

RE BELLEROSE

(1956), previously unreported

Alberta District Court, Buchanan C.J., 31 October 1956

BUCHANAN C.J.: These proceedings are taken under s-s.(3) and (4) of s.9 of the *Indian Act*, S.C. 1951, c.29 (now R.S.C. 1952, c.149) (hereinafter referred to as "the Act"). Their purpose is to inquire into the correctness of three decisions of the Registrar of the Department of Citizenship and Immigration, who by virtue of his office, has charge of the Indian Register. By these decisions all similarly phrased and rendered under powers conferred on him by s.9(2) of the Act, the Registrar held that neither Henry Bellerose, nor Edward Bellerose, nor Thomas Bellerose is entitled to be registered as a member of the Driftpile Band giving in each case the grounds of his decision thus: the _____ Mrs. Rosalie Hamelin who at the date of his birth was not entitled to Indian status. Therefore he is not entitled to membership in the Driftpile Band in accordance with Sec.11 of the Indian Act.

Since the decisions deal with offspring of the same parent and are based upon the same evidence, appeals therefrom were consolidated for the hearing before me.

I suggest with respect that the ground given for the Registrar's decisions is not adequate, either as an explanation of why he arrived at the decisions he did or as material to guide the appellants in the conduct of their appeal. On what evidence was it established that at the date of the appellants' birth their mother was not entitled to Indian status? The fact - if indeed it was a fact - that Rosalie (Giroux) Hamelin, the mother of the appellants, was not entitled to Indian status is not in any event conclusive of the status of her offspring. If they can establish direct descent "in the male line from a male person member of a Band for whose use and benefit in common lands have been set apart" s.11(b) and (c) of the Act - the appellants can qualify for registration regardless of the status of their mother.

Section 11 of the Act sets out in detail those persons who are entitled to be registered as members of a Band, or more briefly and in accordance with the definition contained in s.2(1)(g), who are "Indians" and reads, as to its pertinent portions, thus:

11. Subject to section 12, a person is entitled to be registered if that person

. . .

(b) is a member of a band

(i) for whose use and benefit, in common, lands have been set apart or since the 26th day of May, 1874, have been agreed by treaty to be set apart, or

(ii) that has been declared by the Governor in Council to be a band for the purposes of this Act;

(c) is a male person who is a direct descendant in the male line of a male person described in paragraph (a) or (b);

(d) is the legitimate child of

(i) a male person described in paragraph (a) or (b),

or

(ii) a person described in paragraph (c);

(e) is the illegitimate child of a female person described in paragraph (a), (b), or (d); or

(f) if the wife or widow of a person who is entitled to be registered by virtue of paragraph (a), (b), (c), (d) or (e).

To succeed in their appeal from the decision of the Registrar the brothers Bellerose must bring themselves within one of the five classes or categories (b) to (f) inclusive. None of the exclusions contained in s.12 are applicable.

An examination into the parentage of the Bellerose brothers is essential to the determination of the question at issue, viz: are they entitled to be registered?

In the original marriage book of the Grouard Mission, produced by Father Ferdinand Sauve there is recorded the marriage of George Hamelin to Rosalie Giroux on the 29th of January 1918. George Hamelin swore that he lived but five months with Rosalie Giroux subsequent to the marriage and had but one child by her, a daughter who died in infancy. The brevity of Hamelin's cohabitation with Rosalie Giroux is confirmed by the evidence of William Giroux a band member and father of Rosalie Giroux.

The original records of the Grouard Mission establish that Henry Bellerose born to Rosalie Giroux on March 26, 1922, some three and one half years after her separation from George Hamelin, was baptized on April 13, 1922, by Father Le Serrec, O.M.I. The baptismal entry made by Father Le Serrec omitted the name of the infant's father. In handwriting other than that of Father Le Serrec and evidently of a later date, the name of William Bellerose was inserted as "the father of the child". Father Sauve's evidence was that omission of the father's name from baptismal certificates was the

customary fashion of indicating illegitimacy. The records of the Grouard Mission establish the birth to Rosalie Giroux of a second son Jean Edouard on September 3, 1923, with the name of the father again omitted from the record. The birth to Rosalie Giroux of a third son Thomas on or about May 24, 1925 I hold to be amply established by the evidence of tribe members.

