

# PETERSEN v. CREE AND CANADIAN PACIFIC EXPRESS COMPANY

(1940), 79 Que.S.C. 1

Quebec Superior Court, Mackinnon J., 31 October 1940

Mr. Justice C. G. Mackinnon.--No. 181,014.--Magee, Nicholson, and O'Donnell, for plaintiff  
contestant.--Calder and Lafontaine, for the defendant.

***Indians -- Seizure of salary -- Moveable property outside the reserve Situs of salary -- Stare decisis -- Indian Act (R. S. C. 1927, ch. 98), arts. 102, 105 as replaced by (1930) 20-21 Geo. V, ch. 25, art. 10 -- C. P., art. 677.***

**A member of the Oka band of Indians, who is domiciled at the Indian Reservation at Oka but who works in Montreal, cannot contend that his wages are situated in the Reservation and are in consequence unseizable if it appears that the wages were earned in Montreal and were payable there.**

CONTESTATION of a seizure by garnishment after judgment. (\$580.)

*Judgment:* On the 24th of December, 1939, plaintiff obtained judgment against the defendant for an amount of \$580.48 and costs and on the 15th of January, 1940, served on the Canadian Pacific Express Company a writ of saisie-arrêt after judgment calling on it to declare what sums of money it owed the defendant and what it would have to pay him in the future.

The Canadian Pacific Express Co., through its duly qualified officer, appeared and declared, that the defendant appeared on the Canadian Pacific Express Company's list of employees as warehouseman and that defendant's rate of earnings per full working month was \$125 plus \$5 bonus plus \$5 for night duty, less 3% for pension, wages payable twice a month.

Defendant contested the saisie-arrêt on the grounds that the defendant is a member of the Oka band of Indians, that he has never renounced his right as such and has never taken advantage of the rights and privileges granted under the white man's law. Defendant maintains that he has a right to claim all the rights accruing to him under the Indian Act and that accordingly his moveable effects are exempt from seizure and execution.

It has been admitted by the parties that the defendant is a member of the Oka band of Indians, that he has always claimed and still claims his right to such and has never renounced the same. Also that he has never taken advantage of the rights and privileges granted him under the white man's law outside of those granted him by the Indian Act. It was further admitted that defendant is the owner of a tract of land and a house at the Indian Reservation at Oka, that he spends the summer at the said property and for the winter moves into Montreal where he maintains a year-round establishment. It is also admitted that defendant is working in Montreal for the Canadian Pacific Express Co.

Defendant relies on s. 105 of the Indian Act R. S. C. 1927, ch. 98 as replaced by 20-21 Geo. V., ch. 25, s. 10 which is as follows:

No one other than an Indian or non-treaty Indian 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.

"The last three preceding sections" referred to in s. 105 are ss. 102, 103 and 104 which are grouped together in the Act under the heading of "taxation". Of these sections, only s. 102 concerns the present case, and it reads as follows:

No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate.

Defendant never having renounced his membership in the Oka band of Indians is entitled to all the benefits accruing to him under the Indian Act and it must also be considered that he is domiciled at

the reservation at Oka. He owns a tract of land and a house in the reserve where he spends the summer -- he also spends the winter in the City of Montreal where he maintains an all-year-round establishment.

Section 105 of the Indian Act has been before our Courts in the two recent cases of *Crépin v. de Lorimier* (1) (1930) 68 S. C. 36. and *Feldman v. Jocks* (2) (1936) 74 S. C. 54.. In the *Crépin* case it was held that s. 105 permitted the seizure of property which was subject to taxation under existing laws and not that subject to taxation under a law which might be adopted. However in *Avery v. Cayuga* (1) (1913) 13 D. L. R. 275., the Ontario Court of Appeal held that "subject to taxation" in s. 105 meant property which might be subject to taxation and not property which is taxed under some existent law. Chief Justice Greenshields in the *Feldman* case stated that he did not agree with this holding.

With all due deference to the learned Judges who presided in the *Crépin* and *Feldman* cases, the Court considers that it is more or less bound by the holding in the *Avery* case as the issue before it is the question of the interpretation of a federal statute. I consider that s. 102 refers to property liable to taxation and that it does not refer only to property which has been taxed by some taxing authority.

In *ex parte Tenasse* (2) (1931) 1 D. L. R. 806., Mr. Justice Grimmer in delivering the judgment of the Appellate Division of the New Brunswick Supreme Court said:

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.

The Court considers that defendant's wages were earned in Montreal, they are primarily payable there and are so situated (*The King v. Lovitt* (3) (1910) 43 S. C. R. 106 reversed by (1911) 28 T. L. R. 41., *Avery v. Cayuga supra*).

I can find no legal basis for holding that the defendant's wages are situated on the reserve.

Defendant contends that his wages constitute a *chose* in action until paid over and as such are not personal property. "Personal property" means all property not immoveable and includes *choses* in action.

Considering for the reasons stated defendant has failed to establish the essential allegations of his contestation of the seizure in the hands of the Canadian Pacific Express Co. the *Tierce Saisie*.

The Court doth dismiss defendant's contestation with costs.