

REGINA v . DUQUETTE

(1881), 9 P.R. 29

Ontario Common Pleas, Osler J., 1 November 1881

Liquor License Act--Dickinson's Island--Indian land--Sale of liquor.

Defendant was convicted for selling liquor without a license on Dickinson's Island, in Lake St. Francis.

Held, on an application for *certiorari*. 1. That the island was part of the county of Glengarry, and therefore within the jurisdiction of the police magistrate. 2. That the Liquor License Act applies to Indian land under lease from the Crown to a private individual. 3. That only the holder of a license can be prosecuted under section 43 of the above Act, for selling liquor on prohibited days. [November 1, 1881.--Osler, J.]

Aylesworth moved for a writ of *certiorari* to remove a conviction made by the police magistrate of the Town of Cornwall against one Joseph Duquette for selling liquor without a license.

The sale took place on one of the islands in Lake St. Francis, known as Dickinson's Island. Three objections were taken to the conviction:--

1. That Dickinson's Island is not within the Province of Ontario, but is part of the Province of Quebec.
2. That the island formed part of an Indian Reserve, and the offence of selling liquor thereon, with or without license, was punishable under the Indian Act of 1880, and could not be dealt with under the Liquor License Act.
3. That the sale was on a Sunday, and the conviction should therefore have been for that offence under the appropriate section of the License Act, R. S. O. ch. 181.

Osler, J.--I think the conviction is not open to any of the objections which have been urged against it. On the evidence before the magistrate it appears that Dickenson's Island is in Lake St. Francis, and north of the middle of the lake; and that, if the outlines of the township of Charlottenburgh, in the County of Glengarry, were prolonged to the middle of Lake St. Francis, the island would be wholly within those limits. It was argued that, upon the true construction of the descriptions given of the boundaries between Upper and Lower Canada in ancient Royal proclamations and commissions to Governors General, the north shore of Lake St. Francis was the boundary, and that the Island therefore belonged to the Province of Quebec.

It is, however, quite unnecessary to consider these instruments, for the matter was definitely settled by the Act of the Legislature of the United Provinces, Con. Stat. U. C. cap. 3, sec. 7, which enacts that the limits of the townships in the County of Glengarry shall extend to the middle of Lake St. Francis and to the middle of the main channel of the River St. Lawrence; and, unless therein otherwise provided, shall also include the islands, the whole or the greater part of which, are confined within the outlines of the said townships so prolonged. See also Con. Stat. L. C. ch. 75, sec. 1, sec. 62.

Sec. 7 of ch. 3, C. S. U. C. is still, I apprehend, the governing enactment, though it is repeated in R. S. O. ch. 5, sec. 9.

It is somewhat singular that, in the Act 38 Vic. ch. 5 O. (now R. S. O. ch. 3) intitled "An Act respecting the boundary between the Provinces of Ontario and Quebec," passed in pursuance of 34 & 35 Vic. ch. 28, Imp. Act, and intended to determine the point at the head of Lake Temiscamingue from whence the Province boundary should run north, no notice is taken of the Act of 1860, 23 Vic. ch. 21, by which the true course and situation of the line of division mentioned in the Royal Proclamation of the 18th of June, 1791, was determined and declared, and errors therein corrected. The proclamation only is referred to, and recited as if the division line from Lake St. Francis to the Ottawa River and thence to Lake Temiscamingue still depended upon that.

As to the second objection, the evidence shews that the island has, for many years past, been leased by the Crown to various persons, and is now under lease to Mr. Dickinson. Although Indian land in one sense, it is not a reserve, or special reserve, as it could not, in that case, have been leased. (See Indian Act of 1880, sec. 2, sub-secs. 6, 7, 8, sec. 36.) And it is only to sales of liquor on the reserves, or special reserves, that the prohibition contained in sec. 90 applies. There is therefore no reason why the Liquor License Act should not be in full force in the territory in question.

The third objection also fails. It is only the holder of a license who can be prosecuted under sec. 43 for selling on prohibited days.

I therefore refuse the *certiorari*.