I accept the evidence of William Giroux confirmed as it is by that of witnesses Ben Potskin, Jasper Bellerose, Oliver Ward and George Hamelin, all Driftpile Band members, that from the date of her separation from George Hamelin to the date of her death Rosalie Giroux lived in a common-law relationship with William Bellerose. The baptismal records or oral evidence establish that of this illicit union there were born three children, Henry, Edward and Thomas, the appellants herein. It might be noted that in 1943 the name of George Hamelin was deleted from the Driftpile Band list, although on what ground is not apparent. If this deletion were given retroactive effect, Rosalie Giroux from the date of her marriage would have been disentitled to registration as would her children by Hamelin. Under these particular circumstances the illegitimacy of the appellants may be deemed for them a not too unfortunate circumstance.

The Superintendent of the Lesser Slave Lake Agency, Mr. A.H. Murray, was unable to produce to me the original pay list of the Driftpile Band. Exhibit 8, a plan of a survey made in August 1901 by A.W. Ponton, D.L.S., for Chief Kinoosayo and a portion of his band, of lands now known as Reserve No. 150 would indicate that the first treaty pay list set out in part on Exhibit 8 must have been compiled prior to August 1901. Since by s.9(3) of the Act the Registrar in referring his decision to me for review must likewise refer to me all _____ him in making his decision. I conclude that the earliest pay lists of the Driftpile Band have not been preserved, or if preserved, were not referred to in arriving at his decisions unaided by those records essential to establish the status of William Bellerose, alleged father of the appellants.

Books containing treaty pay lists for the years 1917 and 1918 were produced to me by Mr. Murray: they contain details of treaty pay to a series of Bands of which the Driftpile Band was one, but make no pretense of recording the names of all Indians to whom treaty money was paid; merely heads of families with the number of family members or of unmarried adults are shown. It is thus impossible to trace with certainty other than by such indefinite description as "boy born" or "girl born" the descent of any child born to band members.

The pay lists referred to by Mr. Murray do make it clear however that a son of one Thomasis (the Thomasis family at that time consisting of a man, a woman and a boy, duly enrolled on the Driftpile Band list under No. 38) was transferred on the pay list of July 24, 1918 from No. 38 to a new No. 50, under the new name of William Bellerose and as the head of a family. Mr. Murray, after checking his records, stated that the name of William Bellerose thereafter continued on the pay list until the date of his death in July 1945. The evidence is conclusive that William Bellerose (originally "Thomasis") was a direct descendant in the male line of a male person described in s-s.(b) of s.11 of the Act thus qualifying for registration under s-s.(c) of section 11 of the Act. Holding as I do that the three appellants are the illegitimate children of William Bellerose they likewise are therefore male persons, direct descendants in the male line of a male person described in s-s.(b) of s.11 and equally entitled to registration under s-s.(c) of s.11 of the Act.

The three appellants moreover as the illegitimate children of Rosalie Giroux, the daughter of William Giroux, an original member of the Driftpile Band, qualify on the further ground that as the illegitimate children of a female person described in paragraph (b) of s.11 of the Act, they fall within that class of persons described in paragraph (e) of s.11 as amended in 1956. The registrar in finding Rosalie Giroux at the date of birth of the appellants "not entitled to Indian status" may have based his finding upon the fact that in 1943 George Hamelin, legal husband of Rosalie Giroux, was struck off the Driftpile Band list and that therefore his wife under s.12(b) of the Act should be classified as "a woman... to a person who is not an Indian" and not entitled to be registered. If this was in fact the ground on which the Registrar arrived at the opinion that Rosalie Giroux at the date of birth of the appellants was not entitled to Indian status, it might be suggested that it would be strange indeed if Rosalie Giroux who up to the date of her death in or about 1938, appeared on the Driftpile Band list, should posthumously be found disentitled to Indian status by reason of the fact that in 1943 her husband was found disentitled to rank as an Indian. In any event, even if it were a fact that under s.12, s-s.(b) of the Act the mother of the three illegitimate children was not entitled to be registered as an Indian, this would not alter the fact that the three appellants are the illegitimate children of a female person described in s.11(b) of the Act and therefore entitled to have their names included in the Indian Register as members of the Driftpile Band.