HANDSARD - House of Commons Debates, 3rd Parliament, 3rd Session : Vol. 1, March 21st, 1876 (Second Reading of what would become the Indian Act)

arbitrators were appointed by a company, and any individual whose land was to be expropriated, in case the latter died, to replace him. This Bill removed the existing difficulty.

The House went into Committee of the Whole on the Bill, Mr. Dymond in the Chair, and rising, reported that it was adopted.

The Bill was then read the third time and passed.

THE CRIMINAL LAWS.

The Bill entitled an Act to supply an omission in the Act 37 Victoria, chapter 42, extending certain Criminal Laws of Canada to British Columbia, being read a second time,

The House went into Committee of the whole, Mr. Archibald in the Chair, and passed it. The Committee having risen and reported, the Bill was read the third time, and passed.

THE LAWS RESPECTING INDIANS.

The Bill entitled An Act to amend and consolidate the Laws respecting Indians, being read the second time,

Hon. Mr. LAIRD explained that it provided for the consolidation of the several Acts of the Dominion with respect to Indians.

In the first clause the word "band" meant any tribe or body of Indians who had an interest in a reserve, of which the legal title was vested in the Crown; an "irregular band" signified any tribe which held no such interest. The term "Indian" meant any person holding land, the title of which the Government possessed, and with whom treaties existed. The term "Non-Treaty Indian" denoted any person of Indian blood who was reported to belong to an irregular band, or who follows the Indian mode of life, even though only a temporary resident of Canada. The word "reserve" was defined to mean any tract of land set apart for the benefit of a particular band of Indians. A special reserve meant any tract of land set apart for the use of Indians, the title of which was vested in a corporation or community legally established. It was also provided that any Indian who had resided five years in a foreign country, and not associated with his band, might sever that connection. It also provided that that connection might be resumed with the consent of the Government. Another provision of the Bill was that an woman who married a white man should continue to receive the annuity and retain all her privileges. There was another provision in the clause enabling the band to give her a ten years purchase for her privilege, after which she would be for ever separated from them. Another clause put into force the theory they were carrying out last Session with regard to the half breed and full blooded Indians, as it was considered better it should be sanctioned by law. There was a provision which had been suggested by the hon. member for New Westminster. He desired that the penalty for selling liquors to Indians should be made more vigorous by the addition of hard labor to imprisonment, and this matter had been left to the discretion of the judge. It had been found that the decisions of magistrates in cases of selling liquor to Indians had been successfully appealed from, and this success it was thought was owing to the sympathy juries had with liquor sellers. The Government thought these appeal cases might safely be left to the judges, and therefore a clause making this provision had been inserted in the Bill. With regard to the enfranchisement of Indians, it had been deemed advisable to obtain the consent of the band, and unless this was done it was considered that there would be a great deal of trouble, and discontent would result.

When an Indian who had borne a good character for intelligence and sobriety would receive a location ticket for the portion of land designated, he would enter upon a probationary period for three years. If at the end of that time he was found to have continued sober and industrious he received a patent for his land and became enfranchised, still retaining his right to share the annuity moneys. If they wished to separate from the Indian band altogether, they could enter upon another term of probation of three years. If they still continued in the paths of sobriety, they could take their share of annuity money, and be struck off the Indian list.

The consent of the band must be obtained for the distribution of the capital funds. This Bill would give the Indians some motive to be industrious and sober, and educate their children.

Mr. SCHULTZ said it might be very well to consolidate the laws, but the new principles of this bill would be better left out altogether. It would be found impracticable to make this Bill operative in the North West. Any one having an intimate knowledge of the tribal relations of the Indians of the West would see this. The Act did not define with sufficient clearness what an Indian was. It declared that any one who accepted treaty money should be considered an Indian. Now, he considered this unfair. Many of the half-breeds who had accepted lands and moneys under former arrangements would never have done so if they had supposed for a moment it would have classed them among the Indians. There were other objectionable features of the Bill, to which he would refer in Committee of the Whole.

