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COLONIAL REPORTS—MISCELLANEOUS.

No. 15.

CANADA.

MEMORANDUM

ON THE

LEGAL STATUS OF BRITISH NORTH
AMERICAN INDIANS.

Presented to both Houses of Parliament by Command of Her Majesty.
December, 1900.



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COLONIAL REPORTS.

The following, among other, reports relating to Her Majesty's Colonial Possessions have been issued, and may be obtained from the sources indicated on the title page :—

ANNUAL.

No.	Colony.	Year.
287	Straits Settlements	1898
288	Basutoland	1898-99
289	Niger Coast Protectorate	"
290	British Guiana	1897-98 & 1898-99.
291	Falkland islands	1899
292	British New Guinea	1898-99
293	Bermuda... ..	1899
294	Barbados... ..	"
295	Malta	"
296	Fiji	"
297	Turks and Caicos Islands	"
298	Bahamas	"
299	Sierra Leone	"
300	Gambia	"
301	Seychelles	"
302	Mauritius and Rodrigues	"
303	Trinidad and Tobago	"
304	Straits Settlements	"
305	Gibraltar	"
306	Gold Coast	"
307	Ceylon	"

MISCELLANEOUS.

No.	Colony.	Subject.
1	Gold Coast	Economic Agriculture.
2	Zululand	Forests.
3	Sierra Leone	Geology and Botany.
4	Canada	Emigration.
5	Bahamas	Sisal Industry.
6	Hong Kong	Bubonic Plague.
7	Newfoundland	Mineral Resources.
8	Western Pacific	British Solomon Islands.
9	Dominica	Agriculture.
10	Virgin Islands	Condition during 1897.
11	Grenada	Agriculture in Carriacou.
12	Anguilla	Vital Statistics, 1898.
13	Cook Islands	Trade Report for 1899.
14	Bahamas	Fibre Industry.

No. 15.

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NORTH
AMERICAN
INDIANS.MEMORANDUM ON LEGAL STATUS OF
BRITISH NORTH AMERICAN INDIANS.

GOVERNOR-GENERAL THE EARL OF MINTO to MR. CHAMBERLAIN.

Government House,

Ottawa,

19th February, 1900.

SIR,

IN reply to your circular despatch of the 15th May last, and to your despatch of the 27th October last,* requesting to be furnished, for the purposes of a Return to an Address† from the Imperial House of Commons, with information in regard to the disabilities and restrictions imposed upon British Indians in Canada, I have the honour to enclose herewith a copy of an approved Minute of the Privy Council submitting a memorandum, prepared in the Department of Indian Affairs, containing the desired information.

I have, &c.,

MINTO.

* Not printed.

† See [H. C. 393], 1900.

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EXTRACT FROM A REPORT OF THE COMMITTEE OF THE
HONOURABLE THE PRIVY COUNCIL, APPROVED BY
HIS EXCELLENCY ON THE 12th FEBRUARY, 1900.

The Committee of the Privy Council have had under consideration a despatch, hereto attached, dated 15th May, 1899, from the Right Honourable Mr. Chamberlain, asking for the information, so far as it relates to Canada, required for the preparation of a Return to an Address presented to Her Majesty by the British House of Commons on the 11th May, 1899, which Address called for a Return (1) showing in the case of every British Colony and Dependency, the population of which includes British Indians, what disabilities or restrictions are imposed upon such British Indians, (2) stating for each Colony or Dependency the approximate number of such British Indians, and (3) giving in each case, from the Statutes or Bye-laws, an abstract showing the nature of the disabilities or restrictions in question.

The Committee have had also under consideration a despatch, dated 27th October, 1899, hereto attached, from the Right Honourable Mr. Chamberlain, asking for such information as is practicable for the Return, even if the questions referred to in the Address appear to be inapplicable to Canada.

The Superintendent-General of Indian Affairs, to whom the despatch in question was referred, states that categorical answers to some of the questions submitted in the Address would tend only to create an erroneous impression as to the legal status of Indians in Canada; and that the memorandum hereto annexed has been prepared with the object of showing the limits within which the legal rights of British Indians in Canada are confined, and the nature of those rights.

The Committee, on the recommendation of the Superintendent-General of Indian Affairs, advise that Your Excellency be moved to forward a certified copy of this Minute, together with the said memorandum and the statements annexed thereto, to the Right Honourable the Secretary of State for the Colonies.

All which is respectfully submitted for Your Excellency's approval.

JOHN J. MCGEE.

Clerk of the Privy Council.

MEMORANDUM.

