

CAP. XLII.

Act providing for the organisation of the Department of the secretary of State of Canada, and for the management of Indian and Ordnance Lands, S.C. 1868, c.42. (31 Vict.)

[Assented to 22nd May, 1868.]

Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. There shall be a department to be called "The Department of the Secretary of State of Canada," over which the Secretary of State of Canada for the time being, appointed by the Governor General by commission under the Great Seal, shall preside; and the said Secretary of State shall have the management and direction of the Department, and shall hold office during pleasure.
2. The Governor General may also appoint an "Under Secretary of State," and such other officers as may be necessary for the proper conduct of the business of the said Department, all of whom shall hold office during pleasure.
3. It shall be the duty of the Secretary of State to have charge of the State correspondence, to keep all State records and papers not specially transferred to other Departments, and to perform such other duties as shall from time to time be assigned to him by the Governor General in Council.
4. The Secretary of State shall be the Registrar General of Canada, and shall as such register all Instruments of Summons, Commissions, Letters Patent, Writs, and other Instruments and Documents issued under the Great Seal.
5. The Secretary of State 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.
6. All lands reserved for Indians or for any tribe, band or body of Indians, or held in trust for their benefits, shall be deemed to be reserved and held for the same purposes as before the passing of this Act, but subject to its provisions; and no such lands shall be sold, alienated or leased until they have been released or surrendered to the Crown for the purposes of this Act.
7. All moneys or securities of any kind applicable to the support or benefit of the Indians or any tribe, band or body of Indians and all moneys accrued or hereafter to accrue from the sale of any lands or of any timber on any lands reserved or held in trust as aforesaid, shall, subject to the provision of this Act, be applicable to the same purposes, and be dealt with in the same manner as they might have been applied to or dealt with before the passing of this Act.
8. No release or surrender of lands reserved for the use of the Indians or of any tribe, band or body of Indians, or of any individual Indian, shall be valid or binding, except on the following conditions:
 1. Such release or surrender shall be assented to by the chief, or if there be more than one chief, by a majority of the chiefs of the tribe, band or body of Indians, assembled at a meeting or council of the tribe, band or body summoned for that purpose according to their rules and entitled under this Act to vote thereat, and held in the presence of the Secretary of State or of an officer duly authorized to attend such council by the Governor in Council or by the Secretary of State; provided that no chief or Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near the lands in question;
 2. The fact that such release or surrender has been assented to by the Chief of such tribe, or if more than one, by a majority of the chiefs entitled to vote at such council or meeting, shall be certified on oath before some Judge of a Superior, County or District Court, by the officer authorized by the Secretary of State to attend such council or meeting, and by some one of the chiefs present thereat and entitled to vote, and when so certified as aforesaid shall be transmitted to the Secretary of State by such officer, and shall be submitted

to the Governor in Council for acceptance or refusal.

