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*Feb. 2, 3, 6, 7, 8
*Jun. 11

LOUIS FRANCIS .....APPELLANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Petition of right—Goods imported into Canada from U.S.A. by Indian—Whether subject to duties of customs and sales tax—Exemption claimed under the Jay Treaty—An Act to amend the Income Tax Act and the Income War Tax Act, S. of C. 1949, 2nd Session, c. 25, s. 49—The Indian Act, R.S.C. 1952, c. 149, ss. 2(1)(g), 86(1)(b), 87, 88, 89.

Article III of the treaty commonly known as the Jay Treaty reads in part as follows:

"No duty on entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales or other large packages unusual among Indians shall not be considered as goods belonging bona fide to Indians".

The appellant, an Indian within the terms of s. 2(1)(*g*) of the *Indian Act*, S. of C. 1951, c. 29, resided on an Indian reserve in the Province of Quebec adjoining an Indian reserve in the State of New York, U.S.A.

*PRESENT: Kerwin C.J., Taschereau, Rand, Kellock, Cartwright, Fauteux and Abbott JJ.

In 1948, 1950 and 1951, he brought from the United States into Canada certain articles acquired by him in the U.S.A. No duties were paid in respect thereto. The articles were subsequently seized by the Crown and the appellant, under protest, paid the sum demanded. By his petition of right, he claimed the return of this money and a declaration that no duties or taxes were payable by him with respect to these goods by reason of the above part of Article III of the Jay Treaty. The claim was rejected by the Exchequer Court of Canada.

Held: The appeal should be dismissed.

Per Kerwin C.J., Taschereau and Fauteux JJ.: The Jay Treaty was not a Treaty of Peace and it is clear that in Canada such rights and privileges as were here advanced of subjects of a contracting party to a treaty are enforceable by the Courts only where the treaty has been implemented or sanctioned by legislation. There is no such legislation here.

S. 86(*b*) of the *Indian Act* does not apply because customs duties are not taxes upon the personal property of an Indian situated on a Reserve but are imposed upon the importation of goods into Canada.

S. 49 of S. of C. 1949, c. 25 is a complete bar in so far as the articles imported in 1950 and 1951 are concerned.

Per Rand and Cartwright JJ.: To the enactment of fiscal provisions, certainly in the case of a treaty not a peace treaty such as the Jay Treaty, the prerogative that it need not be supplement by statutory action does not extend and only by legislation can customs duties be imposed. Legislation was therefore necessary to bring within municipal law the exemption claimed here, and for over a century there has been no statutory provision in this country giving effect to it.

There is nothing in s. 102 of the *Indian Act,* R.S.C. 1927, c. 98 nor in s. 86(1) of the *Indian Act,* R.S.C. 1952, c. 149, that can assist the appellant.

Per Kellock and Abbott JJ.: The provisions of the *Indian Act* constitute a code governing the rights and privileges of Indians, and except to the extent that immunity from general legislation such as the *Customs Act* or the *Customs Tariff Act* is to be found in the *Indian Act,* the terms of such general legislation apply to Indians equally with other citizens of Canada. No such immunity is to be found in s. 86(1) of the *Indian Act.*

APPEAL from the judgment of the Exchequer Court of Canada, Cameron J. (1), dismissing a petition of right.

G. F. Henderson, Q.C. and *A. T. Hewitt* for the appellant.

D. H. W. Henry, Q.C. and *E. R. Olson* for the respondent.

The judgment of Kerwin C.J., Taschereau and Fauteux JJ. was delivered by:—

THE CHIEF JUSTICE:—This is an appeal against a decision of the Exchequer Court dismissing the Petition of Right of the suppliant (an Indian resident in a reserve in

(1) [1954] Ex. C.R. 590.

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Canada) and the question is whether three articles, a washing machine, a refrigerator and an oil heater, brought by him into Canada from the United States of America are subject to duties of customs and sales tax under the relevant statutes of Canada. None was paid and in fact the articles were not brought into this country at a port of entry; they were subsequently placed under customs detention or seizure and in order to obtain their release, the appellant, under protest, paid the sum demanded by the Crown. The Petition of Right claims the return of this money and a declaration that no duties or taxes were payable by the appellant with respect to the goods.

