Saskatchewan King's Bench, Trial

[1925] 4 D.L.R. 1015

Yee Clun v. City of Regina

Mackenzie, J.

Judgment: November 14, 1925

Counsel: *A.G. MacKinnon* , for plaintiff.
G.F. Stewart , for defendant.

Mackenzie, J. **:**

1 The plaintiff brings this action to void a resolution passed by the council of the defendant city on October 7, 1924, refusing an application which he made on or about August 6, 1924, for a special license under *The Female Employment Act* , R.S.S., 1920, ch. 185, sec. 2, to employ white women to work in his restaurant and rooming-house premises in the said city.

2 The evidence discloses that the plaintiff is a Chinaman and that he is a property owner and taxpayer in the said city, and that he has resided and carried on his business there for some years, and that he is well and favourably known.

3 When the application for the said license was received by the defendant it was passed upon by the latter's license inspector, who reported to the said council that the plaintiff was a married man living with his wife and a good citizen as was also his partner in the said restaurant business, and recommended that the license be granted. The application was also considered by the defendant's chief constable, who also recommended that it be granted.

4 These recommendations were before the said council when it took up the application for its consideration, as it did at a meeting held on October 7, aforesaid. The granting of such license, however, was strongly opposed by the representatives of certain women's societies, who appeared and addressed the council at its said meeting. After discussion the resolution complained of was put and carried.

5 It appears from the evidence that no application for a license so recommended has ever before been refused by the council, the practice having been to grant them on the recommendation of the license inspector alone.

6 At the trial the mayor and aldermen who attended the said meeting were called and examined, subject to the objection of the defendant's counsel, as to the reasons put forward thereat for refusing the said application. Those who voted for granting the application were largely agreed that those who voted against it did so because the plaintiff was a Chinaman, while those who voted against it were themselves still more agreed that it was because he employed a number of Chinamen on his premises, who, owing to the restrictions placed upon them by our Federal laws, have not been permitted to bring their wives into this country. Hence they feared that such employees would constitute a menace to the virtue of the white women if the latter were allowed to work on the same premises with them. None of these witnesses questioned the plaintiff's own good

character, while nearly all admitted that it was excellent.

7 In making his objection to the evidence of these witnesses, counsel for the defendant relied upon sec. 210 of *The City Act* , R.S.S., 1920, ch. 86, which provides that the granting or refusing of a license to any person to carry on a particular trade, calling, business or occupation, or the revoking of a license under any of the powers conferred upon the council by the same or any other Act, shall be in its discretion, and it shall not be bound to give any reasons for such refusal or revocation, and its actions shall not be open to question or review by any Court.

8 I do not think, however, that this provision has any application to special licenses granted under *The Female Employment Act, supra* . The latter are really permits, and notwithstanding the terms of said sec. 210, the granting thereof is still subject to review by the Courts. (*Robson and Hugg* , 1920, *Municipal Manual* , 344).

9 Counsel for the defendant in support of his objection, also cited *Buccleugh v. Metropolitan Board of Works*, L.R. 5 H.L. 418, 41 L.J. Ex. 137 . That was an action on an award, and it was held that the arbitrator could not be asked to explain his reasons for awarding a sum in respect to any particular matter. It was suggested, however, by Baron Cleasby, at pp. 143-4, that if the case had been one to set aside the award, the evidence of such reasons might be admissible to show whether the arbitrator had proceeded upon some mistake or misconception. So here, it seems to me, the case being one to void the council's resolution, such evidence is admissible to show that the members of the council whose vote carried the resolution, acted upon an erroneous principle in making their decision. (*Phipson* , 6th ed., 196).

10 In my opinion the reason given by those members of the council who voted for the resolution, and against granting the license, as above, is a fallacious one, because it suggests that if the plaintiff, instead of employing Chinamen, had employed an equal number of white men, matrimonially unattached, no member of the council would have considered it, though the menace to the virtue of the white women might well be greater in the latter event, since there would exist no racial antipathy to be overcome between them and the white men.

11 Moreover, it is clear from the evidence that the question of the racial origin of his male employees has never been raised by the council as a reason for refusing a special license to any white restaurant keeper who applied for it, though it is common knowledge that white restaurant keepers do frequently employ Chinamen on their premises, which suggests the seemingly absurd conclusion that when a Chinaman is employed by a Chinaman, however, respectable the latter may be, the former is a menace to the white women's virtue, while, when the white man employs him, he is not.

