REX v. GROSLOUIS (sub nom. PROCUREUR GENERAL DE QUEBEC v. GROSLOUIS)

(1943), 81 C.C.C. 167 (also reported: [1944] R.L. 12)

Quebec Sessions of the Peace, Pettigrew J. Sess., 10 December 1943

Indians--Retail Sales Tax Act (Que.)--Applicability to Indian merchant on Reserve selling to white man.

An Indian merchant who resides and operates a retail store on an Indian Reserve must comply with the provisions of the *Retail Sales Tax Act*, R.S.Q. 1941, c. 88 on a sale to a white man and *semble* on a sale to any one outside the Reserve, and hence maybe convicted of the offence of selling movable property by retail without having first obtained a certificate of provincial registration as required by such Act in respect of any such sale. By virtue of s. 92 of the *Indian Act*, R.S.C. 1927, c. 98 which exempts Indians from taxation, subject to the exceptions therein specified, such merchant is not required to comply with the *Retail Sales Tax Act* if he sells only to Indians inhabiting his Reserve.

Cases Judicially Noted: *R. v. Hill* (C.A.), 15 O.L.R. 406; *R. v. Beboning* (C.A.), 13 Can. C.C. 405, 17 O.L.R. 23; *R. v. Martin* (C.A.), 39 D.L.R. 635, 29 Can. C.C. 189, 41 O.L.R. 79; *R. v. Rodgers* (C.A.), [1923] 3 D.L.R. 414, 40 Can. C.C. 51, 33 Man. R. 139, apld.

Statutes Considered: *Retail Sales Tax Act*, R.S.Q. 1941, c. 88, ss. 3 (1), 12; *Indian Act*, R.S.C. 1927, c. 98, ss. 2, 102.

PROSECUTION on a charge of unlawfully selling movable property without first having obtained a certificate of provincial registration contrary to the *Retail Sales Tax Act*, R.S.Q. 1941, c. 88. Accused convicted.

Gerard Lacroix, K.C., for A.-G. Quebec.
Paul Lesage, K.C., for accused.

PETTIGREW J. SESS.:-- The Attorney-General of the Province of Quebec charges the respondent with having, on May 27, 1943, in the Indian Reserve of Lorette, Huron Village, in the District of Quebec, sold and delivered chattels without being provided with a certificate of provincial registration contrary to the provisions of an Act to impose a tax on the retail sales within the Province (*Retail Sales Tax Act*, R.S.Q. 1941, c. 88).

The parties, through their respective attorneys, have made the following admissions: 1. The accused is an Indian; 2. He is domiciled upon the Reserve of Lorette, Huron Village, District of Quebec; 3. He operates a store for retail sale within the said Reserve; 4. The accused, on the dates mentioned in the action, had no permit or licence as provided for in c. 88 of the Revised Statutes of Quebec 1941; 5. He sells retail, in his store, to the persons who present themselves there; 6. On the occasion of the retail sales he effects, the accused collects no provincial sales tax. It was proven, moreover, that the respondent sold to one Pacifique Ayotte, of the white race and not inhabiting the Indian Reserve, the following articles, namely: (*a*) two boxes of lighter flints at 10 cents per box, forming a total of 20 cents, without demanding from the purchaser the 4% tax, that is one cent; (*b*) one package of "Henley" cigarettes for the sum of 30 cents, omitting to collect from the purchaser the 10% tax, that is three cents.

Section 3 of R.S.Q. 1941, c. 88, reads as follows:

"3. (1) No vendor shall sell any movable property in the Province, at a retail sale, unless a registration certificate has been, upon his application, granted to him under the authority of this act, and unless such certificate be in force at the time of the sale."

Section 12 of the said provincial Act provides for exemptions.

"12. This act shall not apply to the following: . . . .
"(*e*) Beer and tobacco."

We must state immediately that the charge is not well-founded in respect of the sale of the package of cigarettes.

The sale of tobacco is the subject of a special Act [*Tobacco Tax Act*], R.S.Q. 1941, c. 87.

There remains as proof of the infraction, if there is infraction, the sale of lighter flints; moreover, for the purposes of this case, the admission of facts, signed by the parties and above described, would be sufficient.

The following problem is the one we have to solve:

Is an Indian living upon a Reserve under the control of the Dominion Government and operating a store, for the retail sale of chattels, subject to the prescriptions of the Act to impose a tax on the retail sales within the Province?

