Rex v. Clun

Between
Rex, and
Yee Clun et al.

[1928] S.J. No. 76

[1929] 1 D.L.R. 194

Saskatchewan King's Bench

Bigelow J.
(In Chambers)

November 16, 1928.

Counsel:

A.G. MacKinnon, K.C., for appellants.

B.D. Hogarth, for Crown.

---

1 **BIGELOW J.**:-- On September 13, 1928, an information was laid against the appellants by the respondent:--

2 For that Yee Clun and Yee Low carrying on business under the firm, name and style of Sam Mon Coffee and Tea Co. of the City of Regina, in the Province of Saskatchewan, did on July 31, 1928, fail to make a return to the collector of customs and excise showing the total amount of their taxable sales and the tax payable thereon for the month of July, 1928, as required of them by virtue of the provisions of the Special War Revenue Act, R.S.C. 1927, c. 179, and amendments and regulations made thereunder.

3 At the hearing evidence was given by one Bullard and Eley, and on that evidence the Justice of the Peace convicted the accused of the offence charged. It is admitted that there is no such offence set out in the Act referred to, but it is claimed that regulations made by a minister under s. 99 of the Act make the facts proved in evidence an offence.

4 No proof was given of any such regulations of a minister: *i.e.*, no document was tendered in evidence or produced to the Court and made part of the record. This objection was taken by the accused at the trial, but no effect was given to it by the Justice of the Peace; and it is on this ground principally that the accused obtained a stated case.

5 The Justice of the Peace in his stated case states:--

> The grounds upon which I support the proceedings questioned are as follows:--
>
> (1) That I held that it was not necessary to put in evidence the regulations which the accused were charged with having contravened.
> (2) That the fact of a copy of regulations made under the authority of the Minister of Customs and Excise and dated 1925 purporting to be printed by the King's printer being in Court in the possession of counsel for the prosecution and available for my perusal and the further fact that the regulations were referred to by the witness Eley was sufficient for the purpose of proving the said regulations. Attached hereto is a copy of the evidence given at the trial.

6 I have perused the evidence of the witness Eley referred to by the Justice of the Peace and can find no evidence whatever that the regulations in question were referred to by the witness Eley.

7 The question then is, was it sufficient that such regulations should be in the possession of counsel for the prosecution and available for the perusal of the Justice of the Peace?

8 The method of proving such regulations is provided by s. 21 of the Canada Evidence Act, R.S.C. 1927, c. 59, s. 21, which reads as follows:--