The date of importation of the washing machine is December, 1948; of the refrigerator April 24. 1950, and of the oil heater September 7, 1951. The relevancy of the dates is that s. 49 of The Statutes of Canada, 1949, 2nd session, c. 25, relied upon by the respondent, was assented to on September 10, 1949, and was, therefore, in effect at the time the suppliant brought into Canada the refrigerator and oil heater, but was not in force when the washing machine was imported. Furthermore s. 87 of *The Indian Act,* R.S.C. 1951, c. 29, also referred to on behalf of the respondent, was first enacted in the revision of *The Indian Act* in 1949 by s. 87 of c. 29 of the statutes of that year, which chapter was brought into force on September 4, 1951, so that even if applicable, its provisions would affect only the importation of the oil heater and I find it unnecessary to express any opinion upon the matter.

The appellant falls within the definition of "Indian" in s. 2(1)(*g*) of R.S.C. 1951, c. 29 and at all relevant times he resided on the St. Regis Indian Reserve in St. Regis village in the westerly part of the Province of Quebec, which adjoins an Indian reserve in the State of New York in the United States of America,—the residents of both reserves belonging to the St. Regis Tribe of Indians. The articles were brought into Canada in the manner already described in order to lay the foundation for the present proceeding as a test case.

The first claim advanced on behalf of the appellant is that these imposts need not be paid because of the following provisions of Article III of the Treaty of Amity, Com-

merce and Navigation, between His Britannic Majesty and the United States of America, signed on November 19, 1794, and generally known as the *Jay Treaty*:—

> No Duty on Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in Bales or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians.

In view of the conclusion at which I have arrived, it is unnecessary to deal with the question raised by the respondent that the articles imported by the appellant were not his "own proper goods and effects".

The *Jay Treaty* was not a Treaty of Peace and it is clear that in Canada such rights and privileges as are here advanced of subjects of a contracting party to a treaty are enforceable by the Courts only where the treaty has been implemented or sanctioned by legislation. This is an adaptation of the language of Lamont J., speaking for himself and Cannon J. in *Arrow River & Tributaries Slide & Boom Co. Ltd.* v. *Pigeon Timber Co. Ltd.* (1), and is justified by a continuous line of authority in England. Although it may be necessary in connection with other matters to consider in the future the judgment of the Judicial Committee in *The Labour Conventions Case* (2), so far as the point under discussion is concerned it is there put in the same sense by Lord Atkin. It has been held that no rights under a treaty of cession can be enforced in the Courts except in so far as they have been incorporated in municipal law: *Vajesingji Joravarsingji* v. *Secretary of State for India* (3); *Hoani Te Heuheu Tukino* v. *Aotea District Maoria Land Board* (4). The case of *Sutton* v. *Sutton* (5), relied upon by the appellant, dealt with the construction of another provision of the *Jay Treaty* and of the statute of 37 Geo. III, c. 97, which was passed for the purpose of carrying certain terms of the Treaty into execution. This is not a case where vested rights of property are concerned and it is unnecessary to consider the question whether the terms of the *Jay Treaty* were abrogated by the war of 1812.

(1) [1932] S.C.R. 495.
(2) [1937] A.C. 326.
(3) (1924) L.R. 51 Ind. App. 357.
(4) [1941] A.C. 308.
(5) (1830) 1 Russ. & M. 664.

