

CHAP. 32.

An Act to further amend "The Indian Act."

[Assented to 23rd July, 1894.]

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

1. Section twenty of *The Indian Act*, chapter forty-three of the Revised Statutes, is hereby repealed and the following substituted therefor:-

"20. 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 shall be made to any one not entitled to reside on such reserve, except when the devise or bequest of land is made to the daughter, sister or grand-children of the testator, 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 shall be deemed to have died intestate; and provided further that 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 disposition is concerned and the Indian making the will shall be deemed to have died intestate as to the land or interest as to which such disallowance takes place.

"2. 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 a reserve, shall devolve one-third upon his widow, if any, is she is a woman of good moral character, as to which fact the superintendent general shall be the sole and final judge, and the remainder (or the whole of there is no widow or if the widow is not of good moral character) upon the children in equal shares if they are Indians within the meaning of this Act: provided that if one or more of the children of such intestate Indian are living and one or more are dead the inheritance 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 is 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, and the rule of descent thus prescribed shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, are of unequal degrees of consanguinity to the intestate, 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, of 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 section seventy-seven of this Act he was not liable to taxation.

"3. 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; but 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.

"4. 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; any interest which he may have had in land in a reserve shall be vested in Her Majesty for the benefit of the band owning such reserve if his nearest of kin is more remote than a brother or sister.

"5. 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 under the like circumstances, her widower, if any, taking the share which the widow of such male Indian would take; and the other provisions of this section in like manner apply to the case of an intestate married woman, the word "widower" being substituted for the word "widow" in each case. The property of an unmarried Indian woman who dies intestate shall descend in the same manner as if she had been a male.

"6. 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.

"7. 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.

"8. The superintendent general may decide all questions which arise under this Act, 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. 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 Act, 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 restrictions upon the disposition of property in a reserve.

"9. Notwithstanding anything in this Act 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 administrative 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 section seventy-seven of this Act, and India is not liable to taxation."

2. Section twenty-one of *The Indian Act* is hereby repealed and the following substituted therefor:-

"21. Every person, or Indian other than an Indian of the band, who, without the authority of the superintendent general, resides or hunts upon, 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; and all deeds, leases, contracts, agreements or instruments of whatsoever kind made, entered into, or consented to be 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."

3. Section thirty-eight of *The Indian Act* is hereby repealed and the following substituted therefor:-

"38. No reserve or portion of a reserve shall be sold, alienated or leased until the same has been released or surrendered to the Crown for the purposes of this Act; but the superintendent general may lease, for the benefit of Indians engaged in occupations which interfere with their cultivating land on the reserve, and of sick, infirm or aged Indians, and of widows and orphans or neglected children, lands to which they are entitled without the same being released or surrendered."

4. The section substituted for section seventy-two of *The Indian Act* by section eight of chapter thirty-three of

the Statutes of 1887 is hereby repealed and the following substituted therefor:-

"72. The superintendent general may 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 is separated from his family by imprisonment; and the superintendent general may apply the same towards the support of the wife or family of such Indian."

5. Subsection one of section seventy-five of *The Indian Act* is hereby amended by inserting after the word "deposed" in the seventh line thereof the following words "and declared ineligible for re-election for three years."

6. The section substituted for section ninety-four of *The Indian Act* by section four of chapter twenty-two of the Statutes of 1888, is hereby amended by adding thereto the following subsection:-

"2. In this section the expression 'Indian,' in addition to its ordinary signification as defined in section two of this Act, shall extend to and include 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."

7. Section ninety-nine of *The Indian Act* is hereby repealed and the following substituted therefor:-

"99. 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 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, and of which penalty shall belong to the informer."

8. The section substituted for section one hundred and seventeen of *The Indian Act* by section nine of chapter twenty-nine of the Statutes of 1890, is hereby repealed and the following substituted therefor:-

"117. Every Indian agent shall, for all the purposes of this Act, or of any other Act respecting Indians, and with respect to any offence against the provisions thereof or against the provisions of section ninety-eight or section one hundred and ninety of *The Criminal Code*, 1892, and with respect to any offence by an Indian against any of the provisions of part XIII of the said Code, 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 Indians charged with or in any way concerned in or affected by the offence, matter or thing to be tried, investigated or dealt with, are or are not within his ordinary jurisdiction, charge or supervision as an Indian agent.

"2. In the North-West Territories and the provinces of Manitoba and British Columbia 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 anywhere in the said Territories or provinces within which his agency is situated, 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."

9. Section one hundred and thirty-two, as added to *The Indian Act* by section five of chapter twenty-two of the Statutes of 1888, is hereby repealed and the following substituted therefor:-

"132. 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 Her 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; but the Governor General 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 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."

10. Subsection one of section one hundred and thirty four added to The Indian Act by section ten of chapter twenty-nine of the Statutes of 1890, is hereby amended by inserting after the word "shall," in the fifth line thereof, the following words: "without the special license, in writing, of the Superintendent General of Indian Affairs, which license he may at any time revoke."

11. The Indian Act is hereby amended by adding the following sections thereto:-

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

"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."

"**138.** 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 section.

"2. 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, 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.

"3. 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."

"**139.** 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."

12. All regulations made by the Governor in Council under this Act 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.