RUFUS PRINCE AND ROBERT MYRON ..... APPELLANTS;

1963
*Nov. 18
Dec. 16

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Criminal law—Indians—Game laws—Hunting with night light contrary to s. 31(1) of The Game and Fisheries Act, R.S.M. 1954, c. 94—Whether prohibition applies to Treaty Indians—Whether word "hunt" in s. 72(1) of the Act subject to limitations in s. 31(1)—The Manitoba Natural Resources Act, R.S.M. 1954, c. 180, s. 13.

The appellants were charged with unlawfully hunting big game by means of night lights, contrary to s. 31(1) of *The Game and Fisheries Act*, R.S.M. 1954, c. 94. The appellants were Treaty Indians and were hunting deer for food for their own use and on lands to which they had the right of access. They were acquitted by the magistrate, but their acquittal was set aside by the Court of Appeal. They were granted leave to appeal to this Court.

Held: The appeal should be allowed and an acquittal directed.

In regard to Indians, the word "hunt" as used in s. 72(1) of *The Game and Fisheries Act* was not ambiguous nor subject to any of the limitations which are imposed by s. 31(1) upon non-Indians.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], setting aside the appellants' acquittal by a magistrate on a charge under s. 31(1) of *The Game and Fisheries Act* of Manitoba. Appeal allowed.

Duncan J. Jessiman, Q.C., for the appellants.

Benjamin Hewak, for the respondent.

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott, Martland, Judson, Ritchie, Hall and Spence JJ.

[1] (1962), 40 W.W.R. 234.

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Gerald LeDain, Q.C., for the Attorney-General of Quebec, intervenant.

S. Freedman, for the Attorney General of Alberta, intervenant.

The judgment of the Court was delivered by

HALL J.:—The appellants, both of them Treaty Indians, were charged before Magistrate Bruce McDonald of Portage la Prairie, Manitoba:

> That they did on or about the 27th day of October, A.D. 1961, at or near the Rural Municipality of South Cypress, in the Province of Manitoba, unlawfully hunt big game by means of night lights, contrary to the Provisions of the Game and Fisheries Act and Regulations, Section 31(1).

Section 31(1) of *The Game and Fisheries Act*, R.S.M. 1954, c. 94, provides as follows:

> 31(1) No person shall hunt, trap or take any big game protected by this Part and the regulations by means of night lights of any description, traps, nets, snares, baited line, or other similar contrivances, or set such traps, nets, snares, baited line, or contrivance for such big game at any time, and, if so set, they may be destroyed by any person without incurring any liability for so doing.

The learned Magistrate acquitted the appellants because the term "night lights"

> . . . as used in the above subsection was not capable of definition, that the land upon which the hunting was being done was land to which the Indians had access in that there were no prohibition signs posted, and that the Indians were entitled, in any event, to hunt in any manner they saw fit on land to which they had access.

The Crown took an appeal by way of stated case to the Court of Appeal for Manitoba[1]. The questions propounded were as follows:

(*a*) having found that Rufus Prince, George Prince, and Robert Myron were hunting big game by means of a spotlight was I right in holding that such spotlight was not a night light within the meaning of Section 31(1) of The Game and Fisheries Act, R.S.M. 1954, Cap. 94;

(*b*) was I right in interpreting the term "night lights" as contained in Section 31(1) of The Game and Fisheries Act, R.S.M. 1954, Cap. 94, as a classification or description of an object rather than a method or means of hunting;

(*c*) having found that the land upon which Rufus Prince, George Prince and Robert Myron were hunting was land that was occupied

[1] (1962), 40 W.W.R. 234.

and under cultivation and privately owned land, was I right in holding that such land was land to which the said Rufus Prince, George Prince, and Robert Myron had a "right of access";

(*d*) having found that the land upon which Rufus Prince, George Prince and Robert Myron were hunting was land to which the said Rufus Prince, George Prince and Robert Myron had "a right of access", was I right in dismissing the charge under Section 31(1) of The Game and Fisheries Act on this ground.

