

REGINA v. ISAAC

(1972), previously unreported

Ontario Provincial Court, Dunlap J., March 1972

(Appealed to Ontario Court of Appeal, *infra* p. 348)

DUNLAP J.: This is a charge under s.8(1) of the *Highway Traffic Act*, R.S.O. 1970, c.202 alleging that the accused an Indian of the Walpole Island Reservation operated a tractor trailer on Tecumseh Road on Walpole Island without any licence plates.

The factual evidence is not in dispute. Mr. Isaac did operate a tractor trailer on Tecumseh Road on Walpole Island without any licence plates. The defence to the charge is twofold, first it is contended that Tecumseh Road is not a highway within the meaning of the *Highway Traffic Act* and that therefore the Act does not apply. Secondly, that the Governor in Council has by regulation regarding the control of traffic on roads on Indian reservations made the *Highway Traffic Act* part of those regulations and therefore the charge should be under the regulations to the *Indian Act*, R. S. C. 1970, c. I-6 rather than under the *Highway Traffic Act*.

I would point out that there is no treaty which establishes Walpole Island as an Indian reservation. It has been considered as such for many years and I would find that through custom it has been treated as a reservation and should be considered as such at the present time.

The first question to be decided is whether or not Tecumseh Road is a highway within the meaning of the *Highway Traffic Act*. This road is connected to the mainland by a bridge recently constructed. It is an asphalt road and its construction and maintenance are subsidized by the provincial and federal governments. From the evidence it would appear that the road runs from the bridge to the other side of the Island where there is a ferry. In the case of *Regina v. Johns* (1962), 133 C.C.C. 43 [6 C.N.L.C. 418], Wood J.A. points out that all these matters should be taken into consideration when determining whether or not a road on a reservation is a highway within the meaning of the provincial statute.

The definition of highway as contained in the *Highway Traffic Act* is as follows:

"Highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles.

The definition of road in the regulations [*Indian Reserve Traffic Regulations*, P.C. 1954-1368, SOR Con. 1955, vol.2 p.1954] governing the operation of vehicles within Indian reserves is as follows: "road" includes any roadway, driveway, street, lane or other place open to the public for the passage of vehicles.

The word "public" is not defined in the *Indian Act* or the regulations, therefore, the general meaning of the word must be adopted and it would have the same meaning as in the *Highway Traffic Act*. I would find that the road is used by the general public.

Taking into consideration that there is only one sign on the road indicating that persons having business with the Indians shall report to the Indian agent's office before doing any business and the location of the road and all other factors relating to it. I must find that Tecumseh Road is a highway within the meaning of the *Highway Traffic Act*.

The second matter to be decided is whether or not the regulations governing the operation of vehicles within Indian reserves by paragraph 6, makes the whole of the *Highway Traffic Act* a part of those regulations.

I have been referred to the unpublished case of *Regina v. Joe* [reported 6 C.N.L.C. 404 (B.C.Co.Ct.), *aff'd* 6 C.N.L.C. 407 (B.C.C.A.)] a case similar to the case at bar, but where it was found that the road in question was not a highway. I am not bound by this decision as the facts relating to the road in question may be entirely different.

Section 73(1) of the *Indian Act* gives the power to the Governor in Council to make regulations, . . .for the control of the speed, operation and parking of vehicles on roads within reserves. The question is therefore has the Governor in Council the power to pass regulations regarding the licensing of vehicles. Licensing and the requirement to have a licence plate on a vehicle has nothing to do with the speed, operation or parking of vehicles.

Section 6 of the regulations governing the operation of vehicles within the Indian reserves reads as follows:

6. The driver of any vehicle shall comply with all laws and regulations in force from time to time in the province in which the Indian Reserve is situated relating to motor vehicles, except such laws or regulations as are inconsistent with these regulations.

It has been argued that this paragraph describes what shall constitute a breach of the regulations and that therefore any breach of the *Highway Traffic Act* merely shows that a person has not conformed to s.6 of the regulations under the *Indian Act*. As the Governor in Council has power to pass regulations only as to control of speed, the operation of the vehicles and parking of the vehicles the only power granted is to bring into the regulations those sections which have to deal with those three matters. Section 8 (1) of the *Highway Traffic Act* does not deal with any one of these three matters and therefore it cannot become part of the regulations.

Section 88 of the *Indian Act* reads as follows:

88. 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.

This section of the *Indian Act* would bring into effect all those portions of the *Highway Traffic Act* not covered by the regulations including s.8(1).

As I have found that this matter occurred on a highway and that s.8(1) of the *Highway Traffic Act* applies and is not part of the regulations, I find the accused guilty as charged.