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The "Poison Porridge" Case: Chinese and the Administration of Justice In Early Saskatchewan

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CHINESE AND THE ADMINISTRATION OF JUSTICE IN EARLY SASKATCHEWAN

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On the morning of 8 August 1907 a number of patrons were taking breakfast in the Capital Restaurant on Lorne Street in Regina. The restaurant had not been in operation long but was apparently doing a good business, so it must have been somewhat disturbing to Mr. Steele, the owner and manager, when shortly after beginning their morning meal a number of his patrons became ill. The symptoms included quite severe abdominal pains so the decision was taken to send for a doctor who arrived to find nine people suffering from what was obviously something rather more serious than indigestion. In fact, he soon identified the symptoms as resulting from some sort of poisoning. He provided what treatment he could to those who were ill and sent the three worst cases to the local hospital. He then examined the food they had been eating and identified the oatmeal served that morning as the source of the poison. Under these circumstances it seemed wise to summon the police.

The police arrived shortly thereafter, and were understandably interested in finding out who had prepared the oatmeal that morning and who had had access to the restaurant's stores. Their preliminary inquiries raised suspicions that Charlie Mack, who ran a restaurant located next door, might be involved so they went over to speak to him. Their suspicions were only heightened when they discovered that he was unaccountably absent. The death of one of the victims of the poisoning and the continued ill health of some others soon lent even greater urgency to the search for Charlie Mack and ensured that public attention would be focused on the upcoming inquest.

An inquest was convened on 12 August and shed considerable light on the unfortunate incident.[1] The provincial bacteriologist, Dr. Charlton, had by this time identified the poison as arsenic, and testimony dealing with the finer points of arsenic poisoning occupied some time,

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but the major focus of public attention was evidence concerning events on 7 August, the day before the poisoning occurred. As the inquest discovered, however, the available information pertaining to those events still left a number of important questions unresolved and made all the more urgent the apprehension of Charlie Mack, especially as two more of Mr. Steele's patrons died after the inquest, bringing the murder total to three.

The evidence given by Mr. Steele, when combined with that given by Mack Sing[2] and Miss Hulsmith, both of whom worked in Charlie Mack's restaurant, allowed for a fairly complete reconstruction of the events leading up to the tragedy. Charlie Mack had operated a restaurant on Lorne Street for some time and his business by all accounts had been thriving. After the competing restaurant had opened up next door his business had declined, however—though whether the decline was sufficient to threaten his operation remains unclear. But regardless, Charlie Mack had remained on amiable terms with his neighbor and it did not, therefore, seem surprising when, on the morning of 7 August Charlie asked Mack Sing to go next door and see if he could borrow some oatmeal. Mack Sing did as he was asked and Mr. Steele was happy to give him a tin of oatmeal. Later that day, presumably after he was finished with it and after replacing the oatmeal he had used, Charlie had Mack Sing return it. The next morning, it was believed, oatmeal from this tin had been used to prepare the porridge for breakfast and had contained generous amounts of arsenic.

It is understandable that these circumstances cast suspicion on Charlie Mack and Mack Sing, and insofar as Charlie Mack was concerned these suspicions were strengthened by other testimony heard at the inquest. Perhaps most important, it was learned that there had been no need to borrow any oatmeal at all since Charlie Mack, who handled all the buying and food preparation for the restaurant, had purchased an ample supply of oatmeal two weeks before and there were still sufficient quantities on hand. These facts were enough in most eyes to confirm Charlie Mack in the role of poisoner, but a number of relevant questions were either never raised or were inadequately explored. Most obvious, there was apparently no effort to identify the original source of the poison, and this was a crucial question. The tin of oatmeal lent by Mr. Steele to Charlie Mack had been filled from a large previously unopened sack. After receiving the tin back from Charlie Mack, Mr. Steele had simply emptied it into the sack, and the next morning had, for the first time, taken oatmeal from the top of the sack to use in preparing his customers' porridge. This porridge certainly contained arsenic, but is it certain, under these circumstances, that it was made from oatmeal returned by Charlie Mack? Or even that Charlie Mack had ever opened the tin? Doctor Charlton, it appears, simply assumed that Charlie Mack had put poison in the oatmeal and so did not bother, for example, to examine oatmeal from other parts of the sack which, if it had also been found to contain arsenic, would have given the case an altogether different cast. And further, it seems that no consideration was given to the possibility that the arsenic might at some stage, perhaps even before Mr. Steele originally acquired the oatmeal, have found its way into the oatmeal by accident, or even been intended for some acceptable purpose such as the poisoning of vermin.