Mr. PATERSON considered this measure a step in the right direction. There were 90,000 or more Indians in Canada, 30,000 of whom were in Ontario, having $9,000,000 vested in the hands of the Government. The matter was therefore one of importance. While this Act might not be applicable to the Indians of the North-West or the tribes of other parts of Canada, there were bands in Ontario that should be given facilities to raise themselves in the social scale. In Brant there is a reservation comprising a whole township, in which there are fourteen schools, eleven of which are taught by Indians. There is also an institution for teaching the young men farming, and the young women housekeeping. For some 48 years missionaries have been preaching to those Indians, and if, after all these advantages they are not fit for enfranchisement, it is the strongest possible argument against the system that has hitherto prevailed, and in favour of enfranchising the tribe. The hon. member for Charlevoix, in 1860, passed a Bill providing that the Indians desiring to be enfranchised might have a certain portion of of the reservation set aside for them on their applying for it and on producing proofs they were fit to be granted the rights of freemen, but they could not hold such land in fee simple. Only one Indian was enfranchised under that Act, and when the Government had granted him his share of the principal money, and desired to allot him his portion of land they found they could not lay it off. He was in the position of being neither Indian nor a white man. He applied as a last resource to the Department to make him an Indian again, but they found although they had the power to make an Indian a white man, they had no power to make him an Indian again. Among the objections to the Bill before the House was one that the Indians were unable to manage their own lands. There was no proof of that; it was mere assertion. There were Indians in this Province who occupied professional positions and were as intelligent as any member in this House. What could be done with some could be done with all. In the reservation in Brant there are some 3,000 children, of whom 1,600 attend school regularly, and in ten years more it will be an exception to find an Indian child unable to read or write.

Did any one say that a person capable of receiving an education and being trained in the arts and practices of British civilization should be prevented from assuming this position? If so, it was a mistaken idea, and the time had come to test the matter. He did not believe that it was entirely possible to wipe out in this country all national distinctions; but every resident of Canada should make it his proudest boast that he was a Canadian. The endeavour to perpetuate the Indian in the Canadian nation was an anomaly. Where the Indian had not forgotten his national habits, and still lived by the chase and fishing, it would not be desirable to ask him at once to take upon himself the duties of a free man; but regarding the reserves of Ontario, consisting of 52,000 acres, it was different, and immediate steps should be taken to place these Indians in a better position. Hunting and fishing has

long since ceased, and they supported themselves by agriculture and various handicrafts, in which they should be encouraged to the greatest possible extent. This question must soon be dealt with; they were not dying out on these reserves, but increasing at the rate of one per cent. per annum. Nothing would redound more to the credit of the Minister of the Interior than to show the possibility of raising the Indian to the place of manhood; he believed that this could be done. He trusted that the Government would act wisely and liberally in this relation. National distinctions should not be perpetuated in this country, and no legislative obstacles should be placed in the way of the union of whites and Indians. Under the Act of 1868, if a squaw married a white man she ceased to be an Indian within the meaning of the Act, and consequently lost her previous rights and privileges; this was, in other words, a penalty for doing so, and it was a restriction which should no longer exist. The children of the issue of such marriages should also be entitled to these rights and privileges. Under this Bill she did not forfeit under these circumstances her right to a share of the principal of the money, but this did not go far enough. She should be entitled to it as her dower, and the children of the first generation should also share in the principal funds of the tribe.

Under the present law an Indian absent five years from his reservation lost his interest in it. This was a mistake, being a restriction on his liberty. Indians should be encouraged to mingle with their white brethren and learn their occupations without pains and penalties being imposed for so doing. They should also be allowed to rent their farms to whites, who would improve them in the art of agrienlture.

He called the particular attention of the Minister of the Interior to clauses 66 and 69. The former was too sweeping, enacting that no mortgage or lien of any kind could be taken on any personal property belonging to Indians, who, lacking a superabundance of cash, would in consequence be debarred from the purchase of agricultural implements, seed, grain, &c. Again, Indians could not be sued for debt. These restrictions should be removed, and power should be permitted them to give chattel mortgages. Clause 66 would have a most injurious effect in their regard. Then as to the amount of land to be set apart for an enfranchised Indian, this was left for decision to the Indians in Council; and it might happen that while many on a reservation were sufficiently intelligent to desire enfranchisement, the majority would impede them in accomplishing their object, and allot them too meagre a share of their lands.

Hon. Mr. LAIRD—There is a limitation in the clause.

