R. *v.* Sioui, [1990] 1 S.C.R. 1025

The Attorney General of Quebec *Appellant*

v.

Régent Sioui, Conrad Sioui,
Georges Sioui and Hugues Sioui *Respondents*

and

The Attorney General of Canada and
the National Indian Brotherhood/
Assembly of First Nations
Interveners

indexed as: r. *v.* sioui

File No.: 20628.

1989: October 31, November 1; 1990: May 24.

Present: Dickson C.J. and Lamer, Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory and McLachlin JJ.

on appeal from the court of appeal for quebec

Indians -- Treaty -- Rights -- Customs and religion -- Huron band Indians charged with cutting down trees, camping and making fires in places not designated in Jacques-Cartier park contrary to provincial regulations -- Whether regulations applicable to Hurons practising customs and religious

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rites -- Whether document signed by General Murray in 1760 guaranteeing them free exercise of their customs and religion is a treaty -- Whether treaty still in effect -- Whether territorial scope of treaty extends to territory of park so as to make regulations unenforceable in respect of accused -- Indian Act, R.S.C., 1985, c. I-5, s. 88 -- Regulation respecting the Parc de la Jacques-Cartier, (1981) 113 O.G. II 3518, ss. 9, 37.

The respondents are members of the Huron band on the Lorette Indian reserve. They were convicted by the Court of Sessions of the Peace of cutting down trees, camping and making fires in places not designated in Jacques-Cartier park contrary to ss. 9 and 37 of the *Regulation respecting the Parc de la Jacques-Cartier*, adopted pursuant to the Quebec *Parks Act*. The respondents appealed to the Superior Court against this judgment by way of trial *de novo*. They admitted committing the acts with which they were charged in the park, which is located outside the boundaries of the Lorette reserve. However, they alleged that they were practising certain ancestral customs and religious rites which are the subject of a treaty between the Hurons and the British, a treaty which brings s. 88 of the *Indian Act* into play and exempts them from compliance with the regulations. The treaty that the respondents rely on is a document of 1760 signed by General Murray. This document guaranteed the Hurons, in exchange for their surrender, British protection and the free exercise of their religion, customs and trade with the English. At that time the Hurons were settled at Lorette and made regular use of the territory of Jacques-Cartier park. The Superior Court held that the document was not a treaty and dismissed the appeal. A majority of the Court of Appeal reversed this judgment. The court found that the 1760 document was a treaty and that the customary activities or religious rites practised by the Hurons in Jacques-Cartier park were protected by the treaty. Section 88 of the *Indian Act* made the respondents immune from any prosecution. This appeal is to determine (1) whether the 1760 document is a treaty; (2) whether it is still in effect; and (3) whether it makes ss. 9 and 37 of the *Regulation respecting the Parc de la Jacques-Cartier* unenforceable in respect of the respondents.

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Held: The appeal should be dismissed.

The 1760 document is a treaty within the meaning of s. 88 of the *Indian Act*. Though the wording of the document does not suffice to determine its legal nature, the historical context and evidence relating to facts which occurred shortly before or after the signing of the document indicate that General Murray and the Hurons entered into an agreement to make peace and guarantee it. They entered into this agreement with the intention to create mutually binding obligations that would be solemnly respected. All the parties involved were competent to enter into this treaty. Even if Great Britain was not sovereign in Canada in 1760, the Hurons could reasonably have believed that it had the power to enter into a treaty with them and that this treaty would be in effect as long as the British controlled Canada. The circumstances prevailing at the time indicate that Murray had the necessary capacity to enter into a treaty, or at least that the Hurons could reasonably have assumed he did in view of the importance of his position in Canada at the time. In the case of the Hurons, though they could not claim historical occupation or possession of the lands in question, this did not prevent them from concluding a treaty with the British Crown. A territorial claim is not essential to the existence of a treaty within the meaning of s. 88 of the *Indian Act*.

