

## CAP. LXXIV.

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.

[ 10th August, 1850. ]

**W**HEREAS it is expedient to make provision for the protection of the Indians in Upper Canada, who, in their intercourse with the other inhabitants thereof, are exposed to be imposed upon by the designing and unprincipled, as well as to provide more summary and effectual means for the protection of such Indians in the unmolested possession and enjoyment of the lands and other property in their use or occupation: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That no purchase or contract for the sale of land in Upper Canada, which may be made of or with the Indians or any of them, shall be valid unless made under the authority and with the consent of Her Majesty, Her Heirs or Successors, attested by an Instrument under the Great Seal of the Province, or under the Privy Seal of the Governor thereof for the time being.

Preamble.

Purchases of land from Indians not valid without the consent of the Crown.

II. And be it enacted, That if any person, without such authority and consent, shall in any manner or form, or upon any terms whatsoever, purchase or lease any lands within Upper Canada of or from the said Indians, or any of them, or make any contract with such Indians, or any of them, for or concerning the sale of any lands therein, or shall in any manner, give, sell, demise, convey or otherwise dispose of any such lands, or any interest therein, or offer so to do, or shall enter on, or take possession of, or settle on any such lands, by pretext or colour of any right or interest in the same, in consequence of any such purchase or contract made or to be made with such Indians or any of them, unless with such authority and consent as aforesaid, every such person shall, in every such case, be deemed guilty of a misdemeanor, and shall, on conviction thereof before any Court of competent jurisdiction, forfeit and pay to Her Majesty, Her Heirs or Successors, the sum of Two Hundred Pounds, and be further punished by fine and imprisonment, at the discretion of the Court.

Such purchase without consent to be a misdemeanor.

Penalty.

III. And be it enacted, That no person shall take any confession of Judgment or Warrant of Attorney from any Indian within Upper Canada, or by means thereof, or otherwise howsoever obtain any judgment for any debt or pretended debt, or upon any bond, bill, note, promise or other contract whatsoever, unless such Indian shall be seized in fee simple in his own sole right of real estate in Upper Canada, the title to which shall be derived directly or through others by Letters Patent from the Crown, and shall be assessed in respect of such real estate to the amount of twenty-five pounds or upwards.

Confessions of judgment, &c., not to be taken from Indians.

Exception.

IV. And be it enacted, That no taxes shall be levied or assessed upon any Indian or any person inter-married with any Indian for or in respect of any of the said Indian lands, nor shall any taxes or assessments whatsoever be levied or imposed upon any Indian or any person inter-married with any Indian so long as he, she or they shall reside on Indian lands not ceded to the Crown, or which having been so ceded may have been again set apart by the Crown for the occupations of Indians.

Taxes and assessments not to be levied on Indians.

V. And be it enacted, That notwithstanding any thing in this Act contained, Indians and persons inter-married with Indians, residing upon any such Indian lands and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed by the Superintendent General, the Assistant Superintendent General, or by any Subordinate Superintendent of Indian Affairs, who may, for the time being,

As to performance of statute labour by Indians.

be charged with the subordinate superintendence of such Indians and persons inter-married with Indians as aforesaid, or by any such Commissioner or Commissioners, to perform labour on the public roads laid out or used in or through such Indian lands, such labour to be performed under the sole control of the said Superintendents or Commissioners, or of any or either of them, who shall have power to direct when, where, how and in what manner the said labour shall be applied, and to what extent the same shall be imposed upon Indians or persons inter-married with Indians, who shall be resident upon any of the said lands, and that the said Superintendents and Commissioners, and every of them, shall have the like power to enforce the performance of all such labor by imprisonment or otherwise as may now be done by any power or authority under any law, rule or regulation in force in this Province for the non-performance of Statute labour : Provided always, nevertheless, that the labour to be so required of any such Indian or person inter-married with an Indian, shall not exceed in amount or extent what shall or may be required of other inhabitants of Upper Canada, under the general laws requiring and regulating such labour and the performance thereof.

Proviso : as to amount of labour.

No spirituous liquors to be furnished to Indians.

Penalty.

How recovered and appropriated.

Proviso.

Pawns not to be taken for liquor.

Recital.

Indian presents not to be purchased from them.

