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.

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.

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 LAW REPORTS CITED [1925] D.L.R.

REPORTS OF ALL REPORTABLE CANADIAN CASES FROM ALL THE COURTS OF CANADA INCLUD-ING ALL DECISIONS OF THE SUPREME COURT OF CANADA AND ALL CANA-DIAN DECISIONS OF THE PRIVY COUNCIL.

VOL. 4

### [1925]

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# DOMINION LAW REPORTS. [ [1925] 4 D.L.R.

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

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

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[1920] the wife, but to the husband, and therefore it was right to se-the him by getting money paid into Court and finally by the wife, but to the money paid into Court and finally by se. the him by getting money costs incurred when the suit was e the him by getting cure him by getting cure him the proper costs incurred when the suit was finally ment of the proper costs the litigation was finally

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I allow the upp I allow the upp the taxation of this respondent's bill of costs against the the tioner. petitioner.

Appeal allowed

### YEE CLUN V. CITY OF REGINA.

saskatchewan King's Bench, Mackenzie, J. November 14, 1925. Saskarcen 14, 1925. Witnesses 1 A-Competency-Municipal licence-Refusal-Mayor and

where a municipal council has refused a licence, in reality a where a month of Female Employment Act, R.S.S. 1920, c. 185, permit—under and aldermen may be examined as witnesson to 185, permit—under and aldermen may be examined as witnesses to ascerthe mayor and proceeded on a mistake or misconception tain 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 A multicipation against Chinamen, as the Legislature of Female Data 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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# DOMINION LAW REPORTS. [ [1925] 4 D.L.R.

The evidence discloses that the plaintiff is a Chinaman and The evidence discloses that the plaintiff is a Chinaman and The evidence discloses that and taxpayer in the said city, 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 that he has resided and favourably known. that he has resided vears, and that he is well and favourably known.

that he has been and that he is well and some some rears, and that he is well and for the said licence was received by when the application for the upon by the latter's licence in by 1925. Vears, and application for upon by the latter's licence inspectived by When the application for the said council that the plaintig bec. YEE CLUS the defendant it was passed to uncil that the plaintiff by t. t.r, who reported to the said council that the plaintiff way CITY OF t.r, who reported man living with his wife and a good citizen, as way VER CLUS the defend reported to the his wife and a good citizen, as was CITY OF the man living with his wife and a good citizen, as was REGINA. a married man living the said restaurant business, and was CITY OF 10.1, a married man living in the said restaurant business, and recommended that the licence be granted. The application was mended that the defendant's chief constable, where the defendant's chief constable was a stable was a stab a married in the backgranted. The application was also mended that the licence be granted. The application was also mended that the defendant's chief constable, who also realso I. also had that the ficence of a chief constable, who also recome also recome considered by the defendant's chief constable, who also recome

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

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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

# [1925] 4 D.L.R.] DOMINION LAW REPORTS.

19205 bound to give any reason for such refusal or revocation, and bound to shall not be open to question or review by any on and bound to give any be open to question or revocation, and its action shall not be open to question or review by any court."

action shall in a special licences granted under the Female R. appli-I do not think, I do not think, i do not the special licences granted under the Female Sany appli-cation to special licences granted under the Female Employation to special fitter are really permits, and notwithstanding the Employ. 1925. ment Act. The latter are really permits, and notwithstanding the YEE CLUS ment Act. The motor of said s. 210, the granting thereof is still subject to YEE ent Act, said S. 210, C. Robson & Hugg's Still subject to VER CLUN terms of said Courts. (Robson & Hugg's Municipal Manual, CITY or review 5344.) 1920, p. 344.)

