SCHAURTE v. PAUL

(1968), previously unreported

Saskatchewan District Court, Nelson J., February 1968

NELSON J.: The Respondent, Frank Marcel Paul of Batoche, Saskatchewan was charged with that he did "on the Nineteenth day of December, A.D. 1966 at Duck Lake District, in the Province, unlawfully hunt big game at a time other than during the times specified in the regulations as the time during which big game may be hunted, contrary to Section 12 of The Game Act."

The Judge of the Magistrate's Court the accused not guilty, and the Informant, representing the Crown, appealed to this Court under part XXIV of the Criminal Code of Canada. When the case came up before me by way of trial de novo, counsel called no evidence, submitted an agreed statement of facts and requested me to decide the appeal on the basis of the agreed statement of facts only. This I have done. The agreed statement of facts reads as follows:

AGREED STATEMENT OF FACTS

1. The accused and four companions on the 19th of December, 1966 were hunting big game in the Duck Lake District in the Province of Saskatchewan on land owned by one, Isidore Doucette of Duck Lake, Saskatchewan;
2. The said land was enclosed by a fence and was partly cultivated and grazing land;
3. The land was not posted as set out in Section 32 of The Game Act;
4. That such hunting was at a time other than during the times specified in the regulations as the times during which big game may be hunted;
5. That said Isidore Doucette gave to no one permission to hunt on said land;
6. That the accused is an Indian within the meaning of Section 15 of The Game Act and was hunting for food.

Dated January 18th, 1968,
Signed 'V.J. Longworth' Solicitor for the
Respondent
Signed 'R.M. Simpson' Solicitor for the
Appellant.

Section 12 of Saskatchewan being R.S.S. 1965, c.356, under which Act this hearing was held, reads follows:

> 12. No person shall hunt, take, shoot at, wound or kill big game or game birds at any time or at any place within the province other than during the times and at the places from time to time specified in the Regulations as the times during which and the places at which big game or gamebirds may be hunted, taken, shot at, wounded or killed.

In 1929 the Province of Saskatchewan entered into an agreement with the federal government known as the Natural Resources Agreement and this agreement was ratified by the legislature by S.S. 1930, c.87 and also by the Parliament of Canada by S.C. 1930, c.41 and it was confirmed by Imperial Statute being 20 & 21 Geo. V., c.26 (U.K.) 1930, and paragraph 12 of that agreement reads as follows:

> 12. In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence,Canada agrees that the laws respecting game in force in the Province from time to time shall apply to Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Paragraph 12 of the Natural Resources Agreement as set out above was partly incorporated into the Saskatchewan Game Act, being R.S.S. 1965, c.356, by inserting s.15, s-s.(1), which reads as follows:

> 15. (1) Notwithstanding anything in this Act and insofar only as is necessary in order to implement the agreement between the Government of Canada and the Government of

> Saskatchewan, ratified by Chapter 87 of the Statutes of 1930, Indians within the province may hunt for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Subsection (2) of that section reads as follows:

> (2) For the purpose of subsection (1) the land designated by, or pursuant to the Provincial Lands Act as school lands, and the lands within game preserves, provincial forests, provincial parks, registered trap lines, or fur conservation areas, established pursuant to the regulations under The Fur Act, shall be deemed not to be unoccupied Crown lands or lands to which Indians have a right of access.

In the case of Rex v. Smith, [1935] 2 W.W.R. 433, it was pointed out that in one of the paragraphs of Treaty No.6 dated August 23, 1876 the right of Wood Cree Indians to hunt or fish throughout the tract surrendered in the Treaty was protected and It seems to me that paragraph 12 of the Natural Resources Agreement which this Province entered into with the Dominion of Canada in 1930 sought to perpetuate the right which was given the Wood Cree Indians by Treaty No. 6 and, furthermore, carrying part of the provisions set out in paragraph 12 of the said agreement into the Saskatchewan Game Act as set out in s.15, s-s.(1) of that Act also is in furtherance of the desire to protect the Indians' right to hunt to the extent set out in the agreement, namely for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

I am satisfied that Indians in Saskatchewan have a right to hunt, fish and trap in the province of Saskatchewan at all seasons of the year on all unoccupied Crown lands and land to which they have a right of access if such hunting, fishing and trapping is for food, and that s. 12 of the Saskatchewan Game Act under which the accused is charged cannot apply to Indians in view of paragraph 12 of the Natural Resources Agreement referred to supra. See Regina v. Strongquill (1953), 8 W.W.R. (N.S.) 247.