Commissioners and Superintendents of Indians to be Justices of the Peace.

VI. And be it enacted, That it shall not be lawful for any person to sell, barter, exchange or give to any Indian, man, woman or child, within this Province, any kind of spirituous liquors in any manner or way, or to cause or procure the same to be done for any purpose whatsoever; and that if any person shall so sell, barter, exchange or give any such spirituous liquors to any Indian, man, woman or child as aforesaid, or shall cause the same to be done, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined at the discretion of the Court, not exceeding five pounds for every such offence, and shall forfeit also the sum of one pound five shillings for every such offence, to be recovered as in an action of debt with costs in any Court of competent jurisdiction, by any one who will sue for the same, one moiety of every such last mentioned pecuniary penalty or forfeiture to go to the informer or prosecutor, and the other moiety thereof to be paid to Her Majesty, Her Heirs or Successors, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor of this Province for the time being may be pleased to direct: Provided always, nevertheless, that no such penalty shall be incurred by the furnishing to any Indian, in case of sickness, any spirituous liquor, either by a medical man or under the direction of any such medical man.

VII. And be it enacted, That no pawn taken of any Indian for any spirituous liquor, shall be retained by the person to whom such pawn shall be delivered, but the thing so pawned may be sued for and recovered, with costs of suit, by the Indian who may have deposited the same, before any Court of competent jurisdiction.

VIII. And whereas certain tribes of Indians in Upper Canada receive annuities and presents, which annuities, or portions thereof, are expended for and applied to the common use and benefit of the said Tribes, more especially for the encouragement of agriculture and other civilizing pursuits among them, although the articles so required or purchased out of such annuities, may be and often necessarily are, in the possession or control of some particular Indian or Indians of such Tribes, and it is important with a view to the progress and welfare of such Tribes, that the property thus acquired or purchased should be protected from seizure, distress or sale, under or by virtue of any process whatsoever: Be it therefore enacted, That none of such presents or of any property purchased or acquired with or by means of such annuities, or any part thereof, or otherwise howsoever, and in the possession of any of the Tribes or any of the Indians of such Tribes, shall be liable to be taken, seized or distrained for any matter or cause whatsoever.

IX. And be it enacted, That the Commissioners appointed under the Acts of Parliament in the next section of this Act mentioned, or either of them, and the different Superintendents of the Indian Department, either now in office or who may hereafter be appointed to either of such offices shall, by virtue of their office and appointment, be Justices of the Peace within the County, or United Counties, within which, for the time being, they or any or either of them, may be resident or employed as such Commissioners

Commissioners or Superintendents, without any other qualification; any law to the contrary notwithstanding.

X. And whereas for the purpose of affording better protection to the Indians in the unmolested possession and enjoyment of their lands, it is expedient to give more summary and effectual powers to the Commissioners appointed or who may be appointed by virtue of the Act of the Province of Upper Canada, passed in the second year of Her Majesty's Reign, chaptered fifteen, and intituled, *An Act for the protection of the lands of the Crown in this Province from trespass and injury*, and also by virtue of the Act of this Province, passed in the twelfth year of Her Majesty's Reign, chaptered nine, and intituled, *An Act to explain and amend an Act of the Parliament of the late Province of Upper Canada, passed in the second year of Her Majesty's Reign, intituled, 'An Act for the protection of the lands of the Crown in this Province from trespass and injury, and to make further provision for that purpose,'* to enable them more efficiently to protect the said lands from trespass and injury, and to punish all persons trespassing upon or doing damage thereto: Be it therefore enacted, That it shall not be lawful for any person or persons other than Indians, and those who may be inter-married with Indians, to settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada, and that all leases, contracts and agreements made or to be made, purporting to have been or to be made, by any Indians, or by any person or persons inter-married with any Indian or Indians whereby any person or persons other than Indians shall be permitted to reside upon such lands, shall be absolutely void; and if any person or persons other than Indians, or those who may be inter-married with Indians as aforesaid, shall without the license of the said Commissioners or any or either of them, (which license, however, the said Commissioners or any of them, may at any time revoke,) settle, reside upon or occupy any such lands, roads or allowances for roads, it shall be the duty of the Commissioners or any or either of them, on complaint made to them or any of them, and on due proof of the fact of such settlement, residence or occupation, to issue their or his warrant under their hands and seals, or his hand and seal, directed to the Sheriff of the County, or Union of Counties in which the said lands may lie, or if the said lands may not be situated within any County or Union of Counties, then such warrant shall be directed to any literate person who may be willing to act in the premises, commanding him forthwith to remove all such persons settling, residing upon or occupying such lands, with his, her or their families, from the said lands or roads or allowances for roads, and it shall be the duty of such Sheriff, or other person accordingly, to remove such person or persons, and for that purpose he shall have and possess the same powers as in the execution of criminal process: Provided always, nevertheless, that the provisions in this and the two following sections of this Act contained, shall extend and be construed to extend to such Indian lands only as the Governor of this Province for the time being shall from time to time, by Proclamation under the Great Seal thereof, think fit to declare and make subject to the same, and so long only as such Proclamation shall remain unrevoked and in full force.