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CONTAINING THE INFORMATION RELATING TO THE
DISABILITIES AND RESTRICTIONS IMPOSED UPON
BRITISH INDIANS IN CANADA, REQUIRED FOR THE
PREPARATION OF A RETURN TO AN ADDRESS PRE-
SENTED BY THE BRITISH HOUSE OF COMMONS TO
HER MAJESTY ON THE 11TH MAY, 1899.

The furnishing of material, so far as it relates to Canada, required for the preparation of the Return to the Address of the British House of Commons of 11th May, 1899, is a matter of some difficulty, owing to uncertainty as to the nature of the material required.

The word "restrictions" in the Address appears much to extend the scope of the Return asked for.

If used with reference to the limits, within which the laws obtaining in Canada confine the exercise of legal rights of British Indians in Canada, the material furnished would be incomplete without reference to the nature of such rights, inasmuch as the Indians hold a peculiar legal position.

The Provinces which have entered Confederation in accordance with the provisions of the British North America Act, 1867, (Imperial Statutes 30-31 Vic. Cap. 3) have each in accordance with that Act exclusive legislative powers in relation to certain matters, including direct taxation within the Province in order for the raising of the revenue for provincial purposes; the management and sale of the public lands belonging to each Province, the solemnization of marriage in the Province, property and civil rights in the Province, and generally all matters of a merely local or private nature within the Province. (*Vide* Section 98 of the said Act.) The legislature of each Province may also exclusively make laws in relation to education subject, and according to the provisions of Section 93 of the said Act. On the other hand, by Section 91 of the said Act, the exclusive legislative authority of the Parliament of Canada was declared to extend as stated in s.s. 24 to "Indians, and lands reserved for the Indians." The meaning of the expression "Indian" was not defined in the B. N. A. Act, 1867, but the expression "Indian" has, from time to time, been defined by the Parliament of Canada for the purposes of its legislation. The latest definition is that contained in Section 2, Clause (h) of the Indian Act (R. S. C., 1886, Cap. 42).

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Since Confederation the Parliament of Canada, in pursuance of Section 91 of the B. N. A. Act, 1867, has exercised legislative authority, in relation to Indians and lands reserved for Indians, by the enactment of various Statutes consolidated in 42 Vic. Cap. 28, which has been subsequently amended. The Dominion Laws in relation to Indians and lands reserved for Indians now obtaining are the Indian Act contained in the Revised Statutes of Canada, 1886, Cap. 43, as amended by 50-51 Vict. Cap. 33, 51 Vic. Cap. 22, 53 Vic. Cap. 29, 54-55 Vic. Cap. 30, 57-58 Vic. Cap. 32, 58-59 Vic. Cap. 35, 61 Vic. Cap. 34, and the Indian Advancement Act, R. S. C., 1886, Cap. 44, as amended by 53 Vic. Cap. 30.

RESERVES.

Formation.

Each of the present Provinces of the Dominion, prior to its entrance into the Union, followed its own policy in regard to the reservation of lands for the occupancy of Indians.

In Nova Scotia reservations for their benefit had been made from the Crown Lands. Under the provision of Cap. 57 of the Revised Statutes of Nova Scotia, 1864, these reserves were administered by a Commissioner, who was authorised to parcel out a portion of the reservation to each family, with such limited power of alienation as might be authorized by the Governor; and also to enter Agreements for sale or lease to parties who were then in possession, or had squatted on any portion of the reserve. The capital moneys arising from such sale or lease were payable into the hands of the Receiver-General, and the interest thereon was applicable to the exclusive benefit of the Indians; 1st, for the relief of indigent and infirm Indians; 2nd, in promoting their settlement on reserved lands; 3rd, in procuring seed, implements of husbandry and domestic animals as the Governor might direct.

In New Brunswick reservations were made for the benefit of the Indians, and under the Revised Statutes, 1854, Cap. 85, the Governor in Council was enabled to lease or sell, and the annual proceeds or profits from the reserves were applicable to the exclusive benefit of the Indians; 1st, for the relief of indigent and infirm Indians; and 2nd, for procuring seed, implements of husbandry and domestic animals as the Governor might direct. Authority was also given for the laying off of any tract of the reserves, or any part thereof, into villages or town plots for the exclusive benefit of the Indians of each county, the same consisting of not more than 50 acres, nor less than 5 acres; and the Governor in Council had authority to make absolute grants thereof after the Indians had resided upon and improved for at least ten years.

In Prince Edward Island the only reserves for the benefit of the Indians were one granted in 1859 by the Crown, in lieu of the grant of 204 acres made in 1846 for the benefit of eight Indian families expressly named; and one of 1,400 acres purchased by the Aborigines Protection Society, and conveyed to them in trust for the use and benefit of the members of the Micmac Tribe—natives of Prince Edward Island. By Act of Assembly, 19 Victoria, Cap. 10, there was authorized the appointment of Commissioners for the Superintendence of Indian Affairs in a manner similar to that prevailing in Nova Scotia and New Brunswick.