20, p. 344.) 20, p. 344.) Counsel for the defendant in support of his objection, also Mackenzie, J. Counsel for the Metropolitan Bd. of Wks. (1871-2), L.R. 5eited 118. That was an action on an award, and it was 5 eited Buccleater was an action on an award, and it was held H.L. the arbitrator could not be asked to explain his H.L. 418. That could not be asked to explain his reasons that the arbitration in respect to any particular his reasons for awarding a sum in respect to any particular matter. It for awarding the however, by Baron Cleasby, at p. 436, that if was suggested, was suggested, the case had been one to set aside the award, the evidence of the case might be admissible to show whether the the case had be admissible to show whether the evidence of such reasons might be admissible to show whether the arbitrasuch reasons to me, the case being one to void the tor had proceed me, the case being one to void the council's here, it such evidence is admissible to show that d here, it seems evidence is admissible to show that the council's resolution, such evidence is admissible to show that the memresolution, successful whose vote carried the resolution, acted bers of the containing their decision, acted upon an erroneous principle in making their decision (Phipson upon idence, 6th ed., p. 196). on Evidence, 6th ed., p. 196).

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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

# DOMINION LAW REPORTS. [ [1925] 4 D.L.R.

Chinaman. I think, therefore, that I must find that the council Chinaman. I think, therefore in this case upon racial ground ground Chinaman. I think, there in this case upon racial grounds, really refused the licence in that the Female Employments, Chinaman. Chinaman. really refused the licence that the Female Employments. really refused be observed here that the Female Employment Act It is to be observed by the Legislature, constituted a disc Act really read by the Legislature, constituted a discrimination of originally passed by the Legislature of Oriental originally passed by the employment of white in against Chinamen and other men of white in the employment of the em It is to passed by the and other men of Oriental origin. as originally passed by the and other men of Oriental origin. nation against Chinamen and other men of white women to by as original chinamen and by any Japanese. Chinameters work YEE CLUN absolutely promoting undry or other place of business *v*. *v* YEE CLU: absolute restaurant, latin y any Japanese, Chinaman or work *v. city of owned, kept, or managed by any Japanese, Chinaman or other REGINA.* owned, kept, or managed by any Japanese, Chinaman or other *city of owned, kept, or managed (Sask.), c. 17, s. 1).* This enact, *other city of owned, kept, or managed (Sask.), c. 18, by stail of ther* CITY OF in any kept, or manager (Sask.), c. 17, s. 1). This enactment REGINA. Oriental person, ' (1912 (Sask.), c. 18, by striking ont other Mackenzle, J. Oriental person, ' and ' or other Oriental person '' ont owned, her (1912) (1912) (Sask.), c. 18, by striking out the Oriental person, '1912-13 (Sask.), c. 18, by striking out the was amended by '1912-13 (or other Oriental person,' which the Was amended by 1912-10 (or other Oriental person," which the words, "Japanese" and "or other Subsequently the said left was and Japanese, and on one Subsequently the said left words, "Japanese and chinamen alone. Subsequently the said left it applicable to Chinamen alone by 1918-19 (Sask.), c. 85 enact. words, it applicable to Chinamen by 1918-19 (Sask.), c. 85, enact. ment was repealed altogether by 1918-19 (Sask.), c. 85, and a ment was repealed substituted, which has been re-enacted in a it applied altogether, which has been re-enacted in and a ment was repealed altogether, which has been re-enacted in and a new enactment substituted, c. 185, as follows:-""No in its new enactment substitution of the state of the substitution of the present form in h.g. or woman or girl in any capacity requiring shall employ a white woman or to work in any restaurant on line shall employ a white in or to work in any restaurant or laun, her to reside or lodge in or to special license for the purpos her to reside or longe a special license for the purpose from dry, without obtaining a such restaurant or laundry is from dry, without obtaining dry, without obtaining the municipality in which such restaurant or laundry is situa. the municipality in the council of every municipality is situa. ted, which license the council of every municipality is hereby

authorized to grant." uthorized to gran that the Legislature abolished the dis. It will thus be seen that in its original enactment dis. It will thus be seen contained in its original enactment, dis. criminatory principle contained out a licence upon all rest, and criminatory principle of taking out a licence upon all restaurant imposed the necessity of taking race who desire to employ imposed the necessity of every race who desire to employ white or laundry-keepers of every race who desire to employ white or laundry-keepers of white women on their premises. It would be strange if the women on then provide has been delegated authority of grant. municipalities to high could now go on and maintain the ing such special include which the Legislature had been at

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# [1925] 4 D.L.R.] DOMINION LAW REPORTS.