The Court of Appeal answered questions (*a*) and (*b*) in the negative; question (*c*) in the affirmative and question (*d*) in the negative, Schultz and Freedman JJ.A. dissenting as to (*d*). The Court accordingly directed that the case be referred back to the learned Magistrate with a direction that conviction should be entered against the three accused and that appropriate penalties should be imposed.

Leave to appeal to this Court was granted on January 22, 1963.

It was admitted in this Court that at the time in question in the charge the appellants were Indians; that they were hunting deer for food for their own use and that they were hunting on lands to which they had the right of access. These admissions are fundamental to the determination of this appeal.

Section 72(1) of *The Game and Fisheries Act*, R.S.M. 1954, c. 94, reads as follows:

72(1) Notwithstanding this Act, and in so far only as is necessary to implement The Manitoba Natural Resources Act, any Indian may hunt and take game for food for his own use at all seasons of the year on all unoccupied Crown lands and on any other lands to which the Indian may have the right of access.

The above section refers to *The Manitoba Natural Resources Act*, R.S.M. 1954, c. 180, of which s. 13 thereof reads as follows:

13. 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 law respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, with 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.

There was a suggestion that the appeal involved a constitutional issue as to the validity of *The Game and Fisheries Act*, R.S.M. 1954, c. 94, in respect to Indians. The

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Attorney-General for Ontario gave Notice of Intervention and the Provinces of Quebec and Alberta did likewise. Prior to the appeal being heard, the Province of Ontario filed a Notice of Withdrawal. The Provinces of Quebec and Alberta filed factums and were represented by counsel at the hearing. They were not heard as the Court held that no constitutional issue arose in the appeal. The agreement dated December 14, 1929, between the Government of Canada and the Government of the Province of Manitoba containing, *inter alia,* said s. 13, pursuant to which *The Manitoba Natural Resources Act* was passed acquired the force of law by virtue of *The British North America Act,* (1930), 21 George V, c. 26.

The sole question for determination is whether the word "hunt" as used in s. 72(1) of *The Game and Fisheries Act,* R.S.M. 1954, c. 94, in regard to Indians is ambiguous in any way or subject to the limitations contained in s. 31(1) of the said Act.

With respect, I agree with the reasons of Freedman J.A. in his dissenting judgment and also with the statement by McGillivray J.A. in *Rex v. Wesley*[1], when he said:

> If the effect of the proviso is merely to give to the Indians the extra privilege of shooting for food "out of season" and they are otherwise subject to the game laws of the province, it follows that in any year they may be limited in the number of animals of a given kind that they may kill even though that number is not sufficient for their support and subsistence and even though no other kind of game is available to them. I cannot think that the language of the section supports the view that this was the intention of the law makers. I think the intention was that in hunting for sport or for commerce the Indian like the white man should be subject to laws which make for the preservation of game but, in hunting wild animals for the food necessary to his life, the Indian should be placed in a very different position from the white man who, generally speaking, does not hunt for food and was by the proviso to sec. 12 reassured of the continued enjoyment of a right which he has enjoyed from time immemorial.

The word "hunt" as used in the section under review must be given its plain meaning. "Hunt" is defined in the Oxford English Dictionary as:

> The act of chasing wild animals for the purpose of catching or killing them; to chase for food or sport; to scour a district in pursuit of game.

Webster's Third New International Dictionary defines "hunt" as: "To follow or search for game for the purpose

[1] (1932), 2 W.W.R. 337 at 344, 26 Alta. L.R. 433, 58 C.C.C. 269.

and with the means of capturing or killing." It is not ambiguous nor subject to any of the limitations which s. 31(1) imposes upon the non-Indian.

I would allow the appeal with costs throughout and direct that the acquittal of the appellants be confirmed. There should be no order as to costs for or against the Attorneys-General of Quebec and Alberta.

Appeal allowed and acquittal directed, with costs.

Solicitors for the appellants: Johnston, Jessiman, Gardner & Johnston, Winnipeg.

Solicitor for the respondent: The Attorney General for Manitoba.