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In Quebec or Lower Canada, as it was known prior to Confederation, the reserves consisted of lands given by the Jesuit Fathers, or lands granted to the Jesuits in trust for the Indians, also of lands granted by private individuals to the Indians, and lands claimed by the Indians as their habitat of which they had never been dispossessed by the Crown. In addition lands to the extent of 230,000 acres had been set apart and appropriated in different parts of Lower Canada for the benefit of different tribes there, under Statutes 14-15 Vic. Cap. 106.

By 13-14 Vic., Cap. 32, all lands or property in Lower Canada appropriated for the use of any tribe or body of Indians became vested in trust for such tribe or body in the Commissioner of Crown Lands for Lower Canada, who was authorized to concede, lease, or charge such lands subject to instructions from the Governor, to whom he was accountable for all moneys received.

In Ontario, formerly Upper Canada, the Government adhered to the spirit of the Royal Proclamation of 7th October, 1763, 3, George III., whereby the purchase in the name of the Crown of the so-called Indian title over ungranted lands was authorized, and the purchase by private persons prohibited. Although the Quebec Act, 1774, Imperial Statutes, abrogated the force of the Royal Proclamation, Treaties were from time to time made with the Indians inhabiting Ontario, whereby there was surrendered to the Crown whatever usufructuary right was held in the lands over which they roamed, generally in consideration of the grant or reservation for their exclusive benefit of defined areas of land, and of the payment of small annuities. In recognition of the loyalty to the British Crown of the Confederacy of the six nations during the American War, a large block of land of 674,910 acres was, in 1784, appropriated by the Crown for their benefit. By 2 Vic. Cap. 15 of Upper Canada, provision was made in Upper Canada for the protection from encroachment of lands for the cession of which no Agreement had been made by the Crown with the Indian Tribes occupying the same; and the Lieutenant-Governor was authorized to appoint Commissioners to this end. By 23 Vic. Cap. 151 of the Province of Canada, the Commissioner of Crown Lands was declared to be the Chief Superintendent of Indian Affairs.

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In the Province of Manitoba and the North West Territories the policy prevailing in Ontario has been followed, and large reserves have been laid aside upon the surrender of the so-called Indian title.

In British Columbia the policy of extinguishment of Indian title by treaty was adopted to a limited extent upon Vancouver Island; but upon the mainland no such policy prevailed. However, since the Province entered into Confederation, reserves have been set apart for their benefit by Agreement between the Dominion and the Province in 1875-6. (*Vide* Dominion O.C., 10th November, 1875, and British Columbia O.C., 6th January, 1876).

Since 1867 lands have been purchased by the Dominion Government in various parts of Canada for Indian use.

CONTROL.

By Section 4 of the Indian Act the Minister of the Interior, or the head of any other Department appointed for that purpose by the Governor-General in Council as Superintendent-General of Indian Affairs, is given the control and management of the lands and property of the Indians in Canada, and by Sections 5 to 8 provision is made for a Department of the Civil Service called the Department of Indian Affairs, to have the management, charge, and direction of Indian Affairs, and for the appointment of the necessary officers for the conduct of the Department, and for carrying out the Act.

By Section 2, Clause (k), the expression "reserve" in the Act is defined as meaning any tract or tracts of land set apart by Treaty or otherwise for the use and benefit of, or granted to, a particular band of Indians of which the legal title is in the Crown, and which remains a portion of the said reserve, and includes all the trees, wood, timber, soil, stone, minerals, metals and other valuables thereon or therein; and by Section 14 all reserves for Indians are declared to be held for the same purpose as before the Act.

TENURE OF LAND BY INDIANS.

By Section 16 no Indian is to be deemed to be lawfully in possession of any land in a reserve unless he has been or is located for the same by the band, or council of the band, with the approval of the Superintendent-General; but by 53 Vic. Cap. 29, Section 2, proviso was made whereby prior to location in the Province of Manitoba, District of Keewatin, or the North West Territories a certificate of occupancy might issue to an Indian which, although subject to be cancelled at any time

by the Indian Commissioner, thereby authorized to issue it, did, while it remained in force, vest in the holder thereof as against all others lawful possession of the lands described therein.

Under Section 18 a location title does not render the land liable to seizure under legal process, and the title is transferable only by the consent of the Superintendent-General.

