

## REGINA v. OTOKIAK

(1959), 30 C.R. 401 (also reported: 28 W.W.R. 515 )

Northwest Territories Territorial Court, Sissons J., 20 April 1959

***Constitutional law--Eskimos within exclusive Dominion jurisdiction-- The Liquor Ordinance, R.O.N.W.T. 1956, c. 60 s. 24(b)--Special territorial legislation applicable to Eskimos--Ultra vires.***

Section 24(b) of The Liquor Ordinance, which provides that no Eskimo shall possess or consume liquor, is *ultra vires* the Council of the Northwest Territories, being special legislation for Eskimos and, as such, within the exclusive competence of the Dominion Parliament. *Reference re Term "Indians"* [1939] S.C.R. 104 (*sub nom. Re Eskimos*), [1939] 2 D.L.R. 417, 2 Abr. Con. (2nd) 390, *In re Waters and Water Powers*, [1929] S.C.R. 200, [1929] 2 D.L.R. 481, 11 Can. Abr. 39, referred to; *Rex v. Martin* (1917), 41 O.L.R. 79, 29 C.C.C. 189, 39 D.L.R. 635, 22 Can. Abr. 485, quoted and applied.

TRIAL of a charge of violating s. 24 (b) of The Liquor Ordinance.

*M. de Weerd*, for the Crown.

No one for the accused.

20th April 1959. SISSONS J.:--The charge against the accused is that:

"Luke Otokiak W2-260, an Eskimo of Cambridge Bay, N.W.T. on April 11, 1959, at Cambridge Bay, N.W.T. did consume liquor contrary to Section 24 of the Liquor Ordinance, and did thereby commit an offence under Section 38 of the Liquor Ordinance."

Section 24 of The Liquor Ordinance, c. 60 of Revised Ordinances of the Northwest Territories 1956 and amendments thereto reads as follows:

"24. Subject to Sections 29, 30 and 31

"(b) no Eskimo shall possess or consume liquor except that

"(i) an Eskimo who holds a Class A permit may possess and consume liquor, and

"(ii) an Eskimo who holds or is eligible to hold a Class C permit may possess and consume beer on licensed premises."

Section 91(24) of The B.N.A. Act, 1867, gives the Dominion exclusive legislative authority over Indians.

The Supreme Court of Canada has held that Eskimos are "Indians" within the contemplation of s. 91(24): *Reference re Term "Indians"*, [1939] S.C.R. 104 (*sub nom. Re Eskimos*), [1939] 2 D.L.R. 417, 2 Abr. Con. (2nd) 390.

Section 91(24) "enables the Dominion to legislate fully and exclusively, upon matters falling strictly within the subject 'Indians' ": Duff J. in *In re Waters and Water Powers*, [1929] S.C.R. 200, [1929] 2 D.L.R. 481, 11 Can. Abr. 39.

The Department of Northern Affairs and National Resources Act, 1953-54 (Can.), c. 4, provides:

"5. The duties, powers and functions of the Minister extend to and include all matters over which the Parliament of Canada has jurisdiction, not by law assigned to any other department, branch or agency of the Government of Canada, relating to:"

"(a) the Northwest Territories and the Yukon Territory;

"(b) Eskimo affairs."

In *Rex v. Martin* (1917), 41 O.L.R. 79, 29 C.C.C. 189, 39 D.L.R. 635, 22 Can. Abr. 485, Riddell J. of the Appellate Division of the Supreme Court of Ontario, said at 83:

"I think the language used by the Judicial Committee in *Can. Pac. R.W. Co. v. Corporation of the Parish of Notre Dame de Bonsecours*, [1899] A.C. 367, 372, 373, 68 L.J.P.C. 54, 11 Can. Abr. 381, may well be applied here *mutatis mutandis*:

"The British North America Act, whilst it gives the legislative control of the Indian defendant *qua* 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 enactment his conduct *qua* Indian would be in excess of its powers. If on the other hand, the enactment had no reference to the conduct of the defendant *qua* 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 *qua* 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."

The Liquor Ordinance of the Northwest Territories could provide that no person shall possess or consume liquor; and an Eskimo would be bound by that.

An Eskimo could be charged under s. 19 of the Ordinance with being in an intoxicated condition in a public place or with consuming liquor in a public place.

The Dominion could enact that no Eskimo shall possess or consume liquor.

The Council of the Northwest Territories cannot enact that no Eskimo shall possess or consume liquor.

I hold that s. 24(b) of The Liquor Ordinance has no validity.

I find the accused not guilty.

*Judgment accordingly.*