

PAP-WEE-IN ET AL v . BEAUDRY ET AL

[1933] 1 W.W.R. 138

Saskatchewan King's Bench, Maclean J., 23 December 1932

Indians--Action for Trespass Upon Reserve--Indian Act, S. 51--Whether Consent of Band Given.

[Note up with 4 C.E.D., *Indians*, sec. 8]

R. Mulcaster, K.C., for plaintiffs.

J. H. Lindsay, K.C., for defendants.

December 23, 1932.

Maclean, J.--The plaintiff, who is chief of a band of Indians residing on the Big River Indian Reserve, No. 118, brings this action for himself and the majority of his band. The action is properly brought. The defendants, on the invitation or encouragement of a number of the Indians of this band, entered upon the reserve occupied lawfully by the plaintiffs, and erected a building to be used as a church.

The defendants had the permission of the Superintendent-General of Indian Affairs to do this, and the Indians who were favourable to this project did the work of cutting logs and erecting the building under the supervision of a carpenter who was not a member of the band and who was employed by the defendants. Although the work was largely done by some of the Indians on their own reserve, I find on the evidence that it was done for the defendants at their request and under the supervision of their employee and at their expense.

This action is for a declaration that the defendants were trespassers; for damages, and for an injunction restraining the defendants from any repetition of the acts complained of, and for other relief.

Meetings of the band had been called to consider whether or not permission should be given to the defendants to come upon the reserve and erect this building. No vote was actually taken at the meetings. The chief and his council were opposed, and no decision to permit the defendants to enter upon the land was arrived at. No consent of the band in conformity with the rules of the band for the internal regulation of their affairs was given.

A reading of the *Indian Act*, R.S.C., 1927, ch. 98, particularly sec. 51, and of the decision of *Rex v. McMaster* [1926] Ex. C.R. 68, seems to me to make it clear beyond dispute that no portion of an Indian reserve can be alienated, leased, surrendered, or released in any way, as the site of this church was, to any person or corporation outside the band, except with the concurrent consent of the band, and of the Superintendent-General. The consent of the band must be signified at a meeting or council of the band summoned for that purpose according to the rules of the band, and held in the presence of the Superintendent-General or of any officer duly authorized to attend such council; and such consent must be by a majority of the male members of the full age of 21 years present at the meeting. This was not done. As the defendants had only the consent of the Superintendent-General, their entry upon the reserve, even for the laudable purpose of erecting a place of worship, was not justified. They were therefore trespassers, and they are so declared. There will be an injunction restraining defendants from any repetition of the acts complained of and from using or occupying the building.

The damages suffered by the plaintiffs consists mainly in the cutting down of trees. The building is on the reserve and can be used for some suitable purpose in the interests of the band. The damages therefore are nominal, and I fix \$100 as a sufficient amount. The plaintiffs will have costs.