Under Section 20 as now enacted by 57-58 Vic. Cap. 32, Section 1, Indians may devise or bequeath property of any kind in the same manner as any other persons, but no devise of land in reserves, or any interest therein, can be made to anyone not entitled to reside on the reserve except to the daughter, children, or grand-children of the testator, and such devise is not operative until approved by the Superintendent-General, whose disapproval has the effect of causing an intestacy in respect of the property devised. In the case of intestacy property, real or personal, devolves upon next of kin, except that if the next of kin is more remote than a brother or sister, any interest of intestate in land in a reserve becomes vested in the Crown for the benefit of the band owning the reserve. The Superintendent-General is given power to appoint guardians of minors and their property, with power of removal and new appointment, and is made the sole and final judge as to the persons entitled to the property of a deceased Indian, with power to direct the sale, lease, or other disposition thereof, and the distribution or application of the proceeds.

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PROTECTION.

Sections 21 to 29, as amended by Section 2, 57-58 Vic. Cap. 32, Section 1 of 54-55 Vic. Cap. 30, Section 3, 52-53, Vic. Cap. 29, and Section 4 of 50-51 Vic. Cap. 33, contain provision for protection of the reserves from trespass by any person or Indian other than an Indian of the band to which the reserve belongs, and the protection of individual locations from trespass by the members of the band; and make provision for the punishment of trespassers.

IMPROVEMENT.

Under Section 33, as substituted by 61 Vic. Cap. 34, Section 1, and Section 34 of the Indian Act the Superintendent-General may direct the Indians residing upon the reserve to perform labour on the public roads laid out thereon.

ALIENATION.

Section 38 as it now obtains under Section 2 of 61 Vic. Cap. 34, prohibits the sale, alienation, or lease of a reserve, or any portion

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thereof, until released or surrendered to the Crown in accordance with the provisions of the Act, provided the Superintendent-General may lease for the benefit of any Indian without release, or surrender upon application the land to which he is entitled, and may, without surrender, dispose to the best advantage in the interest of the Indians of wild grass and dead or fallen timber.

INDIAN TRUST FUNDS.

Subject to the provisions of Section 70 of the Indian Act now enacted by Section 6 of 61 Vic. Cap. 34, the investment, management, and disposal of Indian funds may be regulated by the Governor in Council; but under Section 139 enacted by 57-58 Vic. Cap. 32, the consent of the band is required for the expenditure of capital moneys in the purchase of lands, or the construction of permanent improvements, or for other purposes named in the Section.

MUNICIPAL GOVERNMENT.

Section 75 of the Indian Act as enacted by 61 Vic. Cap. 34, Section 9, and also Section 76 of the Indian Act contain provision for the Municipal Government of the band by their Chiefs and Councillors, who were empowered to pass rules and regulations, subject to confirmation by the Governor in Council, in relation to the subjects specified in Section 76, which include the care of public health, the observance of order and decorum at assemblies of Indians, the repression of intemperance and profligacy, the prevention of trespass by cattle, the construction of watercourses, roads, bridges, ditches, and fences; the construction and repair of school houses and other public buildings, and the attendance of children at school.

The Indian Advancement Act may be applied to any band of Indians declared by the Governor in Council to be fit subject for its application. It elaborates the Municipal System, and extends the power of the Council of the band.

RESTRICTED LIABILITY TO TAXATION.

Exemption from taxation of any Indian, or non-Treaty Indian, is provided for by Section 77 of the Indian Act, subject to the reservation that he shall be liable to be taxed on real estate under a lease, or in fee simple, or the personal property which he holds in his individual right outside the reserve, or special reserve. The propriety of this exemption appears upon reference to Section 92 of the B. N. A. Act, 1867, under which direct taxation within the Provinces is a matter within the exclusive

authority of the Provincial Legislature which is not charged with Legislative Authority over Indians and Indian Reserves.

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RESTRICTIONS ON CONTRACTS AND EXEMPTIONS FROM SEIZURE.

Though under Section 79 of the Indian Act, Indians and non-Treaty Indians may sue for debts due them, and compel performance of obligations contracted with them, and may sue in respect of any tort or wrong committed upon them, under Section 78 no person shall take any security, or otherwise obtain any lien or charge, whether by mortgage, judgment, or otherwise, upon real or personal property of any Indian or non-Treaty Indian except on real or personal property subject to taxation under the next preceding Section, but any person selling any article to an Indian, or non-Treaty Indian, may take security on such article for any part of the price thereof which is unpaid.

Under Section 80 no pawn taken from any Indian, or non-Treaty Indian, for any intoxicant shall be retained by the person to whom such pawn is delivered: but the thing so pawned may be recoverable by the Indian, or non-Treaty Indian, who pawned the same.