Also unsatisfactory was the inquest's consideration of motive. If the poison was added by Charlie Mack, what did he hope to accomplish? Was his intention to make customers at the neighboring restaurant ill and thereby improve his own custom, or was it simply to take revenge on his competitor and his former customers? The timing of Charlie Mack's flight suggested that the poison was added to the oatmeal knowingly and that serious harm, if not death, was the intended result. But it is entirely possible that he fled only after learning of the poisoning on the morning of the eighth—he lived next door and would certainly have noticed the uproar—at which time he might have guessed that he would be suspected of wrong-doing. What happened next in this strange case, however, depended not so much on the findings of the

inquest, or on the known facts of the case, as on the ethnicity of Charlie Mack, who was Chinese.

Chinese on the Prairies

In November of 1885 the Canadian Pacific Railway mainline had been finished, and its completion had signaled the beginning of serious efforts by the federal government to "control"—that is, reduce—the number of Chinese in Canada. These efforts were not as successful as some might have wished, and a few Chinese began to move eastward, along the railway they had done so much to build, and to contribute toward populating the Canadian prairies. Before the end of the nineteenth century, the first arrivals came to what would, after 1905, become the province of Saskatchewan, where they tended to live either in small towns or in those centers destined to become the province's first cities—few chose the life of a farmer. Those settling in the smallest centers lived lives of great isolation. Barriers of language and culture would under the best of circumstances have made it difficult for the Chinese to participate fully in these communities, but the most serious impediment was undoubtedly the pronounced racist attitudes of the majority of Canadians. The situation of those Chinese living in Saskatchewan's cities was in most respects no better, but in both Moose Jaw and Saskatoon, though inexplicably not in Regina, the Chinese population coalesced into Chinatowns, and in all three cities the greater numbers of Chinese meant that they formed to some extent their own community.

The members of this almost entirely male society supported themselves in a very few occupations.[3] The racist attitudes of the majority of the population of western Canada and the conditions of the Chinese themselves—their often limited facility with English, and their restricted skills and capital resources—meant that most were self-employed or employed by other Chinese, most typically either in laundries or restaurants. The public was, understandably then, deeply concerned to discover that in a province in which Chinese cooks had become commonplace,[4] one had allegedly become a mass murderer. And it is not surprising that there were demands that the police bring the matter to a speedy conclusion. Unfortunately, however, the usual police methods proved unavailing and two weeks after the event Charlie Mack was still at large. The authorities were becoming increasingly embarrassed and angry, and finally, in their frustration, city, provincial, and mounted police powers got together and concocted a truly remarkable scheme.

Raid on the Chinese

The assumptions that underlay the plan were simple and plainly based on the negative stereotype of the Chinese then current. This stereotype had been inherited, in a general sense, from more westerly parts of North America. And though wildly inaccurate—in fact in many respects quite irrational—it had not to any significant extent been amended as a result of the limited familiarity between the comparatively large white community of western Canada and the Chinese living there. The Chinese were a dangerous and utterly alien people, it was believed, not constrained by the values and mores of "civilized Christian people."[5] The authorities, for example, accepted that the Chinese had little or no respect for the rule of law, so the reason for the ineffectiveness of the western-Canada-wide manhunt for Charlie Mack must be that he was being hidden by the rest of the Chinese community, all of whom were assumed to be involved in a huge conspiracy. Complicating this further was the oft-referred to "fact" that all Chinese looked alike, making the "conspiracy" all the more difficult to confound.[6] It seemed clear to law enforcers that drastic action was required, and on the night of 23-24 August it was provided. An account in the *Regina Leader* on 24 August explained to readers what had taken place.