The *B.N.A. Act*, s. 91, para. 24, states that: "Indians, and Lands reserved for the Indians" are under "the exclusive Legislative Authority of the Parliament of Canada."

As a matter of fact, the Parliament of Canada has legislated in respect of the person of the Indian and the lands that are specially reserved for him by adopting "*An Act respecting Indians*" [*Indian Act*, R.S.C. 1927, c. 98].

The word "Indian", here, is synonymous of the expression "Indian" (sauvage) which we encounter at para. 24 of s. 91 of the *B.N.A. Act*.

Section 2, para. (*d*) of R.S.C. 1927, c. 98, defines the word "Indian":

"(*d*) 'Indian' means
"(i) any male person of Indian blood reputed to belong to a particular band."

Paragraph (*b*) defines the word "band":

" 'band' means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible."

Now, here, for the purposes of this case, it has been admitted that the accused is an Indian domiciled in the Reserve of Lorette, Huron Village, near Quebec.

Section 102 declares that no Indian shall be liable to taxes for any real or personal property.

Here is how the legislator expresses himself:

"102. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate."

Therefore, it is clear that the property of an Indian, whether real or personal, can only be taxed if such property is outside of the Reserve.

To what end does c. 88 of the Revised Statutes of Quebec, 1941, require from a retail merchant a registration certificate unless it be to collect the taxes on each of the articles sold to a third party. If the Indian, a merchant, only sells to Indians inhabiting his Reserve, it would be logical to conclude that the Attorney-General of the Province cannot demand legally of this Indian, a merchant, that he comply with para. 3 of the chapter in question. On the other hand, if as in the case with which we are dealing, this Indian sells to persons who do not inhabit the Reserve, does he come within the provisions of the provincial Act?

Canadian Courts have on several occasions delivered judgments on various problems concerning the Indians in their dealings with third parties, and in respect of the application of provincial laws to them.

It seems to follow from jurisprudence taken as a whole that the Indian, in so far as an Indian inhabiting a Reserve under the control of the Dominion Government, is not amenable to the laws of the Provinces; but as soon as he goes out of that Reserve, he becomes, like any ordinary citizen, subject to the application of provincial laws to which he owes obedience failing which he is liable to the penalties provided in such a case.

In the case of *R. v. Hill* (1907), 15 O.L.R. 406, it was decided that the Indian outside the Reserve is subject to the general law which applies in the Province. An Indian who commits an offence against a provincial law beyond the limits of an Indian Reserve, may be convicted and punished just as all other persons may. An unenfranchised Indian is subject to provincial legislation in precisely the same way as a non-Indian at least where he is out of this reservation.

We have the same decision in *R. v. Beboning* (1908), 17 O.L.R. 23, 13 Can. C.C. 405 and in *R. v. Martin* (1917), 39 D.L.R. 635, 41 O.L.R. 79, 29 Can. C.C. 189.

In the last case of *Martin*, Mr. Justice Riddell, of the Supreme Court of Ontario, quoting a decision of the Judicial Committee of the Privy Council, *C.P.R. v. Corporation of the Parish of Notre Dame de Bonsecours*, [1899] A.C. 367, expressed himself in these words [39 D.L.R. at pp. 638-9, 29 Can. C.C. at pp. 192-3]:

"I think the language used by the Judicial Committee in *Canadian Pacific R.W. Co. v. Corporation of the Parish of Nôtre Dame de Bonsecours* . . . . may well be applied *mutatis mutandis*:

" 'The British North America Act, whilst it gives the legislative control of the Indian defendant, *quâ* Indian to the Parliament of the Dominion, does not declare that the defendant shall cease to be a denizen of the Province in which he may be, or that he shall, in other respects, be exempted from the jurisdiction of the provincial legislatures . . . . It therefore appears . . . . that any attempt by the Legislature of Ontario to regulate by enactments his conduct *quâ* Indian would be in excess of its powers. If, on the other hand, the enactment had no reference to the conduct of the defendant *quâ* Indian, but provided generally that no one was to sell, etc., liquors, then the enactment would . . . . be a piece of legislation competent to the Legislature . . . .' even though he--not in his status *quâ* Indian, but under the general words--should come within the prohibition.