9. It shall not be lawful to introduce at any council or meeting of Indians held for the purpose of discussing or of assenting to a release or surrender of lands, any strong or intoxicating liquors of any kind; and any person who shall introduce at such meeting, and any agent or officer employed by the Secretary of State, or by the Governor in Council, who shall introduce, allow or countenance by his presence the use of such liquors a week before, at, or a week after, any such council or meeting, shall forfeit two hundred dollars, recoverable by action in any of the Superior Courts of Law, one half of which penalty shall go to the informer.
10. Nothing in this Act shall confirm any release or surrender which would have been invalid if this Act had not been passed; and no release or surrender of any such lands to any party other than the Crown, shall be valid.
11. The Governor in council may, subject to the provisions of this Act, direct how, and in what manner, and by whom the moneys arising from sales of Indian Lands, and from the property held or to be held in trust for the Indians, or from any timber thereon, 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 may be entitled shall be made or given, any may provide for the general management of such lands, moneys and property, and direct what percentage or proportion thereof shall be set apart from time to time, to cover the cost of and attendant upon such management under the provisions of this Act, and for the construction or repair of roads passing through such lands, and by way of contribution to schools frequented by such Indians.
12. No person shall sell, barter, exchange or give to any Indian man, woman or child in Canada, any kind of spirituous liquors, in any manner or way, or cause or procure the same to be done for any purpose whatsoever;- any if any person so sells, barter, exchanges or gives any such spirituous liquors to any Indian man, woman or child as aforesaid, or causes the same to be done, he shall on conviction thereof, before any Justice of the Peace, upon the evidence of one credible witness, other than the informer or prosecutor, be fined not exceeding twenty dollars for each such offence, one moiety to Her Majesty to form part of the fund for the benefit of that tribe, band or body of Indians with respect to one or more members of which the offence was committed; but no such penalty shall be incurred by furnishing to any Indian in case of sickness, any spirituous liquor, either by a medical man or under the direction of a medical man or clergyman.
13. No pawn taken of any Indian 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.
14. No presents given to Indians nor any property purchased or acquired with or by means of any annuities granted to Indians, or any part thereof, or otherwise howsoever, and in the possession of any Tribe, band or body of Indians or of any Indian of any such Tribe, band or body, shall be liable to be taken, seized or distrained for any debt, matter or cause whatsoever.
15. For the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the tribe, band or body of Indians interested in any such lands or immoveable property:

Firstly. All persons of Indian blood, reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;

Secondly. All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and the descendants of all such persons; And

Thirdly. All women lawfully married to any of the persons included in the several classes hereinbefore

designated; the children issue of such marriages, and their descendants.

16. Indians and persons intermarried with Indians, residing upon any Indian Lands, and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed by the Secretary of State, or any officer or person by him thereunto authorized, to perform labor on the public roads laid out or used in or through or abutting upon such Indian lands, such labor to be performed under the sole control of the said Secretary of State, officer or person, who may direct when, where and how and in what manner, the said labor shall be applied, and to what extent the same shall be imposed upon Indians or persons intermarried with Indians, who may be resident upon any of the said lands; and the said Secretary of State, officer or person shall have the like power to enforce the performance of all such labor by imprisonment or otherwise, as may be done by any power or authority under any law, rule or regulation in force in that one of the Provinces of Canada in which such lands lie, for the non-performance of statute labor; But the labor to be so required of other inhabitants of the same province, county or other local division, under the laws requiring and regulating such labor and the performance thereof.
17. No persons other than Indians and those intermarried with Indians, shall settle, reside upon or occupy and land or road, or allowance for roads running through any lands belonging to or occupied by any tribe, band or body of Indians; and all mortgages or hypothecs given or consented to by any Indians or any persons intermarried with Indians, and all leases, contracts and agreements made or purporting to be made, by any Indians or any person intermarried with Indians whereby persons other than Indians are permitted to reside upon such lands, shall be absolutely void.
18. If any persons other than Indians or those intermarried with Indians do, without the license of the Secretary of State, (which license, however, he may at any time revoke,) settle, reside upon or occupy any such lands, roads or allowances for roads, the Secretary of State, or such officer or person as he may thereunto depute and authorize, shall, on complaint made to him, and on proof of the fact to his satisfaction, issue his warrant signed and sealed, directed to the sheriff of the proper county or district, then directed to any literate person willing to act in the premises, commanding him forthwith to remove from the said lands or roads, or allowances for roads, all such persons and their families, so settled, residing upon or occupying the same; and such sheriff or other person shall, accordingly, remove such persons, and for that purpose shall have the same powers as in the execution of criminal process; but the provisions in this and the four next following sections shall extend to such Indian lands only, as the Governor, from time to time, by Proclamation published in the *Canada Gazette*, declares and makes subject to the same, and so long only such proclamation remains in force.
19. If any person after having been removed as aforesaid returns to, settles upon, resides upon, or occupies, any of the said lands or roads or allowances for roads, the Secretary of State or any officer or person deputed and authorized, as aforesaid, upon view, or upon proof on oath made before him or to his satisfaction, that the said person has returned to, settled or resided upon or occupied any of the said lands or roads or allowances for roads, shall direct and send his warrant signed and sealed, to the Sheriff of the proper County or District, or to any literate person therein, and if the said lands be not situated within and County, then to any literate person, commanding him forthwith to arrest such person and commit him to the Common Gaol of the said County or District or to the said lands, if the said lands be not within any County or District, there to remain for the time ordered by such warrant, but which shall not exceed thirty days.
20. Such Sheriff or other person shall accordingly arrest the said party, and deliver him to the Gaoler or Sheriff of the proper County or District who shall receive such person, and imprison him in the said Common Gaol for the term aforesaid, there to remain without bail and without being entitled to the liberties or limits of the said Gaol.
21. The said Secretary of State, or such officer or person as aforesaid, shall cause the judgment or order against the offender to be drawn up, and such judgment shall not be removed by *Certiorari* or otherwise, or be appealed from, but shall be final.
22. If any person without the license in writing if the Secretary of State, or of some officer or person deputed by him for that purpose, trespasses upon any of the said lands or roads or allowances for roads, by cutting, carrying away or removing therefrom, any of the trees, saplings, shrubs, underwood or timber thereon, or

