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The Charles McKay Case.

The Consolidated Statutes of British Columbia Vol.1 Chap. 79 Sec. 4 specifies who may celebrate a marriage as follows:-

"The Ministers and clergymen of every church and religious denomination in British Columbia, and the Registrars appointed by the Lieutenant Governor in Council under this Act, may celebrate a marriage between any two persons, neither of whom shall be under a legal disqualification to contract such a marriage."

"Section 5 of the same Act further provides that such ministers or clergymen may celebrate a marriage according to the rites and usages of the church or denomination to which they respectively belong, between any two such persons where authorized to do so by license under the hand and seal of the Lieutenant Governor or his Deputy, or (if not so authorized) then, except as is hereinafter enacted by the publication of the banns of such marriage openly, and in an audible voice, in any church, chapel or place of public worship of the congregation or religious community with which the minister or clergyman is connected on three consecutive Sundays, during Divine Service, together with the number of such proclamation as being the first, second or third time of asking."

"Sec.9 is as follows:- Nothing herein contained shall be construed as enabling any religious ceremony of marriage to be solemnized under or by virtue of a Civil Contract of marriage, made as herein provided, through a registrar, but all persons desirious of being married by religious ceremony can only be so married after the license or publication of banns as aforesaid."

Mr. Stephenson states that banns were not published, nor license obtained and the ceremony as performed by Mr. Duncan would not comply with the terms of the Act as regards a marriage by a clergyman. Mr. Duncan was not an ordained clergyman, but a lay missionary of the church of England, but Mr. Tomlinson, who was present at the ceremony, was a clergyman of the Anglican Church. Even if Mr. Tomlinson took part in the ceremony, then was still wanting, to have the marriage comply with the terms of the law, either the publication of the banns or the necessary license.

There are other points to be considered, however, before a decision can be given that Charles MrKay was not legally married.

The marriage ceremony of the Indians of Metlakahtla, like that of the other Indians of the North West and British Columbia, was of a very simple character, requiring only the consent of the parties and of the father of the female, which consent was commonly obtained by a gift. No rite was considered necessary.

The law courts have on more than one occasion, given the decision that such marriages are quite legal. We have had more than one opinion from the Department of Justice to the same effect, as for instance, that of the 14th of December 1888, which states that marriages of Pagan Indians which have been contracted in accordance with tribal customs should be treated as prima facie valid and the issue of such marriages as legitimate" In another opinion, we were told that Indian marriages cannot be disolved according to the Indian customs, but only in such manner as may other marriages.

"Even if there had been no valid marriages but the Indian