Mr. PATERSON understood this merely to signify that a child under fourteen should not be allotted less than half what was given to an adult; but the latter's portion was not specified.

Hon. Mr. LAIRD—The first part of the clause fixes the proportion to be assigned to an adult.

Mr. PATERSON was glad to hear that this was the case. He trusted that no retrograde step would now be taken. This Bill was applicable to the most advanced Indians, and it had not gone one step too far in the direction of the enfranchisement and elevation of the Red men of the Dominion. He now desired to say a word in regard to the duty that belonged to the Indian. In the Act of 1869 a clause was inserted providing that in the case of the convictions of Indians for offences against the law, the expenses of the Court might be borne by the Indian Department. That was very good as far as it went and it was a section he considered desirable. In his county there was a township of 3,000 Indians, and without saying anything to the disparagement of that class, he would state that there were more Indian cases before the Court in proportion to the population than any other. These Indians contributed nothing to the Administration of justice or to the municipal fund. Was it right then that one county should have to bear the expense of the administration of justice to that body of Indians? He thought the House would agree that it was not. He was

bound to say on behalf of the Indians that they asked no favours of white men. The land they lived on was their own, the money in the hands of the Government was their own, and he believed they were willing to pay their share of the taxes. He hoped the Hon. Minister of the Interior would give this matter consideration, and see his way clear to amend the Bill in the direction indicated.

Hon. Mr. LANGEVIN said it must be considered that Indians were not in the same position as white men. As a rule they had no education, and they were like children to a very great extent. They, therefore, required a great deal more protection that white men. He could not see the force of the remarks of the hon. member for South Brant, in which he asked for certain restrictions to be removed. He desired the Hon. Minister of the Interior to say how far the third clause changed the position of Indians.

Hon. Mr. LAIRD—It merely gives a clear definition of the classes of Indians existing.

Hon. Mr. LANGEVIN thought the provision with regard to the severance of the connection between an Indian and his band should be amended. He did not think they should give a premium for the dismissing of an Indian from the band, as would be the case practically by the adoption of this provision. Was a man who was travelling for the purpose of improving himself to have his connection with his band severed, and if he ceased to be a member of his band was he to be deprived altogether of his land and money?

Hon. Mr. LAIRD said the clause was substantially the practice of the Department. The hon. gentleman would observe that while the band was allowed the option of giving their consent, still the Superintendant General or the Department had the right to investigate into the case.

Hon. Mr. LANGEVIN said that while he was in the Department that was done repeatedly, but in nearly every instance there were great difficulties either with the band or with the Indians themselves. He thought that in one or two instances the order had to be cancelled.

Hon. Mr. LAIRD—This Bill admits of their coming back.

Hon. Mr. LANGEVIN thought one of the clauses of the Bill would interfere with the acquired rights of some of the people.

Hon. Mr. LAIRD—All their present rights are respected. Does the hon. gentleman mean those parties who are in receipt of annuities or the whites who had taken leases of Indian land? Those half-breeds who have been living on the reserves are now regarded as Indians, the law fully protects them, and their full rights cannot be disturbed.

Hon. Mr. LANGEVIN asked if the clause with reference to the surrender of lands provided that the majority of all the male members of the band, or only a majority of the males present at the meeting, was necessary to a decision.

Hon. Mr. LAIRD—Of course the majority at the meeting.

Hon. Mr. LANGEVIN said there should be a certain proportion of the band present before a surrender of lands should be determined upon.

Hon. Mr. LAIRD said the Department took good care in their practice not to allow these surrenders unless the Indians were at home at the time.

Hon. Mr. LANGEVIN said, nevertheless, this precaution should be taken for the protection of the Indians, and as little should be left to chance as possible. The same provision should be made for the proper election of chiefs. It should be made clear that a certain proportion of the tribe should be present at the election. The clause respecting intoxicants should also be amended to prevent the Indians from manufacturing liquor for themselves.

The intention of the Minister of the Interior was no doubt good in proproposing to enfranchise the Indians, but the hon. gentleman would fail as he (Mr. Langevin) had done in 1869. The Act of 1869 was framed to prevent jealousies by keeping the land in the hands of the tribe, merely giving the enfranchised

men a life interest in it. That did not succeed, and the same cause would make the Bill before the House inoperative.

