

I find that the constables were not trespassing in the circumstances of the instant case and the motion for dismissal on this ground is therefore denied.

On the second ground for dismissal *viz.* assuming the constables had a right to be on the Reservation, that there was no evidence adduced by the Crown to support the offence of willful obstruction, I must deny the motion on this ground also. There is evidence upon which a conviction might be made if left to a jury; and so far as reasonable doubt is concerned, this cannot arise until after all the evidence is in.

In *Rex v. Shade* (1952), 102 Can. C.C. 316, Feir D.C.J. of the Alberta District Court states at p. 317: "Section 87 is a new section, not appearing in any of the prior legislation affecting Indians. It seems to be a clarification and restatement of previous case law which, in so far as offences against provincial statutes are concerned "+ and at p. 318: "Parliament has elected to legislate for the Indian in those fields particularly affecting his welfare, such as intoxicants and property rights, and to leave him subject to the laws of the Province within which he resides, and to the general laws of Canada, in all other areas."

In *Campbell v. Sandy*, 4 D.L.R. (2d) 754 at p. 756, [1956] O.W.N. 441 at p. 443 Kinnear Co.Ct.J. refers to the application of s. 87 in these words: "As set out above, s. 87 makes Indians subject to any provincial law of general application except in so far as they are inconsistent with Dominion enactment or regulation."

There can be no doubt that the *Highway Traffic Act*, R.S.O. 1950, c. 167 and amendments thereto is a provincial law of general application and as such is applicable to Indians unless it is inconsistent with the terms of any treaty, the *Indian Act* or any Regulation under it or any other Dominion enactment or Regulation. No inconsistency relative to the points at issue in the instant case has been cited to me nor have I, after considerable search, been able to find any. And certainly it cannot be said that the words "exclusive use and enjoyment" with reference to the Reservation as set forth in the agreement or treaty of 1827 give sanctuary to Indians from the operation of the general law of the Province.

In view of this, the problem of whether or not there has been a trespass by the constables resolves itself then into the rights of police constables in carrying out the provisions of the *Highway Traffic Act*.

Section 44 of the *Police Act*, R.S.O. 1950, c. 279 provides: "Every chief constable, constable and other police officer.... shall have authority to act as a constable throughout Ontario." Section 45 provides: "The members of police forces .... shall be charged with the duty of preserving the peace, preventing robberies and *other crimes and offences*, (the italics are mine) including offences against the by-laws of the municipality, and apprehending offenders, and laying information's before the proper tribunal, and prosecuting and aiding in the prosecution of offenders, and shall have generally all the powers and privileges and be liable to all the duties and responsibilities that belong to constables." It would seem also that the above sections are provincial law of general application.

Section 76 (1) of the *Highway Traffic Act* provides: "Every operator of a motor vehicle shall carry his license with him at all times while he is in charge of a motor vehicle and shall produce it when demanded by a constable or by an officer appointed for carrying out the provisions of this Act." The obligation imposed on the accused, therefore, is that while in charge of a motor vehicle he shall carry his operator's license and shall produce it on demand by a constable. The facts establish clearly that the accused was in charge of a motor vehicle not only on the highway in question but when he drove onto the Reservation and because of the right of a constable to demand production of the operator's license under these conditions, Constable Fairbairn had authority in law to follow the accused onto the Reservation as he did and to demand production of the license. It is a right he would have under similar circumstances with reference to private property generally.

Constables Fairbairn and Stewart were in a police cruiser. Constable Fairbairn was driving. The cruiser had just left the Reservation and was back on No. 40 Highway when Constable Fairbairn noticed a car proceeding in the same direction come up behind him at what he believed to be an excessive speed. This car was driven by the accused and passed the cruiser and Constable Fairbairn followed for the purpose of determining its speed. The maximum speed permitted on the highway in this area is 40 m.p.h. Constable Fairbairn stated that he paced the accused at slightly more than 50 m.p.h. for 6-tenths of a mile. The accused then slowed to a complete stop and turned into the driveway leading to a house on the Reservation. The cruiser followed. Both cars came to a stop close to the house and before either of the constables got out of their car the accused left his car and walked directly over to the cruiser, whereupon Constable Fairbairn indicated to the accused he had been driving too fast and asked him to produce his operator's license. Certain events followed which need not be detailed now other than to say that the accused did not produce his license and ran inside the house. It so happened that the accused is the Chief of the Band of Chippewa Indians living on the Reservation.

