REGINA v. RIDER

(1968), 70 D.L.R. (2d) 77 (also reported: 66 W.W.R. 100, [1969] 1 C.C.C. 193)

Alberta Magistrate's Court, Hudson Magistrate, 25 May 1968

Indians- Hunting rights- Treaty Indian hunting game for food within boundaries of National Park contrary to National Parks Act (Can.), s. 8(1)- Whether Parliament in violation of treaty promise, and, if so, whether accused must still be convicted.

A Treaty Indian who hunts game for food within the boundaries of a National Park is guilty of an offence under s. 8(1) of the *National Parks Act*, R.S.C. 1952, c. 189. Under the treaty in question the Indians' hunting rights are withdrawn with respect to those parts of the treaty area required for "settlement, mining, or other purposes". The creation of a National Park in the treaty area comes within the words "other purposes", and, therefore, Parliament in creating a National Park and prohibiting all hunting therein is not in violation of any treaty promise made by the Crown to the Indians. Even if Parliament were in violation of such a promise, the Court would still be bound to convict the accused because there is nothing to prevent Parliament from breaching treaty promises.

[*R. v. Smith*, 64 C.C.C. 131, [1935] 3 D.L.R. 703, [1935] 2 W.W.R. 433; *R. v. Sikyea*, [1964] 2 C.C.C. 325, 43 C.R. 83, 43 D.L.R. (2d) 150, 46 W.W.R. 65; affd [1965] 2 C.C.C. 129, 44 C.R. 266, 50 D.L.R. (2d) 80, 49 W.W.R. 306, [1964] S.C.R. 642, folld]

PROSECUTION of a Treaty Indian for hunting in a National Park contrary to the provisions of the National Parks Act (Can.)

R.A. Jacobson, for the Crown.
M. Hoyt, for accused.

L. W. HUDSON, MAGISTRATE:- Waterton Lakes National Park is constituted a National Park of Canada by the *National Parks Act*, R.S.C. 1952, c. 189, and by virtue of s. 7(1)(*c*) of the said Act the Governor in Council may make Regulations for the protection of wild animals. Section 4(*a*) of the National Parks Game Regulations, P.C. 1954-1431, SOR Con. 1955, vol. 3, p. 2350, reads as follows: "(a) no person shall at any time molest, chase, harass or pursue, hunt, shoot at, trap, take, wound, kill, capture or destroy any game within a Park."

The evidence clearly establishes that on the date in question the accused, a Treaty Indian, did hunt game, namely, deer, within the boundaries of the Park, and that said game was so hunted for food.

Some evidence was given by the defence to the effect that the accused did not know he was hunting within the Park boundaries but were this a material defence, the evidence indicates that the accused, an intelligent youth with a Grade X education, passed numerous signs indicating clearly the entrance and boundary of the Park, and I have not a shadow of doubt that he knew full well that the was hunting in the Park.

As his principal and serious defence, counsel for the accused refers to the provisions of Treaties Nos. 4 and 7 containing the following covenant:

> And further, Her Majesty agrees that Her said Indians shall have right to pursue their avocations of hunting, trapping and fishing throughout the tract surrendered, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining or other purposes, under grant or other right given by Her Majesty's said Government.

It would therefore appear that the question I must decide is whether or not Waterton Lakes National Park falls within the exception mentioned in the foregoing covenant, as, being "tracts as may be required or taken up from time to time for settlement, mining or other purposes".

Various cases have been suggested by counsel. These I have read, along with other cases which I considered might have some bearing on the matter before me. In the majority of the cases I have read, the Courts in question have been dealing with provincial Regulations, the preservation of game, areas where game may be hunted during certain periods or by licence or permit, and many of the decisions have been dealt with the rights of the Provinces to legislate with relation to game and Indians, the necessity of a permit to hunt, etc. In *R. v. Smith*, 64 C.C.C. 131, [1935] 3 D.L.R. 703, [1935] 2 W.W.R. 433 however, the Court deals with a certain area set aside for a particular purpose. Turgeon, J.A., in his judgment states as follows [p. 135 C.C.C., pp. 705-6 D.L.R.]:

> Counsel submits that, having regard to this provision, the words "unoccupied Crown lands" in para. 12 [of the Agreement], should be defined as all Crown lands not required or taken up for settlement, mining, lumbering or for other purposes, and that the expression "other purposes" should be interpreted as not including the setting aside of areas for the preservation of game. This submission resolves itself into an argument that the Crown by specifying in the treaty the purposes of settlement, mining, and lumbering, excluded itself for all time from setting aside tracts of land as game preserves, the words "other purposes" not being sufficiently broad to include such setting aside.

> Counsel invokes the *ejusdem generis* rule. On the ground so chosen by counsel I find I must differ from him. Looking at the words "settlement," "mining" and "limbering," I do not see how they can be grouped into any *genus* to which the *ejusdem generis* rule can be applied. I do not think the works "other purposes" were meant to be construed in such manner.

Following the reasoning of the foregoing I am of the opinion that Parliament, by establishing a park of the area in question, brings such area within the exception mentioned in the Treaty and can therefore make such Regulations, applicable to all persons, with regard to hunting, trapping or fishing, as it sees fit without violating any promise made by the Crown to the Indians.

Had I not found as above I should nevertheless have felt bound to convict the accused of the offence charged. The Regulation is clear in its prohibition that "no person shall...hunt..." I found no exception in the case of Indians. In *R. v. Sikyea*, [1964] 2 C.C.C. 325 at p. 330, 43 C.R. 83, 43 D.L.R. (2d) 150 at p. 154, 46 W.W.R. 65, Johnson, J.A., states:

> It is always to be kept in mind that the Indians surrendered their rights in the territory in exchange for these promises. This "promise and agreement", like any other, can, of course, be breached, and there is no law of which I am aware that would prevent Parliament by legislation, properly within s. 91 of the *B.N.A. Act*, from doing so.

Further Mr. Justice Johnson states [p. 335 C.C.C., p. 158 D.L.R.]:

> It is, I think, clear that the rights given to the Indians by their treaties as they apply to migratory birds have been taken away by this Act and its Regulations.

On appeal to the Supreme Court of Canada [[1965] 2 C.C.C. 129, 44 C.R. 266, 50 D.L.R. (2d) 80, 49 W.W.R. 306, [1964] S.C.R. 642] Hall, J., in delivering the judgment of the Court dismissing the appeal agrees with the reasons for judgment and conclusions of Johnson, J.A.

In view of the foregoing I feel bound to find that notwithstanding the wording of the Treaty, Indians are prohibited from hunting in Waterton Lakes National Park.

I find the accused guilty.

Accused convicted.