The treaty was still in effect when the offences with which the respondents were charged were committed. The Act of Capitulation of Montreal in 1760 and the Treaty of Paris in 1763 did not have the effect of terminating rights resulting from the treaty. At the time, France could no longer claim to represent the Hurons. Since the Hurons had the capacity to enter into a treaty with the British Crown, they were the only ones who could give the necessary consent to its extinguishment. Similarly, the silence of the Royal Proclamation of 1763 regarding the treaty cannot be interpreted as extinguishing it. The change in use of the land by legislation in 1895 (creation of the Jacques-Cartier park) also did not terminate the right protected by the treaty. If

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the treaty gives the Hurons the right to carry on their customs and religion in the territory of the park, the existence of a provincial statute and subordinate legislation will not ordinarily affect that right. Finally, non-user of the treaty over a long period of time does not result in its extinguishment.

Although the treaty gives the Hurons the freedom to carry on their customs and religion, it makes no mention of the territory over which these rights may be exercised. As there is no express indication of the territorial scope of the treaty, it must be interpreted by determining the intention of the parties at the time it was concluded. When the historical context is given its full meaning, the interpretation that is called for is that the parties contemplated that the rights guaranteed by the treaty could be exercised over the entire territory frequented by the Hurons in 1760, so long as the carrying on of the customs and rites was not incompatible with the particular use made by the Crown of this territory. This interpretation would reconcile the Hurons' need to protect the exercise of their customs and the desire of the British conquerors to expand. It gave the British the necessary flexibility to be able to respond in due course to the increasing need to use Canada's resources, in the event that Canada remained under British suzerainty, and it allowed the Hurons to continue carrying on their rites and customs on the lands frequented to the extent that those rites and customs did not interfere with enjoyment of the lands by their occupier. The Hurons could not reasonably expect that the use would remain forever what it was in 1760. Jacques-Cartier park is land occupied by the Crown, since the province has set it aside for a specific use. The park falls within the class of conservation parks and is intended to ensure the permanent protection of territory representative of the natural regions of Quebec or natural sites presenting exceptional features, while rendering them accessible to the public for the purposes of education and cross-country recreation. This type of occupancy is not incompatible with the exercise of Huron rites and customs. For such an exercise to be incompatible with occupancy of the park by the Crown, it must not only be contrary to the purpose underlying that

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occupancy but it must prevent the realization of that purpose. Crown lands are held for the benefit of the community (exclusive use is not an essential aspect of public ownership) and the activities with which the respondents are charged do not seriously compromise the Crown's objectives in occupying the park. Neither the representative nature of the natural region where the park is located nor the exceptional nature of this natural site are threatened. These activities also present no obstacle to cross-country recreation. Under s. 88 of the *Indian Act*, the respondents could therefore not be prosecuted since the activities in question were the subject of a treaty.

Cases Cited

Applied: *Simon v. The Queen*, [1985] 2 S.C.R. 387; *R. v. White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.), aff'd (1965), 52 D.L.R. (2d) 481 (S.C.C.); **referred to**: *Jones v. Meehan*, 175 U.S. 1 (1899); *R. v. Taylor and Williams* (1981), 62 C.C.C. (2d) 227; *R. v. Horse*, [1988] 1 S.C.R. 187; *Worcester v. State of Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Calder v. Attorney-General of British Columbia*, [1973] S.C.R. 313; *R. v. Secretary of State for Foreign and Commonwealth Affairs*, [1982] 2 All E.R. 118.

Statutes and Regulations Cited

Act of Capitulation of Montreal (1760), arts. 40, 50.

Act of Capitulation of Québec (1759).

Act to establish the Laurentides National Park, S.Q. 1895, 58 Vict., c. 22.

Constitution Act, 1982, s. 35.

Indian Act, R.S.C., 1985, c. I-5 [formerly R.S.C. 1970, c. I-6], s. 88.

Parks Act, R.S.Q., c. P-9, ss. 1(*c*), (*e*), 11.