

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 26

An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians. Assented to 10th June, 1857.

Whereas it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The third section of the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, chaptered seventy-four and intituled, *An Act for the protection of the Indians in Upper Canada from imposition and the property occupied or enjoyed by them, from trespass and injury*, shall apply only to Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands, and shall not have been exempted from the operation of the said section, under the provisions of this Act; and such persons and such persons only shall be deemed Indians within the meaning of any provision of the said Act or of any other Act or Law in force in any part of this Province by which any legal distinction is made between the rights and liabilities of Indians and those of Her Majesty's other Canadian Subjects.

II. The term "Indian" in the following enactments shall mean any person to whom under the foregoing provisions, the third section of the Act therein cited shall continue to apply; and the term "enfranchised Indian" shall mean any person to whom the said section would have been applicable, but for the operation of the provisions hereinafter made in that behalf: and the term "Tribe," shall include any Band or other recognized community of Indians.

III. The Visiting Superintendent of each Tribe of Indians, for the time being, the Missionary to such Tribe for the time being, and such other person as the Governor shall appoint from time to time for that purpose, shall be Commissioners for examining Indians, being members of such Tribe, who may desire to avail themselves of this Act, and for making due inquiries concerning them: and such Commissioners shall meet for the said purposes at such places and times as the Superintendent General of Indian affairs shall from time to time direct, and shall have full power to make such examination and inquiry: and if such Commissioners shall report in writing to the Governor that any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the english or the french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be

competent to the Governor to cause notice to be given in the, Official Gazette of this Province, that such Indian is enfranchised under this Act; and the provisions of the third section of the Act aforesaid, and all other enactments making any distinction between the legal rights and habilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof.

IV. The said Commissioners may also examine and inquire concerning any male Indian over twenty-one and not over forty years of age, desirous of availing himself of this Act, although he be not able to read and write or instructed in the usual branches of school education; and if they shall find him able to speak readily either the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs, they shall report accordingly in writing to the Governor; and if such report be approved by the Governor as to any Indian, he shall by virtue of such approval be in a state of probation during three years from the date of the report, and if at the end of that term the Commissioners shall again report in writing to the Governor that such Indian has during such term conducted himself to their satisfaction, then it shall be competent to the Governor to cause notice to be given in the Official Gazette that such Indian is enfranchised under this Act, and he shall thereupon be so enfranchised.

V. Every Indian examined by the Commissioners under this Act, shall at the time of such examination declare to them the name and surname by which he wishes to be enfranchised and thereafter known, such name being his baptismal name if he have one, and such surname any one he may choose to adopt which shall be approved by the Commissioners, and the Commissioners shall enter the same in their Report; and if such Indian be thereafter enfranchised under this Act the name and surname so reported shall be those by which he shall thereafter be legally designated and known.

VI. Lists of Indians enfranchised under this Act and of any lands allotted to them under the authority thereof, shall from time to time be transmitted by the Indian Department to the Clerk of the township or other local municipality in which they reside at the time of such enfranchisement; and any Indian falsely representing himself as enfranchised under this Act when he is not so, shall be liable, on conviction before any one Justice of the Peace, to imprisonment for any period not exceeding six months.

VII. Every Indian enfranchised under this Act shall be entitled to have allotted to him by the Superintendent General of Indian affairs, a piece of land not exceeding fifty acres out of the lands reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe; such sum to be ascertained and paid to him by the said Superintendent, and due consideration being had in the allotment of such land to the quantity of land reserved for the use of the Tribe and to their means and resources; and such sum of money shall become the absolute property of such Indian, and such land shall become his property, subject to the provisions hereinafter made, but he shall by accepting the same forego all claim to any further share in the lands or moneys then belonging to or reserved for the use of his Tribe, and shall cease to have a voice in the proceedings thereof: Provided always, that if such Tribe shall thereafter surrender to the crown other lands either to be sold for their benefit, or in consideration of an annuity, such enfranchised Indian, or his personal representatives, (if any) shall be

entitled to his share of the proceeds of such lands or of the annuity for which they were surrendered, such share to be ascertained and paid by the Superintendent General of Indian Affairs for the time being, and to be the absolute property of such enfranchised Indian or his said representatives.

