

**REFERENCE RE SECTION 9 OF THE INDIAN ACT, RE CERTAIN MEMBERS OF
THE SAMSON INDIAN BAND, HOBBEEMA, ALBERTA. (sub nom. RE THE
INDIAN ACT; RE SAMSON INDIAN BAND.)**

(1957), 7 D.L.R. (2d) 745 (also reported: 21 W.W.R. 455)

Alberta District Court, Buchanan C.J.D.C., 1 March 1957

*Indians--Administrative Law--Court review of Indian Registrar's decision on entitlement of persons
to Band registration-- Application of Indian Act (Can.), ss. 11 and 12--Necessity of compliance with
statutory conditions respecting protest against inclusion of persons in Band List--*

Sections 11 and 12 of the *Indian Act* 1951 (Can.), c. 29, which, replacing previous legislation on the subject, deals with entitlement and non-entitlement to registration on the Band Lists, has not only a prospective application but authorizes the purging of lists by removal of names of persons who under the Act would not be entitled to registration.

However, where pursuant to s. 9 a protest against inclusion of certain names in a Band List is filed, the statutory requirement of "a brief statement of the grounds" must be strictly met, and an allegation that "his fore-bearer took scrip" (*sic. scrip*) is inadequate as a ground of protest in view of the uncertainty of the meaning of "fore-bearer" and the fact that Indians who took scrip were able to re-establish themselves as Band members by subsequently returning its value. The allegation lacked the necessary precision.

Held, further, persons protesting under s. 9 must be "electors" and their self-description as "members of the Samson Band" is not a compliance with s. 9.

This section contemplates the lodging of a protest, first against the "inclusion or omission" of a name in a Band List when posted pursuant to s. 8, and, secondly, where there has been "addition or deletion" of a name by the Registrar under s. 7. The posting of a Band List as required by s. 8 must necessarily precede any action to challenge a name thereon since the six months permitted for challenge runs from the date of posting. Proof of posting is necessary to entitle the Registrar to entertain a protest.

A Judge acting under s. 9(4) to review the correctness of the Registrar's decision and to decide entitlement to registration has the duty so to act only when a proper protest has been made under s. 9; and if there has been no proper protest, no right to an investigation accrued, and hence proceedings leading to Court review were a nullity *ab initio*.

Cases Judicially Noted: *Re Poitras*, 20 W.W.R. 545, aprvd & disaprvd.

Statutes Considered: *Indian Act*, 1951 (Can.), c. 29, ss. 9, 11, 12.

REVIEW under s. 9 of the *Indian Act* of decision of Registrar and entitlement of certain persons to registration as Indians.

A. F. Moir, J. C. Gorman and J. P. Brumlik for appellants;
George H. Steer, Q.C., G. A. C. Steer and K. J. Leathem, for respondents.

BUCHANAN C.J.D.C. (orally):--I preface the reading of my judgment this morning with an explanatory comment. Since the presentation of argument by counsel on Wednesday morning, I have had time for the study of that argument only. My judgment has necessarily been hurriedly prepared. In the public interest and in the interest of the Samson Band I thought it unwise to delay the rendering of my decision.

I digress to correct a suggestion inadvertently made on Wednesday morning last. The Crown represented by the Indian Affairs Branch, Department of Citizenship and Immigration, has remained neutral throughout these proceedings, assisting with equal courtesy counsel both for the protesters and for those whose presence on the Samson Band List is protested ("The appellants"). The Crown is not a party to these proceedings and is not represented by counsel.

[The learned Judge then listed the names and Band numbers of the 27 persons whose inclusion in the Samson Band List was protested and continued:]

It should be noted in passing that s. 10 of the Act provides that "where the name of a male person is included in, omitted from, added to or deleted from a Band List or a General List, the names of his wife and his minor children shall also be included, omitted, added or deleted, as the case may be". In other words the fate of the Indian family follows that of the head of the family.

On January 15, 1952, ten members of the Samson Band occupying lands in the Hobbema Indian Reserve, Hobbema, Alberta, completed 27 individual protests by the terms of which they protested against the inclusion in the Samson Band List of 27 individuals both men and women, then on the Band List.

