

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF an Application
 for an Order of Mandamus;

BETWEEN:

Bromley & Son Ltd.,

Applicant

- and -

Clerk of the Police Magistrate's Court

Respondent

REASONS FOR JUDGMENT OF THE HONOURABLE
 MR. JUSTICE W. G. MORROW

MORROW J.

This matter came on before me as an application for an order of ~~mandamus~~ requiring the Clerk of the Police Magistrate's Court to issue a Small Debt Summons in the amount of \$295.30 ~~covering~~ ^{claimed by} goods sold and delivered, with the Applicant as plaintiff, ~~against~~ ^{against} the John McLean, as defendant. ^{In goods sold and delivered.} The Clerk, Alexander Stewart, refused, giving as his reason that Sections 44 to 56 of the *Judicature Ordinance*, R.O.N.W.T. 1956, c. 54, made provision for Small Debt Officials in the Northwest Territories, and that by Section 44 their jurisdiction was restricted to debts not exceeding ^{two hundred dollars.} ~~\$200.00.~~ ^{Further} He ~~there~~ took the position that the present Small Claims Procedure is contained in Part 48 of ^{the Alberta Rules of Court 1968,} ~~the Supreme Court Rules~~ which came into effect in Alberta on January 1st, 1969, did not apply.

Counsel for the Applicant argued that the ^{freight} ~~Alberta~~ Rules of Court ~~applied to above~~ governed, and that, accordingly, the Small Debt Summons should have been accepted.

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 Section 13 of the *Judicature Ordinance*, provides that :
 "... ~~x~~ the Rules of the Supreme Court of Alberta in force from
 time to time shall, *mutatis mutandis*, be followed in all causes,
 matters and proceedings, ~~x~~.... ~~x~~ There is also provision for
 the ~~Commissioner~~ ^{*Judges of the Court*} to ~~himself~~ make rules of practice and procedure,
 but this has not taken place here.

The Rules in force and effect, ^{*s*} at the time Section 13,
^{*supra*} ~~above~~, became effective, ^{*Alberta Rules of Court 1944*} were the Rules of the Supreme Court of
~~Alberta, 1944~~, as authorized by Order in Council 716/44, and as
 consolidated by Alberta Regulation 561/57.

Order 48 ^{*H. these*} under the above rules sets forth the Small Debt
 procedure to be followed and includes Rule 719, which permits claims
 to be filed in respect to demands of debt, account, money demand,
 actions for tort or damages, and breach of contract where the amount
 claimed "Does not exceed \$200.00."

Although the Territorial Court, as it is constituted
 under Sections 20 to 27, inclusive, of the *Northwest Territories Act*,
 in addition to being a superior court of record, has and does exercise
 the powers equivalent to a district court in Alberta, ^{*u*} In my opinion
 the effect of the sections making provision for Police Magistrates,
 including Section 34, ^{*supra*} is to provide a choice of court to
 the litigant in respect of the limited classes of claims as therein
 set out. This choice was undoubtedly given to help keep down costs,
 and ^{*blue*} to also take advantage of Magistrate Court circuits, which are
 made frequently throughout the Territories. It is a laudable con-
 cept, and I would be reluctant to disturb the practice, which has

been followed practically from the inception of the Court.

There is no doubt in my mind that the Police Magistrate's Court by virtue of the ~~above~~ ^{above-mentioned Act} statute and Ordinance had and now has the power to hear ~~Small Debt~~ ^{Small Debt} Actions. There remains only the question of whether this jurisdiction is to be exercised under the ~~1944~~ ^{Alberta Rules}, or under the new 1968 Rules, the difference being from ~~\$200.00~~ ^{two hundred dollars} to ~~\$500.00~~ ^{five hundred dollars}.

When the new Alberta Rules of Court, 1968, came into effect on January 1, 1969, ^{at} ~~by~~ ^{pursuant to Order in Council} O/C 2208/68, the jurisdiction of the Court in Alberta in respect to small claims, (as they are now called), was increased to ~~\$500.00~~ ^{five hundred dollars} by Rule 659.

Rule 2 of the new Alberta Rules provided for the rescinding of the previous Rules.

The use of the words "from time to time shall, mutatis mutandis" in Section 13 of the *Judicature Ordinance*, (supra), in my opinion constitutes a deliberate intention to make the Rules of the ~~Supreme Court of Alberta~~ ^{Alberta Rules of Court}, the Rules for the Northwest Territories as they ~~may~~ ^{might} be enacted, or promulgated in the future, and not a fixing of them as at a given date. See *Scott v. Montgomery*, [1920] 1 W.W.R. 140, where Dennistoun, J.A. at page 145 interprets a similar phrase in respect to a contract. If the Commissioner in Council had intended the Rules as they stood at the date the *Judicature Ordinance* came into effect, surely, different language would have been used, as for example in section 17 of the *Northwest Territories Act*, where such effect was obtained by the phrase "as such laws existed."

In conclusion, therefore, I find that the Small Debt Claims Procedure as contained in Part 48 of the Alberta Rules of Court, 1968, applies to the Police Magistrate's Court, and in consequence, an Order of Mandamus will go directing the Clerk of that Court to issue the Small Debt Summons as sought. There will be no costs.

W. G. Morrow
W. G. Morrow,
J.T.C.

Yellowknife, N.W.T.
January 12, 1970.

Counsel:

Applicant: Brian Purdy *for applicant*
Respondent: F. G. Smith *for respondent*