

EX PARTE TENASSE

[1931] 1 D.L.R. 806 (also reported: (1930), 2 M.P.R. 523)

New Brunswick Supreme Court, Appeal Division, Hazen C.J., White and Grimmer JJ., 14 November 1930

Indians--Civil action--Jurisdiction of Courts--Execution against property--Attachment of body.

The effect of R.S.C. 1927, c. 98, ss. 102-5, is to place Indian property outside reserves on the same footing as property of other persons but as the Indian is a ward of the Dominion Government his body cannot be taken in attachment under Provincial law relation to civil actions.

The Legislature of N.B. in passing the Towns Incorporation Act, R.S.N.B. 1927, c. 179, s. 127, did not intend to confer upon any Civil Court any power directly or indirectly to interfere with Indians.

Courts II A--Provincial Court--Jurisdiction over Indians--Civil actions.

APPLICATION by way of *certiorari* to set aside an order on review of the Judge of the Northumberland County Court, affirming the judgment entered in the Town of Newcastle Civil Court.

P. J. Hughes, K.C., for applicant.

J. J. F. Winslow, K.C., *contra*.

The judgment of the Court was delivered by

GRIMMER, J.:--the appellant, Michael Tenasse, an unenfranchised Indian living upon an Indian Reservation, was sued in the Town of Newcastle Civil Court by one A. Ramsay for the sum of \$14.62, for goods sold by him to the said Tenasse, and on December 5, 1929, judgment was entered against the defendant for the sum of \$33.81. An order on review was obtained from the Judge of the Northumberland County Court, which was dismissed by the said Court, and the Civil Court judgment confirmed on February 20 last. On May 7 last a writ of *certiorari* was issued out of this Court upon the application of the defendant upon the following grounds:

(1) The Town of Newcastle Civil Court had no jurisdiction in this matter, and the Magistrate has no Jurisdiction to issue an attachment against the defendant in this matter or to enter a judgment against the defendant herein, the said defendant being an Indian.

(2) the order of the Judge of the Northumberland County Court made on review was without jurisdiction because the defendant was an Indian.

The question, therefore, for decision before the County Court Judge and before this Court is: Did the Town of Newcastle Civil Court have jurisdiction to enter a judgment against the defendant Tenasse, he being an Indian?

It was contended on behalf of the defendant that under the Indian Act, R.S.C. 1927, c. 98, s. 105, it did not have such jurisdiction. This section is as follows:--"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, except on real or personal property subject to taxation under the last three preceding sections: Provided that any person selling any article to an Indian or non-treaty Indian may take security on such article for any part of the price thereof which is unpaid" [re-enacted by 1930 (Can.), c. 25, s. 10].

The three preceding sections referred to, being ss. 102-4 of the Act, refer to the liability of Indians to be taxed. Of these sections, s. 102 makes it perfectly clear that Indians holding real estate under lease or in fee simple or personal estate outside of the reserve or special reserve shall be liable to be taxed for such real or personal property at the same rate as other persons in the localities in which it is situate.

It was evidently the intention of Parliament by this enactment to place the real and personal property of Indians outside of the reserve upon the same basis as property of persons who are not

Indians, and it would thus become possible that security might be taken thereon, and that a lien or charge by mortgage, judgment or otherwise might be obtained on any property of an Indian that was liable to taxation under s. 102--that is to say, real estate held by an Indian in his individual right under a lease or in fee simple or personal property outside of the reserve or special reserve.

If, then, the property of Indians outside of the reserve is liable as stated, it naturally follows that the Civil Court of Newcastle would have the necessary jurisdiction to entertain a claim against an Indian and to enter up judgment or as it may be against him, but what can be done with or upon that judgment is quite another matter, and one that does not arise in the present case. Incidentally, it may be mentioned that the Indian Act does not give the right to take the person of an Indian in execution, though certain of his property may be taken. The Indian is a ward of the Dominion Government and cannot be taken under the laws of this Province. The Towns Incorporation Act, R.S.N.B. 1927, c. 179, ss. 127 *et seq.* was referred to in support of the rule, but I cannot and do not think that the Province intended thereby confer upon any Civil Court any power directly or indirectly to interfere with Indians. The learned County Court Judge in disposing of the matter very clearly stated that in his opinion the Civil Court judgment was perfectly good, but he added the following very significant words:--"What the plaintiff can do with it is not now before me."

For the reasons herein shortly stated, I concur in the judgment of the learned County Court Judge, and the rule will be discharged.