

REX v. SHADE

(1952), 102 C.C.C. 316 (also reported: 4 W.W.R. 430, 14 C.R. 56)

Alberta District Court, Feir D.C.J., 18 January 1952

Indians--Intoxicating Liquors II A--Constitutional Law I A--Indian intoxicated in motor car--Legislative authority of Parliament--Offence fully dealt with by Indian Act--Provincial law inapplicable--

The *B.N.A. Act* gives the Parliament of Canada exclusive legislative authority over Indians, and by the *Indian Act*, 1951 (Can.), c. 29, it has elected to legislate for the Indian in those fields particularly affecting his welfare such as intoxicants and property rights, and leave him subject to provincial laws and general laws of Canada in other fields, the latter principle being established in previous case law and now codified in s. 87 of the latter Act. The offence of intoxication as it affects Indians is fully and completely dealt with in ss. 94 and 96 of the *Indian Act* and there is no room for the application of provincial laws in such cases.

Intoxicating Liquors III F--Intoxication in "public place"--Motor car --Street--

The *Government Liquor Control Act of Alberta*, R.S.A. 1942, c. 24, s. 88(2), provides that "no person shall be in an intoxicated condition in a public place". An intoxicated person in a private motor car on a street is in a conveyance in a public place and therefore falls within the scope of such provision.

Statutes Considered: *Government Liquor Control Act of Alberta*, R.S.A. 1942, c. 24, ss. 2(u), 88(2); *B.N.A. Act*, 1867 (Imp.), c. 3, s. 91(24); *Indian Act*, 1951 (Can.), c. 29, ss. 87, 94, 96.

APPEAL from a conviction by a Police Magistrate on a charge laid under the *Government Liquor Control Act of Alberta*. Reversed.

G. F. Butterwick, for the Crown.

A. Beaumont, K.C., for accused.

FEIR D.C.J.:--The appellant appeals from his conviction by a Police Magistrate on a charge laid under the *Government Liquor Control Act of Alberta*, R.S.A. 1942, c. 24, s. 88(2): "No person shall be in an intoxicated condition in a public place."

I find that the appellant is an Indian within the meaning of the *Indian Act*, 1951 (Can.), c. 29, s. 2(1) (g) which came into force on September 4, 1951. I find that the appellant, on November 14, 1951, was in an intoxicated condition in a private motor car on the main street of Pincher Creek, Alberta. It is objected that the appellant was not in an intoxicated condition in a public place. The motor car mentioned above was a "conveyance" in a "public place," and therefore the appellant was in a "public place" as defined in s. 2 (u) [enacted 1943, c. 14, s. 1] of the *Government Liquor Control Act of Alberta*. This objection must fail.

Appellant's counsel also objects that there is no jurisdiction to try the appellant on the charge as laid under a provincial statute, and that such a charge can only be dealt with under the provisions of the *Indian Act*, above cited.

Section 91(24) of the *B.N.A. Act*, 1867, gives to the Parliament of Canada exclusive legislative authority over "Indians and Lands reserved for Indians".

Sections 87 and 94 of the *Indian Act*, which came into force on September 4, 1951, are as follows:

"87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

"94. An Indian who

(a) has intoxicants in his possession,

(b) is intoxicated, or

(c) makes or manufactures intoxicants

off a reserve, is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than fifty dollars or to imprisonment for a term not exceeding three months or to both fine and imprisonment."

Section 96 deals with all persons found with intoxicants in possession or found intoxicated upon a reserve.

Section 87 is a new section, not appearing in any of the prior legislation affecting Indians. It seems to be a clarification and restatement of previous case law which, in so far as offences against provincial statutes are concerned, is found mainly in these cases: *R. v. Hill* (1907), 15 O.L.R. 406; *R. v. Beboning* (1908), 13 Can. C.C. 405, 17 O.L.R. 23; *R. v. Martin* (1917), 29 Can. C.C. 189, 39 D.L.R. 635, 41 O.L.R. 79; *R. v. Rodgers*, 40 Can. C.C. 51, [1923] 3 D.L.R. 414, 33 Man. R. 139; *R. v. Cooper* (1925), 44 Can. C.C. 314, 35 B.C.R. 457; *R. v. GrosLouis*, 81 Can.C.C. 167, [1944] Rev. Leg. 12.

Parliament has elected to legislate for the Indian in those fields particularly affecting his welfare, such as intoxicants and property rights, and to leave him subject to the laws of the Province within which he resides, and to the general laws of Canada, in all other areas.

I find that the offence of intoxication as it affects Indians, whether on or off the reserve, is fully and completely dealt with in ss. 94 and 96 of the *Indian Act*, and there is simply no room for the application of provincial law in such cases. There is no jurisdiction to try the appellant under s. 88(2) of the *Government Liquor Control Act of Alberta* and the appeal is allowed. The deposit of fine and costs will be returned to the appellant.

Appeal allowed.