

Refusing to serve Negro customers in his Dresden café has cost Morley McKay \$360.60.

In a case that has attracted Ontario-wide interest the veteran restaurant owner was found guilty yesterday for the second time in less than two years of practicing racial discrimination.

In a written judgment Magistrate J. C. Dunlap of Sarnia found McKay guilty on two counts and assessed fines of \$25 on each, plus court costs of \$310.60.

Maximum penalty for any individual convicted under the Fair Accommodations Practices Act of 1954 - under which charges were laid is \$50.

#### WITNESS FEES

Witness fees totalling 308.48 were termed "astronomical" by defence counsel W.A. Donohue of Sarnia. This figure included transportation costs for six witnesses brought from Toronto for the Jan. 18 trial.

"Beyond that I have nothing to say," Mr. Donohue said after judgment had been passed. He did not indicate whether a further appeal was planned.

Prosecutor George Walsh of Toronto said he hoped the act would now be recognized as law and that there would be no repetition of "your client's action."

McKay was found guilty on a similar charge last year by Magistrate Ivan B. Craig at Chatham and fined \$50. The conviction and penalty were subsequently quashed by Kent County Judge H. E. Grosch. New charges under the same act were laid last fall.

#### COMPLAINANTS

Complainants were two Negro students at the University of Toronto, Percy Bruce and Jake Alleyne, both 26. They told of making a trip to Dresden, in company with three white Torontonians, and of having two waitresses refuse to serve them with pie and milk shakes.

The white persons, who later entered the restaurant operated by McKay for the past 31 years, were able to get the same items they wanted, Bruce and Alleyne testified. Judgment had been reserved by Magistrate Dunlap, with written arguments to be presented by counsel.

"From the evidence, it is established beyond a reasonable doubt that Bruce was denied services available at Kay's restaurant, and that the accused denied these services," Magistrate Dunlap said, referring to the fact that both Alleyne and Bruce, after being ignored by the waitresses, had gone to the kitchen and addressed their orders to McKay.

#### NO REASON

Continuing, His Worship said "there is nothing in the evidence to disclose any reason for denying the services except Bruce's and Alleyne's color and the evidence definitely points to this being the sole reason for their being denied the services."

Dealing with defence counsel's argument that the Act is ultra vires of the Legislature of Ontario, His Worship came to the conclusion that the Fair Accommodations Practices Act is an act dealing with property and civil rights and therefore within the powers granted to the Provincial Legislature by the British North America Act.

"I find that the statute is valid," he said, "and in view of this and my finding of fact, I find the accused guilty."

While the Chatham court room had been packed for the January trial, only a handful of lawyers and Magistrate Craig, involved in the original case, were on hand as spectators when the judgment was read.

Asked to stand before judgement was passed, McKay complied. He made no comment and sat down again as his lawyer rose to protest the court costs, which Magistrate Dunlap agreed were "fairly high."