Case and Comment

CRIMINAL RESPONSIBILITY OF CORPORATIONS — CONSPIRACY IN RESTRAINT OF TRADE — RULES OF EVIDENCE.—The judgment of the Ontario Court of Appeal in *Rex* v. *Ash-Temple et al.*,[1] delivered on February 28th, 1949, unanimously dismissing an appeal by the Attorney-General of Ontario against the directed verdict of acquittal of eighteen incorporated companies engaged in the dental supply business in Canada, which were accused on an indictment for conspiracy in restrain of trade in violation of section 498, ss. 1(d), of the Criminal Code, raises important questions affecting, generally, the proof required to establish the criminal responsibility of corporations and, more particularly, the enforcement of such legislation as the Combines Investigation Act and section 498 of the Criminal Code.

The evidence submitted by the Crown to prove the unlawful conspiracy unduly to prevent or lessen competition in the manufacture and sale of dental supplies consisted almost entirely of documents allegedly found in the possession of one or another of the accused companies. These documents, being letters, copies of letters, minutes of meetings, etc., were submitted as admissible evidence on the principle that documents found in the possession of a party are admissible against him without further proof to show knowledge of their contents or his connection with the transactions to which they relate; that if he has in any way recognized, adopted or acted upon them, they will be admissible against him as proof of their contents; and that if proof of the whole conspiracy is made they also become evidence against the co-conspirators.[2] This principle has long been recognized in cases where the defendants were individuals, the leading Canadian case being *Rex* v. *Russell*.[3] Counsel for the accused contended, however, that something more is required to prove possession by, and to impute knowledge to a corporation than in the case of an individual, and their contention was maintained by the trial

[1] (1949), 93 C.C.C. 267; [1949] O.W.N. 158.
[2] Phipson on Evidence (8th ed.), p. 242.
[3] (1920), 51 D.L.R. 1.

judge and by the Court of Appeal. In his reasons for judgment Robertson C.J.O. said:

> . . . It is well settled that conspiracy is one of the crimes that a company can commit, and that the necessary *mens rea* may be found in an officer, servant or agent authorized by the company to act for it. . . . The proof required, however, in the case of a company differs somewhat from that required in the case of an individual. If the act relied on is that of an officer, servant or agent of the company, there must be evidence that he had authority from the company to perform the act. Mere possession of a document by a company, in the sense that the document was on its premises, and even in the company's files, may not, without more, afford ground for an inference that its contents had come to the knowledge of its board of directors, or of some one having authority from the company to deal with the matters to which the document relates.
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> No attempt was made by the Crown to show, from the minute-books of any of the accused companies, that its board of directors had ever been concerned, either in the making or the carrying out of the arrangements upon which the charge of conspiracy is based. There is no evidence that any officer, servant or agent of any of the accused companies had any authority to act for the company in these or, for that matter, in any other matters. There is no evidence of any circumstances that might make it more or less probable that any document put forward as evidence had come to the knowledge of the board, or of some one authorized to act for the company. There is no evidence when or from what source such documents as the copies of alleged minutes of the Canadian Dental Trade Association came into the possession of the companies with whom they were found. . . .
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> A great many letters and copies of letters were filed as exhibits upon evidence by a member of the police that they had come from the possession of some one of the accused. As to many of these exhibits there was no evidence whatever that such a letter had been in fact sent by any one of the accused. There are other instances, however, where the original of a letter was got from the possession of the person to whom it was directed, and a copy of it was found in the possession of the sender. There is, however, one objection common to all the letters. There is no evidence that the writing of any of them was authorized by any of the accused companies, nor is there evidence that anyone having authority to bind the company had any knowledge of the sending of any of the letters or of their receipt or of their contents.

The judgment does not declare that it was incumbent upon the Crown to prove all the foregoing points — although it might be so interpreted. It does say that "when so much of the Crown's case is based upon inference . . . the burden is upon the Crown in asking that inferences be drawn, to establish facts that it is necessary to know to make proper inferences".

