

## BRYCE, MCMURRICH AND COMPANY v. SALT

(1885), 11 P.R. 112

Ontario Chambers, Master-in-Chambers, 2 October 1885

### *Judgment--Indian--C. S. C. ch. 9--Indian Act, 1880 (D.)*

On an application which was granted under Rule 80, for judgment against an Indian living with his tribe on their reserve, and not being the holder of any real or personal property outside the reserve,

*Held*, that since the repeal of C. S. C. ch. 9, there is nothing to prevent an Indian suing and being sued, although by the Indian Act of 1880, sec. 77, (D.) the judgment will not bind any property of the Indian except that described in sec. 75.

[October 2, 1885.--The Master-in-Chambers.]

An application for judgment under Rule 80.

*Urquhart*, for the motion.

*Holman*, contra, cited *McKinnon v. Van Every*, 5 P. R. 284, and *Regina ex rel. Gibb v. White*, 5 P. R. 315.

THE MASTER-IN-CHAMBERS.--The papers are in the ordinary form. Claim for a balance due on promissory notes, balance \$668.55.

The only defence is that the defendant is one of a tribe of Indians, living with his tribe on their reserve. There is a negative of his being the holder of any real property, or personal property, outside of the reserve.

The 77th section of the Dominion Act of 1880, ch. 28, is in these words: "No person shall take any security, or otherwise obtain any lien or charge, whether by mortgage, judgment, or otherwise, upon real or personal property of any Indian or non-treaty Indian within Canada, except on real or personal property subject to taxation under section 75 of the Act. Provided always, that any person selling any article to an Indian, or non-treaty Indian, may, notwithstanding this section, take security on such article for any price thereof which may be unpaid." The real or personal property mentioned in this section is described in section 75 as real estate under a lease or in fee simple, or personal property, outside of the reserve, held in his individual right.

Upon this it is contended by the defendant that no judgment can be had against an Indian. Every individual however is capable of suing and being sued, unless some special exemption can be shewn.

There was a time, when the Consolidated Act of Canada ch. 9 was in force, when an Indian *could not* have been sued under the facts shewn here. But that was repealed long ago, and the existing law is as I have cited it above.

It is true that the judgment the plaintiff will recover will not bind any property of the Indian, except that described in section 75; but there is nothing to prevent an Indian from suing and being sued, so that the plaintiff is entitled to judgment *valeat quantum*.

Under the Consolidated Act the fact that the Indian was not seized in his own sole right of land in fee simple would have been a defence to the action, but it is not so now.

NOTE--See *Black v. Kennedy*, Man. Rep. Temp. Wood 144--REP.