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Dec. 7, 16.

THE QUEEN *v.* THE LONDON COUNTY COUNCIL.
EX PARTE AKKERSDYK. EX PARTE FERMENIA.

Local Government—County Council—Music and Dancing Licence—Hearing of Application—Judicial Proceedings—Duty of Council—Appearance by Member of Council in Opposition to Application—Invalidity of Proceedings.

The county council in determining applications for music and dancing licences are acting judicially, and are bound by the same principles as are binding on justices in determining questions which come before them for judicial decision.

The London County Council delegated to a committee of their body the hearing of applications for music and dancing licences. The committee by a majority recommended that a licence which had been applied for should not be granted. The applicant thereupon applied to the county council for a licence. At the hearing before the county council certain members of that body, who were also members of the committee and had voted in the majority against granting a licence at the hearing before the committee, instructed counsel to represent them before the county council and oppose the application for a licence. The councillors so instructing counsel were present at the hearing, but did not vote. The council by a majority refused the application for a licence:—

Held, that the presence at the hearing of those members of the county council who had instructed counsel to oppose the application vitiated the proceedings, and a rule for a mandamus to hear and determine the application according to law was accordingly made absolute.

A RULE nisi had been granted, on the application of John Akkersdyk, calling upon the London County Council to shew cause why a writ of mandamus should not issue commanding the council to hear and determine according to law the application of Akkersdyk for a licence for music and dancing in respect of his premises, the Angel and Crown public-house.

A similar rule had been granted on the application of Fermentia, the landlord of a public-house called the Rose and Crown, and the two cases were heard together.

In each of the two cases a rule nisi had also been obtained for a certiorari to bring up and quash the resolution of the council refusing the licence; but on the argument these rules were by consent abandoned without costs.

From the affidavits used on the argument, it appeared that the London County Council had delegated the duty of hearing

applications for licences for music and dancing to a committee of the council. (1) This committee sat at the Clerkenwell Sessions House, and on October 1, 1891, Akkersdyk and Fermentia applied to the committee for licences for music and dancing in respect of their premises, which had previously been licensed for those purposes.

Certain evidence was given before the committee, and in each case a majority of the committee voted against granting the licence, which was accordingly refused, the applicant being informed that he would be at liberty to apply to the council.

On October 23, the London County Council sat at Spring Gardens, and the two applicants appeared before them by counsel and renewed their applications for licences for music and dancing.

It then appeared that four members of the London County Council, all of whom were also members of the committee, and had voted with the majority of the committee against the applications for licences, and three of whom were present at the meeting of the council, were represented before the council by a barrister, instructed by a solicitor, who opposed the granting of the licences. Ultimately, the council by a majority resolved to refuse both licences. None of the members who were represented by counsel voted on the division.

The above is an outline of the facts, which are more fully stated in the judgment of the Court.

Dec. 7. *Poland, Q.C.*, and *Avory*, for the London County Council, shewed cause against the two rules for mandamus. The members of the council acted within their rights, and the resolutions refusing the licences are valid. It must be conceded that, if a similar state of facts had occurred with regard to justices sitting in quarter sessions, the proceedings would have been invalid; but the distinction in the present case is that the

(1) Licences for music and dancing are regulated by 25 Geo. 2, c. 36, ss. 2, 3, and the powers and duties formerly conferred and imposed on justices in respect of such licences are transferred to the London County

Council, and the powers and duties of the Council are defined and regulated by the provisions of the Local Government Act, 1888 (51 & 52 Vict. c. 41), which are referred to in the judgment.

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county council were acting in the performance of administrative, not judicial, duties. The council is a body which is elected, and candidates are entitled to stand as advocating particular views and opinions, and when elected are entitled to uphold those views and opinions. Moreover, in both cases, the facts shew a waiver on the part of the applicants of any right to object which they might otherwise have had.

Finlay, Q.C. (Grain, with him), in support of the rules. The county council were acting judicially, and they are bound to adhere to the rules which have from time to time been laid down by the Courts for the guidance of justices. There can be no question that the presence of an interested justice, with the other members of the Court, at any judicial hearing, will vitiate the proceedings, notwithstanding the fact that the interested justice does not take any part in the actual decision; and the same rule applies with regard to members of the county council in such a case as the present. There was no evidence of waiver in either of the two cases.