To appreciate the significance of that brief statement one must examine with some care the "definition and registration" sections of the Act, and of the series of Dominion enactments preceding the Act, which dealt with Indian Affairs. The Act, incidentally, is one of a long series dealing with Indian Affairs and extending back to 1868. In that year by *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands*, 1868 (Imp.), c. 42, there was laid the foundation to which the present definition of an Indian may be traced. Its s. 15 reads thus:

"15. For the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the tribe, band or body of Indians interested in any such lands or immoveable property:

"*Firstly*. All persons of Indian blood reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and their descendants;

"*Secondly*. All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immoveable property, and the descendants of all such persons; And

"*Thirdly*. All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriages, and their descendants."

In the *Indian Act*, R.S.C. 1886, c. 43, an Indian was more briefly defined in s. 2(h) thereof as follows:

"2(h) The expression 'Indian' means--

"*First*. Any male of Indian blood reputed to belong to a particular band; [The expression 'band' having previously been defined as 'any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible'].

"*Secondly*. Any child of such person;

"*Thirdly*. Any woman who is or was lawfully married to such person."

This definition was repeated without change in the *Indian Act* as it appeared in R.S.C. 1906, c. 81, s. 2(f). It might be noted that s. 16 of the same Act denied to half-breeds in Manitoba who had shared in the distribution of half-breed lands the status of an Indian. Section 2(d) of R.S.C. 1927, c. 98, consolidating once more the *Indian Act* made no change in the 1886 and 1906 definitions of an "Indian".

I now come to the *Indian Act*, 1951 (Can.), c. 29, the Act under which these proceedings are taken. Section 123 of that Act repealed in their entirety all those sections of the 1927 *Indian Act* relating to Indian Affairs and by its ss. 5 to 17, headed, "Definition and Registration of Indians", provided fully and in greater detail than in any previous legislation, for the definition of those entitled and not entitled to be registered as Indians in the Indian Register and, likewise for the removal from or addition to Band Lists or General Lists of those entitled or not entitled to be registered as Indians.

Sections 11 and 12 of the Act dealing with entitlement and non-entitlement respectively read as follows:

"1. Subject to section twelve, a person is entitled to be registered if that person

"(a) on the twenty-sixth day of May, eighteen hundred and seventy-four, was, for the purposes of *An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands*, chapter forty-two of the statutes of 1868, as amended by section six of chapter six of the statutes of 1869, and section eight of chapter 21 of the statutes of 1874, considered to be entitled to hold, use or enjoy the lands and other immovable property belonging to or appropriated to the use of the various tribes, bands or bodies of Indians in Canada,

"(b) is a member of a band

"(i) for whose use and benefit, in common, lands have been set apart or since the twenty-sixth day of May, eighteen hundred and twenty-four, have been agreed by treaty to be set apart, or

"(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act,

"(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b),

"(d) is the legitimate child of

"(i) a male person described in paragraph (a) or (b), or

"(ii) a person described in paragraph (c),

"(e) is the illegitimate child of a female person described in paragraph (a), (b) or (d), unless the Registrar is satisfied that the father of the child was not an Indian and the Registrar has declared that the child is not entitled to be registered, or

"(f) is the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

"12(1) The following persons are not entitled to be registered, namely,

"(a) a person who

"(i) has received or has been allotted half-breed lands or money scrip,

"(ii) is a descendant of a person described in sub-paragraph (i),

"(iii) is enfranchised, or

"(iv) is a person born of a marriage entered into after the coming into force of this Act and has attained the age of twenty-one years, whose mother and whose father's mother are not persons described in paragraph (a), (b), (d), or entitled to be registered by virtue of paragraph (e) of section eleven, unless, being a woman, that person is the wife or widow of a person described in section eleven, and

"(b) a woman who is married to a person who is not an Indian.

"(2) The Minister may issue to any Indian to whom this Act ceases to apply, a certificate to that effect."

An official known as the Registrar, by ss. 5, 6 and 7 of the Act, was given charge of the Indian Register in the Department of Indian Affairs at Ottawa. This Indian Register, which it was the Registrar's duty to maintain, consists of Band Lists and General Lists in which must be recorded the name of every person entitled to be registered as an Indian.

I now turn back to the affairs of the Samson Band and to the 27 protests of ten members of that Band against the continued presence on the Samson Band List of the 27 persons named therein. Section 8 of the Act provides: "Upon the coming into force of this Act, the band lists then in existence in the Department shall constitute the Indian Register, and the applicable lists shall be posted in a conspicuous place in the superintendent's office that serves the band or persons to whom the list relates and in all other places where band notices are ordinarily displayed."