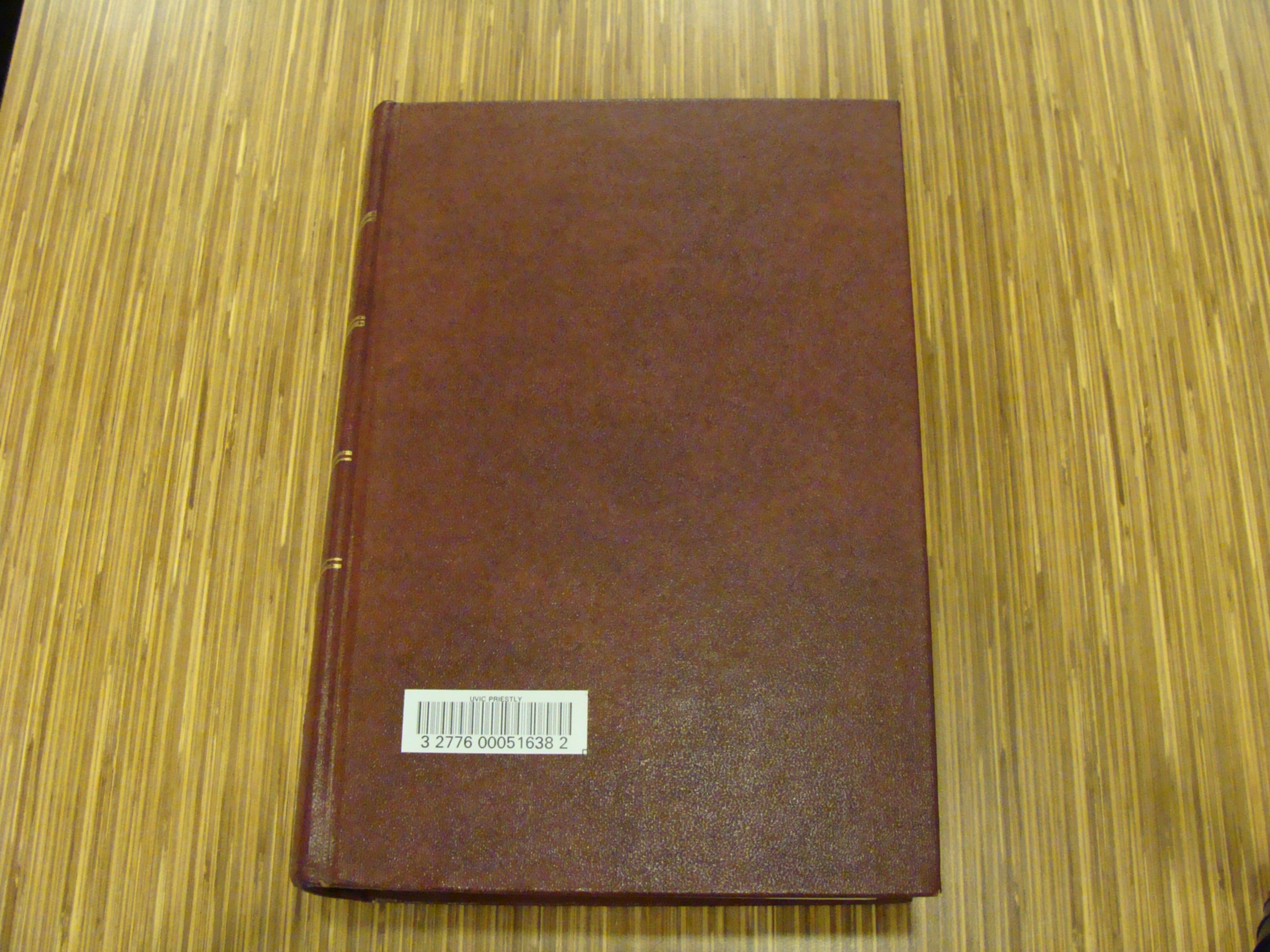
> Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada, may be given in all or any of the modes following, that is to say:--
>
> (*a)* By the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to contain a copy of such proclamation, order, regulation, or appointment or a notice thereof;
>
> (*b)* By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer for Canada; and
>
> (*c)* By the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the King's Privy Council for Canada;
>
> and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides.

9 The only part of that section relied upon by the prosecution is s-s. (*b)*. Counsel argues that he did produce a copy of such regulation by having it in his possession during the argument. I cannot

find any authority on the interpretation of the word "production" in such a phrase, but I would consider that it means that it must be produced as evidence and made part of the record of the Court. In any event I cannot think that it was produced when counsel only had it in his possession and no opportunity was given to the accused to peruse it or object to it. It might be that there was some valid objection to the document produced. Surely accused's counsel should have a chance to object to it! See *Reg. v. Wallace* (1866), 10 Cox C.C. 500. In that case a gazette was made evidence of certain facts if it purported to be printed by the Queen's printer or by the Queen's authority, but where the gazette purported to be printed merely by authority it was rejected. That might or might not apply in the present case, because a copy of the regulation can only be proved by its production if it purports to be printed by the King's printer for Canada; and the suggested regulation not being part of the evidence of the case, not even having been shown to the accused's counsel as far as we know, we have no way of knowing whether the suggested regulation complied with the section in question.

10 My conclusion is that the Justice of the Peace was wrong in holding that the evidence adduced was sufficient to support a conviction; and the conviction is hereby quashed, with costs.

11 The same result applies to a second stated case between the same parties for an offence alleged to have taken place on August 31, 1928.



DOMINION
LAW REPORTS

CITED [1929] D.L.R.

REPORTS OF ALL REPORTABLE CANADIAN CASES FROM ALL THE COURTS OF CANADA INCLUDING ALL DECISIONS OF THE SUPREME COURT OF CANADA AND ALL CANADIAN DECISIONS OF THE PRIVY COUNCIL.

VOL. 1

[1929]

Editor-in-Chief
R. M. WILLES CHITTY
Editors
C. B. LABATT
Editor of Patent and Trade Mark Cases
RUSSEL S. SMART, K. C.