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I agree with Mr. Justice Cameron that clause (*b*) of s. 86 of *The Indian Act* does not apply, because customs duties are not taxes upon the personal property of an Indian situated on a Reserve but are imposed upon the importation of goods into Canada. I also agree that, so far as the refrigerator and the oil heater are concerned, s. 49 of c. 25 of the 1949 statutes is a complete bar. This is "An Act to amend the *Income Tax Act* and the *Income War Tax Act*". While it is true that in s. 48 there are references to residents in Newfoundland and in ss. 49 and 50 to Newfoundland, most of the sections deal with income tax throughout all of Canada. The words are clear that no one is entitled to any deduction, exemption or immunity from, or any privilege in respect of any duty or tax imposed by an Act of the Parliament of Canada; and the *Customs Act of Canada* certainly provides for a duty on all the goods brought into the country by the appellant. Counsel for the appellant points to the words "notwithstanding any other law heretofore enacted" and argues that the rights upon which the appellant bases his claim under the *Jay Treaty* do not arise under any enactment. For the reasons already given, I cannot agree that any relevant rights of the appellant within that Treaty are judiciable in the Courts of this country.

The appeal should be dismissed with costs.

The judgment of Rand and Cartwright JJ. was delivered by:—

RAND J.:—The appellant, Louis Francis, is an Indian within the definition of that word in the *Indian Act*, R.S.C. 1952, c. 149, s. 2(1)(*g*) and resides on the St. Regis Indian Reserve in Quebec. The latter is part of a larger settlement of the St. Regis tribe extending into the United States and is bounded on the south by the international boundary between the two countries. Between 1948 and 1951 Francis purchased an electrical washing machine, a second-hand oil burner or heater and an electric refrigerator in the United States; two of these were brought over or from the international boundary to his home in the reserve by Francis and the other delivered by the seller. They were not reported at the customs office for the district and some time

later were seized and held until the duty amounting to $123.66 was paid. The petition of right was thereupon brought for the return of these moneys.

The claim is based first on that clause of art. 3 of the *Jay Treaty* between Great Britain and the United States of 1794 which stipulates:

> No Duty on Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in Bales or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians.

and on the 9th article of the Treaty of Ghent, 1815, between the same states which, as regards Great Britain, reads:

> And His Britannic Majesty engages, on his part, to put an end, immediately after the Ratification of the present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at War at the time of such Ratification; and forthwith to restore to such Tribes or Nations, respectively, all the Possessions, Rights and Privileges, which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty, and his Subjects, upon the Ratification of the present Treaty being notified to such Tribes or Nations, and shall so desist accordingly.

The contention is put as follows: art. 3 effects the enactment of substantive law not requiring statutory confirmation as being a provision in a treaty of peace, the making of which is in the exercise of the prerogative including, here, a legislative function; on the true interpretation of the treaty the article was intended to be perpetual and was not affected by the war of 1812; in any event it was restored by the 9th article of 1815.

A second ground is that the appellant is exempted from liability for the duties of s. 102 of the *Indian Act*, R.S.C. 1927, c. 98 and by s. 86(1) of c. 149, R.S.C. 1952. These read:

> 102. No Indian or non-treaty Indian shall be liable to be taxed for any real or personal property, unless he holds, in his individual right, real estate under a lease or in fee simple, or personal property outside of the reserve or special reserve, in which case he shall be liable to be taxed for such real or personal property at the same rate as other persons in the locality in which it is situate.
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86. (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to Section 82, the following property is exempt from taxation, namely,

(*a*) the interest of an Indian or a band in reserve or surrendered lands, and

(*b*) the personal property of an Indian or band situated on a reserve, and no Indian or band is subject to taxtion in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (*a*) or (*b*) or is otherwise subject to taxation in respect of any such property . . .

Cameron J., dismissing the petition, held that art. 3 required statutory confirmation to become effective as law, of which there was none; that the article was abrogated by the war of 1812; that the exemption was negatived by s. 49 of the statutes of Canada, 1949, 2nd Session; and that the sections of the *Indian Acts* quoted did not extend to customs duties. Art. 9 of the Treaty of Ghent was not, evidently, brought to his attention nor apparently the distinction in respect of the scope and power of the prerogative urged before us between a treaty of peace and other treaties.

A peace treaty in its primary and legitimate meaning is a treaty concluding a war, "an agreement"—in the words of Sir William Scott in the *Eliza Ann and others* (1)—"to waive all discussion concerning the respective rights to the parties and to bury in oblivion all the original causes of the war." The Treaty of Paris, 1783 was of that nature; it recognized the independence of the United States, fixed boundaries, secured the property of former and continuing subjects and citizens in both countries against prosecution and against confiscation of their property, provided for the withdrawal of British troops from the lands of and border points in the United States and for other matters not germane here.