> The "census" of Regina's Chinese population was taken last night and during the early hours this morning . . . with the knowledge

and sanction of the Attorney General, his worship, the Mayor, and the Mounted Police authorities.

. . .

The "census" commenced about eleven o'clock, when the "enumerators" proceeded in the Victoria Hotel bus to the favorite rendezvous of Regina's Chinamen, on Osler Street, where nightly the game of fan-tan is indulged in by the Asiatics. Here fourteen Chinamen were found. No opportunity was afforded them of escaping, all possible avenues of exit from the building being carefully watched. With very little ceremony and no great amount of explanation, the wondering Chinamen were forthwith bundled into the omnibus, in which they were at once driven to the City Hall. Some jabbered incoherently, protesting at the compulsory free ride, but for the most part they accepted the situation in the calm philosophic manner characteristic of the Oriental.

Having thus got rid of its first load, which were left in charge of Sergt. Sample, the bus with its attendant "emunerators" [sic] proceeded to South Railway St., where a haul of eleven was made, all of whom were likewise transferred to the City Hall.

Thus, systematically, every Chinese house in the city was raided and every inmate taken to City Hall.

. . .

> So far as the police know, the only Chinese inhabitants of Regina not taken to the City hall in the course of last night were the wife of Mah Po, and her off-spring.[7]

Much to their frustration, however, Charlie Mack was not discovered by the "enumerators," who finally had to admit that wherever he was he was not in Regina. The local authorities eventually had to content themselves with the knowledge that they had done all they could to take him into custody. In the weeks and months that followed this unsuccessful attempt to capture the elusive Charlie Mack the search was conducted further afield. A raid that took place in early September in Saskatoon may well have been inspired at least in part by the desire to find him, and reports that he had been seen, but not apprehended, were received from all over western Canada.[8] But as we will see, the events of the night of 23-24 August were not to be so quickly forgotten.

Chinese Response

One has a sense that at the time of the raid the *Regina Leader*, and it was probably representative, applauded the measures taken by the police in their efforts to capture Charlie Mack—there was certainly no call for apologies. But those involved had reckoned without the determination of some members of the local Chinese community who resolved such "enumeration" was too much to tolerate. They therefore retained legal counsel and in early September some fourteen of those who had been taken so peremptorily to the City Hall that night, including Mack Sing who had worked for Charlie Mack and who had come in for more than his fair share of special attention from the police, brought separate civil suits against the mayor of Regina, the chief of police, a mounted police corporal, and two junior officers of the Regina City Police.[9] Each suit alleged that the plaintiff had been "arrested and falsely imprisoned and detained" by those named in the suit and sought $2000 in damages and costs. The hunters had become the hunted!

It appears that both the defendants and the local newspapers thought the whole thing ridiculous at first and did not take very seriously the claims, totaling $28,000. In their first response to the suit the defendants simply admitted that, while the facts as stated in the plaintiffs' statements of claim were true, the plaintiffs were never "at any time, either arrested or falsely or otherwise imprisoned or detained," and relied on the protection of a series of statutes dating back as long ago as the reign of James I.[10] It soon became apparent, however, that the matter was not to be disposed of so

easily. The suits launched by the fourteen disgruntled Chinese were not dropped due to a lack of funds or courage, and they were not dismissed by the courts. And so, on 18 October 1907 the defendants appeared before the presiding judge in chambers asking to be allowed to enter defenses in addition to the statutes already cited.[11] It is also perhaps revealing that Mrs. Harwood, wife of the chief of police, was engaged at this same time in trying to have title to certain real property registered under her name rather than her husband's, claiming that it was actually her property and that because of a clerical error it had been registered under her husband's name some years before.[12]

As the autumn of 1907 progressed toward winter the various formal preliminaries that had to precede trial were gradually satisfied. The defendants tried throughout this period to derail the whole proceeding, and the trial of Mack Sing in November of 1907 may have been a part of this larger game. He was tried for the murder that had resulted from the August poisonings, but not surprisingly in light of the evidence—or rather the lack of it—he was promptly acquitted. All other ploys were similarly unavailing, with the result that the matter did eventually come to trial in February of 1908 before Mr. Justice Prendergast.

