

CHAP. 7.

An Act to amend the "North-West Territories Act, 1875."

[Assented to 28th April, 1877.]

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| Preamble. 38. V. c. 49. | In amendment of the Act passed in the thirty-eighth year of Her Majesty's reign, intituled " <i>An Act to amend and consolidate the laws respecting the North-West Territories</i> "; Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :— |
| Section two amended. | 1. The second section of the said Act is hereby amended by repealing sub-section two and inserting the following sub-sections :— |
| Administrator may be appointed. | "2. The Governor in Council may, from time to time, appoint an Administrator to execute the office and functions of the Lieutenant-Governor during his absence, illness or other inability. |
| Lieutenant-Governor or Administrator to take oath of office. | "3. Every Lieutenant-Governor or Administrator so appointed shall, before assuming the duties of his office, take and subscribe before the Governor General or some person duly authorized to administer such oaths, an oath of allegiance or office similar to those prescribed to be taken by a Lieutenant-Governor under " <i>The British North America Act, 1867.</i> " |
| Section three repealed. | 2. The third section of the said Act is repealed, and the following substituted for it :— |

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| <p>New section substituted.</p> <p>Appointment of Council.</p> <p>Oaths of allegiance and office.</p> <p>Quorum.</p> | <p>"3. The Governor General with the advice of the Queen's Privy Council for Canada, by warrant under his privy seal, may constitute and appoint such and so many persons, from time to time, not exceeding in the whole six persons, of which number the Stipendiary Magistrates hereinafter mentioned shall <i>ex officio</i>, form part, to be a Council to aid the Lieutenant-Governor in the administration of the North-West Territories : Before entering upon the duties of their offices, the persons so appointed shall take and subscribe before the Lieutenant-Governor such oath of allegiance and such oath of office as the Governor in Council may prescribe ; and the majority of the Council so appointed shall form a quorum.</p> |
| <p>Clerk's oath.</p> | <p>"2. The Clerk of the said Council shall take before the Lieutenant-Governor such oath of office as the Governor in Council may prescribe."</p> |
| <p>Section seven repealed.</p> | <p>3. The seventh section of the said Act is repealed, and the following substituted for it :—</p> |
| <p>New section substituted.</p> <p>Powers of Council.</p> <p>Proviso.</p> | <p>"7. The Lieutenant-Governor in Council or the Lieutenant- Governor, by and with the advice and consent of the Legislative Assembly, as the case may be, shall have such powers to make ordinances for the government of the North-West Territories as the Governor in Council may, from time to time, confer upon him ; Provided always, that such powers shall not at any time be in excess of those conferred by the ninety-second section of " <i>The British North America Act, 1867,</i>" upon the Legislatures of the several Provinces of the Dominion :</p> |
| <p>Further proviso as to ordinances.</p> | <p>"2. Provided that no ordinance to be so made shall,—(1) be inconsistent with or alter or repeal any provision of any Act of the Parliament of Canada in Schedule B. of this Act, or of any Act of the Parliament of Canada, which may now, or at any time hereafter, expressly refer to the said Territories, or which or any part of which may be at any time made by the Governor in Council, applicable to or declared to be in force in the said Territories, or,—(2) impose any fine or penalty exceeding one hundred dollars :</p> |
| <p>Fines.</p> | <p>or declared to be in force in the said Territories, or,—(2) impose any fine or penalty exceeding one hundred dollars :</p> |
| <p>Copy to Secretary of State. May be disallowed.</p> <p>Proviso: information to Parliament.</p> | <p>"3. And provided that a copy of every such ordinance shall be mailed for transmission to the Secretary of State, within ten days after its passing, and it may be disallowed by the Governor in Council at any time within two years after its receipt by the Secretary of State ; Provided, also, that all ordinances so made, and all Orders in Council disallowing any ordinance so made, shall be laid before both Houses of Parliament, as soon as conveniently may be after the making and enactment thereof respectively."</p> |

Lieutenant-Governor to sit with Council.

Form of enacting ordinances;

Until a Legislative Assembly is formed.

Clerical error in section 13 corrected.

Sections 59, 60 repealed.

Sections 62, 63, 64 repealed and new substituted.

Stipendiary Magistrates' oath of office.

And jurisdiction.

4. The Lieutenant Governor shall sit in Council with the Councillors as an integral part thereof, and not separately from them, and such ordinances as aforesaid shall be made by the Lieutenant-Governor in Council, and shall be expressed to be so made ; and wherever in the Act hereby amended the expression---- " The Lieutenant-Governor and Council " occurs, the expression " The Lieutenant-Governor in Council " shall be understood, and is hereby substituted for it ; but this section shall cease to have effect when the number of members of the Council elected under section thirteen of the said Act amounts to twenty-one, and a Legislative Assembly has been formed for the said Territories.

5. The word "Province," in the fourth line of the second sub-section of the thirteenth section of the said Act is hereby struck out, and the words "said Territories" substituted for it.