12 Such facts, when carried to their logical conclusion, go far to confirm the evidence of those witnesses who testified that the council refused the plaintiff's application because he was a Chinaman. I think, therefore, that I must find that the council really refused the license in this case upon racial grounds.

13 It is to be observed here that *The Female Employment Act* , as originally passed by the Legislature, constituted a discrimination against Chinamen and other men of oriental origin by absolutely prohibiting the employment of white women to work in any restaurant, laundry or other place of business owned, kept, or managed by a Japanese, Chinaman or other oriental person. (Statutes of Saskatchewan, 1912, ch. 17, sec. 1). This enactment was amended by the statutes of Saskatchewan, 1912-13, ch. 18, by striking out the words, "Japanese," and "or other Oriental person," which left it applicable to Chinamen alone. Subsequently the said enactment was repealed altogether by the statutes of Saskatchewan, 1918-19, ch. 85, and a new enactment substituted, which has been re-enacted in its present form in R.S.S., 1920, ch. 185, as follows:

2. No person shall employ any white woman or girl in any capacity requiring her to reside or lodge in or to work in any restaurant or laundry, without obtaining a special license for the purpose from the municipality in which such restaurant or laundry is situated, which license the council of every municipality is hereby authorized to grant.

14 It will thus be seen that the Legislature abolished the discriminatory principle contained in its original enactment, and imposed the necessity of taking out a license upon all restaurant or laundry keepers of every race who desire to employ white women on their premises. It would be strange if the municipalities to which has been delegated authority of granting such special licenses could now go on and maintain the discriminatory principle which the Legislature had been at such pains to abolish.

15 In view of the foregoing, I think that the council acted upon such a discriminatory principle in refusing the plaintiff his license, and that in so doing its resolution was wrong. (See *Jonas v. Gilbert*, 5 S.C.R. 356 ; *Rex v. Pierce*, 9 Sask. L.R. 89, 9 W.W.R. 1184, 33 W.L.R. 554 ; *Mitcham Common Conservators v. Cox; Same v. Cole*, [1911] 2 K.B. 854, 80 L.J.K.B. 1188).

16 The plaintiff's counsel in his argument went farther, and submitted that the council had, under the terms of *The Female Employment Act* , no right to refuse the plaintiff's application at all. I think that this is so.

17 The only power specifically granted to the Legislature by *The B.N.A. Act* , 1867, ch. 3, of making laws in relation to licenses is that contained in sec. 92, subsec. 9 thereof, which provides that it may do so in order to raise revenues for provincial, local and municipal purposes. It is obvious that the Legislature could not have passed the Act in question under this power, since it does not provide for the payment of any fee. That fact, as well as the nature of the subject-matter of the Act, and the fact that a penalty is recoverable from any employer who fails to comply with it, lead me to the conclusion that the Act was intended simply as a measure of police regulation.

18 That the Legislature has the power of imposing licenses as a police regulation under subsec. 15, quite apart from the power contained in subsec. 9 of sec. 92, of *The B.N.A. Act* , is the opinion of the learned author of *Lefroy's Canadian Federal System* , (1913) pp. 439-40; while in *Robson and Hugg's Municipal Manual* , at p. 344, to which I have already referred, it is further laid down that the granting of a permit, such as I deem the special license in question to be, is a mere exercise of police power. Reference may also be had to *In re Foster and Tp. of Raleigh*, 22 O.L.R. 26 , at pp. 29-30, where Mr. Justice Middleton makes some remarks about such police power.

19 It has been well established by legal decisions, that when authority is delegated by the Legislature to a municipal corporation to grant such a license, the latter must confine its actions strictly within the limits of such authority, especially when it is to be exercised in derogation of a right such as the plaintiff here had at common law of employing whom he pleased.

20 Under such circumstances, the mere authority to grant a license, without the attachment of any conditions as to its exercise, such as is conferred upon the defendant municipality by the enactment in question, does not imply that the latter may refuse such a grant, because the applicant does not or cannot fulfill conditions which the members of the municipal council think should be attached to such exercise; such, for instance, in the present case, as the personal character or racial origin of the plaintiff, or of his male employees.