By Section 81 there is exempted from seizure or distraint presents given to Indians, and property purchased or acquired by any annuities granted to Indians, and in the possession of any band of Indians, or any Indian of any band. By the same Section the sale, barter, or exchange of such presents is restricted in the Province of British Columbia and Manitoba, and in the North West Territories, and the District of Keewatin; and punishment is imposed for the contravention of this Section; and every such sale, barter, exchange, or gift is declared to be null and void, unless made with the consent of the Superintendent-General or his Agent.

Under Section 30 the Governor in Council can make regulations prohibiting and regulating such barter, exchange, or gift in the Province of Manitoba and the North West Territories, or District of Keewatin in grain or root crops, and no other produce grown upon any reserve therein, and may further provide for the nullification and the avoidance thereof. By the same Section and Section 31 provisions are made for the enforcement of the regulations.

APPLICATION OF ANNUITY OR INTEREST MONEY OF PARENT OF ILLEGITIMATE OR OF INDIAN GUILTY OF DESERTION.

Under Section 72 of the Indian Act as enacted by 61 Vic. Cap. 34, Section 7, the Superintendent-General may stop the

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payment of the interest money of, as well as deprive of any participation in the real property of the band, any Indian who is proved, to the satisfaction of the Superintendent-General, guilty of deserting his family, or of conduct justifying his wife or family in separating from him, or who is separated from his family by imprisonment; and the Superintendent-General may apply the same towards the support of the wife or family of such Indian. The Superintendent-General may also stop the payment of the annuity and interest money of any Indian parent of an illegitimate child, and apply to the same to the support of such child. By Section 73 as enacted by Section 8 of 61 Victoria, Cap. 34, similar provisions are made in regard to Indian women.

ENFRANCHISEMENT.

Sections 82 to 92 inclusive (of the Indian Act), as amended by 58-59 Vic. Cap. 35, Sections 4 and 5, contain provisions in regard to the gradual enfranchisement of Indians and grant to Indians on enfranchisement of locations of land in accordance with the Act, and of their share of the funds of the band.

Upon complete enfranchisement, in accordance with the Act, all such Indians and their unmarried minor children cease in every respect to be Indians of any class within the meaning of the Act, or Indians within the meaning of any other Act or law.

INTOXICATING LIQUORS.

By Section 94 of the Indian Act, as substituted by Section 4 of 67 Vic. Cap. 22, the sale, gift, or supply by any device or in any manner described in the Section, of an intoxicant, as defined by the Act, is punishable on summary conviction by imprisonment for not more than six months or less than one month, with or without hard labour, or penalty not exceeding \$300·00, or not less than \$50·00, or both penalty and imprisonment in discretion of convicting justice.

By Section 95 the master or person in charge of any steamer, vessel, or boat, on which an intoxicant is sold, bartered, or given, to an Indian is liable on summary conviction to a penalty not exceeding \$300·00 or less than \$50·00 with cost of prosecution.

By Section 95 every Indian who makes or manufactures or has in his possession, or sells, barters, supplies, or gives to another Indian any intoxicant shall, on summary conviction, be liable to imprisonment of not more than six months or less than one month, with or without hard labour, or to a penalty not exceeding \$100·00, or less than \$25·00, or both penalty and imprisonment.

By Section 99 Indians are competent witnesses under the three preceding Sections.

Section 98 contains permission to use intoxicants in case of sickness under direction of a medical man or a minister of religion, but the burden of proof that it is so used is placed on the accused.

Section 99 provides for arrest by peace officers without warrant of any person or Indian found gambling, drunk, or in possession of any intoxicant on a reserve, and punishment by imprisonment of persons or Indians so found not exceeding three months, or penalty not exceeding \$50·00 or less than \$10·00 with costs of prosecution.

Section 100 provides for search for and forfeiture of keg, barrel, vat or receptacle from which intoxicants have been sold, exchanged, bartered, supplied, or given, and also for penalty of \$100·00 and not less than \$50·00, and costs of prosecution of any person in whose possession same is found.

Section 101 provides for seizure or forfeiture of any ship, vessel, canoe, or conveyance employed in carrying intoxicants to be supplied to Indians.

Section 103 prohibits introduction of intoxicants at meetings of Indians for discussion or assent to a release or surrender of a reserve on penalty of 200·00 recoverable by action.

Section 104, as enacted by Section 10 of 50-51 Vic. Cap. 33, imposes on summary conviction of an Indian found in a state of intoxication, imprisonment not exceeding one month, or penalty not exceeding \$30·00 and not less than \$5·00, or both penalty and imprisonment, and also provides for arrest without warrant and detention until sober.

Section 105 provides an additional penalty if the Indian charged refuses to state where he has procured the intoxicant.

SALE OF AMMUNITION TO INDIANS.

