# Notes on Recent Cases

On September 9th, 1938, a ruling of some importance under the Indian Act was given by Police Magistrate J. E. Lussier at Melfort, Sask. His Worship's decision is of exceptional interest in placing an interpretation on the words "or other produce" contained in Section 120. Briefly, the facts are that one Simon Whitehead, a Treaty Indian, was charged with a contravention of Section 120 of the Indian Act for unlawfully selling produce, to wit, one load of hay acquired from the James Smith Indian Reserve without a proper permit.

Section 120 of the Indian Act, as amended by Sec. 9 of Chap. 42, 1932-33, provides:

> "Every person who buys or otherwise acquires from any Indian or band or irregular band of Indians in the Province of Manitoba, Saskatchewan, or Alberta, or the Territories, or sells to any such Indian, any cattle or other animals or any grain, root crops or other produce, and every Indian who sells any cattle or other animals or any grain, root crops or other produce, contrary to the provisions of this Act, shall on summary conviction be liable to a penalty not exceeding fifty dollars or to imprisonment for a term not exceeding thirty days, or to both."

The accused entered a plea of "not guilty" and at the conclusion of the prosecution evidence, Defence Counsel moved for the discharge of his client on the ground that the information failed to disclose an offence inasmuch as it referred to "hay" as a produce, and that the definition of "or other produce" within the meaning of the Statute did not embrace "wild hay". In support of this contention, *Prince* v. *Tracey* (1913) 25 W.L.R. 412, a Manitoba decision dealing with the civil rights of Indians, was advanced as conclusive and binding authority. In this case it was held that construed *ejusdem generis,* the words in question were definitive of "grain, root, crops," which clearly indicated that produce was interpreted to be in the nature of cultivated field crops. He submitted that Section 120 of the Act applied only to things actually produced on the Reserve and that the word "produce" was limited to the meaning of agricultural produce, which, although it included tame or cultivated hay, did not mean wild hay. In reply Crown Counsel insisted that the meaning of a similar phrase referred to in *Prince* v. *Tracey* was a mere *obiter dictum* and declared that the reasoning of this case could not be relied upon as authoritative corroboration of the opposition's argument, in view of the fact that the learned Judge had not indicated the category of "other produce." The prosecution further contended that these words should be held to be "goods commonly produced or used on an Indian Reserve", which included wild hay.

His Worship allowed the motion of the Defence and dismissed the information. The following is an abstract of the decision rendered:

> "The evidence before me shows that the hay sold by the Defendant was wild hay harvested on the Reserve. Defence Counsel, at the close of the prosecution's case, has moved for a dismissal on the grounds, amongst others, that the word 'produce' included in the section does not cover wild hay. Counsel cited in particular the decision of Prendergast, J. in Prince v. Tracey, 25 W.L.R. page 412, and especially at page 417 where His Lordship says: "I am also of opinion