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*THE CROWN AS A TRUSTEE.*

In the recent case of *Henry v. The King*, 9 Ex. C.R. 417, Burbidge, J., in the Exchequer Court, had to consider the question of the enforcement of a trust against the Crown. The petition filed by the suppliants, representing the Mississaugas of the Credit, a band of Indians residing on their reserve in the counties of Brant and Haldimand, sought to obtain a declaration that a sum amounting to over twenty-nine thousand dollars, deducted by the Department of Indian Affairs from certain capital funds held in trust for the Indians, be repaid or restored to such funds. It is not our purpose to discuss the merits of the case here, but we append the following extracts from the learned judge's reasons because they appear to us to be an adequate statement of the Crown's position both as regards this particular trust and trusts in general. We quote from p. 440:—

"It does not follow that because the Crown is a trustee for the Indians in respect of such lands or moneys, that the Court has jurisdiction to enforce the trust, or to make any declaration as to the rights of the parties. That authority, if it exist, must be found in the statutes which give the Court jurisdiction. There are a number of authorities and cases in which the question as to whether the Crown may be a trustee has been considered, and there has been some difference of opinion on the subject. But the real question in any such case is not, it seems to me, whether the Crown may or may not, be a trustee, but whether the Court has any jurisdiction in respect of the execution of the trust. Where the jurisdiction to grant the relief sought is expressly given by statute no difficulty arises in respect of either question."

At p. 443 he further says:—

"The Crown does not in respect of Indian lands and moneys stand in the position of an ordinary trustee. In the first place the Crown does not personally execute the trust. Its administration thereof is vested in a department of Government, over which a Minister of the Crown responsible to Parliament presides. That has been the position of Indian affairs since the year 1860,