On the opening day of the trial the various counsel agreed that twelve of the plaintiffs would abide by the decision in the Mack Sing case—the other plaintiff, Mah Po, announced that his case would be kept separate and would go forward only in the event that Mack Sing et al. lost. Even so, the trial took four days.[13] It began with Judge Prendergast ruling on a motion by counsel for Mayor Smith that the action against him be dismissed. The mayor testified that he had not really known what was going on at the time of the raid, and further, and perhaps somewhat contradictorily, that he had been surprised that the city police had been involved. This was certainly not the version of events that had been presented in the newspapers—there, a full share of the credit for the scheme had been given to the mayor, and his worship had not been quick to deny these reports. But Judge Prendergast chose to accept this version of events and allowed Mayor Smith to withdraw from the proceedings. His absence, however, and the absence of the attorney general, who had wisely not been named in the original lawsuits, did little to weaken the case for the plaintiffs.

These preliminary matters out of the way, the court then moved on to the events of the night in question. These events were recounted in great detail by everyone involved, and gradually the case began to take shape. Judge Prendergast early on rejected the assertion of defense counsel that the entire proceeding was flawed because of a failure to give proper notice. The dispute then came to focus on two crucial questions: Had the plaintiffs been arrested on the night in question? And had they been detained by the police?

The first of these questions defense counsel met head on, maintaining quite simply that the plaintiffs had not been arrested at all. No compulsion had been exerted; they had simply been invited to go to City Hall and they had decided to go. One or two had even voiced their willingness to cooperate with the police in this matter. But this view of the matter did not persuade Judge Prendergast, who described the "raid"—a term used rather unwisely by two of the defendants when giving evidence—in these words:

> They went there, as I feel convinced, ready to use force to carry out the plan which they thought necessary for the apprehension of a murderer at large, and the Chinamen, including the plaintiff, undoubtedly understood it that way, from the nature of the proceeding, from the time of day at which it was carried on, and from the defendants' costumes and functions with which they were familiar. What was called their acquiescence and readiness, was undoubtedly simply the effect of a sense of their helplessness. They knew it was useless to offer opposition, they did not wish to take the responsibility of resisting peace officers, and consequently they submitted.
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> The placing of a constable at the back door of every house before rapping at the

front, is hardly in harmony with the freedom which the defence says the Chinamen enjoyed at the time; nor was the presence of a police officer in the bus, each time "a load" was taken to the City Hall.[14]

The question of whether the plaintiffs had been detained at City Hall proceeded along similar lines. Defense counsel suggested that the plaintiffs had been perfectly free to leave at any time, that there had been no real restraint at all. But this was not consistent with the behavior of the defendants on the night in question and was frankly contradicted by the testimony given by some of the defendants. Constable Sample had been left at City Hall for the expressed purpose of keeping any of the plaintiffs from leaving—even accompanying them to the street for "calls of nature" to see that they came back. And when Mah Po had said to Chief Haward, "Mr. Chief, may I go home; you know I am not Charlie Mack," he had not been allowed to leave.[15] The plaintiffs had very clearly been detained.