Section 113 of the Indian Act enables the Superintendent-General to prohibit (by public notice) the sale, gift, or other disposal of any fixed ammunition or ball cartridge to any Indian in Manitoba or the North West Territories, on a penalty not exceeding \$200·00 or imprisonment for six months.

INDIAN DANCES.

By Section 114 of the Indian Act the celebration of certain festivals, dances, or ceremonies, whereat presents are made or

human or animal bodies are mutilated is an indictable offence, punishable by imprisonment, not less than two months or not more than six months.

COSTS OF CONVICTION.

By Section 118 of the Indian Act, if any Indian is convicted of any crime punishable by imprisonment in a penitentiary or other place of confinement, the costs of procuring such conviction and of carrying out the various sentences recorded may be defrayed out of annuity or interest money coming to such Indian or to the band as the case may be.

OFFICIALS PROHIBITED FROM TRADING.

By Section 134 of the Indian Act, as enacted by Section 109 of 53 Victoria, Cap. 29, no official or employee of the Indian Department, and no Missionary employed in mission work among the Indians, and no school teacher on an Indian Reserve shall trade with any Indian, or sell to him directly or indirectly any goods or supplies, cattle, or other animals: penalty, the sum received from sale, etc., and cost of prosecution.

EVIDENCE.

By Section 120 of the Indian Act the evidence of an unbelieving Indian upon enquiry into or trial of criminal charge or offence may be received upon his solemn affirmation, in accordance with Sections 121 to 124 inclusive of the Act.

EDUCATION.

By Section 11 of 57-58 Victoria, chapter 32, the Governor in Council may make regulations to secure the compulsory attendance of Indian Children at school, and providing for the punishment of parents and others who fail, refuse, or neglect to send such children to school. The Governor in Council may also establish industrial or boarding schools for Indians, and may provide for the application of annuities and interest moneys of children committed to such schools for the maintenance of such schools or the children themselves.

INCITING INDIANS TO RIOTOUS ACTS.

By Section 98 of the Criminal Code, 1892, 55-56 Vic., Chapter 29, every one is guilty of an indictable offence, and

liable to two years' imprisonment, who induces, incites, or stirs up any three or more Indians, non-Treaty Indians, or half-breeds, apparently acting in concert (a) to make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly, or in a threatening manner, calculated to cause a breach of the peace; or (b) to do any act calculated to cause a breach of the peace.

PROSTITUTION OF INDIAN WOMEN.

By Section 190 of the Criminal Code of 1892, every one is guilty of an indictable offence, and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment (a) who being the keeper of any house, tent, or wigwam, allows or suffers any unenfranchised woman to be or remain in such house, tent, or wigwam, knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent, or wigwam, with the intention of prostituting herself therein; or (b) who being an Indian woman prostitutes herself therein; or (c) who being an unenfranchised Indian woman, keeps, frequents, or is found in a disorderly house, tent, or wigwam used for such purpose.

Every person who appears, acts, or behaves as master or mistress, or as the person who has the care or management of any such house, tent, or wigwam, in which any such Indian woman is or remains for the purpose of prostituting herself therein, is deemed to be the keeper thereof, notwithstanding he or she is not, in fact, the real keeper thereof.

THEFT FROM INDIAN GRAVES.

By Section 352 of the Criminal Code, 1892, every one who steals or unlawfully injures or removes any image, bones, article or thing deposited in or near any Indian grave is guilty of an offence, and liable, on summary conviction for a first offence, to a penalty not exceeding one hundred dollars, or to three months' imprisonment, and for a subsequent offence to the same penalty and to six months' imprisonment with hard labour.

HOMESTEAD AND PRE-EMPTION RIGHTS.

Under Section 126 of the Indian Act no Indian resident in the Province of Manitoba, the North West Territories, or the District of Keewatin shall be held capable of having acquired, or of acquiring, a homestead or pre-emption right to a quarter

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section or any portion of land in any surveyed or unsurveyed section in the Province of Manitoba, the North West Territories, or the District of Keewatin, or the right to share in the distribution of any lands allotted to half breeds, subject to the exceptions therein mentioned. The reason for this provision is evidently that the public lands in the Province, Territories, and District mentioned are vested in the Crown for the benefit of the Government of the Dominion. The surrender of the so-called Indian title over these lands having accrued to the benefit of the Dominion, the Dominion has been party to the reservation of large tracts of land for the benefit of the Indians, which, speaking generally, far exceed in extent the areas to which they would have been entitled individually, under the Homestead and Pre-emption Clauses of the Dominion Lands Act and its Amendments. In the remaining Provinces, the public lands being under Section 109 of the British North America Act, 1867, and in accordance with the terms of admission of Prince Edward Island and British Columbia into Confederation, the property of the several Provinces in which the same are situated, and the management and sale thereof belonging to the Province, under Section 92 of the same Act, the right to determine whether Indians shall homestead or pre-empt is in the legislature of each Province. The laws of none of the Provinces appear to deny to an Indian the rights in this respect enjoyed by a white man, provided he complies with the requirements applicable to the latter. It may be generally stated that the Indian reserves are not, in proportion to the population of Indians, so large in the remaining Provinces as they are in Manitoba, the Territories, and Keewatin.