The Registrar is given extraordinary powers of adding to or subtracting from Band Lists or General Lists as provided in s. 7 of the Act:

"7(1) The Registrar may at any time add to or delete from a Band List or a General List the name of any person who, in accordance with the provisions of this Act, is entitled or not entitled, as the case may be, to have his name included in that List.

"(2) The Indian Register shall indicate the date on which each name was added thereto or deleted therefrom."

It should be stated that any action taken by the Registrar independently under s. 7 is subject to the right of protest given by s. 9 of the Act.

Councils of a band and any ten electors of a band--the word elector being defined in s. 2(1) (e) of the Act as a person who is registered on a Band list, is of the full age of 21 years, and is not disqualified from voting at band elections--by the provisions of s. 9, may protest the presence or the absence of names from Band Lists or from General Lists.

Section 9 of the Act reads thus:

"9(1) Within six months after a list has been posted in accordance with section eight or within three months after the name of a person has been added to or deleted from a Band List or a General List pursuant to section seven

"(a) in the case of a Band List, the council of the band, any ten electors of the band, or any three electors if there are less than ten electors in the band,

"(b) in the case of a posted portion of a General List, any adult person whose name appears on that posted portion, and "(c) the person whose name was included in or omitted from the list referred to in section eight, or whose name was added to or deleted from a Band List or a General List, may, by notice in writing to the Registrar, containing a brief statement of the grounds therefor, protest the inclusion, omission, addition, or deletion, as the case may be, of the name of that person.

"(2) Where a protest is made to the Registrar under this section he shall cause an investigation to be made into the matter and shall render a decision, and subject to a reference under subsection three, the decision of the Registrar is final and conclusive.

"(3) Within three months from the date of a decision of the Registrar under this section

"(a) the council of the band affected by the Registrar's decision, or

"(b) the person by or in respect of whom the protest was made, may, by notice in writing, request the Registrar to refer the decision to a judge for review, and thereupon the Registrar shall refer the decision, together with all material considered by the Registrar in making his decision, to the judge of the county or district court of the county or district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other county or district as the Minister may designate, or in the Province of Quebec, to the judge of the Superior Court for the district in which the band is situated or in which the person in respect of whom the protest was made resides, or such other district as the Minister may designate.

"(4) The judge of the county, district or Superior Court, as the case may be, shall inquire into the correctness of the Registrar's decision, and for such purposes may exercise all the powers of a commissioner under Part I of the *Inquiries Act*; the judge shall decide whether the person in respect of whom the protest was made is, in accordance with the provisions of this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register, and the decision of the judge is final and conclusive."

In respect of the 27 persons whose names I listed initially, ten persons describing themselves as members of the Samson Band, on January 15, 1952, lodged protests with the Registrar, in every case stating the ground of their protest thus: "because his forebearer took scrip", and they spelled scrip "script". The Registrar under the power contained in s-s. (2) of s. 9 "caused an investigation to be made". By an Order in Council P.C. 1953/249, dated February 19, 1952, a Commissioner was appointed under the *Inquiries Act*, R.S.C. 1952, c. 154, to inquire into the protests; this the Commissioner did during March 29, 30 and 31, and April 1 of 1954 and July 7 and 8 of 1955. The 1954 evidence led the Commissioner to advise the Registrar that none of the protests could be sustained. A year's investigation of departmental records at Ottawa brought additional materials, brought a 1955 further hearing by the Commissioner and brought a reversal of his previous opinion and advice to the Registrar. The latter, on November 6, 1956, rendered his decision in respect of the 27 protests, this decision being based on materials gathered at the Commissioner's hearing. In every case the protested person was held, by the Registrar, not entitled to be registered as an Indian in the Samson Band. The 27 persons affected by the Registrar's decision filed with the Registrar on almost the last day of the period provided for such filing, namely February 4, 1957, a request that the decision of the Registrar be referred to a Judge for review. As I deliver this judgment on March 1, 1957, I am reminded that 5 years, years of painful suspense for those protested (the appellants), of golden opportunity for the writers of editorials and of letters to the newspapers, and of unlimited joy to the propagandists, have gone by since the protesters initiated these proceedings. The responsibility for the unreasonable delay rests upon the Department of Indians Affairs, upon the Commissioner and--more recently--upon the appellants themselves.