XI. And be it enacted, That so often as any person or persons after being or having been removed as aforesaid, shall return to settle, reside upon or occupy any of the said lands or roads or allowances for roads, the said Commissioners or any or either of them, upon their or his view, or upon proof by any witness or witnesses on oath, to be made or taken before the Commissioners or any or either of them, and upon their or his being satisfied that the said person or persons has or have returned to, settled, resided upon or occupied any of the said lands or roads or allowances for roads, then and in every such case, such Commissioners or Commissioner shall direct and send their or his warrant, under their hands and seals or his hand and seal, to the Sheriff of the County or Union of Counties within which such lands may lie, or to any literate person there, or if the said lands shall not be situated within any County or Union of Counties, then to any literate person, commanding him forthwith to arrest such person or persons, and

Recital.

U. C. 2 Vict. c. 15.

Canada.  
12 Vict. c. 9.

None but Indians or those inter-married with them to reside on Indian lands.

Provision for the removal of persons contravening this section.

Proviso: to what lands this section shall extend.

Proceedings if persons so removed return to such lands.

Arrest of such person.

to commit him, her or them to the Common Gaol of the said County or Union of Counties in which the said lands may lie, or to the Common Gaol of the nearest County or United Counties to the said lands, if the said lands shall not be within any County or United Counties, there to remain for such time as shall be ordered by the Commissioners or by any or either of them, not exceeding thirty days; and such Sheriff or other person shall accordingly arrest the said party or parties, and deliver him, her or them to the Gaoler or Sheriff of the said County or United Counties as aforesaid, who are hereby required to receive such person or persons, and the said person or persons to confine and imprison in the said Common Gaol for the term aforesaid, there to remain without bail and without being entitled to the liberties of the limits of the said Gaol; and such Commissioners or any of them shall cause the judgment or order against such person or persons to be drawn up, and no such judgment shall be liable to be removed by *Certiorari* or otherwise, or to be appealed from, but shall be deemed and taken to be final.

No *certiorari* allowed.

Punishment of persons cutting timber on and doing damage to Indian lands.

XII. And be it enacted, That if any person without the license in writing of the Commissioners or of any or either of them, shall hereafter trespass upon any of the said lands or roads or allowances for roads, by cutting any trees, saplings, shrubs, underwood or timber thereon, or by carrying away or removing any of the trees, saplings, shrubs, underwood or timber therefrom, or by removing any of the stone or soil of the said lands, roads or allowances for roads, each person so trespassing shall for every tree he shall cut, carry away or remove, forfeit and pay the sum of five pounds, and for cutting, carrying or removing any of the saplings, shrubs, underwood or timber, under the value of five shillings, the sum of one pound, but if over the value of five shillings, then the sum of five pounds, and for removing any of the stone or soil aforesaid, the sum of five pounds, such fine to be imposed and recovered by the said Commissioners or any or either of them, by distress and sale of the goods and chattels of the party or parties fined, or the said Commissioners may, without proceeding by distress and sale as aforesaid, upon the non-payment of the said fine, order the party or parties to be imprisoned in the Common Gaol as aforesaid, for a period not exceeding thirty days, when the fine shall not exceed five pounds, or for a period not exceeding three calendar months, when the fine shall exceed the sum of five pounds; and upon the return of any warrant for distress or sale, if the amount thereof have not been made, or if any part of it may remain unpaid, the said Commissioners or any or either of them, may commit the party or parties who may be in default upon such warrant or warrants to the Common Gaol as aforesaid, for a period not exceeding thirty days, if the sum claimed by the said Commissioners upon the said warrant do not exceed five pounds, or for a time not exceeding three calendar months, if the sum claimed do exceed five pounds; all which fines shall be paid to Her Majesty, Her Heirs or Successors, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor of this Province for the time being may be pleased to direct.

