

REGINA v. JACK ET AL.

[1975] W.W.D. 135

British Columbia Provincial Court, Heard Prov. J., May 1975

Indians - Treaty Indians fishing for food in restricted area - Absence of aboriginal rights - Guilty on charge under the Fisheries Act, R.S.C. 1970, c. F-14, s. 19.

Eight Indians within the meaning of the Indian Act and registered members of the Cowichan Indian Band were charged under s. 19 of the Fisheries Act. It was admitted they fished for or had salmon in their possession for food purposes. The area where the fishing took place had been closed to all salmon fishing by order under the British Columbia Fishing Regulations. It was argued the Terms of Union of British Columbia and Canada had preserved aboriginal rights in Indians to fish for food at any time.

Held, the accused were guilty. They were unable to show any treaty, statute or agreement having statutory effect conferring upon them the right, or any aboriginal right, to fish as they saw fit in contravention of the Regulations made under the Fisheries Act. Although in former times there may have been a policy allowing considerable freedom of action that does not create legal rights which can be relied upon then the authorities decide different policy considerations must be applied because of a change in the situation. *Calder v. A.G. B.C.*, 74 W.W.R. 481, 13 D.L.R. (3d) 64, affirmed [1973] S.C.R. 313, [1973] 4 W.W.R. 1, 34 D.L.R. (3d) 145.

T. M. Singh, for Attorney General of Canada.

R. J. M. Hutchinson, for Attorney General of British Columbia.

D. Saunders, for accused.

(13 pp.)