Counsel, both for the appellants (and the appellants are those persons whose presence on the Band list is the subject of protest), and for the protesters, desired that certain questions of law and statutory interpretation should be heard before embarking on an examination of the evidence taken before the Commissioner, some 250 pages in all, and before calling such additional *viva voce*

evidence as counsel or the Court might deem necessary. Argument on the preliminary questions has been heard and a transcript thereof is now before me.

Mr. Moir, for the appellants, submits that on five grounds the Registrar's decision cannot be sustained:

"Firstly, Section 8 of the Act not having been complied with, the Registrar was not justified in entertaining the protests.

"Secondly, that if the phraseology of Section 9(1) of the Act be carefully studied and correctly interpreted it will be found not to permit the protesting of names of Indians already on a Band list when posted as provided in Section 8.

"Thirdly, that the ten protesters described in their twenty-seven protests as 'members of the Samson Band of Indians' having failed to identify themselves as 'electors',--an essential under Section 9, sub-section (1), sub-section (a)--are therefore not qualified as protesters.

"Fourthly, that the grounds set out in the protests, namely 'because his (or her) fore-bearer(s) took script' do not comply with the requirements of Section 9 sub-section (1) of the Act not being in fact 'a brief statement of the grounds' of the protest and in fact being void for uncertainty, and

"In the fifth place, and finally, that Section 12 of the Act on which the protests purport to be based and which sets out those persons not entitled to be registered should not be interpreted as of retrospective or retroactive operation and if not so interpreted, fails completely as a ground of protest."

Mr. George Steer, for the protesters, submits that the construction of the relevant sections of the Act, all of which have been quoted above, are a complete answer to his opponent's preliminary objections. I think that his argument may be summed up thus: The 1951 *Indian Act* repeals completely the pre-existing statutory provisions as to the definition and registration of Indians; s. 11 defines those who may be registered, s. 12, those who may not be registered; the Registrar's decision having been referred to this Court, the Court need not be deterred by alleged failure in strict compliance with the statutory provisions; the duty of the Court is set out simply and clearly in s-s. (4) of s. 9: "The judge shall inquire into the correctness of the Registrar's decision, the judge shall decide whether the person in respect of whom the protest was made is, in accordance with the provisions of this Act, entitled or not entitled, as the case may be, to have his name included in the Indian Register."

On the inquiry before the Commissioner, counsel for the appellants reminded him that the Samson Band by reason of the discovery of oil on Reserve lands has suddenly become possessed of a highly valuable asset and that loss of status as Band members would be to the individual appellants an irretrievable disaster. Although I accept that as a statement of fact, I doubt its relevancy. I must adhere strictly to my responsibility which is to interpret the Act and to apply it.

I now deal with arguments of counsel for the appellants and in reverse order. In their fifth ground of objection the appellants challenge the correctness of the Registrar's decision because of the construction placed by him on s. 12; he deemed it referable to any persons whose names appeared on band lists posted pursuant to s. 8, or alleged to have been so posted. How then, shall s. 12 be interpreted? Do the words therein "to be registered" refer to future registration only as held by Hogarth D.C.J. in the case *Re Joseph Poitras* (1957), 20 W.W.R. 545 at p. 561? It should be noted that the opening phraseology of s. 11 follows the same pattern as does the opening phraseology of s. 12. Section 11 commences in this fashion: "Subject to section twelve"--(and those are very important words) "Subject to section twelve, a person is entitled to be registered if that person" and then there are set out in a series of sub-headings those entitled to be registered. Section 12 reads: "The following persons are not entitled to be registered, namely," and there are set out in a series of sub-headings those not entitled to be registered among whom are persons "who have received or have been allotted half-breed lands or money scrip", or, those who are "descendants of a person who has received or has been allotted half-breed lands or money scrip." Surely the opening words of those two sections are to be interpreted in the same fashion. To say that the words, "is entitled to be", in s. 11 are also to be construed as referable to the future only would make that section, in my opinion, completely meaningless.