21 The proper legal course for the council to take in respect of such an enactment is to assume that the Legislature has intended, as no doubt it has, that the exercise of such authority shall be unconditional. In this case, therefore, I do not see that the defendant had any discretion but to grant the plaintiff's application for a license. *Merritt v. Toronto*, 25 O.R. 256 ; in appeal 22 O.A.R. 205 ; *Hall v. Moose Jaw*, 3 Sask. L.R. 22, 12 W.L.R. 693 ; *Toronto Municipal Corpn. v. Virgo*, [1896] A.C. 88, 65 L.J.P.C. 4 ; *Rex v. Pope*, 7 Terr. L.R. 314, 4 W.L.R. 278 .

22 I find, therefore, that the resolution of the council is invalid; and that the plaintiff was and is entitled to the license applied for. The plaintiff may also, if necessary, have a mandamus requiring the defendant to grant said license, since the fact that the council has no discretion in the matter makes the change in its membership since the resolution was passed, of no consequence. The plaintiff is also entitled to his costs.

DOMINION
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PRESTON v. PRESTON & MOXLEY.
Macdonald, J.

The wife's costs are provided for by Div. R. 42. Are these costs subject to the limitation of K.B.R. 951? In my opinion they are not; that rule is only applicable where there is no divorce rule governing. It must be further observed that K.B.R. 951 governs costs only as between party and party, whereas the costs of the wife provided for by Div. R. 42 are costs as between her and her solicitor of and incidental to the hearing of the cause.

Divorce R. 43 further assists in my conclusion; it provides that:—"When on the hearing or trial of a cause the decision of the judge or the verdict of the jury is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband except such as shall be applied for and ordered to be allowed by the court at the time of such hearing or trial, provided that the court may in a meritorious case entertain an application subsequent to the hearing," and this even in a case where the wife fails in her defence.

The practice (Div. R. 42) requires the husband to deposit a sum of money or to give security to cover the wife's costs and that sum may be increased from time to time by application to the Court. It is also the practice where the wife fails to award her, or rather to her solicitor, for it is he who gets the costs, the costs properly incurred, but not exceeding the sum paid into Court or secured by the petitioner.

The practice of the old Ecclesiastical Court was different. There the rule was to tax the whole of the wife's costs before the hearing and the amount was not limited in any way to any sum which was secured or paid in; the evidence was all in writing and complete before the hearing and there was, therefore, no difficulty in ascertaining the whole costs. But with the Divorce Court (Matrimonial Causes Act, 1857 (Imp.), c. 85) the practice of oral evidence was introduced and then the costs could not be taxed beforehand. No one could say how many witnesses would be called, or what time their evidence would take, and therefore it became impossible to follow the practice of the Ecclesiastical Court. Then in the Divorce Court, as they could not tax and pay the costs before the hearing, the practice arose of making the husband pay into Court or secure a sufficient sum and following a false analogy when the wife's costs were taxed they were limited to that sum.*

There must be money provided for a wife to defend herself and a solicitor is necessary, who must look for payment, not to

*Quaere, the correctness of this statement. See Browne & Watts on Divorce, p. 216, and *Palmer* v. *Palmer*, [1914] P. 116.—ED.

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the wife, but to the husband, and therefore it was right to secure him by getting money paid into Court and finally by payment of the proper costs incurred when the suit was finally disposed of.

If the solicitor conducts the litigation properly, if he fairly investigates the charges and sees a reasonable foundation for a defence, he is not to lose his costs and the fair remuneration for his labour because he is not successful. Where the defence is fairly and reasonably conducted the solicitor ought to be paid his costs in full. This being the law in the case of an unsuccessful wife, how much stronger the reason for awarding full costs incurred being paid to the solicitor of a successful wife.

I allow the appeal and find that K.B.R. 951 does not apply to the taxation of this respondent's bill of costs against the petitioner.

Appeal allowed.

YEE CLUN v. CITY OF REGINA.

Saskatchewan King's Bench, Mackenzie, J. November 14, 1925.

Witnesses 1 A—Competency—Municipal licence—Refusal—Mayor and aldermen.

Where a municipal council has refused a licence,—in reality a permit—under the Female Employment Act, R.S.S. 1920, c. 185, the mayor and aldermen may be examined as witnesses to ascertain whether they proceeded on a mistake or misconception. [*Buccleuch* v. *Metropolitan Bd. of Wks.* (1871-2), L.R. 5 H.L. 418, applied.]

Licence II D—Discriminatory refusal—Legislation—Elimination of discrimination—Absence of discretion.