[The following authorities were referred to: *Reg. v. Cheltenham Commissioners* (1); *Dimes v. Proprietors of the Grand Junction Canal* (2); *Reg. v. O'Grady* (3); *Ex parte La Mert* (4); *Reg. v. Allan* (5); *Wakefield Local Board of Health v. West Riding and Grimsby Railway Company* (6); *Reg. v. Meyer* (7); *Reg. v. Milledge* (8); *Reg. v. Justices of Kent* (9); *Reg. v. Handsley* (10); *Reg. v. Justices of Great Yarmouth* (11); *Ex parte Partridge* (12); *Reg. v. Farrant* (13); *Reg. v. Justices of Cumberland* (14); *Allbutt v. General Council of Medical Education and Registration* (15); *Leeson v. General Council of Medical Education and Registration*. (16)]

Cur. adv. vult.

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| (1) 1 Q. B. 467. | (8) 4 Q. B. D. 332. |
| (2) 3 H. L. C. 759. | (9) 44 J. P. 298. |
| (3) 7 Cox C. C. 247. | (10) 8 Q. B. D. 383. |
| (4) 4 B. & S. 582. | (11) 8 Q. B. D. 525. |
| (5) 4 B. & S. 915. | (12) 19 Q. B. D. 467. |
| (6) Law Rep. 1 Q. B. 84; 6 B. & S. | (13) 20 Q. B. D. 58. |
| 794. | (14) 58 L. T. (N.S.) 491. |
| (7) 1 Q. B. D. 173. | (15) 23 Q. B. D. 400. |
| (16) 43 Ch. D. 366. | |

Dec. 16. The judgment of the Court (Lord Coleridge, C.J., and A. L. Smith, J.) was delivered by

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A. L. SMITH, J. In this case John Akkersdyk obtained a rule nisi calling upon the London County Council to shew cause why a writ of mandamus should not issue commanding the council to hear and determine his application for a licence for music and dancing in respect of his premises, the Angel and Crown public-house, in the Liberty of the Tower, and also why a writ of certiorari should not issue to bring up a resolution of the council refusing such licence.

The real question we have to determine is, whether the London County Council have heard and determined Akkersdyk's application according to law; if yes, then the rule must be discharged; aliter if they have not.

For many years prior to the passing of the Local Government Act, 1888 (51 & 52 Vict. c. 41), which created county councils, Akkersdyk had applied for and obtained from the county justices sitting in quarter sessions a music and dancing licence for his premises.

By this Act (s. 3) the administrative business of the justices of the county in quarter sessions assembled, in respect of the licensing of houses for music and dancing, was transferred to the county council.

The council were not authorized to administer an oath, or to perform any judicial business, or otherwise act as justices of the peace (s. 78).

By s. 28 the council had power to delegate to a committee, with or without restrictions or conditions, any powers or duties transferred to them.

After this Act was passed the county council continued to grant what are known as renewals of the licence to Akkersdyk, and upon the last occasion upon which such grant was made structural and other alterations were required by the council to be executed by him to the amount of 1000*l.*, he being at the same time informed that the execution of such works would not give him any right to a subsequent renewal.

Akkersdyk executed the works according to the requisition of the architect of the council.

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In the succeeding year—viz., on October 1, 1891—Akkersdyk again applied to the licensing committee of the county council, sitting at the Sessions House, Clerkenwell, for a renewal of his licence. After some evidence had been heard, Akkersdyk was informed by the chairman that the majority of the committee were not satisfied as to the house, and that they could not recommend the council to grant the renewal, and that it was open to him to appeal to the London County Council, who would sit on October 23, 1891.

Akkersdyk, in these circumstances, appeared by counsel before the London County Council sitting in licensing sessions at Spring Gardens.

It is erroneous to say that this was an appeal. It was no such thing. It was an original hearing by the London County Council of the applicant's application for what is called a renewal of the music and dancing licence, the council having before them the report of their committee of what they had done at Clerkenwell.

