were, but if he had any duties in the shape of protecting the Indians, I am satisfied he failed entirely to look after their interests. The Chief Justice says:

Before reporting upon the various claims for patents to portions of this reserve, I think it well to consider the environment at the time of the treaty and also to discuss some points of law.

At the time of the treaty and for a long time previously, the territory along the Red river from Winnipeg northward, was divided into parishes by the church of England, the boundaries of each of which were well defined. Reference to volume 1 of H. Youle Hind's work, published in 1860, being a report of his own observations, will show at page 173, that at that date the parishs of St. Andrews and St. Peters were adjoining, and there was then no St. Clements.

It further shows that the southerly limit of the parish of St. Peter's was south of Sugar Point, and included all of the present town of Selkirk.

The evidence given before me established that at the time of the treaty the southerly boundary of the church parish of St. Peters was in the same place.

At that date the survey by the Dominion government of the Red river belt, north of Winnipeg had not yet begun. See Vaughan's evidence. So of course, when in the treaty the following language is used, 'beginning at the south line of St. Peter's parish, the church parish, and not the Dominion survey parish of St. Peter's must have been intended.' According to the language of the treaty then, the reserve should have its place at the beginning at the south side of Sugar Point, nearly a mile further south than its present boundary and including the fine lands of the town of Selkirk and the lands to the westward and eastward thereof.'

Then, Mr. Speaker, further on, the Chief Justice points out in the following language:

It seems to me clear that the south line of St. Peter's parish referred to in a treaty of 1871, does not correspond with the south line of St. Peter's parish according to the Dominion government survey, and in this respect, the terms of the treaty were not carried out.

Another paragraph later on, Chief Justice says:

It does seem to me that the limits of the reserve were settled ex-parte by the government without the concurrence of the Indians, at all events, there was no pretense before me of any participation in the selection by the band.

The Indians claimed before me that the southern boundary of the reserve should have been at Boilleau's lot, south of Sugar Point, nearly a mile further south than as ultimately fixed.

The report further on says, at the time of the treaty, the Manitoba Act, 33 Vic., chap. 3, was in force. Section 32 gives rights to parties under the sanction of the Hudson Bay Company, which rights were extended by 37 Vic., chap. 20, section 3, and the method of providing or ascertaining these rights was facilitated by 38 Vic., chap. 52, section 1, which seems to be retroactive.

It seems to me clear that the Manitoba Act applies to Indians, half-breeds and whitemen alike, and that if an Indian proves possession and title sufficient to come within section 32 of the Act and amendments, he is entitled to a patent, notwithstanding, the purity of his aboriginal blood. See Totten v. Watson, 15 U.C.R., 392.

The treaty provides that if there are any settlers within the bounds of any lands reserved by any band, Her Majesty reserves the right to deal with such settlers as she shall deem just, so as not to diminish the extent of land allotted to the Indians. The question at once arises as to the meaning of the term settler. Does it mean a mere squatter who has come to this country and has settled on the land prior to surveys, but after the 15th of July, 1870, the date of the transfer, or does it refer to those having rights under the Manitoba Act, above referred to?

The mere setting aside of a tract of land for an Indian reserve by the treaty could not deprive any person of a statutory right to any lands which he then had on any portion of the reserve.

The various members of the band who are in possession of their separate parcels, and owners nearly all claiming titles through Peguis or Princes, were recognized in the locality as separate owners and had their rights marked out as separate lots, fronting on the river by Vaughan in his survey commenced in 1873, completed in 1874. And following the variable practice of the department of the Interior in this country, which is well known to me, if this parish of St. Peter's had not been made a part of the reserve, it seems to me that patents would have issued to the occupiers of this land as in other parishes.

It is argued, however, that because of provisions of the Indian Act, these people lost their rights. However startling it may be, there was no Indian Act in force in this province at, or for some years after the treaty. It is further argued that because the Indians made a treaty, which provides that a reserve be set aside, beginning at the south boundary of the parish, they each individually, agreed to abandon separate and private property to the government so as to establish a reserve. In other words, by the law of estoppel, these wards of the government were prevented from setting up their individual rights against their guardian.

The Indians claim, and there is a good deal of evdence to support it, that at the treaty they were told that each was to retain his private property, and holdings and were to get a reserve in addition thereto.

Another paragraph, the Chief Justice points out the following:

The Indians claim that each is entitled to a patent under the Manitoba Act of the land occupied at the transfer by themselves of their ancestors, and that, therefore, the reserve was not originally large enough to satisfy the terms of the treaty.

It will be seen that this report of Chief Justice Howell points out clearly to the Superintendent General of Indian Affairs