A municipal council cannot refuse a special licence under the Female Employment Act, R.S.S. 1920, c. 185, on a principle of discrimination against Chinamen, as the Legislature by successive amendments to the Act has eliminated therefrom this same discriminatory principle, nor can it refuse the licence on any ground, as the power to license in this Act is mere police power and not a discretionary matter.

ACTION to set aside a resolution of the Regina City council refusing a licence under the Female Employment Act, R.S.S. 1920, c. 185.

A. G. Mackinnon, for plaintiff; *Fraser Stewart*, for defendant.

MACKENZIE, J.:—The plaintiff brings this action to void a resolution passed by the council of the defendant city on October 7, 1924, refusing an application which he made on or about August 6, 1924, for a special licence under the Female Employment Act, R.S.S. 1920, c. 185, s. 2, to employ white women to work in his restaurant and rooming-house premises in the said city.

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The evidence discloses that the plaintiff is a Chinaman and that he is a property-owner and taxpayer in the said city, and that he has resided and carried on his business there for some years, and that he is well and favourably known.

When the application for the said licence was received by the defendant it was passed upon by the latter's licence inspector, who reported to the said council that the plaintiff was a married man living with his wife and a good citizen, as was also his partner in the said restaurant business, and recommended that the licence be granted. The application was also considered by the defendant's chief constable, who also recommended that it be granted.

These recommendations were before the said council when it took up the application for its consideration, as it did at a meeting held on October 7, aforesaid. The granting of such licence, however, was strongly opposed by the representatives of certain women's societies, who appeared and addressed the council at its said meeting. After discussion the resolution complained of was put and carried.

It appears from the evidence that no application for a licence so recommended has ever before been refused by the council, the practice having been to grant them on the recommendation of the licence inspector alone.

At the trial the mayor and aldermen who attended the said meeting were called and examined, subject to the objection of the defendant's counsel, as to the reasons put forward thereat for refusing the said application. Those who voted for granting the application were largely agreed that those who voted against it did so because the plaintiff was a Chinaman, while those who voted against it were themselves still more agreed that it was because he employed a number of Chinamen on his premises, who, owing to the restrictions placed upon them by our Federal laws, have not been permitted to bring their wives into this country. Hence, they feared, that such employees would constitute a menace to the virtue of the white women if the latter were allowed to work on the same premises with them. None of those witnesses questioned the plaintiff's own good character, while nearly all admitted that it was excellent.

In making his objection to the evidence of these witnesses, counsel for the defendant relied upon s. 210 of the City Act, R.S.S. 1920, c. 86, which provides that:—"The granting or refusing of a license to any person to carry on a particular trade, calling, business or occupation, or the revoking of a license under any of the powers conferred upon a council by this or any other Act, shall be in its discretion, and it shall not be

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bound to give any reason for such refusal or revocation, and its action shall not be open to question or review by any court."

I do not think, however, that this provision has any application to special licences granted under the Female Employment Act. The latter are really permits, and notwithstanding the terms of said s. 210, the granting thereof is still subject to review by the Courts. (Robson & Hugg's Municipal Manual, 1920, p. 344.)

Counsel for the defendant in support of his objection, also cited *Buccleuch* v. *Metropolitan Bd. of Wks.* (1871-2), L.R. 5 H.L. 418. That was an action on an award, and it was held that the arbitrator could not be asked to explain his reasons for awarding a sum in respect to any particular matter. It was suggested, however, by Baron Cleasby, at p. 436, that if the case had been one to set aside the award, the evidence of such reasons might be admissible to show whether the arbitrator had proceeded upon some mistake or misconception. So here, it seems to me, the case being one to void the council's resolution, such evidence is admissible to show that the members of the council whose vote carried the resolution, acted upon an erroneous principle in making their decision (Phipson on Evidence, 6th ed., p. 196).

In my opinion, the reason given by those members of the council who voted for the resolution, and against granting the licence, as above, is a fallacious one, because it suggests that if the plaintiff, instead of employing Chinamen, had employed an equal number of white men, matrimonially unattached, no member of the council would have considered it, though the menace to the virtue of the white women might well be greater in the latter event, since there would exist no racial antipathy to be overcome between them and the white men.

