prospecting licence, thereby subjecting himself to the same obligations and liabilities as if he were of full age.

These statutory provisions make it clear that persons under the age of twenty-one who are enjoying the benefits allowed them by these statutes will be liable for their actions. There are, in addition, several areas of statute law affecting infants' rights which are of a permissive nature. The *Trustees Act*[10] states that an infant may act as a trustee. The *Wills Act*[11] declares that a married person, a member of the armed forces on active service, or a mariner or seaman while at sea can make and revoke a will even though in each case the person is under the legal age of twenty-one. Further, the *County Courts Act*[12] and the *County Magistrates Act*[13] allow a person under twenty-one years of age to sue for wages due to him in the same manner, and subject to the same liability for costs, as if he were of full age.

While it is clear that the legislature has made a start in changing the status of infants in some areas, it is submitted that this policy should be extended to other areas of the law. Under present conditions, as seen in the *Noble* case, a person twenty years of age who purports to be twenty-one can deceive a vendor, since infants nineteen to twenty-one often exhibit an air of maturity. However, if a seventeen-year-old purports to be eighteen, a vendor will be much more cautious before allowing him to take possession of an expensive item on credit. A person of that age will often portray an immature air which will immediately caution a vendor. In addition, persons seventeen years of age and under are normally under the influence of their parents or guardians thus allowing fewer instances where problems might arise.

Because of sociological changes and the need of the law to maintain the respect of citizens, it is submitted that the legislature should consider the above recommendations, particularly in the light of the decision in *Bellefleur v. Noble's Limited.*

C. Gordon Simmons*

INDIANS — FEDERAL AND PROVINCIAL STATUTES — TREATY RIGHTS — HUNTING AND FISHING.

With the intent to save migratory birds "from indiscriminate slaughter" and to assure their preservation, Great Britain, on behalf of Canada, entered into a Convention with the United States, in

10 R.S.N.B., 1952, c. 239, s. 27.
11 R.S.N.B., 1952, c. 15, ss. 5 and 8, as amended 1959.
12 R.S.N.B., 1952, c. 45, s. 19.
13 R.S.N.B., 1952, c. 46, s. 33(3).
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1916, by which certain migratory birds were not to be shot except in particular seasons. This Convention was later implemented in the *Migratory Birds Convention Act*.[1]

Recently, the Supreme Court of Canada was faced with the interesting problem of reconciling this legislation with certain Indian rights dating back to a *Royal Proclamation* of 1763. That Proclamation, following the *Treaty of Paris,* declared that Indians "should not be molested or disturbed in the possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds."

Some of these "Hunting Grounds" were subsequently surrendered by the Indians in a series of treaties which preserved to the Indians "the right to pursue their usual vocation of hunting, trapping, and fishing throughout the tract surrendered . . . subject to such regulations as may from time to time be made by the Government of the Country acting under the authority of His Majesty." It is important to note that the intention underlying the phrase "subject to such regulations" was to assure that a supply of game would be maintained for the Indians' own good.[2] With regard to these treaties, McGillvray, J.A., pointed out in *R. v. Wesley*:[3]

> ". . . I do not think that any of the makers of it [the treaty] could by any stretch of the imagination be deemed to have contemplated a day when the Indians would be deprived of an unfettered right to hunt game of all kinds for food on unoccupied Crown land."

Michael Sikyea, a Yellowknife treaty Indian (Treaty no. 11), shot for food in May, 1962, a wild female Mallard duck. The bird was considered a migratory bird within the *Migratory Birds Convention Act* and had been shot outside the prescribed season.[4] Sikyea was promptly arrested by an R.C.M.P. constable and fined $10.00. He appealed to the Northwest Territorial Court where Sissons, J.T.C., quashed the conviction on the ground that, because of treaty obligations, the *Migratory Birds Convention Act* did not apply to the Indians. The case was then appealed to the Territorial Court of Appeal where Johnson, J.A., said:

> "The right of Indians to hunt and fish for food on unoccupied Crown lands has always been recognized in Canada—in early days as an incident of their 'ownership' of the land, and later by the treaties by which the Indians gave up their ownership right in these lands."[4]

1 R.S.C., 1952, c. 179.

2 *The Queen v. Sikyea* (1964), 43 D.L.R. (2d) 150, at 153.