Although I respectfully agree with Hogarth D.C.J. in the decision at which he arrived in the *Poitras* case, *supra*, I find his interpretation of s. 12 (p. 561) unacceptable. He holds that the section refers only to future registrations. I agree with Mr. Steer that ss. 11 and 12, in fact, set the standards by which the Band Lists in existence in the Department of Indian Affairs upon the coming

into force of the Act were to be regulated, corrected, and if found encumbered with the names of those not entitled to be registered, to be purged. In so holding I am not overlooking those rules of statutory construction as set out in the following cases cited by Mr. Moir: *Midland R. Co. v. Pye* (1861), 10 C.B. (N.S.) 179, 142 E.R. 419; *Young v. Adams*, [1898] A.C. 469; *Lauri v. Renad*, [1892] 3 Ch. 402; *Smith v. Callander*, [1901] A.C. 297; *Re School Bd. Election for Pulborough*, *Bourke v. Nutt*, [1894] 1 Q.B. 725. I adopt with respect the reasoning of Scott L.J. in *Barber v. Pigden*, [1937] 1 K.B. 664 at p. 678, where, in support of his finding that the *Law Reform (Married Women and Tortfeasors) Act* was in fact retrospective in its application he stated, "the dominant intention of the Act is clear beyond all doubt".

For the "dominant intention" of the Act, one must look at ss. 5 to 17 as a whole. Upon so doing I hold that the "dominant intention" becomes quite clear; that ss. 11 and 12 are the key sections of the Act; that they constitute the tests by which rights to registration were to be determined and that the process of determination based on ss. 11 and 12 was to commence with the posting Band Lists following the coming into force of the Act (s. 8). If the correct application of those sections results in the purging from Band Lists of the descendants of scrip takers, descendants who have passed their entire lives on reserves, and if that result is to be deemed inhumane, it is for Parliament not for the Court to amend the legislation. It is not the function of the Court to whittle down and render nugatory the clearly expressed intentions of Parliament. On their fifth ground of objection the appellants therefore fail.

The four remaining arguments of counsel for the appellants deal with the interpretation of ss. 8 and 9 of the Act. It is my view that if the tests of entitlement and non-entitlement to registration set out in ss. 11 and 12 of the Act are severe--and they are--then equally severe should be the enforcement of the procedure by which names are added to, and above all, subtracted from Band Lists.

An examination of the evidence taken at the inquiry indicates quite clearly the hopeless position in which the phraseology of the 27 protests left counsel for the appellants. The grounds for the protests were expressed thus: "because his fore-bearer took scrip". What is a fore-bearer? My most recent Oxford Dictionary ignores the word entirely. Is it an ancestor? If so, what ancestor? Ancestor of what generation? Into the records of what ancestor is the protested person to delve? The records are all with the Department of Indian Affairs and in spite of the courtesy and patience of the Registrar, Mr. Malcolm McCrimmon, are most difficult to discover and when discovered, to understand. Over the years, Indian Affairs have been under the direction of several different departments at Ottawa, rendering the discovery of pertinent documents most difficult and, in some cases, quite impossible. The Registrar, for example, was unable to state, or to find departmental records purporting to show whether any of the ancestors of the appellants who allegedly took scrip subsequently returned the value of the scrip and were re-established as Band members. That many Indians, takers of scrip, did so re-establish themselves is, nevertheless, a well authenticated fact. Neither could the Registrar establish whether "scrip" payable to bearer always came into the hands of or was actually cashed by the Indian for whose benefit it purported to be issued. I hold that the words, "because his fore-bearer took scrip" are a completely inadequate statement of "grounds". They fall far short of that precision of statement necessary to the preparation by the appellants of their defence.

No attempt was made by the protesters to qualify themselves as "electors". They described themselves in the protests merely as "members of the Samson Band of Indians" and that too on forms apparently supplied by the Department of Indian Affairs.

The Act, by s. 9, requires that when the protest of the inclusion of names on a posted Band List is being made "any ten *electors* of the band" may do it, not *members*. Are the ten protesters electors? The Court has no information other than that provided in the protests. The protesters, as self described, are not electors. I accept their own description of themselves and hold them not to be electors.