ANNOTATED

Annotations or briefs, prepared by experts in their respective branches of law, covering the whole law of Canada are included in the D.L.R. to date. A consolidated table of Annotations is published at the beginning of each completed volume.

CANADA
CANADA LAW BOOK CO., LTD.
417 Terminal Bldg., 207 Queen's Quay.
Foot of York St.
TORONTO
1929.

Ont.
S.C.
1928.
MAITLAND v. PEMBROKE.
Fisher, J.

(a) Maintaining a sidewalk covered with slippery ice and snow without employing the usual method of sanding to lessen the danger.

(b) By permitting children making a slide of the sidewalk with sleighs, etc., and thereby creating a depression or trap therein which was dangerous to pedestrians and a failure to erect a fence or other barrier to prevent children using the sidewalk as indicated.

The defendants cannot escape for want of notice of the danger of the place in question, because the evidence is conclusive they had actual notice for a long period prior to the accident, apart altogether from the notification by citizens of the danger, also of the fact that several accidents had actually happened to pedestrians at this point.

There will be judgment, with costs, in favour of the plaintiff for $2,251.25, made up as follows:—$451.25 for out-of-pocket expenses, $300 for loss of business, and $1,500 for personal injuries.

Judgment for the plaintiff.

REX v. YEE CLUN et al.

Sask.
K.B.
1928.

Saskatchewan King's Bench, Bigelow, J., in Chambers. November 16, 1928.

Evidence IV B—Departmental regulations—Production of copy—What necessary.

Regulations made under any statute of Canada may be proved by production of a copy printed by the King's Printer, but such regulations are not produced where a copy of them was merely in possession of Crown counsel at the trial and not in any way put in evidence so that the accused had the opportunity to object to them.

APPEAL by the accused from their convictions on two charges by a Justice, on the information of one Eley. Reversed.

A. G. MacKinnon, K.C., for appellants.

B. D. Hogarth, for Crown.

BIGELOW, J.:—On September 13, 1928, an information was laid against the appellants by the respondent:—

"For that Yee Clun and Yee Low carrying on business under the firm, name and style of Sam Mon Coffee and Tea Co. of the City of Regina, in the Province of Saskatchewan, did on July 31, 1928, fail to make a return to the collector of customs and excise showing the total amount of their taxable sales and the tax payable thereon for the month of July, 1928, as required of them by virtue of the provisions of the Special War

Sask.
K.B.
1928.
REX v. YEE CLUN.
Bigelow, J.

Revenue Act, R.S.C. 1927, c. 179, and amendments and regulations made thereunder."

At the hearing evidence was given by one Bullard and Eley, and on that evidence the Justice of the Peace convicted the accused of the offence charged. It is admitted that there is no such offence set out in the Act referred to, but it is claimed that regulations made by a minister under s. 99 of the Act make the facts proved in evidence an offence.

No proof was given of any such regulations of a minister: *i.e.*, no document was tendered in evidence or produced to the Court and made part of the record. This objection was taken by the accused at the trial, but no effect was given to it by the Justice of the Peace; and it is on this ground principally that the accused obtained a stated case.

The Justice of the Peace in his stated case states:—

"The grounds upon which I support the proceedings questioned are as follows:—

"(1) That I held that it was not necessary to put in evidence the regulations which the accused were charged with having contravened.

"(2) That the fact of a copy of regulations made under the authority of the Minister of Customs and Excise and dated 1925 purporting to be printed by the King's printer being in Court in the possession of counsel for the prosecution and available for my perusal and the further fact that the regulations were referred to by the witness Eley was sufficient for the purpose of proving the said regulations. Attached hereto is a copy of the evidence given at the trial."

I have perused the evidence of the witness Eley referred to by the Justice of the Peace and can find no evidence whatever that the regulations in question were referred to by the witness Eley.

The question then is, was it sufficient that such regulations should be in the possession of counsel for the prosecution and available for the perusal of the Justice of the Peace?

