

## REGINA v. THOMPSON

(1975), previously unreported

Saskatchewan Court of Queens Bench, Sirois J., 2 October 1975

SIROIS J.: This is an appeal by way of Stated Case from a conviction entered against the appellant on the 15th day of January, A.D. 1975 for the following offence:

That the said Ronald Thompson of Little Pine Indian Reserve on or about the 21st day of April, A.D. 1974 at Neilburg District, in the Province of Saskatchewan not being the holder of a Permit that authorized him to do so in an area described in Schedule 'A' did unlawfully hunt a species of migratory game bird named in the Schedule except during the Open Season specified therein for that area and that Species, in violation of Section 5(4) of the Migratory Birds Regulations, thereby committing an offence contrary to Section 12(1) of the Migratory Birds Convention Act, Chapter M-12, R.S.C. 1970.

The facts upon which the learned Judge of the Magistrate's Court based the conviction were the following:

- (a) Said Ronald Thompson is a Treaty Indian pursuant to Treaty #6.
- (b) Said Ronald Thompson on or about the 21st day of April, 1974 was hunting wild ducks, a species of migratory game bird.
- (c) The said wild ducks were a game bird named in Section 3(a) of the Migratory Birds Convention Act.
- (d) That the said Ronald Thompson was hunting for food.
- (e) That on April 21st, 1974 in the Neilburg District in which the said Ronald Thompson was hunting there is no Open Season for the said area or species.

Said conviction is questioned on the following basis:

- (1) Did I err in law when I held that the Canadian Bill of Rights, (Revised Statutes of Canada), does not apply to protect the right to hunt and fish recognized and granted to the Appellant under Treaty #6.
- (2) Did I err in law when I held that the right to hunt and fish recognized in Treaty #6 is not a "Human Right" or "Fundamental Freedom" protected by Section 5(1) of the Canadian Bill of Rights?
- (3) Did I err in law when I held the application of Section 5(1) of the Canadian Bill of Rights to the rights of the Appellant recognized by Treaty #6, did not provide those rights, that is, the right to hunt and fish the full status of an enumerated right under Section 1 of the Canadian Bill of Rights?
- (4) Did I err in law when holding that to convict the Appellant (a Treaty Indian under Treaty #6) of the alleged offence under the Migratory Birds Convention Act did not contravene Section 2 of the Canadian Bill of Rights in that the conviction of the Appellant did not involve a disregard of the protection afforded Appellant by Section 2 of the Canadian Bill of Rights which holds that no law (The Migratory Birds Convention Act) shall be "construed and applied [so as] to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared, and in particular, on law of Canada shall be construed or applied so as to: (e) deprive a person of a right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations"- the right to hunt and fish being a right that is protected by the application of Section 5, subsection 1 of the Canadian Bill of Rights?

Were I to answer each of these four questions, I would do so in the negative on the strength of the following authorities: Sikyea v. The Queen, [1964] S.C.R. 642, 2 C.C.C. 129 [ 6 C.N.L.C. 597]; R. v. George, [1966] S.C.R. 267, 3 C.C.C. 137 [6 C.N.L.C. 360]; Daniels v. The Queen, [1968] S.C.R. 517, [1969] 1 C.C.C. 299 [ 6 C.N.L.C. 199]; Attorney-General of Canada v. Lavell; Isaac v. Bedard (1973), 38 D.L.R. (3d) 481, 23 C.R. (N.S.) 197 [ 7 C.N.L.C. 236].

However, it appears that this appeal should be decided in another manner.

Section 12(1) of the Migratory Birds Convention Act, R.S.C. 1970, c.M-12 reads as follows:

12.(1) Every person who violates this Act or any regulation is, for each offence, liable upon

summary conviction to a fine of not more than three hundred dollars and not less than ten dollars, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment.

Section 5 of the Regulations respecting the protection of Migratory Birds provides as follows:

- 5.(1) Subject to subsection (2), no person shall hunt a migratory bird except under authority of a permit thereof.
- (2) In the Province of Newfoundland, a resident of the Province may, without a permit and during the period from September 1 to March 31 hunt murre for human food only.
- (3) No person shall hunt a migratory game bird unless he is the holder of a migratory game bird hunting permit.
- (4) Subject to subsection (6), no person shall in any area described in Schedule A hunt a species of migratory game bird named in the Schedule except during an open season specified therein for that area and that species.
- (5) Notwithstanding subsection (3) and (4),
  - (a) an Indian or Eskimo may, in any area in Canada, and
  - (b) any person may, in the Franklin and Keewatin Districts, in the Northwest Territories, hunt migratory game birds without a migratory game bird hunting permit.
- (6) Subsection (4) does not apply to the holder of a permit issued pursuant to Section 19.
- (7) Notwithstanding subsections (1) and (3) and subject to subsection (8), an Indian or Eskimo may at any time, without a permit, take auks, auklets, guillemots, murre, puffins and scoters and their eggs for human food and clothing.
- (8) No person shall hunt in a migratory bird sanctuary except under authority of a special permit therefor.

The above Regulation P.C. 1974-1634 was passed on July 23, 1974, or after the alleged offence herein. However the preceding Regulation did not vary materially from the present one as far as this appeal is concerned.

Under s.768(1) of the Criminal Code, R.S.C. 1970, c.C-34 it seems clear to me that a fifth question should have been stated by the learned Magistrate (in addition to the four questions, supra) as follows:

- (5) Did I err in law in convicting the accused for a violation of section 5(4) of the Migratory Bird Regulations, without also considering the wording of the remaining subsections of said section 5, and particularly subsection (5) thereof?

With all due respect this case should be sent back to the learned Magistrate for the suggested amendment. Vide: Rex ex rel. Cook v. Armstrong, 80 C.C.C. 262. However to save costs I would direct that upon such amendment being made the appeal be allowed and the conviction quashed since the answer to this question is Yes. Clearly, under the plain reading of s-s. (5), supra, the accused had the right to hunt, in any area of Canada, migratory game birds without a migratory game bird hunting permit.