"In other words, no statute of the Provincial Legislature dealing with Indians or their lands as such would be valid and effective; but there is no reason why general legislation may not affect them."

Now, the "Act to impose a Tax on Retail Sales within the Province (R.S.Q. 1941, c. 88)" is a law of general application, affecting every person indiscriminately, dealing in chattels within the limits of the Province.

The Federal Statute dealing with "Indians" contains no provision with respect to the status of the Indians doing business generally.

Sections 40 to 45 of c. 98, R.S.C. 1927, speak of the sale of grain crops and other produce grown upon a reserve in the Province of Manitoba, Saskatchewan, Alberta or the Territories; prohibit all barter in such territories, without a special permit issued by the Superintendent of Indian Affairs, and, on general principle, no missionary, official or employee of the department may trade with the Indians unless he has been specially authorized to do so.

In *R. v. Rodgers*, reported [1923] 3 D.L.R. 414 at p. 421, 40 Can. C.C. 51 at p. 59, 33 Man. R. 139, Justice Dennistoun, of the Manitoba Appeal Court, said: "In the absence of express legislation to the contrary by the Dominion, an Indian whether on or off his reserve is, I think, subject to the general law of the Province."

The Indian cannot claim he is not a subject of the Crown and that the Reserve forms a small independent country, enclaved in the Province, subject to the sole directions of the Councils and the Chief of the band.

Indians are subjects of the Crown and are not exempt from the general law; it cannot be maintained that Indians are "not in reality subjects of the King but an independant people--allies of His Majesty--and in a measure at least exempt from the civil laws governing the true subject:" *Sero v. Gault* (1921), 64 D.L.R. 327 at p. 330, 50 O.L.R. 27.

And in *R. v. Beboning*, 13 Can. C.C. 405 at p. 413: "The suggestion that the Criminal Code does not apply to Indians is . . . . so manifestly absurd as to require no refutation."

These citations show that in the almost unanimous opinion of the Courts of this country the Indian is a Canadian citizen and that, save for the restrictions provided for in the special legislation concerning him, he has the same rights and privileges as the ordinary citizen and therefore the same duties and obligations.

So long as he lives upon his Reserve, the Indian enjoys the privileges that are specially granted to him by the Dominion *Indian Act* and his deeds and actions are subject to the provisions of such Act. When the Act respecting the Indian is silent, the problem must be solved in the light of the general law, either federal or provincial.

Here, it is recorded in the evidence that the respondent sold to a person who is not an Indian and does not live upon the Reserve. Furthermore, the respondent admits that he sells regularly to any person going to his store, thus acknowledging that he barters alike with the Indians of his band and with persons from the outside.

In this case, is it not logical to conclude that the respondent, when he sells to a non-Indian, does an action which causes him, theoretically, to go outside the Reserve?

Does he not encroach on the provincial field by thus withdrawing from the public department the sales tax which the citizen, a purchaser in this Province, must pay?

The white person who goes out of his way to buy from the Indian does so for the obvious purposes of evading the payment of the tax and thus defraud the provincial Act. Does the Indian who sells under such conditions not then become party to such fraud?

To allow the Indian to act in that manner with impunity would be to tolerate a regrettable abuse that would soon degenerate into disorder. If the Indian wishes to profit by the privileges that are granted to him, let him remain strictly within the limits of his field of action.

In conclusion, I must say that the Indian not being liable to be taxed for his chattels, the provincial sales tax does not apply to the Indian, a merchant; but, if he goes outside of his Reserve, such as happens in this case, to sell to persons from the outside, this Indian, merchant, must submit to the prescriptions of the provincial Act.

The Attorney-General has proven his case and, consequently, I find the accused, Harry Groslouis, guilty of having: the twenty- seventh day of May nineteen hundred and forty-three, upon the Indian Reserve of Lorette, Huron Village, in the District of Quebec, sold and delivered to Pacifique Ayotte, of the City of Quebec, chattels, to wit: two boxes of flint lighters at 10 cents a box, without having a provincial registration certificate, contrary to the provisions of the Act to impose a tax on the retail sales within the Province. (R.S.Q. 1941, c. 88, s. 3.)

I condemn the said Harry Groslouis to pay a fine of ten dollars with costs; and in default of such payment between this day and the nineteenth of December to three months' imprisonment. (R.S.Q. 1941, c. 88, s. 17(*a*).)

Accused convicted.