There remained, then, only the protection possibly offered by statute to peace officers engaged in the execution of their duties. But here again defense counsel was unsuccessful. Judge Prendergast wrote in part:

> But I do not intend to deal with the objection raised. It would be idle for me to do so, for in my view, assuming that the rule and statutes referred to are in force, the defendants, on the facts above set forth, are not entitled to their protection.
>
> The defendants have not shown that they had any reasonable grounds of belief that the Chinamen were harbouring Charlie Mack; they, at the most, had bare suspicions, and even those were directed to the whole body of the 67 Chinamen in town, and not to any particular one. Even if they had grounds for this belief, their plain duty under the circumstances, was to have an information laid and warrant issued. Nothing of any particular import happened for days prior to the event in question; there was nothing brought to their notice at the last moment; there was no emergency; they had every opportunity to deliberate and seek advice, and ample time, if there was ground for it, to take the steps which the law required for the arrest of these men.
>
> . . .
>
> [I]t is absolutely clear to me from the evidence that the defendants' intention was not in the least to arrest these men for anything they were suspected of committing or having committed, but what was done was clearly done simply as a means to effect Charley [sic] Mack's arrest.
>
> The statute will protect police officers against certain errors in time, place, and persons. (*Daniel v. Wilson*, 5 Durnford and East, p.1; *Hughes v. Buckland*, 15 L.J. Exch. 233). It will also sometimes protect them against manifest errors of their own judgment; but not against anything they choose to do on the bare ground that they believe it to be the means of attaining some desirable and legal end. The defendants say they believed that the gathering of 67 Chinamen might be the means of effecting the arrest of Charlie Mack; but they knew—they must have known as experienced peace officers—that the means which they were adopting was altogether irregular and illegal.[16]

And so, at the end of the day, Judge Prendergast gave judgment in favor of the plaintiffs. Their meed of victory was somewhat lessened, however, by the amount of damages awarded. Instead of the $2000 per person sought, Judge Prendergast decided that a sum of twenty-five dollars would adequately compensate the aggrieved for their suffering.[17] The costs submitted by the plaintiffs to the court were also taxed very closely, though on the "higher scale." But even so, fourteen claims for twenty-five dollars plus interest, and costs, was a tidy sum. And to make sure the plaintiffs were able to collect it, counsel requested that a writ of *fieri facias*, requiring the sheriff to realize the amount of a

judgment from property of a judgment debtor, be issued against the lands of the defendants—thus proving the foresight of Chief Harwood and his wife.[18]

But the size of the judgment was, perhaps, not the most important aspect of the result in this case. Victory against such seemingly powerful opponents must certainly have given the Chinese in Regina, and indeed in all of Saskatchewan, confidence in themselves and in the judicial process.[19] And even more important, it cannot fail to have had a significant effect on others in the province, especially the police. The surviving records are not as detailed as one might wish, but it is surely not entirely a coincidence that a few months after the case was decided against them Constable Hogarth had left the city police force and Chief Harwood had been fired. While it is never safe to argue from silence, it is perhaps noteworthy that nothing approaching the August raid occurred again in Saskatchewan, nor is there any indication in existing records that the Chinese of the province again had cause to complain that they had been treated in such a manifestly unfair manner by any of the province's police. There is an important distinction to be made between the August raid in Regina and subsequent raids conducted by the province's police. Later raids were directed against establishments suspected of housing gambling or other illegal activities, and, after the outbreak of the first World War, against various groups defined by conscience or politics and identified by authorities as posing a danger to the country. These latter classes of raid may be criticized on a number of counts, but they had, or at least the police thought they had, a basis in law that the August raid did not. No longer could police proceed on the assumption that Chinese were a group that simply did not have legal rights. This may have been the most important result of the raid.

(And by the way, they never did catch Charlie Mack.)

NOTES

1. Unfortunately the original papers produced by the inquest are not preserved, but the local paper gave a good account. *Regina Leader*, 13 August 1907, pp. 5, 8, 14 August 1907, pp. 1, 5.

2. There are a number of versions of this name in the record including Mac Sing, Mack Fook, and others.

3. Canadian immigration laws had the effect—fully intended—of preventing all but a very few Chinese women from coming to live in Canada.

4. Peter Li, "Chinese Immigrants on the Canadian prairie, 1910-47," *Canadian Review of Sociology and Anthropology* 19 (1982): 527-40.