6. Sections fifty-nine and sixty of the said Act are hereby repealed.

7. Sections sixty-two, sixty-three and sixty-four of the said Act are hereby repealed and the following sections, respectively, substituted in lieu thereof :—

"62. Each Stipendiary Magistrate having taken the following oath before the Lieutenant-Governor or any Stipendiary Magistrate in the North-West Territories, that is to say:—

"I do swear that I will truly and faithfully execute the several powers, duties and trusts committed to me by or under '*The North-West Territories Acts, 1875 and 1877,*' without fear, without favor, and without malice : So help me God ;"-- shall have jurisdiction throughout the North-West Territories, as hereinafter mentioned, and shall also have jurisdiction and may exercise within the North-West Territories, the magisterial, and other functions appertaining to any Justice of the Peace, or any two Justices of the Peace, under any laws or ordinances which may, from time to time, be in force in the North-West Territories."

Further powers, for summary trial of certain offenders under section 3 of 36 V. c. 35.

Said section to remain in force.

Trial without a jury by assent of offender in certain cases.

Trial by jury of six.

When the crime is capital.

Procedure in such cases.

Notes by Magistrate.

Defence by Counsel.

"63. Each Stipendiary Magistrate shall further have power to try in a summary way, and without the intervention of a jury, in addition to any other charge which he may by law have the power so to try, any charge against any person or persons for any offence committed within the North-West Territories, mentioned in the third section of the Act passed in the thirty-sixth year of Her Majesty's reign, chapter thirty-five, intituled "*An Act respecting the Administration of Justice and for the establishment of a Police Force in the North- West Territories,*" —Which section is hereby re-enacted and shall be and remain in force notwithstanding the coming into force of the Act hereby amended.

"64. When the maximum punishment for a crime not triable in a summary way under the next preceding section, or under any other provision of the criminal law does not exceed seven years' imprisonment, the Stipendiary Magistrate— if the accused assents thereto—may try in a summary way and without the intervention of a jury, any charge against any person or persons for any such crime, but if the accused does not so consent then the trial shall be had as provided in the next following sub-section :

"2. When the maximum punishment for a crime other than punishment by death exceeds seven years' imprisonment, the Stipendiary Magistrate and a Justice of the Peace, with the intervention of a jury of six, may try any charge against any person or persons for any such crime :

"3. When the punishment for a crime is death, one Stipendiary Magistrate and two Justices of the Peace, with the intervention of a jury of six, may try any charge against any person or persons for any such crime :

"4. The procedure upon trials under sub-sections two and three of this section shall be as far as possible similar to the procedure upon summary trials ; but the Stipendiary Magistrate shall, upon every such trial, take, or cause to be taken, in writing, full notes of the evidence and other proceedings thereat ; and all persons tried under the said sub-sections shall be admitted after the close of the case for the prosecution to make full answer and defence by counsel learned in the law :

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| <p>Death sentence to be reported.</p> <p>Stay of execution.</p> | <p>"5. When any person is convicted of a capital offence and is sentenced to death, the Stipendiary Magistrate shall forward to the Minister of Justice full notes of the evidence with his report upon the case, and the execution shall be stayed until such report is received and the pleasure of the Governor thereon is communicated to the Lieutenant-Governor :</p> |
| <p>Summoning jurors: until ordinance is made.</p> | <p>"6. In default of any ordinance in that behalf, made under subsection nine of this section, persons required as jurors for a trial under the said sub-sections two and three, shall be summoned by a Stipendiary Magistrate from among such male persons as he may think suitable in that behalf ; and the jury required on such trials shall be called from among the persons so summoned as such jurors, and sworn by the Stipendiary Magistrate who presides at the trial :</p> |
| <p>Peremptory challenges by prisoners.</p> <p>Void beyond six.</p> | <p>"7. Any person arraigned for treason or felony may challenge peremptorily and without cause not more than six jurors :</p> <p>"Every peremptory challenge beyond the number so allowed shall be entirely void;</p> |
| <p>By Crown.</p> | <p>"The Crown may peremptorily challenge not more than four jurors;</p> |
| <p>Challenges for cause.</p> | <p>"Challenges for cause shall be the same as now provided for under the Act, chapter twenty-nine, thirty-second and thirty-third Victoria, (1869) intituled " <i>An Act respecting procedure in criminal cases and other matters relating to criminal law</i>" ;</p> |
| <p>Provision if the list of jurors is exhausted.</p> <p>Tales.</p> | <p>"If, from challenges or otherwise, the jurors summoned for the trial are exhausted, the Stipendiary Magistrate shall direct some constable or other person to summon by word of mouth from among the by-standers or from the neighbourhood, such number of persons as may be necessary to make up a jury, the persons so summoned being subject to challenge as those summoned by the Magistrate in the first instance, and the like proceedings shall be repeated, if necessary, until a jury be formed, competent to try the case ; and any person summoned, as hereby provided, to serve as a juror, and making default or refusing to serve as such without lawful excuse to the satisfaction of the Magistrate, may be fined by him in a sum not exceeding ten dollars, and committed to prison until such fine be paid :</p> |
| <p>Fine on juror summoned and not serving.</p> | |

Provision when imprisonment for two years or more is awarded.