Proof of conspiracy must almost necessarily be made by inference from the acts, conduct and declarations of the parties. It is difficult to make proof by direct evidence because the parties

who know the facts of the conspiracy may themselves be considered co-conspirators. In the words of Rinfret J.:

> Conspiracy, like all other crimes, may be established by inference from the conduct of the parties. No doubt the agreement between them is the gist of the offence, but only in very rare cases will it be possible to prove it by direct evidence. Ordinarily the evidence must proceed by steps. The actual agreement must be gathered from 'several isolated doings' (Kenny — Outlines of Criminal Law, p. 294), having possibly little or no value taken by themselves, but the bearing of which one upon the other must be interpreted; and their cumulative effect, properly estimated in the light of all surrounding circumstances, may raise a presumption of concerted purpose entitling the jury to find the existence of the unlawful agreement.[4]

In the judgment under consideration the court held that to prove conspiracy in the case of a company by the production of documents found on its premises requires something "more" than in the case of an individual. To establish corporate possession, it is necessary to prove knowledge by the board of directors or by an officer, servant or agent of the company to whom the company has properly delegated a duty to know on its behalf. Accordingly, the fact that incriminating documents are found on a company's premises or in its files, or in the files of its president, general manager or other officers, and are produced by officers or employees in the company's offices does not constitute corporate possession without further proof. The signature on the document of the president or the general manager or other officers is not in itself proof of the position or of the authority of these officers without further proof. Even where the original of a letter is found in the possession of the person to whom it was directed and a copy of it is found in the possession of the sender, there must be further proof that the writing of the letter was authorized by the company or that someone having authority to bind the company had knowledge of the sending of the letter or of its receipt or of its contents. One form of proof suggested by the court is "to show from the minute-books of any of the accused companies, that its board of directors had ever been concerned, either in the making or the carrying out of the arrangements upon which the charge of conspiracy is based".

The court thus applied the traditional rules of evidence to a complicated case arising from modern economic legislation and affecting the more or less large-scale business operations between 1930 and 1947 of eighteen companies operating in all parts of Canada. There were available to the Crown over two thousand

[4] *Paradis* v. *the King*, [1934] S.C.R. at p. 168.

documents of which more than five hundred were read to the jury over a period of almost three weeks. The proving of all these documents in a case of this nature by the strict traditional rules appears well-nigh impossible. It is therefore submitted that the pre-requisites apparently set out by the court will render difficult the effective prosecution of corporations on criminal charges, particularly in cases of conspiracy in restraint of trade. Conspiracy, as has been shown, can rarely be established by direct evidence and agreements in restraint of trade even more rarely. Such agreements are made in secret. To the extent that they are reduced to writing, they would certainly not be recorded in the minute-book of a company. Nor would a company by by-law or resolution authorize an officer or employee to enter into such agreements. Direct evidence would require the testimony of co-conspirators and officers of the accused companies who may themselves be co-conspirators. The prosecution is therefore compelled by practical considerations to rely upon written evidence generally in the possession of the conspirators, and on the rule that such evidence coming from their possession is admissible against them.

The growth of corporations has led to growth and development in the various branches of the law. It is now apparent that there is need for further development in the rules of evidence applicable to corporations charged with criminal acts. The law must take cognizance of the fact that, although there may be little or no difficulty in applying the existing rules to small local companies in which the ownership, management and direction of the business are vested in one or two persons, it may be impossible to apply these rules effectively in the case of the modern large corporation which must of necessity act through many persons with authority in different branches of the business and in different geographic areas.

In an Alberta case involving the criminal responsibility of a corporation, Ford J.A., delivering the judgment of the court, said:

> After reading and considering, with many others, the cases cited on the argument I have, not without considerable hesitation, formed the opinion that the gradual process of placing those artificial entities known as corporations in the same position as a natural person as regards amenability to the criminal law has, by reason of the provisions of the Criminal Code, . . . reached that stage where it can be said that, if the act complained of can be treated as that of the Company, the corporation is criminally responsible for all such acts as it is capable of committing and for which the prescribed punishment is one which it can be made to endure.[5]

[5] *Rex* v. *Fane Robinson Ltd.*, [1941] 3 D.L.R. 409.

It is submitted, in the light of the decision in *Rex* v. *Ash-Temple et al.*, that further development is necessary in the rules governing proof that "the act complained of can be treated as that of the company". This development, particularly in relation to economic legislation such as the Combines Investigation Act and section 498 of the Criminal Code, must take cognizance of developments in the corporate form of business organization, developments in corporate business practices, and the position of the corporation in the economy of the modern state.