Hon. Mr. LAIRD said the Bill was framed to meet the views of the Indians expressed at their grand council in Sarnia, the summer before last. If they did not carry it out the fault would rest with themselves and not with the Government.

Hon. Mr. LANGEVIN said it might apply to the Indians of Ontario, but it would not suit the tribes of Quebec. Some general plan would have to be adopted to educate the Indians and fit them for enfranchisement, just as a white boy would be prepared for manhood.

Mr. McGREGOR thought that the Bill was a step in the right direction, as Indians should have it within their power to obtain the full privileges of white men. The Leader of the Opposition had had the honour of attending at a banquet given to an Indian residing in the County of Peel. The latter's brother, if in the House, would hardly be supposed to be an Indian, and indeed, many hon. members would sooner be so considered than this person.

The Minister of the Interior had visited his county last year, and settled a dispute, which had long existed there between the whites and Indians, the males being allotted 100 and the females 50 acres of the land, the balance being sold. They occupied about 8,000 acres. He regretted that the term of probation was not shorter, as three-quarters of the Indians in his county might very properly be enfranchised at once.

Mr. SNIDER had had a great deal to do with Indian Reserves and with Indians, who he knew were very grateful to the Minister of the Interior for the interest the hon. gentleman had taken in their welfare. He had with great pleasure shown educated Indians around the Parliament Buildings, and these he could say would do the House no discredit if they occupied seats on this floor, being more intelligent than the great majority of white men. This was a great improvement on former similar Bills, and the Indians were perfectly satisfied with its provisions. He did not think that Indians could be so easily tempted with bribes as whites; and he hoped that the Bill would be made as perfect as possible.

Mr. FLEMIMNG contended that the policy to be pursued with regard to the Indians, must be either one of preservation or one of absorption and amalgation. Legislation during the past twenty years had a tendency in the former direction. In 1857 he believed the first Bill having relation to the enfranchisement of Indians had been introduced by the right hon. member for Kingston, who explained that the object was to raise them to the position of white men. If it had failed this was to be ascribed to the fact that the machinery provided had not been sufficient for the purpose. Indians should be placed precisely on the same footing with whites; and they should be made more self-reliant and self-dependent. He was greatly gratified on account of the introduction of the Bill; and he would have been better pleased had it gone still further, offering them greater inducements for self-advancement. As to squaws losing their rights to their property when they married whites, it was to be observed that it appeared from the 9th clause that an Indian widow could marry a white man, and yet retain all her estate, real and personal, though according to the 3rd sec., and sub. sec. C, an Indian woman marrying any person other than one of her nationality was deprived of such right; this was surely inconsistent.

Hon. Mr. LAIRD—An Indian widow cannot marry a white man and convey dower to her husband.

Mr. FLEMING—I read it otherwise. The 9th clause is as follows:

"Upon the death of any Indian holding under location or other duly recognised title any lot or parcel of land, the right and interest therein of such deceased Indian shall, together with his goods and chattels, devolve one-third upon his widow, and the remainder upon his children equally; and all such children shall have a like estate in such land as their father; but should such Indian die without issue but leaving a widow, such lot or parcel of land and his goods and chattels shall be vested in her, and if he leaves no widow, then in the Indian nearest akin to the deceased, but if he have no heir nearer than a cousin, then the same shall be vested in the Crown for the benefit of the Band. But whatever may be the final disposition of the land, the claimant or claimants shall not be held to be legally in possession until they obtain a location ticket from the Superintendent General in the manner prescribed in the case of new locations."

Hon. Mr. LAIRD—By sub-section D. she loses all such rights.

Mr. FLEMING—This should be be made clear and distinct.

Mr. DECOSMOS stated that there was no such thing as statute labor in British Columbia.

With regard to sec. 79, touching intoxicants, he would mention that an Indian Reserve existed in Victoria, on which there was a licensed house held by a man named Everett, and the operation of this provision would interfere with the vested right that this person undoubtedly possessed for a certain number of years. Unless the Government was prepared to grant compensation, this right should be continued him. He would be gratified if amendments were made in this regard, as the Bill on the whole was excellent in its nature.