Penalties.

Imprisonment if the penalty cannot be levied.

Application of penalties.

Recital.

Provision where the name of any person to be proceeded against under this Act cannot be ascertained.

XIII. And whereas great difficulty has been experienced by the said Commissioners in carrying into effect the several Acts relating to Indian lands, by reason of persons giving false names or concealing their names, and it is expedient that the Commissioners should be enabled to proceed without difficulty in this respect: Be it therefore enacted, That in all orders, writs, warrants, summonses and proceedings whatsoever to be made, issued or taken by the Commissioners or any or either of them, under this or any other Act whatsoever, it shall only be necessary for the Commissioners or such of them as may be acting, to insert or express the name or names of the person or persons summoned, arrested, distrained upon, imprisoned or otherwise proceeded against in any of such orders, writs, warrants, summonses or proceedings, when the name or names of such person or persons shall be truly given to or known by the said Commissioners, or such of them as may be acting in that behalf, and if the name or names be not truly given to or known by the Commissioners, then the Commissioners or such of them as shall be acting in that behalf, shall be at liberty to name or describe the person or persons by any part of the name or names of such person or persons

persons which may be given to or known by them, or such of them as may be so acting ; but if no part of the name or names be given to or known by the said Commissioners, or such of them as shall be so acting, they or such of them as shall be acting may describe the person or persons proceeded against in any manner by which he, she or they may be capable of being identified ; And it is hereby declared that all such proceedings as aforesaid, containing the name or description, or purporting to give the name or description of any such person as aforesaid, according to this Act, shall *prima facie* be deemed to be sufficient ; any thing to the contrary notwithstanding.

XIV. And be it enacted, That all Sheriffs, Gaolers and Peace Officers, to whom any such process shall be so directed by such Commissioners or any or either of them, are hereby required to obey the same, and all other Officers upon reasonable requisition to be aiding and assisting in the execution thereof.

Sheriff, &c., to obey process.

## C A P . L X X V .

An Act for the protection of Mill-owners in Upper Canada.

[ 24th July, 1850. ]

**W**HEREAS it often happens that persons purchase Crown Lands and Clergy Reserves in Upper Canada from the Crown, which, at the time of the purchase, and of the issuing of the patent therefor, were in the whole or in part overflowed by the waters of some mill stream, in consequence of the erection and continuation of Mill Dams thereon : And whereas it often happens that such persons, at the time they purchase such Lands, are well aware of their being so overflowed, and have in consequence thereof obtained a reduction or allowance in the price paid for the same, but, nevertheless, obtain Patents for the whole of such Lots, and afterwards bring actions against the proprietors or occupiers of the Mills for the use of which such Dams have been erected : For remedy thereof, Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That when in any action hereafter to be brought against the proprietor or occupier of any Mill, for the overflowing of, or injury to any Land, caused by the erection or continuation of any Dam for the purposes of such Mill, it shall appear that such overflowing or other injury was caused by the erection or continuation of a Dam which was built before the purchase by, and grant thereof to the Grantee of the Crown of such Land, and that such purchaser obtained a reduction in the price of such Land, or was otherwise indemnified in consequence of its being so overflowed or otherwise injured, then, the Jury on the trial of any such cause may take such facts into their consideration, and if they think it just and equitable, may, in consequence thereof, find a verdict for the Defendant in any suit so to be brought.

Preamble

Grantee of Crown not to recover damages for injury caused to lands by dam erected before patent issued in certain cases.

II. And be it enacted, That in any such action, it shall and may be lawful for the Defendant to plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, to avail himself of this Act and of the matters of defence herein given.

Defendant may plead the general issue, &c.

III. And be it enacted, That this Act shall extend to Upper Canada only.

Extent of Act.