Moreover, it is clear from the evidence, that the question of the racial origin of his male employees has never been raised by the council as a reason for refusing a special licence to any white restaurant-keeper who applied for it, though it is common knowledge that white restaurant-keepers do frequently employ Chinamen on their premises, which suggests the seemingly absurd conclusion that when a Chinaman is employed by a Chinaman, however respectable the latter may be, the former is a menace to the white women's virtue, while when the white man employs him, he is not.

Such facts, when carried to their logical conclusion, go far to confirm the evidence of those witnesses who testified that the council refused the plaintiff's application because he was a

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Chinaman. I think, therefore, that I must find that the council really refused the licence in this case upon racial grounds.

It is to be observed here that the Female Employment Act, as originally passed by the Legislature, constituted a discrimination against Chinamen and other men of Oriental origin by absolutely prohibiting the employment of white women to work in any "restaurant, laundry or other place of business . . . owned, kept, or managed by any Japanese, Chinaman or other Oriental person," (1912 (Sask.), c. 17, s. 1). This enactment was amended by 1912-13 (Sask.), c. 18, by striking out the words, "Japanese" and "or other Oriental person," which left it applicable to Chinamen alone. Subsequently the said enactment was repealed altogether by 1918-19 (Sask.), c. 85, and a new enactment substituted, which has been re-enacted in its present form in R.S.S. 1920, c. 185, as follows:—"No person shall employ a white woman or girl in any capacity requiring her to reside or lodge in or to work in any restaurant or laundry, without obtaining a special license for the purpose from the municipality in which such restaurant or laundry is situated, which license the council of every municipality is hereby authorized to grant."

It will thus be seen that the Legislature abolished the discriminatory principle contained in its original enactment, and imposed the necessity of taking out a licence upon all restaurant or laundry-keepers of every race who desire to employ white women on their premises. It would be strange if the municipalities to which has been delegated authority of granting such special licences could now go on and maintain the discriminatory principle which the Legislature had been at such pains to abolish.

In view of the foregoing, I think that the council acted upon such a discriminatory principle, in refusing the plaintiff his licence, and that in so doing its resolution was wrong (See *Jonas* v. *Gilbert* (1880), 5 S.C.R. 356; *Rex* v. *Pierce* (1916), 30 D.L.R. 753, 26 Can. C.C. 140, 9 S.L.R. 89; *Mitcham Common Conservators* v. *Cox*, [1911] 2 K.B. 854).

The plaintiff's counsel in his argument went farther, and submitted that the council had, under the terms of the Female Employment Act, no right to refuse the plaintiff's application at all. I think that this is so.

The only power specifically granted to the Legislature by the B.N.A. Act, 1867, R.S.C. 1906, p. 3089, of making laws in relation to licences is that contained in s. 92 (9), which provides that it may do so in order to raise revenue "for Provincial, Local or Municipal Purposes." It is obvious that the

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Legislature could not have passed the Act in question under this power, since it does not provide for the payment of any fee. That fact, as well as the nature of the subject-matter of the Act, and the fact that a penalty is recoverable from any employer who fails to comply with it, lead me to the conclusion that the Act was intended simply as a measure of police regulation.

That the Legislature has the power of imposing licences as a police regulation under s. 92 (15), quite apart from the power contained in s. 92 (9), of the B.N.A. Act, is the opinion of the learned author of Lefroy's Canada's Federal System, 1913, pp. 439-40; while in Robson & Hugg's Municipal Manual, p. 344, to which I have already referred, it is further laid down that the granting of a permit, such as I deem the special licence in question to be, is a mere exercise of police power. Reference may also be had to *Foster* v. *Township of Raleigh* (1910), 22 O.L.R. 26, at pp. 29-30, where Middleton, J., makes some remarks about such police power.

It has been well established by legal decisions, that when authority is delegated by the Legislature to a municipal corporation to grant such a licence, the latter must confine its actions strictly within the limits of such authority, especially when it is to be exercised in derogation of a right such as the plaintiff here had at common law of employing whom he pleased.

Under such circumstances, the mere authority to grant a licence, without the attachment of any conditions as to its exercise, such as is conferred upon the defendant municipality by the enactment in question, does not imply that the latter may refuse such a grant, because the applicant does not, or cannot fulfil conditions which the members of the municipal council think should be attached to such exercise; such, for instance, in the present case, as the personal character or racial origin of the plaintiff, or of his male employees.