The method of proving such regulations is provided by s. 21 of the Canada Evidence Act, R.S.C. 1927, c. 59, s. 21, which reads as follows:—

"Evidence of any proclamation, order, regulation or appointment, made or issued by the Governor General or by the Governor in Council, or by or under the authority of any minister or head of any department of the Government of Canada, may be given in all or any of the modes following, that is to say:—

"(a) By the production of a copy of the *Canada Gazette*, or a volume of the Acts of the Parliament of Canada purporting to

Sask.
K.B.
1928.
REX
v.
YEE CLUN.
Bigelow, J.

contain a copy of such proclamation, order, regulation, or appointment or a notice thereof;

"(b) By the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer for Canada; and

"(c) By the production, in the case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor in Council, of a copy or extract purporting to be certified to be true by the clerk, or assistant or acting clerk of the King's Privy Council for Canada; and in the case of any order, regulation or appointment made or issued by or under the authority of any such minister or head of a department, by the production of a copy or extract purporting to be certified to be true by the minister, or by his deputy or acting deputy, or by the secretary or acting secretary of the department over which he presides."

The only part of that section relied upon by the prosecution is s-s. (*b*). Counsel argues that he did produce a copy of such regulation by having it in his possession during the argument. I cannot find any authority on the interpretation of the word "production" in such a phrase, but I would consider that it means that it must be produced as evidence and made part of the record of the Court. In any event I cannot think that it was produced when counsel only had it in his possession and no opportunity was given to the accused to peruse it or object to it. It might be that there was some valid objection to the document produced. Surely accused's counsel should have a chance to object to it! *See Reg.* v. *Wallace* (1866), 10 Cox C.C. 500. In that case a gazette was made evidence of certain facts if it purported to be printed by the Queen's printer or by the Queen's authority, but where the gazette purported to be printed merely by authority it was rejected. That might or might not apply in the present case, because a copy of the regulation can only be proved by its production if it purports to be printed by the King's printer for Canada; and the suggested regulation not being part of the evidence of the case, not even having been shown to the accused's counsel as far as we know, we have no way of knowing whether the suggested regulation complied with the section in question.

My conclusion is that the Justice of the Peace was wrong in holding that the evidence adduced was sufficient to support a conviction; and the conviction is hereby quashed, with costs.

The same result applies to a second stated case between the same parties for an offence alleged to have taken place on August 31, 1928.

Convictions quashed.

PERRON v. VILLAGE OF THE SACRED HEART OF JESUS.

Can.
S.C.
1928.

Supreme Court of Canada, Anglin, C.J.C., Duff, Mignault, Newcombe and Rinfret, JJ. February 21, 1928.

Mandamus I D—Payment of debt by third party—Authority.

APPEAL by the plaintiff from the judgment of the Quebec Court of K.B. (1927), 44 Que. K.B. 400, affirming the judgment of Letellier, J. Affirmed.

L. Morin, K.C., for appellants.

P. H. Bouffard, K.C., for respondent.

The judgment of the Court was delivered by

ANGLIN, C.J.C.:—The plaintiffs appellants seek a mandamus to compel the defendant municipality to accept payment by a third party of an alleged debt of its secretary-treasurer. In order to succeed they must make out a case within art. 1141 C.C. (Que.), or establish agency of such third party in making the payment for the alleged debtor.

Two essential elements appear to be lacking in the proof necessary to bring the case within art. 1141. The debt of the secretary-treasurer is not admitted by the defendant and it is contested by himself. Unless such debt is established it cannot be said that the payment is for the benefit of the alleged debtor.

The payment by the third party was not made by him as representative or as agent of the debtor. He had no authority to represent the debtor. This is clearly established by the evidence. And the only possible inference from the proof before us is that the third party did not profess to act in the capacity of agent for the alleged debtor but, on the contrary, made the payment avowedly on his own behalf, whether intending it to be taken in satisfaction of any claim against the debtor or, as seems more probable, to be held as a deposit, or guarantee, for the eventual settlement of any such claim by the debtor himself.

It is urged that this payment was subsequently ratified by the debtor and, therefore, is as binding upon him and the respondent as if made by his authority. The alleged act of ratification, however, is quite consistent with the debtor's position denying the existence of the debt and with the payment itself having been made not on his behalf but by the third party for his own account. Moreover, it is trite law that liability by virtue of ratification can arise only when in doing the act to be ratified the agent purported to act as such and on behalf of the principal.

Upon these grounds we think it quite clear that neither under