VIII. The wife, widow, and lineal descendants of an Indian enfranchised under this Act, shall be also enfranchised by the operation thereof, and shall not be deemed members of his former tribe, unless such widow or any such lineal descendant being a female, shall marry an Indian not enfranchised and a member of such tribe, in which case she shall again belong to it and shall no longer be held to be enfranchised under this Act.

IX. The wife and children of any Indian enfranchised under this Act shall be entitled to their respective shares of all annuities or annual sums payable to the tribe; subject to the provisions hereinafter made as to such shares.

X. An Indian enfranchised under this Act, to whom any of the lands reserved for the use of his Tribe shall be allotted as aforesaid, shall have a life estate only therein, but he shall have power to dispose of the same by will to any of his children or lineal descendants, and if he dies intestate as to any such lands, the same shall descend to his children or lineal descendants according to the laws of that portion of the Province in which such lands are situate, and the said children or lineal descendants to whom such land shall be so devised or shall descend, shall have the fee simple thereof; but if such Indian die without leaving any child or lineal descendant but leaving a widow, she shall, instead of Dow r to which she shall not be entitled, have the said land for life or until her re-marriage, but upon her death or re-marriage it shall escheat to the Crown: and if any child or lineal descendant of such Indian shall take such land or any part thereof and die leaving no lineal descendant and without having disposed of such land or part thereof by will or otherwise, it shall escheat to the Crown.

XI. If any Indian enfranchised under this Act shall die leaving any child under the age of twenty-one years, the Superintendent General of Indians shall become *ipso facto* the tutor of such child as to property and rights in Lower Canada, and the guardian of such child as to property and rights in Upper Canada, until it shall attain the age of twenty-one years; and the widow of such Indian, being also the mother of any such child, shall receive its share of the proceeds of the estate of such Indian during the minority of the child, and shall be entitled to reside on the land left by such Indian, so long as in the opinion of the Superintendent General she shall live respectably.

XII. The capital of the annual share of the wife of any Indian enfranchised under this Act in any annuity or annual sum payable to her Tribe, shall be held in trust by the Superintendent General of Indian affairs for the purposes of this section, and the interest thereof shall be paid to her yearly while she shall be the wife or widow of such Indian, and upon, her death or re-marriage one half of such capital sum shall be divided equally among her children, and the other half shall revert, to the Tribe to which she belonged; but if she have no children, the whole shall revert to the said Tribe.

XIII. The capital of the share of each child of an Indian enfranchised under this Act, in any annuity or annual sum payable to his Tribe, shall be held in trust by the Superintendent General of Indian Affairs for such child, and the interest, thereon shall, except in the case hereinafter mentioned, be left to

accumulate until such child shall obtain the age of twenty-one; Provided always that if such child shall be put apprentice to any trade, the money so held in trust for him may be wholly or in part applied to the payment of his apprentice fee or other expenses attending such apprenticeship; and if any such child shall die before attaining the age of twenty-one, one half the money then held in trust for him shall revert to his Tribe, and the other half shall go to the other child or children of such Indian, and in equal shares if there be more than one, and if there be no other child, then the whole shall revert to the Tribe.

XIV. Lands allotted under this Act to an Indian enfranchised under it shall be liable to taxes and all other obligations and duties under the Municipal and School Laws of the section of this Province in which such land is situate, as he shall also be in respect of them and of his other property; and his estate therein shall be liable for his *bonâ fide* debts, but he shall not otherwise alienate or charge such land or his estate therein; and if such land be legally conveyed to any person, such person or his assigns may reside thereon, whether he be or be not of Indian blood or intermarried with any Indian; any thing in the Act first cited to the contrary notwithstanding.

XV. It shall be lawful for the Council of any Municipality in Upper Canada, or the School Commissioners of any School Municipality in Lower Canada, on application of the Superintendent General of Indian affairs, to attach the whole or any portion of any Indian Reserves in such Municipality to a neighboring School Section or District, or to neighboring School Sections or Districts, and such land shall thereupon become a portion of the School Section or District to which it may be attached, to all intents and purposes.