"8. If imprisonment in jail for not less than two years, or in the penitentiary, be awarded in any case, the convict may be ordered to be imprisoned in the North-West Territories or be conveyed to the penitentiary in the Province of Manitoba ; in which latter case he shall undergo such punishment therein as if convicted in the Province of Manitoba, and shall be so conveyed by any constable or constables, and received and detained therein by the authorities of the penitentiary on the warrant of the Stipendiary Magistrate :

Lt.-Governor in Council, or with Assembly, may make jury laws.

"9. The Lieutenant-Governor in Council, or the Lieutenant-Governor, by and with the advice and consent of the Legislative Assembly, as the case may be, may, from time to time, make any ordinance in respect to the mode of calling juries, and when, and by whom, and how they may be summoned or taken, and in respect of all matters relating to the same ; but no Grand Jury shall be called in the North-West Territories :

No Grand Jury.

Returns to Lt.-Governor.

"10. Returns of all trials and proceedings, civil and criminal, shall be made to the Lieutenant-Governor in such form and at such times as he may direct."

Section 71 repealed.

"8. Section seventy-one of the said Act is hereby repealed, and the following substituted for it :—

New section.

"71. Every Stipendiary Magistrate shall have jurisdiction, power and authority to hear and determine any claim, dispute or demand as hereinafter mentioned, that is to say:—

Jurisdiction in civil cases.

"1. Where the claim, dispute or demand is for a tort, wrong or grievance in which the amount claimed does not exceed five hundred dollars, or if for a debt or on a contract, in which the amount claimed does not exceed one thousand dollars, in a summary way, and without the intervention of a jury :

Without a jury.

With a jury, in a summary way.

Judgment according to equity and good conscience.

No suit allowed for gambling debt or intoxicant.

"2. In all other claims, disputes or demands than those above-mentioned, or for the recovery of the possession of real estate, if neither party demands a jury, in a summary way and without the intervention of a jury ; but if either party demands a jury, then with the intervention of a jury of six in number, summoned in the manner hereinbefore provided as to criminal trials : and the Stipendiary Magistrate shall give such judgments and make such orders and decrees as shall appear to him just and agreeable to equity and good conscience ; but the Stipendiary Magistrate shall not have cognizance of any action for a gambling debt, or for any intoxicating liquor or intoxicant, or of any action by any person on a note of hand or other document, the consideration or any part of the consideration for which was for a gambling debt or for any such intoxicating liquor or intoxicant :

Execution of judgment.

"3. Execution of any such judgment shall be carried into effect in the manner prescribed by any ordinance of the Lieutenant-Governor in Council or the Lieutenant-Governor and Legislative Assembly, as the case may be, or if no such ordinance be then in force, then in like manner as a judgement to the same amount, in the Province of Manitoba."

Part of s. 74 repealed.

9. Sub-section nine of the seventy-fourth section of the said Act is hereby repealed, and the following substituted for it :—

New provision substituted.

"9. Intoxicating liquors imported or brought from any place out of Canada into the North-West Territories, by special permission, in writing, of the Lieutenant-Governor of the said Territories, shall be subject to the several Customs and Excise laws of Canada.

39 V. c. 22, repealed.

"10. The Act passed in the thirty-ninth year of Her Majesty's reign, intituled '*An Act to amend the Acts therein mentioned as respects the importation or manufacture of intoxicants in the North-West Territories,*' is hereby repealed."

Schedule B amended.

10. Schedule B of the said Act is amended by striking out of the article referring to the Act *thirty-two and thirty-three Victoria, chapter thirty*, the words "committed in the North-West Territories and triable in Manitoba, or"—.

English or French language may be used in Council or Courts.

11. Either the English or the French language may be used by any person in the debates of the said Council, and in the proceedings before the Courts, and both those languages shall be used in the records and journals of the said Council, and the ordinances of the said Council shall be printed in both those languages.

Powers of Stipendiary Magistrates in Keewatin.

12. Stipendiary Magistrates appointed under the said Act or under this Act shall have the same power and authority for trying offences in the District of Keewatin as, under the said Act, they have in the North-West Territories, and the provisions herein made as to such trials and as to imprisonments under sentences shall apply to the District of Keewatin.

Powers of County Judges and Judges of Q. B. Manitoba, in N.W.T.

2. The Chief Justice or any Judge of the Court of Queen's Bench, of the Province of Manitoba, shall have the same power and authority for trying offences in the District of Keewatin as under said Act or this Act a Stipendiary Magistrate or two Stipendiary Magistrates or a Stipendiary Magistrate and two Justices of the Peace have in the North-West Territories, and the provisions herein made as to trials shall, so far as applicable, apply to trials before such Chief Justice or Judge in the District of Keewatin : Provided always, that the Chief Justice or Judge shall not proceed to any such trial unless requested by the Governor in Council.

Proviso.

Interpretation.

13. This Act shall be construed as forming one Act with that amended by it.

Short titles.

14. This Act may be cited as "*The North-West Territories Act, 1877*," and the Act hereby amended and this Act may be together cited as "*The North- West Territories Acts, 1875 and 1877.*"