# REGINA v. HOWSON

(1894), 1 Terr.L.R. 492 (also reported: 1 (No.4) N.W.T.R. 44)

North-West Territories Supreme Court, Wetmore, Richardson, Macleod, Rouleau and McGuire JJ., 13 June 1894

***Indian Act--Halfbreed--Meaning of "Indian"***

**The Indian Act R. S. (1886) c. 43, defines (s. 2 *h*) "Indian" as meaning *inter alia* "any male person of Indian blood reputed to be- long to a particular band."**

***Held*, (1) Against the contention that "of Indian blood" means of full Indian blood, or at least of Indian blood *Ex parte paterna*-- that a half breed of Indian blood *Ex parte materna* is "of Indian blood."**

**(2) Against the contention that the defendant having been shown to have *actually* belonged to a particular band, this disproved, or was insufficient to prove, that he was *reputed* to belong thereto--that the intention of the Act is to make proof of mere reputed sufficient evidence of *actual* membership in the band.**

**(3) Against the contention that by virtue of s. 11 the mother of the defendant by her marriage to his father, who was a white man, ceased to be an Indian, and that therefore the defendant was not a person of Indian blood--that while the mother lost her character of an Indian by such marriage, except as stated in that section, it did not affect her blood which she transmitted to her son.**

**[*Court in banc, June 13th, 1894*]**

[Statement] This was a case stated for the opinion of the Court *in banc* by Justices of the Peace, who had convicted defendant under section 94 of the Indian Act for selling liquor to an Indian. From the evidence it appeared that the person to whom the liquor was sold was not an Indian of pure blood, being the son of a Frenchman by an Indian mother, but he was a member of a band of Indians and was living on a reserve and sharing in the Indian Treaty payments.

*N. F. Davin*, Q.C, and *T. C. Johnstone*, for the defendant.
*D. L. Scott*, Q.C., for the Crown.

[*June l3th, 1894*.]

WETMORE, J.--The defendant was convicted under R. S. C. c. 43, s. 94, of selling an intoxicant to an Indian, a case was signed and stated to this Court by the convicting Justices.

The only question submitted by such a case is whether the person to whom the intoxicant was sold was an Indian within the meaning of the Act. This person goes by the [Judgment.] name of Henry Bear. The evidence shows that he is a half-breed, his father having been a Frenchman and his mother an Indian, that he belongs to and is a member of Mus-cow-e-quan's Band of Indians and lives on his reserve and has taken treaty-money for a number of years past since a period before the railway came into the Territories. The only question raised by the defence was that Bear being a half-breed was not an Indian within the meaning of the Act.

1st. Because he was a half-breed.

2nd. Because the evidence showed that he actually belonged to the band, not that he was "reputed to belong thereto."

Section 2 paragraph (*h*) defines what the expression "Indian" means when used in the Act unless the context requires a different meaning to be given to the word.

I can find nothing in the context of section 94 which requires a different meaning to he given to the word from that provided in section 2.

Now paragraph (*h*) defines the expression "Indian" shall mean "any male person of Indian blood reputed to belong to a particular band." Paragraph (*d*) of the same section provides what the expression "band" when used in the Act shall mean.

The evidence shows that Bear belongs to a band as so defined. But it is urged that where in paragraph (*h*) the words "any male person of Indian blood" are used they mean any person of full Indian blood, or failing that, that the blood of the father, is to govern, and therefore that Bear's father, having been a white man, Bear is not an Indian. A number of sections of the Act were cited with a view to showing that it was not the intention of the Legislature that a half-breed was to be embraced by the expression "Indian" as defined in paragraph (*h*). I am however of opinion that by every rule of construction that can he applied to the expression as so defined "half-breeds" were intended to be included in it if they fitted the definitions.

[Judgment.] The first and golden rule of construction is that the words of a statute are to be construed according to their popular and ordinary meaning. I understand the popular and ordinary meaning of the words "any male person of Indian blood" to mean any person with Indian blood in his veins, and whether such blood is obtained from the father or mother. This rule of construction, however, has its exceptions and undoubtedly as urged at the argument another rule of construction is that we are to consider the evil which the statute is intended to remedy, and having discovered that, so to construe the words as to give effect to the intention of the Legislature, and in that case if necessary the ordinary and popular meaning of the words are sometimes departed from and some other meaning which they may bear from the context or otherwise is accepted.