The question of the Indians, however, was left untouched, and during the years that followed they presented both governments with problems of reconciliation. Generally speaking, the tribes in the east between New York state and the Ohio river, and in particular those belonging to the confederation known as the Six Nations had tended to support the British, and the bitterness then aroused continued after the peace. No clear political conception had been formulated of the relationship of the Indians either to the

(1) (1873) 1 Dods. 244, 248.

old or the new government especially in respect of rights in the lands over which the natives had formerly roamed at will; and their protest was that the British had purported to transfer to the United States, a title which they did not possess. As a measure of mitigation, the British conceived the idea of setting apart a neutral zone between the two countries for Indian settlement, but this did not, apparently, develop to the point of definite proposal. In addition to this, charges and countercharges were made by both countries of failure to carry out the terms of the treaty in such matters as the return of slaves, the confiscation of properties, the prosecution of individuals and the withdrawal of British troops from fortified border points. These, with the events developing in Europe and the need of both for the restoration of trade, induced a common desire to remove these frictions, which eventuated in the treaty of 1794: (Jay's Treaty, A Study in Commerce and Diplomacy, Bemis, pp. 109 et seq.)

Assuming, then, a broader authority under the prerogative in negotiating a peace treaty, neither the causes nor the purposes of the treaty of 1794 bring it within that category.

A treaty is primarily an executive act establishing relationships between what are recognized as two or more independent states acting in sovereign capacities; but as will be seen, its implementation may call for both legislative and judicial action. Speaking generally, provisions that give recognition to incidents of sovereignty or deal with matters in exclusively sovereign aspects, do not require legislative confirmation: for example, the recognition of independence, the establishment of boundaries and, in a treaty of peace, the transfer of sovereignty over property, are deemed executed and the treaty becomes the muniment or evidence of the political or proprietary title. Stipulations for future social or commercial relations assume a state of peace: when peace is broken by war, by reason of the impossibility of their exercise, they are deemed to be abrogated as upon a failure of the condition on which they depend. But provisions may expressly or impliedly break in upon these general considerations; the terms may contemplate continuance or suspension during a state of war. The interpretation is according to the rules that govern

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that of instruments generally; from the entire circumstantial background, the nature of the matters dealt with and the objects in view, we gather the intention of the parties as expressed in the language used. When such matters touch individuals, the judicial organ must act but a result that brought about non-concurrence between the judicial and the executive branches, say as to abrogation, and apart from any question of an international adjudication, would, to say the least, be undesirable.

Except as to diplomatic status and certain immunities and to belligerent rights, treaty provisions affecting matters within the scope of municipal law, that is, which purport to change existing law or restrict the future action of the legislature, including, under our constitution, the participation of the Crown, and in the absence of a constitutional provision declaring the treaty itself to be law of the state, as in the United States, must be supplemented by statutory action. An instance of the joint involvement of executive, legislative and judicial organs is shown by the provisions of the treaty of 1783 respecting the holding of lands in the United States by subjects of Great Britain, including their heirs and assigns, and vice versa. These were supplemented by 37 Geo. III, c. 97 which was declared to continue so long as the treaty should do so and no longer. In *Sutton* v. *Sutton* (1), the Master of the Rolls, Sir John Leach, held that this provision was not annulled by the war of 1812, that so far the statute remained in force and that "the heirs and assigns of every American who held lands in Great Britain at the time mentioned in the Act of 37 Geo. III are, so far as regards these lands, to be treated not as aliens but as native subjects."

To the enactment of fiscal provisions, certainly in the case of a treaty not a peace treaty, the prerogative does not extend, and only by legislation can customs duties be imposed or removed or can the condition under which goods may be brought into this country be affected. I agree, therefore, with Cameron J. in holding that legislation was necessary to bring within municipal law the exemption of the clause in question. Legislation to that effect was enacted, in Upper Canada by 41 Geo. III, c. 5, s. 6, repealed by 4 Geo. IV, c. 11; in Lower Canada by the enabling

(1) 39 E.R. 255.

statute, 36 Geo. III, c. 7 and the ordinance of 1796 made thereunder, the former having been continued by annual renewals up to January 1, 1813 when it lapsed. No legislation is suggested to have been passed by any other province. For over a century, then, there has been no statutory provision in this country giving effect to that clause of the article.