Akkersdyk, by his counsel, protested against the decision of the committee, and insisted that nothing had been proved against him disentitling him to a renewal of the licence.

At this time Mr. MacDougall, Mr. Beachcroft, and Mr. Leon, three of the committee who had voted against Akkersdyk at Clerkenwell, were sitting upon the London County Council adjudicating upon his case, Mr. MacDougall taking a somewhat active part in the discussion thereon.

It then, for the first time, appeared that these three councillors were not only adjudicating upon the applicant's case, but had themselves, together with another of the committee who had voted against the applicant—viz., Mr. Lidgett—retained counsel and solicitor to appear before the council to press the case against him, and uphold if they could the vote the four councillors had given when upon the committee at Clerkenwell.

Hence the present rule nisi for a mandamus to hear and determine the applicant's application according to law.

Mr. Poland very frankly admitted that, if what had taken place in this case had taken place when justices were sitting in quarter sessions, he could not have resisted the mandamus.

He admitted, and it has been so held, that the presence of one interested justice would render the Court improperly constituted and vitiate the proceedings, it being no answer to the objection that there was a majority in favour of the decision without reckoning the vote of the interested party: *Reg. v. Justices of Hertfordshire* (1); but Mr. Poland argued that the London County Council were an elected body, and not justices sitting in quarter sessions; and in this we agree.

It is true that, by the statute 25 Geo. 2, c. 36, justices, and now, by the Local Government Act, 1888, the county council, are authorized to grant or refuse a licence as they "in their discretion shall think proper"; but the discretion is to be exercised, as Lord Halsbury puts it in *Sharp v. Wakefield* (2), "according to the rules of reason and justice."

In our judgment, the London County Council are adjudicating as to whether a man is or is not to be deprived of his licence; to use the words of Cotton, L.J., in *Leeson v. General Council of Medical Education* (3), "Though not in the ordinary sense judges, they have to decide judicially as to whether or not the complaint made is well founded." In our judgment, when so acting, they are not emancipated from the ordinary principles upon which justice is administered in this kingdom, and which are, as it has been said, founded on its very essence. It is conceded by Mr. Poland that, if the London County Council adjudicated in a matter of a music and dancing licence against an applicant without hearing him, such an adjudication could not stand. He also admitted that, if any of the council adjudicating had a pecuniary interest in the subject-matter, such adjudication also could not stand. Then why is an adjudication in which gentlemen have acted both as judges and accusers at the same time to be upheld? There is a sequence of authority holding that it cannot be, and it suffices to quote a passage from the judgment of Cotton, L.J., in the case above named, in which he says: "Of course the rule is very plain, that no man can be plaintiff or prosecutor in any action, and at the same time sit in judgment to decide in that particular case, either in his own case, or in any case where

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(1) 6 Q. B. 753.

(2) [1891] A. C. at p. 179.

(3) 43 Ch. D. at p. 379.

1891 he brings forward the accusation or complaint on which the order
 THE QUEEN is made." (1) And yet this is precisely what, in the present case,
 v. the three councillors have done. But it was argued, that after it
 LONDON had appeared that they were, in fact, both accusers and judges,
 COUNTY they no longer took part in the deliberations of the council.
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 EX PARTE This, however, will not avail, even if it were the fact; for Lord
 AKKERSDYK. Denman, in the case above cited, *Reg. v. Justices of Hertford-*
 EX PARTE *shire* (2), held, that a decision was vitiated by any one interested
 FERMENTIA. person taking part, it being enough for the purpose that one single
 A. L. Smith, J. interested person has formed *part* of the Court, and Patteson, J.,
 who followed Lord Denman, said, "The question is, has an inter-
 ested person taken *any part at all*?"

The case of *Reg. v. Meyer* (3) is also an authority as to this; Blackburn, J., in delivering judgment, said: "We cannot go into the question whether the interested justice took no part in the matter (i.e., in the discussion of the case). The question is, was he so interested in the matter as that he ought not to have sat?" In this we agree.