by removing any of the stone or soil of the said lands, roads or allowances for roads, the person so trespassing shall for every tree he cuts, carries away or removes, forfeit and pay the sum of twenty dollars, and for cutting, carrying or removing any of the saplings, shrubs, underwood or timber, 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, such fine recovered by the said Secretary of State, or any officer or person by him deputed, by distress and sale of the goods and chattels of the party or parties fined, or the said Secretary of State, officer or person without proceeding by distress and sale as aforesaid, may, upon the non-payment of the said fine, order the party or parties to be imprisoned in the Common Gaol as aforesaid, for a period not exceeding thirty days, when the fine does not exceed twenty dollars, or for a period not exceeding three months, where the fine does exceed twenty dollars; and upon the return of any warrant for distress or sale, if the amount thereof has not been made, or if any part of it remains unpaid, the said Secretary of State, officer or person, may commit the party in default upon such warrant, to the Common Gaol as aforesaid, for a period not exceeding thirty days if the sum claimed by the Secretary of State, upon the said warrant, does not exceed twenty dollars, or for a time not exceeding three months if the sum claimed does not exceed twenty dollars; all such fines shall be paid to the Receiver General, to be disposed of for the use and benefit of the tribe, band or body of Indians for whose benefit the lands are held, in such manner as the Governor may direct.

23. In all orders, writs, warrants, summonses and proceedings whatsoever made, issued or taken by the Secretary of State, or of any officer or person by him deputed as aforesaid, it shall not be necessary for him or such officer or person, to insert or express the name of the person summoned, arrested, distrained upon, imprisoned or otherwise proceeded against therein, except when the name of such person is truly given to or known by the Secretary of State, officer or person, and if the name be not truly given to or known by him, he may name or describe the person by any part of the name of such person given to or known by him; and if no part of the name be given to or known by him he may describe the person proceeded against in any manner by which he may be identified; and all such proceedings containing or purporting to give the name or description of any such person as aforesaid shall *prima facie* be sufficient.
24. All Sheriffs, Gaolers or Peace Officers to whom any such process is directed by the said Secretary of State, or by any officer or person by him deputed as aforesaid, shall obey the same, and all other officers upon reasonable requisition shall assist in the execution thereof.
25. If any Railway, road or public work passes through or causes injury to any land belonging to or in possession of any tribe, band or body of Indians, compensation shall be made to them therefor, in the same manner as is provided with respect to the lands or rights of other persons; the Secretary of State shall act for them in any matter relating to the settlement of such compensation and the amount awarded in any case shall be paid to the Receiver General for the use of the tribe, band or body of Indians for whose benefit the lands are held.
26. The Secretary of State is hereby substituted for the Commissioner of Indian Lands for Lower Canada, under the fourteenth chapter of the Consolidated Statutes for Lower Canada, respecting Indians and Indian lands, which shall continue to apply to Indians and Indian lands, in the Province of Quebec, in so far as it is not inconsistent with this Act, and shall have all the powers and duties assigned to such Commissioner by the said Act, except that the lands and property heretofore vested in the said Commissioner shall henceforth be vested in the Crown, and shall be under the management of the Secretary of State, who shall manage the same on behalf of the Crown, and the suits respecting them shall be brought in the name of the Crown, and the said Secretary of State shall not be bound to have any domicile in the Province of Quebec or to give security; and so much of the said Act as is inconsistent with this Act is repealed.
27. The period limited by the sixth section of the Act last cited, as that within which informations may be brought under that Act, shall be one year instead of six months.
28. In all cases of encroachment upon any lands set apart for Indian reservations or for the use of the Indians, not hereinbefore provided for, it shall be lawful to proceed by information in the name of Her Majesty in the Superior Courts of Law or Equity, notwithstanding the legal title may not be vested in the Crown.
29. The Governor may authorize surveys, plans and reports to be made of any lands reserved for Indians shewing and distinguishing the improved lands, the forests and lands fit for settlement, and such other