Mr. Brumlik for the appellants was critical of the construction and phraseology of s. 9 and he was quite entitled to be critical. A careful scrutiny of that section reveals that the final words of subsection (1) "of the name of that person", should properly refer to the addition or deletion of a name from a Band List and not to a Band List as posted, since the reference in those final words can only be to the earlier words in lines 2 and 3, of the subsection, "within three months after the name of a person has been added to or deleted from a Band List". I agree with Mr. Steer, however, that sound principles of interpretation demand that the general intent of the section shall prevail. I hold that the section contemplates the lodging of a protest firstly against the "inclusion or omission" of a name in a Band List when posted in accordance with the provisions of s. 8 and secondly by the "addition or deletion" of a name in accordance with s. 7. The substitution of the word "any" for the

final word "that" in subsection (1) of s. 9 would seem a reasonable typographical correction falling within that class of "mere corrections of careless language", designed to give the true meaning of the statute: Maxwell on Interpretation of Statutes, 10th ed., p. 229; *Morris v. Structural Steel Co.*, [1917] 2 W.W.R. 749. The substitution would thus permit in the case of the Samson Band List "the council of the band or any ten electors of the band" to lodge their protest against the inclusion of the names of the appellants in that list. On their second ground of objection the appellants fail.

Mr. Gorman refers me to the *Poitras* case, *supra*, in which Hogarth D.C.J. at p. 554 dealt with the statutory requirements in respect to the posting of Band Lists upon the coming into force of the Act. By a rather strange coincidence, the words there used by Hogarth J. may be applied almost without change to the case at bar, since Mr. McCrimmon, the Registrar, gave identical evidence in that case and at the inquiry herein. I quote from p. 554:

"Sec. 9 of the Act gives the right to protest within six months after a list has been posted in accordance with sec. 8. Sec. 8 requires the list to be posted upon the Act coming into force in a conspicuous place in the superintendent's office that serves the band, or persons to whom the list relates, and in all other places where band notices are ordinarily displayed.

"The only evidence of posting as required by sec. 8 is that given by Mr. Malcolm McCrimmon, the registrar, who said the list was posted September 4, 1951. Mr. McCrimmon did not say where the list was posted nor did he say that it was posted as required by sec. 8. A photostatic copy of the band list is now before me and I observe there is attached thereto the following words:

" 'This list is posted pursuant to Section 9, Cap. 29, 15, George VI, 1951 (*The Indian Act*).'

"There is nothing in sec. 9 that requires a band list to be posted. It is sec. 8 that directs the posting. There is no evidence that the band list was posted in the superintendent's office and in all other places where band notices are ordinarily displayed.

"In absence of proof of posting the list in the places stated in sec. 8 the registrar, in my opinion, erred in entertaining the protest. In my opinion, the absence of proof of proper posting is fatal to the protesters' right to be heard."

With this opinion as expressed by Hogarth D.C.J., I with respect agree. The posting of a Band List as required by s. 8 must necessarily precede any action to challenge a name thereon since the 6 months' period permitted for such challenge runs from the date of posting. On three scores, therefore, I find failure in compliance with the strict requirements of the Act: Firstly, failure to post the Samson Band List as required by s. 8. Secondly, failure to state in reasonably intelligent and intelligible fashion the grounds of the protests. And thirdly, failure of the ten protesters to qualify themselves as electors of the Samson Band and thus entitled to lodge the twenty-seven protests with the Registrar.

In what position do these findings leave the Court? Mr. Steer argues that in spite of these instances of non-compliance with the Act my duty still remains under s-s. (4) of s. 9, "to decide whether the persons in respect of whom the protests are made are in accordance with the provisions of this Act entitled or not entitled, as the case may be, to have their names included in the Indian register". In my view, this duty arises only when a protest has been made to the Registrar *under s. 9* and strictly in accordance with its detailed provisions. The three defects which I have found in respect of and in the twenty-seven protests are just as fatal in my view as though the protests had been filed after the expiry of the 6-month period provided by s. 9, for the filing of protests.

There being no valid protests before the Registrar, the right to cause an investigation to be made never accrued. Only "where a protest is made to the Registrar, *under this section*" (*i.e.*, s. 9) shall he cause an investigation to be made. Since the right to investigate never arose, the decision of the Registrar based upon that investigation and the subsequent reference of his decisions to this Court were both equally invalid.

I hold the proceedings by way of protest to have been a nullity *ab initio*. Those members of the Samson Band referred to in the twenty-seven protests are entitled to have their names included in the Indian register as members of the Samson Band.