Then a further point was taken for the London County Council, viz., that the appellant had waived any objection to the three councillors sitting upon his case, and authorities were cited to shew that if there was such a waiver, mandamus would not go. We do not doubt the authorities; but we are clear that there was no waiver in fact in this case. It is true that when Akkersdyk arrived at the council in Spring Gardens he might, and probably did, see the three councillors he had previously seen sitting upon the committee; but neither he nor his solicitor then knew anything of counsel being present upon their retainer to press the case against him. In our judgment, the London County Council shew no good cause against this rule, and mandamus must go to them to hear and determine Akkersdyk's application according to law. We understand that in this and the subsequent case, about which hereafter, counsel consent to the rules for a certiorari being abandoned without costs.

In the case of *Fermentia v. The London County Council* the salient facts are almost identical with those in the case of

(1) 43 Ch. D. at p. 379.

(2) 6 Q. B. 753.

(3) 1 Q. B. D. 173.

Akkersdyk, with the exception that Fermentia had spent 1135*l.* upon alterations according to the requirements of the architect of the London County Council, and that the evidence adduced before the committee was altogether in his favour.

The decision of the committee was as follows:—

“The decision of the committee is the same in this case as it was in the last” (i.e., Akkersdyk’s). “They do not recommend the council to grant a renewal. It will be open to you to appeal to the council on October 23.” This case came on before the council immediately after Akkersdyk’s, and was in reality a continuation of it. The learned counsel for the four councillors pressed the case against Fermentia as he had done against Akkersdyk, and with the same result. It was argued in this case that the three councillors “had left the Bench”—a term well known in the administration of justice—and consequently they were no longer judges as well as accusers. It is true, as appears from the shorthand writer’s notes, that none of the three councillors took any open active part in the discussion of this case, as Mr. MacDougall had done in Akkersdyk’s case. It was sworn, however, by Henry Souch, clerk to the applicant’s solicitor, that on several occasions whilst the case was proceeding, he saw Mr. MacDougall, Mr. Beachcroft, and Mr. Leon, standing or sitting in the council chamber, and upon one of such occasions he saw Mr. Leon sitting immediately behind the official seat of Mr. Fardell, the chairman of the licensing committee, and conversing with other members of the London County Council.

Mr. Leon, in his affidavit in answer, does not deny being in the council chamber, but states that during the discussion he was not in that part of the chamber in which councillors who are taking part in the proceedings sit.

He admits that he may have conversed occasionally with other members who came and spoke to him there. He does not, however, state what they spoke about; but he adds that he did not attempt to influence their votes.

Mr. Beachcroft limits his attendance in the council chamber to one or other of the doorways, and Mr. MacDougall states that he sat on the dais behind the seat of the chairman, which is the

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place for visitors, and not where councillors who are taking part in the proceedings sit.

In the affidavit of Mr. MacDougall, handed up to us, as originally drafted for him to swear, it stated: "I may have conversed occasionally with the members who came and spoke to me there; but I did not attempt to influence their votes, and I left the council chamber before, and was not present during, the shew of hands."

This paragraph is struck out before Mr. MacDougall swore to the affidavit, and it is deposed to with this paragraph erased.

It should be noticed that it appears from the shorthand notes that Mr. Ford, who addressed the council, considered that the three councillors were still taking part in the proceedings.

In our judgment, if members of a body such as the London County Council, consisting as it does of 139 persons, and sitting in a building like that at Spring Gardens, desire to retain counsel on their behalf to press accusations against applicants for licences, or others, before the council, they should either absent themselves altogether from the precincts of the building, or sit in such a position, with their counsel, that it may be known to all as to who the real accusers are, and that they do not "leave the bench" if they remain in the position the three councillors did upon this occasion.

In our judgment, these two cases, conducted as they have been throughout, are in reality one, the one case being referred to in the other, and what we have said about waiver in Akkersdyk's case is applicable to this case: see *Reg. v. Great Yarmouth*. (1)

A mandamus must also go in this case, as in Akkersdyk's, to hear and determine Fermentia's application according to law.

Rules absolute.

Solicitors for applicants: *H. J. & C. Child.*

Solicitor for London County Council: *W. A. Blaxland.*

(1) 8 Q. B. D. 525.

P. B. H.