5. For the image of the Chinese in Saskatchewan, see Ken Leyton-Brown, "Anti-Chinese Legislation in Early Saskatchewan," Transboundary Conference on the Legal History of the West and North-West of North America, "Law for the Elephant, Law for the Beaver," Victoria, British Columbia, 21-23 February 1991.

6. Testimony supporting both these assertions was given in open court by police officers at a trial arising out of these events. The documentation pertaining to this case, including the original judgment of Judge Prendergast, is held by the Saskatchewan Archives Board, S.A.B. R-1266, file 13, 303-13, 316. There is no pagination.

7. *Regina Leader*, 24 August 1907, p. 1.

8. The Saskatoon raid was reported in papers throughout the province. Perhaps significantly all charges arising from the raid were "dropped." The *Moose Jaw Times*, 30 August 1907, p. 3, for example, reported that the Winnipeg police had arrested a man whom they thought to be Charlie Mack. They had, however, arrested "the wrong chink."

9. The parties appeared before a magistrate on 29 August (*Saskatoon Phoenix*, 30 August 1907, p. 1), but proceedings in the supreme court officially got under way on 14 September. S.A.B. R-1266, file 13, 303-13, 316 (note 6 above).

10. S.A.B. R-1266, file 13, 303-13, 316 (note 6 above). These Statutes were given as 7 Jas. I ch. 5, 21 Jas. I ch. 12, 24 Geo. II ch. 12, and ch. 146 *Revised Statutes of Canada* 1906 secs. 1143 to 1148.

11. S.A.B. R-1266, file 13, 303-13, 316 (note 6 above).

12. Ibid. The affidavit is dated 20 November 1908.

13. The trial dates were 11, 12, 19, and 20 February.

14. *Mack Sing v. Smith* 9 W.L.R. 28, at 32-33. (Also reported [1908] 1 Sask. L.R. 454.) Some confusion arises because the name of the court changed during the course of the proceedings. What was in 1907 the Supreme Court of the North West Territories had become the Saskatchewan Supreme Court by the time the judgment was delivered.

15. Ibid., at 33.

16. Ibid., at 34-36.

17. In explaining how he arrived at this reduced figure, Judge Prendergast observed "evidence was given showing that there was really regard for their comfort. Their habits, their customs, their mode of living, make it safe to say that in the circumstances they have not been injured in their reputation, neither with their own compatriots, nor with the general community of this city, the less so as the real significance of the event was generally well understood. Although an imprisonment in the legal sense, still, their confinement in the city hall, being avowedly for the purpose mentioned, did not carry with it the indignity of an arrest meant to be executed as a legal arrest upon a criminal charge. Nor do I believe that they are affected in their business, either directly or indirectly. There was no ground shown for actual damages, and even less so for exemplary damages. There was the inconvenience and annoyance of being taken away from their homes and kept away about five hours,—for which, all things being duly weighed and considered, I think that $25 is a fair compensation." Ibid., at 38.

18. A series of letters in the Archives of the City of Regina (COR-5 1157) reveal that as late as 31 March 1909 plaintiffs had not been able to collect the amount of the judgment. Plaintiffs had apparently offered to settle for a lesser amount but the city of Regina, which was apparently handling the matter for the defendants, was in communication with the attorney general in an effort to get the entire judgment set aside. Their request, amazingly enough, was not for a new trial, but rather, simply that the attorney general set the judgment aside in his own right. This, of course, he could not do, but it remains unclear whether plaintiffs ever did receive any money.

19. This confidence was, perhaps, not entirely well founded, as events in 1912 were to show, when the Chinese community unsuccessfully challenged a piece of discriminatory legislation passed by the Saskatchewan Legislature. See Ken Leyton-Brown, "Discriminatory Legislation in Early Saskatchewan and the Development of Small Business," *Proceedings of the Eighth Annual Conference of The International Council for Small Business—Canada (ICSB)*, Terry Wu and Jim Mason, eds. (Regina: International Council for Small Business—Canada, 1990), pp. 253-72.