information as may be required.

30. The proceeds arising from the sale or lease of any Indian lands or from the timber thereon shall be paid to the Receiver General to the credit of Indian Fund.
31. The fifty-seventh chapter of the Revised Statutes of Nova Scotia, Third Series, is hereby repealed, and the chief Commissioner and Deputy Commissioners under the said chapter, shall forthwith pay over all monies in their hands arising from the selling or leasing of Indian lands, or otherwise under the said chapter, to the Receiver General of Canada by whom they shall be credited to the Indian Fund of Nova Scotia; and all such monies in the hands of the Treasurer of Nova Scotia, shall be paid over by him to the Receiver General of Canada, by whom they shall be credited to the said Indian Fund. And all Indian lands and property now vested in the said Chief Commissioner, Deputy Commissioner, or other person whomsoever, for the use of Indians, shall henceforth be vested in the Crown and shall be under the management of the Secretary of State.
32. The eighty-fifth chapter of the Revised Statutes of New Brunswick respecting Indian Reserves is hereby repealed, and the Commissioners under the said chapter, shall forthwith pay over all monies in their hands arising from the selling or leasing of Indian Lands or otherwise under the said chapter, to the Receiver General of Canada, by whom they shall be credited to the Indians of New Brunswick, and all such monies now in the hands of the Treasurer of New Brunswick shall be paid over to the Receiver General of Canada, to be credited to the said Indians. And all Indian lands and property now vested in the said Commissioner, or other person whomsoever, for the use of Indians, shall henceforth be vested in the Crown and shall be under the management of the Secretary of State.
33. Nothing in this Act contained shall affect the provisions of the ninth chapter of the Consolidated Statutes of Canada, intitled: *An Act respecting the civilization and enfranchisement of certain Indians*, in so far as respects Indians in the Provinces of Quebec and Ontario, nor of any other Act when the same is not inconsistent with this Act.
34. The Secretary of State is hereby substituted for the Commissioner of Crown Lands as regards the Ordnance and Admiralty lands transferred to the late Province of Canada and lying in the Provinces of Quebec and Ontario.
35. All powers and duties vested in the Commissioner of Crown Lands with respect to the said Ordnance or Admiralty Lands, in the Provinces of Quebec and Ontario, by the Act of the Parliament of the late Province of Canada, passed in the twenty-third year of Her Majesty's reign, and chaptered two, intitled: *An Act respecting the sale and management of Timber on Public Lands*, both which Acts shall continue to apply to the said lands;)- or by any other Act or law in force in any of the Provinces now composing the Dominion of Canada, at the time of the Union of the said Provinces, are hereby transferred to and vested in the said Secretary of State, and shall be exercised and performed by him; Provided that in construing the two Acts cited in this Section, with reference to the said lands, the words "Secretary of State" shall be substituted for the words "Commissioner of Crown Lands," and for the words "Registrar of the Province,"- the words "Governor General" shall be substituted for the word "Governor" and the words "Governor General in Council" for the words "Governor in Council,"- and the Governor General in Council may direct that the said two Acts or either of them, or any part or parts of either or both of them shall apply to the Indian Lands in the Provinces of Quebec and Ontario, or to any of the said lands, and may from time to time repeal and such Order in Council and make another or others instead thereof; and provided further, that all the powers and duties by this section vested in the Secretary of State, shall be deemed to have been so vested from and after the first day of July now last past, and may be by him exercised with reference to any act or thing done or performed since that date, in connection with Ordnance or Indian Lands.
36. The Secretary of State shall also have the control and management of all Crown Lands being the property of the Dominion, that are not specially under the control of the Public Works Department.
37. The Governor in Council may, from time to time, make such Regulations as he deems expedient for the protection and management of the Indian lands in Canada or any part thereof, and of the timber thereon or cut from off the said lands, whether surrendered for sale or reserved or set apart for the Indians, and for