Hon. Mr. LAIRD thanked hon. members on both sides of the House for their favourable opinion with reference to the measure, and remarked that certain points had been noted, which could be more properly explained in Committee. His object was simply to make the Bill as perfect as possible, with the cordial co-operation of hon. gentlemen on both sides of the House. He proposed the second reading of the Bill, and announced that it would again be taken upon Friday next.

The Bill was then read the second time.

The hour being six, the House took recess.

AFTER RECESS.

The Bill respecting roads and road allowances in Manitoba was read the second time.

SUPPLY.

The House went into Committee of Supply. Mr. Scatcherd in the chair.

On item $35,000 for the improvement of navigable rivers,

Hon. Mr. TUPPER asked if anything had been done towards improving the Harbour of Partridge Island River?

Hon. Mr. MACKENZIE promised to furnish information on the subject at a future day.

Hon. Mr. TUPPER asked if anything had been done towards dredging Wallace River? It was a very important work and a small expenditure in dredging would produce important rusults. Last Session the Premier had stated he expected to be able to provide for that in the dredging service, but nothing was done.

Hon. Mr. MACKENZIE said he had found it impossible to reach that point. There were two large dredges which could not be used anywhere but in deep water, and the smaller dredges were employed elsewhere. Nothing would please him better than to dredge the harbours to which the hon. member for Cumberland had referred. The $10,000 in this item for the improvement of navigation in Neebish rapids was to remove some dangerous rocks from the channel on the way to Lake Superior. The United States Government had dredged a great deal up to the boundary, and there was only a small passage in our territory that required improvement. The $15,000 for raising anchors was to improve the harbour of Quebec. It was expected this expenditure would be fully repaid by the proceeds of the sale of the anchors and chains removed. A fair beginning was made last year, but five or six anchors were grappled at once, and the chain broke with the great weight. By the time repairs were made the severe weather set in, but if a good beginning were once made the bed of the river would soon be cleared.

Mr. WOOD suggested that something more should be done to improve the navigation of the Neebish Rapids than remove the rocks. Wharves should be built along the rocky shore to prevent vessels from being broken against it by the force of the current.

Hon. Mr. MACKENZIE said he had to trust to the engineers, and they ob-

the county of Cape Breton, which he represented, if the transfer were made with the view of having the road merely extended to the Strait of Canso; that the impression prevailed in his county that the Hon. Premier had during the past year resisted a good deal of pressure intended to induce him to consent to such limited extension, and that the hon. gentleman had obtained more credit for this in Cape Breton than for any other of his acts since his [illegible]ssion to [illegible]; that the transfer [illegible] be unju[illegible]is constituency, par[illegible]rly bec[illegible]t at present owned a [illegible]portion [illegible]he road the Dominion [illegible]ernme[illegible]posed so to be transfe[illegible]and t[illegible] it was only extended [illegible]e St[illegible]f Canso this would be [illegible]ght[illegible]rtance to the county he [illegible]esc[illegible] He might also state th[illegible]hi[illegible] colleague had not placed a [illegible]the paper asking for the [illegible]dence touching this matter, [illegible] have done so himself.

Mr. MACK[illegible] was about to speak when th[illegible]aker said I was out of order.

THE SUPREME [illegible]XCHEQUER COURT O[illegible]ADA.

Hon. Mr. B[illegible]noved the third reading of th[illegible]o make further provision in [illegible]o the Supreme Court and [illegible]quer Court of Canada. He [illegible]had considered the suggesti[illegible]n. member for Montmagny [illegible]ot thought it advisable t[illegible]e a[illegible]eration in the Bill in reg[illegible]o th[illegible]orum or the appointme[illegible]*ad hoc*[illegible]ges.

The Bil[illegible]read t[illegible]rd time, and passed.

T[illegible]NLAND R[illegible]UE.

On m[illegible] of Ho[illegible]r. CARTWRIGHT, the House went into Committee on the Bill from the Senate to amend the Act respecting the Inland Revenue.

The Committee reported the Bill without amendment, and the Bill was read the third time, and passed.

INDIAN LEGISLATION.

Hon. Mr. LAIRD moved the House in to Committee of the Whole on the Bill to amend and consolidate the laws respecting Indians.

The first and second clauses were adopted without amendment.

On clause 3,

Mr. PATERSON suggested that the word "male" be struck out.

