

was forwarded to the Governor-in-Council for approval, but no action was taken upon it and it was never approved.

Held, that in the absence of such approval the charge made was illegal, and that defendant, having paid the difference between the two rates under protest, was entitled to offset the amount so paid against plaintiff's claim, but that, in the absence of a counterclaim, defendant could not have judgment for any excess.

J. L. Ralston, for plaintiff. *W. T. Pipes, K.C.*, for defendant.

Province of Manitoba.

KING'S BENCH.

Phippen, J.A.]

[Dec. 21, 1906.]

SLINGSBURY MANUFACTURING CO. v. GELLER.

Partnership—Limited partnership.

The defendant Rosenthal bought an interest in a partnership business carried on by his co-defendants Geller and Haid under the name Winnipeg Shirt and Overall Manufacturing Company, contributed the sum of four thousand dollars to the funds of the partnership and the three undertook to form a limited partnership under R.S.M. 1902, c. 129. They then drew up and signed a certificate in the form set out in s. 66, using the same firm name. This certificate was filed in the office of the prothonotary, who recorded it in the book provided for that purpose pursuant to s. 68, but it was not recorded at large as required by that section. Section 69 says that no such limited partnership shall be deemed to have been formed "until a certificate has been . . . recorded as above directed," and the plaintiffs sought judgment against Rosenthal upon a promissory note and an acceptance of the firm on the ground that he was liable as a general partner, the limited partnership contemplated not having been effectively formed, also because the firm name chosen did not contain the names of either of the general partners, as required by s. 72.