The particular privilege lay within a structure of settled international relations between sovereign states and from its nature was not viewed as intended to be perpetual. Following the treaty of 1783 large scale transfers of Indians belonging to the Six Nations and more western tribes took place from the United States to lands north of Lake Erie. This was a major step which was bound to affect materially the circumstances instigating the clause.

But the Indians north of the boundary were not confined to the district between Montreal and Detroit: they inhabited also the eastern maritime provinces and the territories to the west of central Canada; these were within the general language but there has been no suggestion that the treaty was significant to them, much less that they have ever claimed its privilege.

In 1794 European settlement of North America was in its early stages. In 1768 a treaty had been made with the Indians that had placed the western boundary of the advance south of the Great Lakes at the Ohio river. The lands to the north and west of those lakes were within the charter granted to the Hudson's Bay Company. The section of the international boundary from the Lake of the Woods to the Rocky Mountains was not fixed until 1818 and that beyond to the Pacific ocean until 1846. Confederation succeeded in 1867 and a few years later drew within its orbit all the territory reaching to the Pacific and the far north. Government in relation to the Indians was thus greatly extended. Continuing the administration inaugurated by Sir William Johnson in 1744 and extended to Quebec in 1763, (Canada and Its Provinces, Vol. IV, p. 695 et seq.) ordinances for the welfare of the Indians and the protection of their lands were passed in Lower Canada as early as 1777 and a partial consolidation was

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made in 1840 by 3-4 Vict., c. 44. In Upper Canada, 5 William IV, c. 9 and 2 Vict., c. 15 provided similar safeguards. Legislation of the province of Canada, 13-14 Vict., c. 42, 14-15 Vict., c. 106 and 20 Vict., c. 26 had in view the preservation of their settlements and their gradual introduction to the customs and mode of life of western civilization. Then 31 Vict., c. 42 committed the management of their lands to the Department of the Secretary of State and by 32-33 Vict., c. 6 comprehensive provision was made for their gradual enfranchisement and the management of their affairs. These enactments were consolidated by 43 Vict., 28 and this with modifications has now become the present *Indian Act.*

Indian affairs generally, therefore, have for over a century been the subject of expanding administration throughout what is now the Dominion, superseding the local enactments following the treaty designed to meet an immediate urgency. In the United States the last statutory provision dealing with duties on goods brought in by Indians was repealed in 1897. This appears from the case of *United States* v. *Garrow* (1). In that case, also, it was pointed out that under the Ghent treaty the contracting parties merely "engaged" themselves to restore by legislation the "possessions, rights and priveleges" of the Indians enjoyed in 1811 but that no such enactment had been passed. The article itself was held to have been abrogated by the war of 1812: *Karnuth* v. *United States* (2). In the last decade of the 18th century peace had been reached between the United States and the tribes living generally between Lake Champlain and the Mississippi river. There followed the slow but inevitable march of events paralleled by that in this country; and today there remain along the border only fragmentary reminders of that past. The strife had waged over the free and ancient hunting grounds and their fruits, lands which were divided between two powers, but that life in its original mode and scope has long since disappeared.

These considerations seem to justify the conclusion that both the Crown and Parliament of this country have treated the provisional accommodation as having been replaced by an exclusive code of new and special rights and privileges.

(1) 88 Fed. R. (2nd) 318 at 321. (2) 279 U.S. 231.