The next point to be considered is, on what lands do Indians have a right of access, as they are entitled under the agreement to hunt, fish and trap for food "on any other lands to which the said Indians may have a right of access." The question to be decided in this case, as I see it, is, did the accused have a right of access to the land on which he was charged with hunting in this case.

Section 32, s-s.(1) of the Saskatchewan Game Act reads as follows:

> 32.(1) No person shall hunt, take, shoot at, wound or kill any big game or game bird if the big game or game bird is upon or over land enclosed by a fence of any kind, or land under cultivation or covered by buildings, or enter upon such land for the purpose of doing so, without the consent of the owner or occupant thereof.

From a perusal of the agreed statement of facts in this case, it will be noted that the land on which the accused was hunting was enclosed by a fence and was partly cultivated and partly grazing land and the owner had given no one permission to hunt on the said land.

Subsection (2) of s.32 of The Game Act reads as follows:

> (2) Subsection (1) does not apply unless there are signs at least twelve inches long and ten inches wide prominently placed at each corner of the land and at intervals of not more than one-half mile long on each boundary thereof bearing the words “Hunting and Shooting Prohibited” or words to a like effect.

Upon perusing the agreed statement of facts it will be noted that the land over which the accused was hunting was not posted as required by s-s.(2) of s.32 of The Game Act if s-s.(1) of s.32 is to apply.

From a consideration of s-ss.(1) and (2) of s.32 of The Game Act it appears to me that if any land, such as the land owned by Isidore Doucette in this case, was not posted as set out in s-s.(2) of s.32 then s-s.(1) of s.32 does not apply wherefore anyone could enter thereon at any time, even if he did not have the consent of the owner thereof. In other words, as far as The Game Act is concerned a person might enter upon the land for the purpose of hunting at any time, but of course if he was hunting during a closed season he would be liable under the regulations as he would have no licence to hunt during such a prohibited period. I am of the opinion that s-ss.(1) and (2) of s.32 of The Game Act apply to all persons who hunt in the province and therefore an Indian residing in Saskatchewan would have the same rights granted to a white man under the said section. To my mind the only difference would be that whereas an Indian, as already indicated, has the right to hunt for food throughout the year so long as he hunts on unoccupied

Crown land or land to which he has a right of access, a white man can only hunt during the open season.

In the case of Regina v. Little Bear, 25 W.W.R. (N.S.) 580, the facts were somewhat similar to the case at bar. An Indian shot a deer for food out of season on land belonging to a white man who had given him permission to hunt on his land. He was found guilty but on appeal it was held that the words "right of access" in s.12 of the Alberta Natural Resources Act, S.A. 1930, c.21, the wording of which is the same as s.12 of Saskatchewan's agreement with the Dominion, would give an Indian the right to enter privately owned land for the purpose of hunting for food, out of season, so long as he had the permission of the owner of the land. This is as set out in s-s.(1) of s.32 of out Act and, if that is the case, how can it be said that s-s.(2) of s.32 of the Saskatchewan Game Act does not also apply to an Indian as well as to a white man and, if that is so, then it seems to me that the only logical conclusion from a reading of those sections must be that as the accused was in no way affected by a closed season he had a right of access to the land over which he was hunting; and I so hold.

It should also be noted that the Alberta Game Act as amended in S.A. 1956 by c.17, s.3, contains no such provision as s-s.(2) of s.32 of the Saskatchewan Game Act and therefore I am of the opinion that parts of the judgment in the Regina v. Little Bear case, supra, which were cited to me by counsel, can not be taken as an authority when considered in the light of the peculiar wording of the Saskatchewan Game Act.

Having already held that an Indian ahs the right to hunt for food at any time, whether in or out of season, as long as he hunts only on unoccupied Crown land or land to which he has a right of access, it follows that the accused cannot on the facts of this case be found guilty under the section under which he is charged.

I therefore hold that the appeal is dismissed, with costs to the Respondent.

In addition to the cases cited herein I have also considered the following:

Regina v. Prince et al., 40 W.W.R. (N.S.) 234;
Prince and Myron v. Reginam, 46 W.W.R. (N.S.) 121;
Rex v Wesley, [1932] 2 W.W.R. 337;
Rex v. Mirasty, [1942] 1 W.W.R. 343;
Rex v. Edward Jim, 26 C.C.C. 236;
Rex v. Rodgers [1923] 2 W.W.R. 353.