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STARE DECISIS — AUTHORITY OF COURT OF APPEAL DECISIONS FROM ENGLAND OR ANOTHER CANADIAN PROVINCE. — I hesitate to add to the many comments and articles on *stare decisis* that have appeared in the Review,[1] but a note should be made of two recent judicial pronouncements. A year ago, I dissented in these pages[2] from the statement in a Manitoba case that the court was bound by a decision of the English Court of Appeal. In *Safeway Stores Ltd.* v. *Harris*,[3] Williams C.J.K.B. had held that he was bound by a decision of the English court upon a question of quantum of damages even though he did not approve the reasoning. There was no discussion beyond the mere statement that the decision was binding. Subsequently, on appeal, the Court of Appeal for Manitoba unanimously allowed the plaintiff's appeal and increased the damages for defamation from $3000 to $20,000.[4] In the course of his reasons for judgment MacPherson C.J.M., for the court, noted that the trial judge had followed the English decision, and then continued:[5]

> In the present action I am of the opinion that the learned trial Judge misconceived the situation. It is true that in *Trimble* v. *Hill* (1879), 5 App. Cas. 342, the Judicial Committee of the Privy Council laid it down that the Colonial Courts ought to follow the decisions of the Court of Appeal in England. I would suggest that there has been a great change in the relationship between the various parts of the Empire since that

[1] Can. Bar Rev. 1:470; 3:1, 109, 138, 349; 4:289, 404; 9:578; 13:1, 606; 16:743; 19:151,303; 23:349; 26:581.

[2] (1948), 26 Can. Bar Rev. 581.

[3] [1948] 4 D.L.R. 187; [1948] 1 W.W.R. 337 (*sub nom. Canada Safeway Limited* v. *Harris*).

[4] [1948] 4 D.L.R. 187; [1948] 2 W.W.R. 211. The appeal by the defendant was dismissed at the hearing. Written reasons for judgment were delivered only with respect to the plaintiff's cross-appeal.

[5] [1948] 4 D.L.R. 187, at p. 202.

> decision was given. It is still desirable and advisable that our Courts should pay the greatest respect, and give the greatest consideration, to any judgment of the Appeal Courts of England — though perhaps not binding on them: *Stuart* v. *Bk. of Montreal* (1909), 41 S.C.R. 516.

His Lordship then noted that the Court of Appeal for Ontario had expressed disapproval of *Trimble* v. *Hill*, that there were two single judge decisions in Manitoba purporting to follow that case, but both were cases dealing with the interpretation of similar statutes, and that Duff C.J.C. in *London* v. *Holeproof Hosiery Co.*,[6] had declared that the observations in *Trimble* v. *Hill* were "a little too absolute", even in relation to the interpretation of English statutes which had been reproduced in Canada.[7] With that, the court left the subject of *stare decisis*[8] and proceeded to distinguish the English decision in question, as well to hold that, even if it did apply, the assessment of damages by the trial judge had been inadequate.

In the result, it would appear that a modern Canadian appellate court has unanimously ruled that Canadian courts are not bound by English Court of Appeal decisions. We should have preferred the omission of the word "perhaps" in the last line of the quotation just given, but there has now been such general disapproval in Canada of the statement in *Trimble* v. *Hill* that it is submitted the decision is no longer valid in Canada.[10] This submission does not derogate in any way from the idea that English decisions should continue to carry great weight in Canada. It merely allows us to develop our own jurisprudence free from the involuntary binding authority of English decisions. It allows us, in circumstances in which Williams C.J.K.B. found himself, to apply what we conceive to be the more correct principle of law. In addition, however, we should like to think that the decisions in other common law jurisdictions should also be considered. The English courts are not averse, occasionally, to looking abroad.[11] We should do so more often. And it should not be as

[6] [1933] 3 D.L.R. 657, at p. 659; [1933] S.C.R. 349, at p. 354.

[7] [1948] 4 D.L.R. 187, at pp. 202-3.

[8] Note is made of Lord Dunedin's famous remark that where appellate courts in a "colony" and in England differ the former is not necessarily wrong: *Robbins* v. *National Trust*, [1927] A.C. 515, at p. 519; [1927] 2 D.L.R. 97, at p. 100.