Appreciating fully the obligation of good faith toward these wards of the state, there can be no doubt that the conditions constituting the raison d'être of the clause were and have been considered such as would in foreseeable time disappear. That a radical change of this nature brings about a cesser of such a treaty provision appears to be supported by the authorities available: McNair, The Law of Treaties, 378-381. Assuming that art. 9 of the Treaty of Ghent extended to the exemption, it was only an "engagement" to restore which, by itself, could do no more than to revive the clause in its original treaty effect, and supplementary action was clearly envisaged. Whether, then, the time of its expiration has been reached or not it is not here necessary to decide; it is sufficient to say that there is no legislation now in force implementing the stipulation.

There remains the question of exemption under s. 102 of c. 98, (1927) and s. 86(1) of c. 149, R.S.C. 1952, the former of which was repealed as of June 20, 1951. I can find nothing in these provisions that assists the appellant. To be taxed as by s. 102 "at the same rate as other persons in the locality" refers obviously and only to personal or real property under local taxation; it cannot be construed to extend to customs duties imposed on importation.

Similarly in 86(1), property "situated on a reserve" is unequivocal and does not mean property entering this country or passing an international boundary. On the argument made, the exemption would be limited to situations in which that boundary bounded also the reserve and would be a special indulgence to the small fraction of Indians living on such a reserve, a consequence which itself appears to me to be a sufficient answer.

The appeal must therefore be dismissed and with costs if demanded.

The judgment of Kellock and Abbott JJ. was delivered by:—

KELLOCK J.:—The appellant, who is described in the petition herein as "an Indian subject to the provisions of the *Indian Act*, Statutes of Canada 1951 Chapter 29", at all material times resided at the St. Regis Indian Reserve,

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Cornwall Island. It is contended on his behalf that contrary to Art. 3 of the *Jay Treaty* of the 19th November, 1794, between His Britannic Majesty and the United States of America, he was improperly charged customs duty on certain articles brought into Canada on or subsequent to the 19th of October, 1951. Art. 3 of the treaty reads in part as follows:

> No Duty on Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever. But Goods in Bales or other large Packages unusual among Indians shall not be considered as Goods belonging bona fide to Indians.

The appellant contends (1) that this article became part of the municipal law in Canada without the necessity of any legislation either authorizing it or confirmatory thereof, and (2) that there is no legislation subsequently enacted which affects the right claimed.

In view of the conclusion to which I have come with respect to the second point, I do not find it necessary to consider the first. The appellant admits that at least since the Statute of Westminster 1931, it was competent to Parliament to legislate with respect to the right claimed.

S. 86(1) of the *Indian Act*, R.S.C. 1952, c. 149, reads as follows:

> 86(1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 82, the following property is exempt from taxation, namely,
>
> * * *
>
> (*b*) the personal property of an Indian or band *situated on a reserve*, and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (*a*) or (*b*) or is otherwise subject to taxation in respect of any such property; and no succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the *Dominion Succession Duty Act* on or in respect of other property passing to an Indian.

Before the property here in question could become situated on a reserve, it had become liable to customs duty at the border. There has been no attempt to impose any other tax.

Section 89(1) and (2) reads as follows:

89(1) For the purposes of sections 86 and 88, personal property that was

(a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or

(b) given to Indians or to a band under a treaty or agreement between a band and Her Majesty,

shall be deemed always to be situated on a reserve.

(2) Every transaction purporting to pass title to any property that is by this section *deemed to be situated on a reserve,* or any interest in such property, is void unless the transaction is entered into with the consent of the Minister or is entered into between members of a band or between the band and a member thereof.

It is quite plain from this section that the actual situation of the personal property on a reserve is contemplated by s. 86 and that any argument suggesting a notional situation is not within the intendment of that section.

It is, moreover, provided by s. 87 that

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.

I think it is quite clear that "treaty" in this section does not extend to an international treaty such as the *Jay Treaty* but only to treaties with Indians which are mentioned throughout the statute.

In my opinion the provisions of the *Indian Act* constitute a code governing the rights and privileges of Indians, and except to the extent that immunity from general legislation such as the *Customs Act* or the *Customs Tariff Act* is to be found in the *Indian Act,* the terms of such general legislation apply to Indians equally with other citizens of Canada.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Gowling, MacTavish, Osborne & Henderson.*

Solicitor for the respondent: *F. P. Varcoe.*