[1920] Legislature could not have passed the Act in question under pegislature since it does not provide for the payment under Legislature counce it does not provide for the payment under this power, as well as the nature of the subject-mate of any power, since it well as the nature of the subject-matter of any That fact, as well as the nature of the subject-matter of this That fact, and fee. Act, and the fact that a penalty is recoverable from any the lover who fails to comply with it, lead me to the from any e. Act, and the fact comply with it, lead me to the conclusion 1925. the loyer who fails to comply as a measure of police regu.  $Y_{EZ}$  CLUM

tion. That the Legislature has the power of imposing licences as a That mulation under s. 92 (15), quite apart from the That the Legislation under s. 92 (15), quite apart from the power REGINA. police regulation s. 92 (9), of the B.N.A. Act, is the opinion of the Mackenzle, J. police regulation of 19, of the B.N.A. Act, is the opinion of the power contained in s. 92 (9), of the B.N.A. Act, is the opinion of the pontained in S. of Lefroy's Canada's Federal System, 1913, contained author of Lefroy's Canada's Federal System, 1913, learned author, while in Robson & Hugg's Municipal Mar, 1913, learned author of a Robson & Hugg's Municipal System, 1913, 1913, 439-40; while in Robson & Hugg's Municipal Manual, 1913, 1914, to which I have already referred, it is further laid down 1914, to granting of a permit, such as I deem the special is 344, to which of a permit, such as I deem the special down that the granting of a mere exercise of police power D licence that the grantenes is a mere exercise of police power. Reference in question to be, is a mere exercise of police power. Reference in question to be had to Foster v. Township of Raleigh (1910), 22 may also be had to Foster v. Middleton, J., makes may also be may also be may also be may 29-30, where Middleton, J., makes some re-0.L.R. 26, at pp. 29-30, where Middleton, J., makes some remarks about such police power.

arks about the stablished by legal decisions, that when It has been delegated by the Legislature to a row that when It has been delegated by the Legislature to a municipal cor-authority is delegated by the Licence, the latter municipal cor-

authority is grant such a licence, the latter must confine its poration to be within the limits of such authority, especially actions structure be exercised in derogation of a right such as the when it is to be exercised in derogation of a right such as the when it is to had at common law of employing whom he pleased. aintiff field in the attachment of any conditions to grant a licence, without the attachment of any conditions as to its exerlicence, "In as is conferred upon the defendant municipality by the enactment in question, does not imply that the latter may the enaction a grant, because the applicant does not, or cannot refuse such a grant, the members of the fulfil conditions which the members of the municipal council fulfil council 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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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

Co. per O. Bergum.

dealing in motor cars. ealing in motor canded by J. Douglas and L. Bergum that it was It was contended by J. mork, but when O. Bergum that it was It was contended to do repair work, but when O. Bergum who did only intended to do do did practically all the business for the partnership, ordered a carload of Star cars, the other two partners helped him unload the cars of Star cars, the cars, Douglas admits this and as to L. Bergun from the railway car. Douglas admits this and as to L. Bergun from the railway of the station agent. The two partners in I accept the evidence of the station agent. O. Bergum I accept the evidence only aware that O. Bergum was buying question then were not only aware they helped him in the buying question then automobiles, but they helped him in the business, the carload of automobiles, Douglas, took an active 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 Sask. atchewan Motor Co., Ltd. These things show that the partner. ship was engaged in the business of buying and selling cars.

