REX v. JIM

(1915), 22 B.C.R. 106 (also reported: 26 C.C.C. 236)

British Columbia Supreme Court, Hunter C.J.B.C., 27 April 1915

Criminal law--Indian reservation--Killing of game by Indian--Game Protection Act, R.S.B.C. 1911, Cap. 95--Application of.

The provisions of the Game Protection Act do not apply to Indians when killing game on Indian reservations.

APPEAL by way of case stated from the conviction by the police magistrate of Victoria on the 2nd of July, 1914, of one Edward Jim, an Indian, on the charge that he unlawfully had in his possession a portion of a deer contrary to the provisions of the Game Protection Act. The case submitted by the magistrate was as follows:

"It was admitted and proved upon the hearing that: (1) The defendant is chief of the North Saanich Tribe of Indians, who have a reserve at Union Bay on the Saanich Peninsula, and another on Saturna Island, both [Statement]in the Province of British Columbia. (2) The defendant killed a two-year- old buck deer upon the Saturna Island reserve for his household use, and had a portion of such deer in his possession at the time and place alleged in the information. (3) The defendant at no time made any attempt to conceal the said deer or any part thereof from the game warden or any person whatsoever. (4) The defendant had not obtained a permit pursuant to the provisions of the Game Protection Act. (5) The said reserve on Saturna Island is not occupied except by the Indians of the North Saanich tribe at short intervals for hunting and fishing purposes.

"The defendant submitted that by virtue of the treaty of 1852, the statutes of British Columbia in force at the time of confederation, the Terms of Union, the provisions of the British North America Act, and the Indian Act, the Province had no authority or jurisdiction to create the acts in question an offence so far as concerns the Indian in question. I determined that the Game Protection Act is *intra vires* of the Provincial Legislature, and that the matters hereinbefore stated afforded no ground of answer or defence to the said information. The question for the opinion of the Court is whether my said determination was erroneous in point of law?"

The appeal was argued before HUNTER, C.J.B.C at Vic- toria on the 27th of April, 1915.

W. J. Taylor, K.C., for the accused.

Maclean, K.C., for the Crown.

HUNTER, C.J.B.C.: In my opinion, this conviction must be quashed. The facts are not in dispute, the central fact being that the defendant charged with an infraction of the Game Protection Act was an Indian who killed a two-year-old buck upon a reserve upon which he was entitled to live, and was using the meat for his household use. The question at once arises as to whether the Indian is within the scope of the prohibitions of the Provincial Game Protection Act. In my opinion, he is not. By the British North America Act, 1867, that is to say, by subsection (24) of section 91, Indians and lands reserved for the Indians are reserved for the exclusive jurisdiction of the Dominion Parliament. The Dominion Parliament has enacted a lengthy Act known as the Indian Act. Many provisions are there to be found in connection with the management of Indians[Judgment] upon their reserve; in fact, by section 51 it is expressly enacted "that all Indian lands . . . . shall be managed, leased and sold as the Governor in Council directs."

Now, I cannot conceive it possible how any wider term can be used than the word "management" in connection with the Indians as to what shall or shall not be done upon an Indian reserve. I would say that the word "management" would, at all events, include the question of regulation and prohibition in connection with fishing and hunting upon the reserves. Then, also, special provisions have been made in connection with the subject of shooting and fishing. We find in another section that special provision has been made with regard to the subject of game in certain reserves in certain other Provinces. Undoubtedly if there was jurisdiction in the Dominion Parliament to make that regulation, there certainly would be, in my opinion, jurisdiction to make similar regulations with regard to reserves in British Columbia, and possibly, as *Mr. Taylor* suggests, it has not done so out of respect to the early treaties with the Indians in the Province. Then laws regarding the question of bringing in intoxicants on the reserves have been passed, and as I understand no question has ever been raised as to the right of the Dominion Parliament to pass those laws, and one would say that if the matter of bringing in intoxicants on to reserves was within the purview of the Dominion Parliament, that the question of what should be done with the game and fish within the reserves would *a fortiori* fall within their jurisdiction.

Moreover, I think that the question is in reality concluded by the case of *Madden v. Nelson and Fort Sheppard Ry. Co.* (1897), 5 B.C. 541; (1899), A.C. 626; 68 L.J., P.C. 148. It was there contended that because the Dominion did not choose to enact certain legislation regarding the fencing of railways which the Provincial Legislature thought was desirable, that the Legislature could, in the absence of such legislation [Judgment]on the part of the Dominion, temporarily, at all events, pass such laws under its power over civic rights. It was held that it would be impossible to maintain the authority of the Dominion Parliament if the Legislature was to be permitted to enter into the former's field of legislation.

I am unable to distinguish this case in principle from that case. Obviously the proper course for the local authorities is not to attempt to pass legislature affecting the hunting by Indians on their reserves or to apply general legislation regarding game to such Indians, but if necessary to apply to the proper law-making authority and make any representations they may see fit.

Conviction quashed.