ELECTORAL FRANCHISES.

Dominion.

By the Franchise Act, 1898, 61 Vic. Cap. 14, Section 5, for the purposes of any Dominion Election held within the limits of any Province, the qualifications necessary to entitle any person to vote thereat shall be those established by the laws of that Province as necessary to entitle that person to vote in the same part of the Province at a Provincial Election. By Section 4, "Dominion Election" means election of a member to serve in the House of Commons; and "Provincial Election" means the election of a member to serve in the Legislative Assembly, or House of Assembly, or General Assembly of a Province of Canada, and in the Province of Prince Edward Island means an Election of an Assembly Man. By Section 2 the Act is declared not to apply to the North West Territories. It will thus be seen that in order to ascertain the restrictions in relation to the franchise of an Indian it is necessary to refer to the Statutes of each Province.

Nova Scotia.

The Electoral Franchise Act, 1889, 52 Vic. Cap. 1, appears to contain no disqualifications of an Indian as such; and he would be entitled to vote provided he held the general qualifications of an elector in accordance with that Act, and the amendments thereto.

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New Brunswick.

The "New Brunswick Election Act of 1889," 52 Vic., Cap. 3, Section 24, declares that no person shall be entitled to be entered on the list of voters or shall vote, who is an Indian.

Prince Edward Island.

The "Election Act," 53 Vic., Cap. 1, does not contain any enactments disqualifying an Indian as such, and provided he has the other qualifications as a voter, as provided by the Act, there seems to be no reason why he should not vote for the election of a member of the House of Assembly.

Quebec.

The "Quebec Election Act, 1895," 59 Vic., Cap. 9, makes no special provision with regard to Indians to whom the qualifications and disqualifications applied by the Act to other of Her Majesty's subjects extend.

Ontario.

By "The Ontario Election Act," R. S. O., 1897, Cap. 9, Section 12, an enfranchised Indian, whether of whole or part Indian blood, shall, like other persons, be entitled to vote without having a property qualification; and by Section 13 an unenfranchised Indian not residing among Indians or on an Indian reserve being of the full age of 21 years, and a subject of Her Majesty by birth or naturalization, and not being disqualified under that Act, or otherwise by law prevented from voting, shall, (though he participates in the annuities, interest moneys, and rents of a tribe, band, or body of Indians) if duly entered on the list of voters in the poll-book proper to be used at the election then pending, according to the provisions of the Voters' Lists Act, or of that Act, be entitled to vote at the elections of members to serve in the Legislative Assembly of the Province, provided such Indian is, at the time of the election, a resident of and domiciled within the electoral district, for which he

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claims to vote, and was, at the time of the final revision and correction of the assessment roll, entered on the revised assessment roll, upon which the voters' list is based for any city, town, incorporated village or township, for real property of the value thereinafter mentioned, that is to say: in cities and towns \$200·00, incorporated villages and townships \$100·00; and by Section 14 where there is no assessment roll the only unenfranchised Indians or persons with part Indian blood who are entitled to vote shall be as follows, namely:—unenfranchised Indians or persons with part Indian blood who do not participate in the annuities, interest moneys, or rents of a tribe, band, or body of Indians, and do not reside among Indians, or on an Indian reserve, subject to the same property and other qualifications, and to the same provisions as other unenfranchised Indians, in cases in which there is both an assessment roll and a voters' list. Unenfranchised Indians, of whole or part Indian blood, residing among Indians, or on an Indian reserve, are not entitled to vote.

Manitoba.

By Section 14 of the "Manitoba Election Act" (R. S. M., 1891, Cap. 49), Indians, or persons of Indian blood, receiving annuity or Treaty Money from the Crown, or who have, at any time within three years prior to the date of the Proclamation appointing the Registration Clerk, received such annuity or Treaty money, shall not be entitled to be registered as electors.

North West Territories.

By Section 58-59 Vic., Cap.11, See 1. (Dominion) every male person shall be qualified to vote at an election of a member (of Parliament) *who, not being an Indian*, is a British subject, and of the age of 21 years, and has the residential qualifications therein mentioned. Unenfranchised Indians are disqualified from voting at an election of the Legislative Assembly of the Territories (*Vide Consolidated Ordinances of 1898, Cap. 3, "The Territories Election Ordinance,"* Section 39).

