

IN THE DISTRICT COURT OF THE
DISTRICT OF COLUMBIA.

May 14, 1926

Let the \$25. paid into Court
for costs be paid and to
the Solicitor for the Appellant
as assessed
J.D.C.

HIS MAJESTY THE KING

VS



EDWIN C. ...

JUDGMENT

IN THE DISTRICT COURT OF THE DISTRICT OF MACLEOD.

HIS MAJESTY THE KING,

- and -

EDWIN SMITH.

JUDGMENT OF HIS HONOUR JUDGE MACDONALD.

The appellant Edwin Smith was convicted by J. W. Low, a Police Magistrate, on the 25th day of February last for unlawfully committing an assault on Albert Many Fingers, a pupil at St. Mary's Roman Catholic Indian School situated on the Blood Reserve south of Macleod.

Smith is employed on the staff of the school referred to and among his other duties is that of maintaining discipline among the pupils. During the absence of the principal he is in charge of the school.

Many Fingers is a pupil attending the school. He is a strong healthy boy and about the same height and weight as the appellant, and will be seventeen years old on the 5th of this month. Prior to the alleged assault he had been the cause of considerable trouble in the school and was a leader amongst some of the older pupils who were evidently becoming discontented at being subjected to school discipline. He had intimated his intention of fighting Smith. The appellant spoke to him about his conduct and also warned him but with no effect, as he continued to be insolent and disobedient to both Smith and his teacher. The appellant then reported the matter to the principal who advised him that it was his duty to see that discipline was maintained. He then concluded that in order to carry out his instructions and maintain discipline in

the school it was necessary that he punish Many Fingers. On the morning of January 9th when the pupils were marching in to breakfast he requested him to stand out of line. When the other pupils had marched into the dining-room he told Many Fingers that he had been corrected several times but was still disobedient and he was now going to punish him, or words to that effect. He also referred to Many Fingers' threat to fight him. Other words then passed between them and Many Fingers, seeing that he was about to be punished, assumed a fighting attitude with closed fists. Upon his so doing Smith struck him three rapid blows about the face and head with his fists, causing his nose to bleed. Many Fingers then stepped back. No further attempt was made by Smith to strike him.

I find that the blows struck, although causing the pupil's nose to bleed, were not severe and caused no apparent bruise or discoloration of the flesh where struck.

I further find that the appellant in administering the punishment was not guilty of malicious intent or was he actuated by any ill-will towards Many Fingers. The punishment was not inflicted in a fit of anger.

Following the judgments of *Rex vs Metcalfe* (1927) 3 W. W. R. 194; *Rex vs Zinek*, 18 Canadian Criminal Cases 456; *Regina vs Robinson*, 7 Canadian Criminal Cases 52, and the authorities therein cited, I think that the appellant had the right to punish the pupil in question, or any of the other pupils disobeying the rules of the school.

At the close of the hearing of this appeal considerable doubt existed in my mind as to whether or not the force used was reasonable under the circumstances.

I have carefully considered the evidence submitted on this point, especially that of the Rev. William R. Hanes, called by the Crown, and who has had considerable experience in the management of Indian Schools. When asked what he would do if an Indian attempted to fight him he said he would knock him down and then take him to the principal to be dealt with.

I have further considered the fact that the pupil had boasted that he intended fighting the appellant and the further fact that in appearance at least, he was physically able to carry out his boast. These, with the further facts that he assumed a fighting attitude when approached by Smith, and that when Many Fingers stepped back after receiving the blows complained of, no further attempt was made by Smith to strike him, convinces me, after consulting a number of authorities on this point, that the force used was not under the circumstances unreasonable. In this regard I may refer to the words of Cuseley, D. C. J., in the case of Rex vs Hilton decided by him in March, 1919, (unreported) and quoted in Rex vs Metcalfe already referred to, which reads as follows:

"It seems to me therefore that under these authorities I am in this appeal bound to find that taking into consideration the doctrine laid down in the case of State v Pennington as explained by the Case of Rex v Gaul that the force used was reasonable under the circumstances. I have consulted many authorities and so far as my reading extends the only case in which the schoolmaster or mistress has been found guilty of an assault is where the act was done with a dangerous weapon, improper for correction, and likely (the age and strength of the pupil being duly considered) to kill or maim, such as an iron bar, etc., or where the pupil is kicked to the ground or otherwise illtreated, or where the chastisement is flagrantly excessive, or the master has been actuated with malice or illwill towards the pupil, but I have found no case which goes nearly the length that the respondent on this appeal is asking me to do, namely, to hold that because a punishment inflicted by the schoolmistress caused temporary pain and discoloration of the flesh for a few days, that no pain or inconvenience was experienced so far as the evidence shows outside the first two days, I should hold that the punishment inflicted was excessive or was not reasonable under the circumstances."

I think, after taking all the circumstances into consideration, that the language in this quotation applies in this case.

For the reasons submitted the appeal will be allowed with costs and the conviction quashed and set aside with costs.

May 2nd, 1926.

Amason

J. D. C.