ensuring and enforcing the collection of all moneys payable in respect of the said lands or timber, and for the direction and government of the officers and persons employed in the management thereof or otherwise with reference thereto, and generally for carrying out and giving effect to the provisions of this Act;- and by such Regulations the Governor in Council may impose such fines not exceeding in any case two hundred dollars, as he deems necessary for ensuring the due observance of such Regulations, the payment of all such moneys as aforesaid, and the enforcing of due obedience to the provisions of this Act,- and by such Regulations provide for the forfeiture, or the seizure and detention of any timber in respect of which the said Regulations have been infringed, or on which any sum payable in respect thereof has not been paid, and for the sale of such timber (if not forfeited,) in case the dues, damages and fine be not paid within the time limited by such regulations, and the payment thereof out of the proceeds of the sale; and if forfeited such timber shall be dealt with as the regulation may direct:- and may appropriate any such fines in such manner he may see fit; and the Governor in Council may by such regulations provide for the forfeiture of any lease, licence of occupation, licence to cut timber, or other licence or permission of any kind with respect to such lands, if the conditions on which such licence or permission is granted are not observed; but no such provision imposing any penalty or forfeiture shall impair or diminish any right or remedy of the Crown to recover any money or enforce the performance of the conditions of any such sale, lease, contract, obligation, licence, or permission in the ordinary course of law.

38. All Regulations or Orders in Council made under the next preceding section shall be published in the *Canada Gazette*, and being so published shall have the force of law, from the date of their publication or from such later date as may be therein appointed for their coming into force; and any such regulation may be repealed, amended or re-enacted by any subsequent regulation, and shall be in force until so repealed or amended unless an earlier period be therein appointed for their ceasing to be in force; and a copy of any such Regulations purporting to be printed by the Queen's Printer shall be *prima facie* evidence thereof.
39. The Governor may, from time to time, appoint officers and agents to carry out this Act, and any Orders in Council made under it, which officers and agents shall be paid in such manner and at such rates as the Governor in Council may direct.
40. The Governor in Council may at any time assign any of the duties and powers hereby assigned to and vested in the Secretary of State, to any other member of the Queen's Privy Council for Canada, and his department, and from the period appointed for that purpose by any order in Council such duties and powers shall be transferred to, and vested in such other member of Her Majesty's Privy Council for Canada and his department.
41. The Secretary of State shall annually lay before Parliament, within ten days after the meeting thereof, a report of the proceedings, transactions and affairs of the department during the year then next preceding.
42. So much of any Act or law as may be inconsistent with this Act, or as makes any provision in any matter provided for by this Act, other than such as is hereby made, is repealed, except only as to things done, obligations contracted, or penalties incurred before the coming into force of this Act.

See S.C. 1869, c.6; S.C. 1874, c.21.