

FIRST DIVISIONAL COURT.

FEBRUARY 7TH, 1917.

*ATKINS v. DAVIS.

Indian—Judgment Recovered by one Indian against another—Enforcement—Recovery on Promissory Note Made by Defendant in Favour of Non-Indian and Endorsed to Plaintiff—"Person"—Indian Act, R.S.C. 1906 ch. 81, secs. 2(c), 102.

Appeal by the plaintiff from the judgment of the County Court of the County of Brant in favour of the defendant in an issue directed to try the question whether sec. 102 of the Indian Act, R.S.C. 1906 ch. 81, had the effect of preventing the plaintiff from enforcing a judgment against the defendant by seizure and sale of his goods and chattels upon his premises or dwelling-place in an Indian Reserve. Both parties were Indians, and the judgment against the defendant was recovered upon a promissory note made by him to the order of one Thompson, not an Indian, who endorsed and transferred it to the plaintiff.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, HODGINS, and FERGUSON, J.J.A.

H. Arrell, for the appellant.

W. A. Hollinrake, K.C., for the defendant Perry Davis, respondent.

A. M. Harley, for the defendant Sarah Davis, respondent.

MEREDITH, C.J.O., read the judgment of the Court. He referred to secs. 99, 100, 101, 102, 103, 104, and 105 of the Indian Act, and said that the plaintiff contended that sec. 102, read in connection with clause (c) of sec. 2, which says that "person" means an individual other than an Indian, in effect provides that "no individual other than an Indian shall take any security or otherwise obtain any lien or charge upon real or personal property of any Indian;" and that, as the plaintiff is an Indian, the prohibition does not extend to him.

It is not said in any section of the Act that property which cannot be seized as provided by sec. 102 can be levied upon under an execution issued on a judgment which an Indian has recovered; and it is reasonably clear that in some instances where the word "person" is used in the Act it is not used in the restricted sense mentioned in sec. 2 (c): see secs. 104, 129, 130, 131, 132, and 136.

If the contention of the plaintiff were to prevail, there would be nothing to prevent the provisions of sec. 102 being evaded. All that would be necessary for a non-Indian having a claim against