By applying that rule, what was the intention of Parliament in enacting The Indian Act.

It is to be borne in mind that this Act is not only applicable to the Indians in the North-West, but it is also applicable to Indians throughout the whole of Canada.

It is intended to apply to a body of men who are the descendents of the aboriginal inhabitants of the country, who are banded together in tribes or bands, some of whom live on reserves and receive monies from the Government, some of whom do not. It is notorious that there are persons in those bands who are not full blooded Indians, who are possessed of Caucasian blood, in many of them the Caucasian blood very largely predominates, but whose associations, habits, modes of life, and surroundings generally are essentially Indian, and the intention of the Legislature is to bring such persons within the provisions and object of the Act, and the definition is given to the word "Indian" as aforesaid with that object.

In some instances possibly the Act goes further than I stated, and in some of its provisions applies to half-breeds, as for instance in s. 111, which provides that "every one induces, incites, or stirs up any three or more Indians, non-treaty Indians or half-breeds apparently acting in concert "to do certain specified things is guilty of a misdemeanor. That section is so framed because admittedly [Judgment.] there are half-breeds who would not be embraced by the term "Indian" or "Non-Treaty Indian," as defined by the Act. For instance, a half-breed who was not "reputed to belong to a particular band," would not be an Indian with- in the meaning of the Act. Nor would a half-breed, who did not belong to an "irregular band" as defined in the Act and who did not follow the Indian mode of life be a "non-treaty Indian" as defined by paragraph (*i*) of section 2. So by section 13 of the Act "no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian." Nor under the same section shall the half-breed head of a family anywhere with certain specified exceptions except under certain specified circumstances be considered an Indian. The very provisions of this section which I have mentioned show that it was the intention of the Legislature that there are half-breeds who must be considered Indians within the meaning of the Act; because if the word "of Indian blood" in paragraph (*h*) of section 2 meant "of full Indian blood," then these pro- visions in section 13 were entirely unnecessary.

Assuming that there may be a section or so of the Act which might render such a construction apparently doubtful, the Act must be construed according to its general pro- visions, not to make it fit into one or two exceptional sections. See the consequences of a different construction from that which I have adopted and if that urged for the defendant were accepted. A prosecution is brought against a person for doing or omitting to do something with respect to an Indian under the provisions of the Act for which a penalty is provided; if the defendant's contention is adopted it would be necessary in every case to prove that such Indian was a full blooded Indian, because the burthen of proof is on the prosecutor, and he is bound to show that the person with respect to whom the offence was committed is an Indian as defined by the Act, and that is, according to his contention, a full blooded Indian--how in the world could that be done? Or in the other view, if he had some [Judgment.] white blood in him, he would have to prove that he got his Indian blood from his father, and possibly have to go generations back, because the alleged Indian might so far as

his skin was concerned be as white as a Spaniard or an Italian or as many Englishmen or Frenchmen for that matter, and yet not understand a word of any European language, and be in thought, association and surrounding altogether Indian.

I am of opinion, therefore, that Bear was a person of Indian blood within the meaning of the Act, and I am of opinion that there was evidence which warranted the Justices in finding that he was "reputed to belong to a particular band" within the meaning of the Act, because as a matter of fact it was found that he did belong to a particular band. The words "reputed to belong" in paragraph (h) are used so as to provide facility of proof, that is, that proof of mere repute that he so belongs is sufficient not merely for the purposes of section 94, but for all the purposes of the Act; *a fortiori* evidence that he actually belongs is sufficient. I am not impressed with the view that Bear's mother being married to his father ceased to be an Indian by virtue of section 11.

Assuming that she did marry as alleged, and I have doubts whether there is any evidence of any such marriage, while she herself lost her character of an Indian by such marriage, it did not affect her blood which she transmitted to her son. I think the conviction must be affirmed with costs.

RICHARDSON, MACLEOD, ROULEAU and McGUIRE, JJ., concurred.

*Conviction affirmed with costs*