[9] Cf. cases up to 1922 collected by Hodgins J. (1923), 1 Can. Bar Rev. 470, at pp. 483–8, 496–500. His lordship also makes a plea that we owe respect only, not involuntary respect, to English decisions: (1926), 4 Can. Bar Rev. 404, at p. 405.

[10] In fact, Williams C.J.K.B. himself expressed preference, twenty-two years ago, for the view in British Columbia that *Trimble* v. *Hill* was too broad for the three major dominions, Canada, Australia and South Africa: (1926), 4 Can. Bar Rev. 289, at pp. 298-9.

[11] *E.g.* Romer J. in *Young* v. *Sealey*, [1949] 1 All E.R. 92, where six Irish,

difficult for us in Canada to refer to the principles upon which the United States courts have approached various problems as it is in England. We have reasonable access to the decisions and digests, and to the vast wealth of periodical literature. Lord Wright's regret, therefore, that more use cannot be made in England of the decisions in that republic, so recently expressed in the House of Lords,[12] should not be an excuse to us to ignore the comparative jurisprudence.

On the other hand, slightly different considerations apply in the other judicial pronouncement to be commented upon here. In *Lethbridge Lodge No. 2, I.O.O.F.* v. *Afaganis,*[13] Sissons J. of the Trial Division of the Supreme Court of Alberta, after discussing for over four pages the reasoning upon which the British Columbia Court of Appeal decided a problem in landlord and tenant in the case of *West* v. *Barr*[14] and the reasons why he thought it was wrong, stated:

> While I am unable to follow the reasoning in *West* v. *Barr*, (*supra*), I am bound by it as the latest decision of a superior court on the point now before me, and it is my duty to follow it without endeavouring to pick out infinitely small points of difference between it and the case with which I am dealing. On the other hand, I should be careful not to improperly extend the principle of that decision.[15]

His Lordship then found a "fundamental distinction" between the case before him and that in his neighbouring province, and declined to follow the latter.

It comes as quite a surprise to find it suggested in 1949 that the decisions of an appellate court of one province are binding upon the trial judges of another province, particularly in a case that involves neither a statute common to both provinces nor a provision of federal law. There is more reason since our union in 1867 for the common law provinces of Canada (and all provinces on federal issues) to follow one another than to follow English decisions, and if there was a choice between a Canadian province and England, without more, shall we not prefer the former? But in neither case, it is submitted, should such decisions be binding. The rule of *stare decisis* is growing harder every year.

New Brunswick and Ontario cases were referred to (three of them were considered in detail at pp. 104-8). His lordship seems to have missed the more recent Canadian Supreme Court decisions dealing with another aspect of the same problem: joint bank accounts and resulting trusts. This aspect was also pertinent to the decision in *Young* v. *Sealey*.

[12] *Monarch Steamship Co.* v. *A/B Karlshamns Oljefabriker* (1948), 82 Ll.L.R. 137, at pp. 157-8; [1949] 1 All E.R. 1, at pp. 17-18.

[13] [1949] 1 W.W.R. 314 (Alta., Sissons J.).

[14] [1945] 2 D.L.R. 42, 61 B.C.R. 108 (BC.CA).

[15] [1949] 1 W.W.R. 314, at p. 321.

Here is an opportunity for the courts to examine the principles and if, as in the case before Sissons J., the court thinks an earlier decision is wrong, he should be able to say so and to leave it to the Supreme Court of Canada to choose between the two. In fact, with respect, we submit that there is authority in the appellate court of the very province in which Sissons J. sat for the proposition that, although very great respect will be paid to the decisions of another province, there is no rule which *binds* us to the decisions of that other province.[16] This, it is submitted, is a wholesome rule.

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EVIDENCE — PRIVILEGE — QUESTIONS TENDING TO SHOW COMMISSION OF ADULTERY. — Recently, in the course of a trial,[1] Gale J. made a ruling upon the applicability of the privilege conferred by section 7 of the Ontario Evidence Act,[2] which, surprisingly enough, has not been the subject of any previously reported decision. In an action brought by a husband for divorce on the ground of his wife's adultery and for custody of the children of the marriage, the wife, by her pleading, neither admitted nor denied the adultery and counterclaimed for custody. There was some evidence that the wife had given birth to an illegitimate child. The wife gave evidence in chief on the issue of custody but at that point was not asked about the adultery alleged against her. The plaintiff's counsel, in cross-examination, pro-

