REGINA v. WATSON

(1958), previously unreported

Saskatchewan Magistrate's Court, Bence Magistrate, 30 September 1958

BENCE P.M.: The accused, an Indian of the Ochapowace Indian Reserve lying north and east of Broadview, Saskatchewan, was tried before me at Broadview on June 19th, 1958 on the following charge, namely, that on the 22nd day of May, A. D . 1958 at Round Lake in the Province of Saskatchewan he was unlawfully in possession of a snare while carrying on a fishing operation, other than at a time when, and place where, the use of a snare was permitted under s-s.24 of s.4 of the *Saskatchewan Fisheries Regulations*, contrary to s.11, s-s.7 of the *Saskatchewan Fisheries Regulations* and the *Fisheries Act* (Dominion) [R.S.C. 1952, c. 119].

It was admitted at the outset that the accused is an Indian within the definition of an Indian in the *Indian Act*, Chapter 149 of the Revised Statutes of Canada, 1952, and within the meaning of Chapter 20 George V *An agreement to transfer Natural Resources*, Paragraph 12.

It was proved in evidence that the defendant, a married man, lived on the Ochapowace Reserve with his wife and two children about 8 miles from the Qu'Appelle River; that on the date charged the family was out of meat and the accused decided to fish for food with a wire lasso or snare attached to a long pole. He stood on a dam, built under the *Prairie Farm Rehabilitation Act*, about sixty yards from the Eastern outlet of Round Lake on the North East Quarter of Section 14 in Township 18 in Range 3 West of the Second Meridian where he was discovered by a conservation officer of the Department of Natural Resources of Saskatchewan. There was uncontradicted evidence that other Indians had used the same method of fishing for some forty years.

The power to legislate both in respect of Indians and Fisheries is given to the Dominion Parliament by the *British North America Act, 1867*, ss.91(24) and 91(12) but as stated by Chief Justice Martin of the Court of Appeal for this Province in *Regina* v. *Strongquill*, 8 W.W.R. (N.S.) 247 at page 253:

> The right of the Indians to hunt, trap and fish is dealt with in paragraph 12 of the Natural Resources Agreement of 1929 made between the Province of Saskatchewan and Canada which is as follows :
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> In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the law respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however, that the said Indians shall have the right, which the Province hereby assures to them of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown Lands and on any other lands to which the said Indians may have a right of access.

Similarly Magistrate J.E. Lussier in *Rex* v. *Mirasty*, [1942] 1 W.W.R. 343 at page 345 held:

> The Natural Resources Agreement is now the instrument which governs the relation of the Indians with the Provincial Game Laws and other laws affecting the Indians' supply of fish and game and any bearing the treaty may have in any given case can only be to the extent of throwing some light upon the interpretation of certain words in the agreement.

Again Chief Justice Martin, then one of the Justices of the Court of Appeal for this Province, in *Rex* v. *Smith* (1935), 64 C.C.C. 137 in dealing with the case of an Indian convicted of carrying a fire arm on the Fort La Corne Game Preserve contrary to s.69(1) of the *Game Act* at a time when he was hunting for food said:

> The issue must be determined upon the construction of paragraph 12 of the Natural Resources Agreement made between the Government of the Dominion of Canada and the Government of the Province of Saskatchewan. By the Act of the Imperial Parliament (British North America Act, 1930) the agreement was declared to have the force of law notwithstanding anything in the British North America Act of 1867 of any amending Act or any Act of the Parliament of Canada or any order in council or by any terms or conditions of union made or approved under any such Act. The Natural Resources Agreement, therefore, has been given the force of law by the Imperial Statute and the law with respect to any subject dealt with therein must be determined by an interpretation of the terms of that agreement.

On the authority of these decisions I hold that the right of the accused to fish in the manner he did in this case is governed by paragraph 12 of the Natural Resources Agreement and regard must be had to the terms of that agreement and the interpretation of the words "hunting, trapping and fishing game and fish for food". The act of the accused here would appear to come within the ordinary connotation of the words "Trapping fish for food" but having regard to the definition of fishing in the *Fisheries Act*, s.2(e) which defines fishing as follows- "Fishing means fishing for or catching fish by any method". I hold that snaring fish does come within the terms of paragraph 12. Mr. Towill argued that different considerations applied in this case than in those dealing with an infraction of the *Game Act* as the latter Act is provincial and the *Fisheries Act* is Dominion legislation but I don't see how that can change the picture since the Natural Resources Agreement is the legislation covering the situation on the authorities I have cited and that has the approval of both the Province of Saskatchewan and the Dominion and in addition has been given the force of law by the Imperial Parliament. Mr. Towill also contended that to uphold the act of the accused in this case would logically entitle him to use explosives to get fish for food. I am not so sure that such action would come within the definition of the words "hunting, trapping and fishing" but in any event I am of the opinion it would be contrary to the spirit of paragraph 12 of the Natural Resources Agreement which is stated to be to secure to the Indians the continuance of the supply of game and fish for their support and subsistence.

I am, therefore, of the opinion that the accused was within his rights in snaring fish if he was on unoccupied Crown lands or other land to which he had a right of access. Very little was said in argument by either counsel on this point. From the documents put in evidence by the Crown I conclude that title to the land on which the offence is alleged to have occurred is in the name of Her Majesty as represented by the Superintendent of Indian Affairs or in other words Crown land. The question is, is the land in question "unoccupied"? Mr. Justice Turgeon in *Rex* v. *Smith* referred to above said, "I think that among its possible uses, the parties to the agreement and the Legislature intended in this case to express those which invoke the idea of 'idle', 'not put to use'

'not appropriated'". There is no evidence that this land is used for any purpose and the mere fact that there is a dam there I do not think can take it out of the unoccupied class. I therefore find that the accused was on unoccupied Crown land and in the result find him not guilty of the offence charged and I dismiss it without costs.