British Columbia.

By Section 8 of the Provincial Election Act (R. S. B. C., 1897, Cap. 67), no Indian shall have his name placed on the list of voters for any Electoral District or be entitled to vote at any election.

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MEMBER OF PARLIAMENT.

There is no statutory provision against an Indian as such being elected to, or sitting and voting as a member of, Parliament.

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MUNICIPAL FRANCHISE.

The only Province in which an Indian as such is disqualified from voting in a Municipal Election, when he otherwise holds the same qualifications as a white man, appears to be British Columbia, in which province he is disqualified under the Municipal Elections Act (Cap. 68, R. S. B. C., 1897).

EXEMPTIONS FROM GAME LAWS.

In Ontario, by virtue of Section 34 of the "Ontario Game Protection Act" (R. S. O., 1897, C. 2,372), the provisions of the Act do not apply to Indians in regard to any game for their own immediate use for food only, and for the reasonable necessity of the person killing the same and his family, and not for the purposes of sale or traffic.

In Manitoba the Game Protection Act of the Province, (R. S. M., 1891, Cap. 62), is, by Section 27, declared not to apply to Indians within the limits of their reserve with regard to any animals or birds killed at any period of the year for their own use only, and not for the purposes of sale or traffic.

In the North West Territories the Game Ordinance, (C. O. N. W. T., 1898, Cap. 85), is declared by Section 22 to only apply to such Indians as it is specially made applicable to in pursuance and in virtue of the powers of the Superintendent-General of Indian Affairs of Canada, conferred by Section 133 of the Indian Act as enacted by 53 Victoria, Cap. 29, Section 10. The section of the Indian Act referred to provides that the Superintendent-General may, from time to time by public notice, declare that on or after the day therein named, the laws respecting game in force in Manitoba and the North West Territories, respecting such game as is specified in such notice, shall apply to Indians in the said Province or Territories, as the case may be, or the Indians in such parts thereof as to him seems expedient.

In British Columbia the Game Protection Act, 1895, is declared by Section 5 of 60 Vic., Cap. 14, of the Statutes of British Columbia, not to apply to Indians with regard to deer killed for their own, or their families' immediate use for food only, and not for the purposes of trade or traffic.

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In the Provinces of Nova Scotia, New Brunswick, Prince Edward Island, and Quebec, the Indians do not appear to be exempted by the Provincial Statutes from the operation of game laws.

MISCELLANEOUS.

Special legislation, other than above referred to, obtains in different Provinces in relation to Indians; but it is not thought necessary to particularly describe it, as it hardly comes within the meaning of restrictions or disabilities. For instance, in British Columbia provision is made for affirmation by an Indian witness in a civil suit; and in Ontario in relation to the fishing rights of Indians, and the issue of fishing licences to them; and the supply of vaccine matter for their inoculation under the Act relating to vaccination.

Attached hereto are two statements, the one showing the number of Indians in each Province, Territory, or District of Canada as shown by the last census return; and the other showing the extent of land held in trust for the Indians of Canada.

REGINALD RIMMER,

Law Clerk.

Department of Indian Affairs,

Ottawa, 29th December, 1899.

STATEMENT I.

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List of Indians in the Dominion of Canada, showing the number in each province, territory, or district as shown by the last Census returns :—

Provinces, &c.	Census Return.
Ontario	20,618
Quebec	10,677
Nova Scotia	2,027
New Brunswick	1,627
Prince Edward Island	314
British Columbia	24,973
Manitoba	6,716
North West Territories	14,600
Upper MacKenzie District	400
Eastern Athabasca ,,	881
Lower MacKenzie ,,	2,058
Great Slave Lake ,,	1,915
Riviere Aux Liards ,,	377
—— Athabasca ,,	1,331
Peace River ,,	893
Lesser Slave Lake ,,	1,218
Yukon ,,	2,600
Nelson and Churchill Rivers District	852
Eastern Rupert's Land	4,016
Labrador, Canadian Interior	1,000
Arctic Coast, Esquimaux	1,000
Grand Total	100,093

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STATEMENT II.

Statement showing the extent of land held by the Indians of the Dominion of Canada :—

Province.	Number of Acres.
Ontario	1,143,612·32
Quebec	214,828·33
Nova Scotia	21,541·66
New Brunswick	69,797·25
Prince Edward Island	1,524
British Columbia... ..	713,902
Manitoba and the North West Territories	3,080,585 60
Total Number of acres	5,245,791·16

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