

On a fair reading of the various enactments, process by civil action can alone be resorted to for the recovery of the penalty, and the principle of proceeding by summary conviction has been improperly adopted. The conviction must therefore be quashed.

COUNTY OF BRANT.

REG. v. JOHNSON.

*Worrying sheep on Indian Reserve—R.S.O. c. 214, s. 15—Scienter.*

A sheep was worried on an Indian Reserve by a dog owned by an Indian resident thereof, who was sought to be made chargeable for the injury by the owner.

*Held*, 1. That R.S.O. c. 214, s. 15, is not applicable, and a scienter must still be proved against such a resident.

2. That without express power given by the Indian Act the Indian Council cannot alter the common law rule in this respect.

[BRANTFORD, Dec. 11, 1895, JONES, Co.J.]

Appeal from a summary conviction for injury caused by a dog worrying sheep on an Indian Reserve.

The appellant, an Indian, living on the Six Nations Reserve in the township of Tuscarora, and the owner of an alleged vicious dog, had, on complaint of the respondent, been cited before a Magistrate to answer the vicarious charge of injury inflicted by such animal upon sheep belonging to respondent. The latter was unable to prove, either before the Magistrate, or on appeal, that the appellant was aware of any aggressive propensity of his dog with regard to sheep; but, invoking the Ontario Act (R.S.O. c. 214, s. 15), claimed that the necessity for establishing scienter was dispensed with.

*Mackenzie*, Q.C., for appellant.

*Brewster*, for respondent.

JONES, Co. J., Chairman: The Act referred to (R.S.O. c. 214, s. 5) has no operation within the limits of the Indian Reserve, in respect of which the jurisdiction of the Dominion Parliament was absolute and exclusive, under the provisions of the B.N.A. Act. Regulations purporting to deal with the subject have been framed under the direction of the Indian Agent, and thus authenticated have been duly passed by the Indian Council. The learned Judge proceeded to declare that, in the absence of express power conferred upon that body, by the terms of the Act, to supersede the common law principle of the scienter, it could not be disregarded as an element requiring to be proved. The conviction was therefore quashed.