The proper legal course for the council to take in respect of such an enactment is to assume that the Legislature has intended, as no doubt it has, that the exercise of such authority shall be unconditional. In this case, therefore, I do not see that the defendant had any discretion but to grant the plaintiff's application for a licence (*Merritt* v. *City of Toronto*, (1894), 25 O.R. 256; 22 A.R. (Ont.) 205; *Hall* v. *City of Moose Jaw* (1910), 3 S.L.R. 22; *City of Toronto* v. *Virgo*, [1896] A.C. 88; *Rex* v. *Pope* (1906), 7 Terr. L.R. 314).

I find, therefore, that the resolution of the council is invalid; and that the plaintiff was and is entitled to the licence applied for. The plaintiff may also, if necessary, have a *mandamus* re-

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quiring the defendant to grant said licence, since the fact that the council has no discretion in the matter makes the change in its membership since the resolution was passed, of no consequence. The plaintiff is also entitled to his costs.

Judgment for the plaintiff.

FINNY v. BERGUM et al.

Saskatchewan King's Bench, Bigelow, J. October 28, 1925.

Partnership III—Trading firm—Liability of partners—Note—Signature by one partner.

All the partners in a trading partnership are liable on a note signed by one partner in the name of the firm, especially where the proceeds of the note were used for partnership purposes.

ACTION on a promissory note signed by the Torquay Motor Co. *per* O. Bergum.

J. H. McFadden, for plaintiff.

W. J. Perkins, for defendants, J. Douglas and L. Bergum.

BIGELOW, J.:—I am of the opinion that the defendants were a trading partnership and that all are liable on the note sued on, signed by O. Bergum in the firm's name.

The name of the partnership is the Torquay Motor Co., and the articles of partnership state that the three defendants agree to become partners in the garage and machine business. It seems to me a fair inference that the "machine business" must mean dealing in motor cars.

It was contended by J. Douglas and L. Bergum that it was only intended to do repair work, but when O. Bergum who did practically all the business for the partnership, ordered a carload of Star cars, the other two partners helped him unload the cars from the railway car. Douglas admits this and as to L. Bergum I accept the evidence of the station agent. The two partners in question then were not only aware that O. Bergum was buying the carload of automobiles, but they helped him in the business.

Another way in which Douglas took an active part in the business of dealing in automobiles. O. Bergum sold one of the Star cars to C. Hofseth on October 6, 1923 and took a lien note payable to the partnership. About a month after that and before the money was due, Douglas went to see Hofseth and pressed him for payment of the note. Again later, on May 26, 1924, Douglas acting for the partnership and in the name of the partnership, assigned Hofseth's note to the Sterling Securities Corp., and also gave a bill of sale of a Maxwell car to the Saskatchewan Motor Co., Ltd. These things show that the partnership was engaged in the business of buying and selling cars.

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Section 7 of the Partnership Act, R.S.S. 1920, c. 196, provides:—"Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner."

I find that borrowing money for a partnership business was the usual way of carrying on the kind of business in question, in fact the ledger sheet of the bank shows that the partnership borrowed money from the bank from time to time for the purpose of the business. The bank took the precaution to have an agreement signed by the three parties that any one of them could sign cheques for the partnership. The articles of partnership provide that all notes in connection with the partnership business, shall be signed and endorsed by all the partners, but this provision in my opinion, would not make any difference as far as the plaintiff is concerned unless he had knowledge of it. See Falconbridge on Banking, 3rd ed., p. 793:—"A partner in a trading firm has *prima facie* authority to bind the firm by drawing, endorsing or accepting bills in the firm name for partnership purposes."

Nor does the fact that the plaintiff did not know that L. Bergum and J. Douglas were partners when he loaned the money to O. Bergum, make any difference (*Western Commercial Co. v. Murr & Mutz* (1914), 29 W.L.R. 945).

Even if the partnership were not liable on the note, I am satisfied that the money was used for the purpose of the partnership, and defendants would be liable on that ground (*Reid v. Rigby & Co.*, [1894] 2 Q.B. 40).

The plaintiff will have judgment for the amount claimed and costs.

Judgment for the plaintiff.

McLEAN v. BADGER et al.

Saskatchewan King's Bench, MacDonald, J. October 31, 1925.

Mortgages VI G—Enforcement—Sale—Order nisi for foreclosure—Practice.

The Court may make an order for sale of land subject to a mortgage under the Land Titles Act, R.S.S. 1920, c. 67, containing a power of sale, in respect of which an order *nisi* for foreclosure has been made, at any time before final order of foreclosure.