From evidence adduced so far, it appears that one of the outstanding points at issue in the instant case, *viz.* the right of police officers other than the R.C.M.P. to go on the Indian Reservation in question in the execution of their duties, has been a matter of contention for some time between the police of the City of Sarnia and the Indian occupants of the Reservation. A decision in the instant case, therefore, becomes a matter of considerable importance with reference to future conduct and the maintenance of law and order generally. While no broad ruling can or will be given in the instant case on what is, in effect, alleged to be the right of sanctuary to an Indian when once on his Reservation from pursuit by a police officer (other than the R.C.M.P.) for an offence, it is hoped that the decision I will give in this case will be of assistance to all concerned with reference to future attitudes and conduct.

Mr. Garrett, counsel for the accused alleges that the constables had no lawful right to follow the accused onto the Reservation and having done so, they were trespassers. In support of this he cited an agreement (referred to as a treaty) dated July 10, 1827 between His Majesty George IV and the Chiefs and Principal Men of the Chippewa Nation of Indians wherein the Reservation in question was created which, in the words of the agreement, reserved the said lands "to the said Nation of Indians and their posterity at all times hereafter for their own exclusive use and enjoyment". It was argued further that under the *Indian Act*, R.S.C. 1952, c. 149, s. 30 the constables were actually committing a statutory offence. Section 30 provides: "A person who trespasses on a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding one month or to both fine and imprisonment."

It seems clear to me that the agreement or treaty entered into in 1827 and s. 30 of the *Indian Act* must be read in conjunction with s. 87 of that Act which provides: "Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act."

This section has been before the Courts for consideration.

# REGINA v. WILLAMS

(1958), 120 C.C.C. 34

Ontario Magistrate's Court, Jasperson M., 16 January 1958

*Indians --*

Enforcement by municipal police officers of provisions of Highway Traffic Act (Ont.) on Indian Reservation -- By s. 87 of the *Indian Act*, R.S.C. 1952, c. 149, provincial laws of general application, in this case the *Highway Traffic Act*, R.S.O. 1950, c. 167, and the *Police Act*, R.S.O. 1950, c. 279, are applicable to Indians and Indian Reservations unless inconsistent with that Act or any other federal Act or with the terms of any treaty. In the instant case two municipal policemen discovered an Indian, the accused herein, speeding on a provincial highway and followed him into the Reservation to which he belonged and demanded production of his driver's license. The accused ran away and was charged with obstructing police contrary to s. 110(a) of the *Cr. Code*. *Held*, that the police officers were acting in the course of their duties under the statutes above mentioned and, there being no inconsistency with any rights conferred on Indians by any federal Act or treaty, were therefore not trespassers on the Reservation. Accordingly the accused, in the event of proof of willful obstruction, can properly be convicted under s. 110(a) of the *Code*. A clause in an 1827 treaty made with accused tribes which reserved the Reservation for "their own exclusive use and enjoyment" certainly does not give sanctuary to Indians from the operation of the general law of the Province. [*R. v. Shade*, 102 Can.C.C. 316. 4 W.W.R.(N.S.) 430, 14 C.R. 56, reld to]

TRIAL OF A PRELIMINARY ISSUE on a charge of obstructing police officers contrary to s. 110(a) of *Cr. Code*.

S.A.K. Logan, Q.C., for the Crown.

Hugh Garrett, for accused.

F.K. JASPERSON, Q.C., MAGISTRATE:--The accused is charged as follows: On or about November 23, 1957, at the City of Sarnia, County of Lambton, at about 3.45 p.m. did unlawfully and willfully obstruct Constable I.E. Fairbairn, of the Sarnia Police Department, Sarnia, while engaged in the lawful execution of his duty as a Peace Officer, contrary to s. 110 (a) of the *Criminal Code*.

At the close of the Crown's case, counsel for the accused moved for dismissal on two grounds, the main one being that the Peace Officer in the execution of his duties was a trespasser and that therefore any act of the accused alleged to be an obstruction was not an obstruction to the Peace Officer in the legal execution of his duties.

The facts adduced by the Crown are briefly these:

Constables Fairbairn and Stewart of the City of Sarnia Police had, at approximately 3:45 p.m., November 23, 1957, completed service of a summons on the Chippewa Indian Reservation which borders No. 40 Highway, a public highway. Both the Reservation and the highway are within the corporate limits of the City of Sarnia.