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quiring the defendant to grant said licence, since the fact that quiring the defendant to get in the matter makes the fact that the council has no discretion in the matter makes the change in the council has no discretion was passed, of no council has a since the resolution was passed, of no council has no council has a since the resolution was passed, of no council has no council has a since the resolution was passed, of no council has no council has a since the resolution was passed, of no council has no council has a since the resolution was passed, of no council has a since the resolution was passed, of no council has a since the resolution was passed. quiring the has no discretion was passed, the change in the council has no discretion was passed, of  $n_0$  change in the membership since the resolution was passed, of  $n_0$  consecutes the change in the plaintiff is also entitled to his costs. its membership quence. The plaintiff is also entitled to his costs. Juda Judgment for the plaintiff

#### FINNY v. BERGUM et al.

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

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

ACTION on a promissory note signed by the Torquay Motor

J. H. McFadden, for plaintiff.

J. H. McFadden, for defendants, J. Douglas and L. Bergum, W. J. Perkins, for defendants opinion that the defendants. W. J. Perkins, for definition that the defendants W. Bergum. BIGELOW, J.:-I am of the opinion that the defendants were a BIGELOW, J.:-I and that all are liable on the note sued on trading partnership and that firm's name. signed by O. Bergum in the firm's name.

gned by O. Berguin , The name of the partnership is the Torquay Motor Co., and The name of the partnership state that the three defendant, and The name of the partnership state that the three defendants, and the articles of partners in the garage and machine business. L the articles of partners in the garage and machine business. It seems to become partners in forence that the "machine business" must seems to become partners increase that the "machine business" must mean to me a fair inference that the "machine business" must mean

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19200 19200 7 of the Partnership Act, R.S.S. 1920, c. 196, pro-Section 7 of the partner is an agent of the firm and his prosection 7 of the partner is an agent of the firm and his other section Every partner who does and the partner who does an vides: for the purpose of the business of the partnership; vides. for the partner who does any act for carrying on partners of every partner who does any act for carrying on and the usual way business of the kind carried on by the on particle acts of every business of the kind carried on by the firm and the usual way business of the kind carried on by the firm in the usual is a member, bind the firm and his partners and the usual way on the solution of which he is a member, bind the firm and his partners, unless of which he is a cting has in fact no authority to act for the firm of which he is a ding has in fact no authority to act for the firm of partner so acting matter, and the person with whom he is the firm the particular matter, and the person with whom he is deal. the particulation in the particulation with whom he is deal. in either knows that he has no authority, or does not know ing either him to be a partner." or believe him to be a partner."

believe him to believe him borrowing money for a partnership business was I find that borrowing on the kind of business in I find that used of carrying on the kind of business in question, the usual way of sheet of the bank shows that the partnership in fact the ledger sheet of the bank from time to time for the in fact the neuger from the bank from time to time for the partnership horrowed money from the bank took the precaution to the purborrowed money. The bank took the precaution to have any pose of the signed by the three parties that any one of them agreement cheques for the partnership. The articles of them agreement sign cheques for the partnership. The articles of them could sign or that all notes in connection with the partcould sign chief that all notes in connection with the part-nership provide that be signed and endorsed by all the partnernership provide signed and endorsed by all the partner-ship business, shall be signed and endorsed by all the partners, ship business, so in my opinion, would not make any difference but this provision in my opinion, would not make any difference but this provide any difference as far as the plaintiff is concerned unless he had knowledge of as far as the plaintiff on Banking, 3rd ed., p. 793. as far as the radius on Banking, 3rd ed., p. 793:-"A partner it. See Falconbridge on Banking, 3rd ed., p. 793:-"A partner it. See Fading firm has prima facie authority to bind the firm by in a trading endorsing or accepting bills in the firm name for drawing, endorses." 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 gum and difference (Western Commercial Co. 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 partsatisfied 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 VIG-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.

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Sask.

K.B.

1925.