

REGINA v. McPHERSON

[1971] 2 W.W.R. 640

Manitoba Court of Appeal, Freedman, Guy and Dickson JJ.A., 15 February 1971

(On appeal from judgment of Manitoba Co.Ct., **supra** p. 360.)

Indians- Treaty Indian killing game for food with prohibited bullet- Whether exempt from prohibition- The Wildlife Act, 1963(Man.), c. 94, s.46(1).

Appeal by the Crown from the acquittal of the respondent by Thompson Co. Ct. J., [1971] 1 W.W.R. 299, on a charge of unlawfully killing game with a metal-cased hard-point bullet. Appeal dismissed.

[Note up with 13 C.E.D. (2nd ed.) *Indians*, s. 22.]

J. G. Dangerfield, for the Crown, appellant.

H. I. Pollock, for respondent.

15th February 1971. The judgment of the Court was delivered by

FREEDMAN J.A.:— This is a Crown appeal from a decision of Thompson Co. Ct. J., [1971] 1 W.W.R. 299, in which he dismissed a charge against the accused, a treaty Indian, of shooting a moose, using a hard-point bullet contrary to The Wildlife Act, 1963 (Man.), c. 94, and Regulations thereunder. It is admitted that at the time in question the accused was hunting for food on lands to which he had a right of access.

In our view this case is undistinguishable in principle from the case of *Prince et al. v. The Queen*, [1964] S.C.R. 81, 46 W.W.R. 121, 41 C.R. 403, [1964] 3 C.C.C.1. In that case the Court quashed a conviction against an Indian in circumstances essentially similar to those found here. There the Indian was hunting game with the aid of a night light contrary to the Regulations. Here an Indian was hunting game with a hard-point bullet, contrary to the Regulations. In both cases they were hunting for food. The *Price* case has application here and must govern our disposition of the matter.

The appeal is accordingly dismissed.