Hon. Mr. LAIRD said it made no difference, because when an Indian man married a white woman she became a member of the band, but when an Indian woman married a white man, her children did not share in the lands.

Mr. PATERSON doubted if it was wise to impose a penalty on an Indian woman for marrying a white man. He contended it would be a benefit to the country to encourage such intermarriages.

Hon. Mr. LAIRD said there was a great deal of force in the remarks of the hon. member, and an endeavour was made in another sub-section to meet the objection. It was proposed to allow an Indian woman who married a white man to retain her annuity moneys during her life time, and if she wished to receive the capital sum, she could do so by drawing ten years' purchase of annuity money. Of course she and her husband would then cease to have any connection with the band, and their children would not be considered.

The sub-section was passed.

On sub-section B, which was as follows:—Provided that any Indian having for five years resided principally in a foreign country, or having for a like period very rarely resided with or visited the land to which he or she belonged, shall cease to be a member thereof, and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent General or his agent, be first had and obtained; but this provision shall not apply to any missionary, teacher or interpreter, while discharging his or her duty as such.

Mr. SCRIVER objected to any member of a band being thus deprived of his annuity.

Hon. Mr. LAIRD explained in some cases Indians went to the United States and shared the annuities there, only returning to Canada long enough to draw their annuities here.

Sir JOHN MACDONALD objected to this proposition, which would have the effect of dealing with the Indians as serfs of the soil.

Hon. Mr. LAIRD said they should belong to one country or the other.

Mr. BORRON contended that it would be an arbitrary exercise of power to deprive Indians of their birth-right because they spent a portion of their time in another country, where, perhaps, they found it most convenient and profitable to reside and work.

Sir JOHN A. MACDONALD quite understood that it would be convenient for the department to have such an arrangement as this; and that the Indians would approve of it, because the fewer there were in a band the more its members would receive; still, it was their birth-right, and they should not be deprived of it.

Hon. Mr. MACKENZIE reminded the House that many of our Indians were adopted into United States tribes, while Indians from that country were adopted into bands in this country. There was a sort of reciprocity among the tribes in this respect.

Mr. PATERSON said our Indians had a perfect right to adopt any number of outsiders they pleased. Their money was their own, and they could do what they pleased with it. Every inducement should be offered to the Indians to leave their reserves and mix with the whites. He suggested, therefore, this sub-section should be dropped out altogether.

Hon. Mr. LAIRD said in the North-West, the Blackfeet Indians roam on both sides of the boundary line, and it was very possible some of them would have to be received into our treaties, and some into the treaties of the United States. He did not think any Indian entitled to receive annuities on the other side of the line should have the same right here. The clause was therefore necessary.

Mr. PATERSON remarked that it was not a question of dealing with our money. If it did, there might be some reason for directing that if an Indian went into a foreign country he should not share in it; but on the contrary, this legislation would deprive such Indians of the enjoyment of their own money. This money, at all events, belonged to the Indians in his (Mr. P's.) own county, who had never received a cent from us. Their affairs were administered by the Government, and he could not really see the justice, under the circumstances, of taking from them their own money.

Hon. Mr. LAIRD—We do not let them use their money as they wish.

Sir JOHN A. MACDONALD—But you have not the right to take it away from them.

Hon. Mr. LAIRD—We do not take it away.

Mr. FLEMING thought it strange that Indians should be prohibited from obtaining land in the North-West, when the most ignorant and illiterate immigrant could enjoy that pre-emption right.

Hon. Mr. MACKENZIE—It will be more convenient to discuss that matter when we come to the clause in question.

Mr. FLEMING—I allude to this clause.

Mr. MACDONALD (Toronto) stated that the wording of the clause was perfectly clear. Indians were precluded from the enjoyment of such a right after an absence of five years, but yet not entirely, as it could be restored with the consent of the Superintendent and of the band as well.

Sir. JOHN A. MACDONALD—They will not consent to give up their own money.

Hon. Mr. LAIRD—After an absence of five years an Indian is not reputed to belong to a band, but in our experience, when an Indian returns and really wishes to live with the band again, he is generally received with open arms.

Mr. BOWELL—I understand that this clause is to stand.

Hon. Mr. LAIRD—Yes.

Mr. BOWELL—I also understand that the words "professional man" are to be added after the word "interpreter."