

Chap. 14.

An Act to amend the Indian Act

[Assented to 19th May, 1911]

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

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 Subsection 1 of section 46 of *The Indian Act*, chapter 81 of the Revised Statutes, 1906, is repealed, and the following is substituted therefor:--

"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 processing by such company, municipal, or local authority in ordinary cases."

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

"49A. In the case of an Indian reserve which adjoins or is situated wholly or partly with 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 recommendations of the Superintendent-General, refer to the judge of the Exchequer Court of Canada for inquiry and report the questions as to, whether it is expedient, having regard to the interest if the public and if 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.

"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 court shall thereupon 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.

"3. The judge shall have the like power to issue subpoenas, 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 and act for the Indians who may be opposed to the proposed removal.

"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.

"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, 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.

"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 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.

"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."

3. Section 171 of the said Act is repealed and the following is substituted therefor:--

"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."

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:--

"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 possess: on or any right of possession, is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass committed thereon, the possession may be revoked 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 band or tribe of Indians entitled to or claiming the possession or right of possession or entitled to or claiming the possession or right of possession or entitled to or claiming the declaration, relief or damages."