3 [1932] 4 D.L.R. 774, at 789.

4 *The Queen v. Sikyea* (1964), 43 D.L.R. (2d) 150.

Johnson, J.A., further explained the origin of these "ownership" rights and had this to say about the situation before him:

> ". . . it is difficult to understand why these treaties were not kept in mind when the Migratory Birds Convention was negotiated and when its terms were implemented by the *Migratory Birds Convention Act*. . . ."[5]

He then expressed the opinion that there should have been a reservation in favour of the Indians enabling them to shoot such birds for food at all times; this, he said, would not have constituted "indiscriminate slaughter" within the meaning of the Act.

Finally, he held that the *Migratory Birds Convention Act* "took away the rights given to the Indians by the treaties", and, notwithstanding that it was "an apparent breach of faith" on the part of the Government, it applied to the Indians. The appeal was allowed and the conviction restored.

On a further appeal to the Supreme Court of Canada, the decision of the Territorial Court of Appeal was upheld.[6] Hall, J., delivering the judgment of the Court, agreed with the reasons for judgment and with the conclusions of Johnson, J.A., in the Court of Appeal.

Another case on the same point, *Attorney-General of Canada v. George*[7] was recently heard in the Ontario Court of Appeal. The court gave priority to the rights contained in the treaties. Roach, J.A., conceded that by virtue of section 87 of the *Indian Act*,[8] the *Migratory Birds Convention Act* applied to Indians in a province because its "laws were of general application in the province". However, he stipulated that by the same section, it was "subject to the terms of any treaty"; therefore, the *Migratory Birds Convention Act* gave way to the provisions of the treaty. Gibson, J.A., dissenting, pointed out that the treaty did not really

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5 *Ibid.*, p. 155.

6 *Sikyea v. The Queen*, [1964] S.C.R. 642.

7 (1964), 45 D.L.R. (2d) 709.

8 R.S.C., 1952, c. 149, s. 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.

deal with the matters of hunting and fishing but rather was restricted to the narrow question of the possession of land; thus the treaty could have no qualifying effect upon the terms of section 87 of the *Indian Act*.

While it is true that the treaty, as Gibson, J.A., pointed out, did not specifically refer to matters of hunting and fishing, one must keep in mind that the *Royal Proclamation* of 1763, referred to above, in dealing with Indians' lands, really intended to reserve to the Indians the use of such lands as "Hunting Grounds" in its historical sense. This was emphasized by Roach, J.A., and, it is submitted, was not given sufficient weight by Gibson, J.A.

It is further submitted that although the view taken by Roach, J.A., favoured the Indians, it is not good law as the purpose of section 87 is to make provincial laws applicable to Indians; to include federal laws would be redundant since these would apply to Indians in any event by virtue of section 91(24) of the British North America Act.[9] It is suggested that in the *Sikyea* case, section 87 could have been invoked[10] but it was not, the *Migratory Birds Convention Act* being a federal statute. The conflict remains between a federal statute and the treaties; there remains the Supreme Court of Canada decision that treaty rights must be subjected to a federal statute.

It may be, however, that the Indians have another remedy. Pursuant to the suggestion of an "apparent breach of faith" on the part of the Government in not respecting the treaty, the Indians may have a right of action against the Federal Government for its failure to abide by treaty obligations.

Probably the best analysis of the unhappy situation was given by Johnson, J.A., when he described it as "a case of the left hand having forgotten what the right hand had done."[11]

Jean-Claude Angers*

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9 B.N.A. Act, 1867, 30 & 31 Vict., c. 3, s. 91(24) Indians, and Lands reserved for the Indians.

10 Interpretation Act, R.S.C., 1952, c. 158, s. 31(24) "province" includes the Northwest Territories and the Yukon Territory.

11 *The Queen v. Sikyea* (1964), 43 D.L.R. (2d) 150, at 158.

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