[16] Cf. Harvey C.J.A. for the appellate division in *R.* v. *Smith* (1919), 47 D.L.R. 513, at p. 514; *R.* v. *Schmolke* (1919), 33 C.C.C. 371, at p. 372; *R.* v. *Glenfield*, [1935] 1 D.L.R. 37, at p. 40. Also Dennistoun J.A. in *Loczka* v. *Ruthenian Farmers* (1922), 68 D.L.R. 535, at pp. 543-4 (Man. CA.) ("desirable" to follow other provincial appellate courts, but not bound to do so). It is true that each of these cases involves the question whether an appellate court in province A is bound to follow the appellate court in province B, not whether a trial judge in one should follow the appelate court in the other. But there is no suggestion in any of the decisions that the rule is different for trial judges. In his article in 1935, D. H. Laird made a similar submission: 13 Can. Bar Rev. 1, at p. 13. At p. 21, there is a plea that we *should* follow each other, though not *bound* to do so.

[1] *Booth* v. *Booth and Cook*, [1949] O.R. 80.

[2] R.S.O., 1937, c. 119. There is similiar legislation in the other common law provinces: Alta., The Alberta Evidence Act, R.S.A., 1942, c. 106, s. 8, as amended by 1947, c. 42, s. 2; B.C., Evidence Act, R.S.B.C., 1936, c. 90, s. 8; Man., The Manitoba Evidence Act, R.S.M., 1940, c. 65, ss. 7, 8; N.B., The Evidence Act, R.S.N.B., 1927, c. 131, s. 9; N.S., The Evidence Act, R.S.N.S., 1923, c. 225, s. 38, as amended by 1936, c. 35, s. 1; P.E.I., The Evidence Act,1939, c. 14, s. 8; Sask., Order XL, Rule 523 (2).

posed to ask her about the alleged adultery and this was objected to on the ground that the witness was privileged by section 7 which reads:

> The parties to any proceeding instituted in consequence of adultery and the husbands and wives of such parties shall be competent to give evidence in such proceeding; provided that no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she is guilty of adultery unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.[3]

Gale J. ruled that the counterclaim for custody was not a proceeding "instituted in consequence of adultery" and that the wife must submit to full cross-examination. This ruling is eminently sound because the section has been interpreted as strictly limited to proceedings in which the essential cause of action is adultery and as inapplicable to bastardy proceedings,[4] legitimacy proceedings,[5] and slander[6] and enticement actions[7] in which adultery might be an issue or merely evidentiary. The section is applicable apparently only to actions for divorce on the ground of adultery, alimony on the same ground and actions for criminal conversation.

Gale J. went further and gave his opinion that, even if there had been no counterclaim and custody had been an issue in the main action, the proposed cross-examination was permissible. He based this conclusion upon the application of two fundamental principles — the first that, "Any person who can testify with personal knowledge as to any matter in controversy before the Court and who might thereby assist the Court in coming to a proper result, should be compelled to give that evidence, and any attempt to detract from that obligation should be carefully scrutinized",[8] and the second, which he considered of greater

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[3] This section is similar to section 3 of the Evidence Further Amendment Act, 1869 (32 & 33 Vict., c. 68), which has been interpreted as confining the proviso to actions instituted in consequence of adultery: Phipson on Evidence (8th ed.), p. 203. The present section in England (Judicature Act, 1925, s. 198) removes any possible doubt on this point, the proviso reading "but no witness in any such proceedings. . . ".

[4] *Nottingham Guardians* v. *Tomkinson* (1879), 4 C.P.D. 343.

[5] *Evans* v. *Evans*, [1904] P. 378.

[6] *Blunt* v. *Park Lane Hotel*, [1942] 2 K.B. 253.

[7] *Elliott* v. *Albert*, [1934] 1 K.B. 650.

[8] "For more than three centuries, it has been recognized as a fundamental maxim that the public (in the words sanctioned by Lord Hardwicke) has a right to every man's evidence. When we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional, being so many derogations from a positive general rule . . . all privi-

importance in this case, "that upon any proceedings the result of which will determine the custody of children, the Court should be fully apprised of all the facts pertaining to the past and future welfare of those children". The custody issue was merely incidental to the divorce action and therefore section 7 did not apply to it.

It is submitted that both the ratio decidendi and obiter dicta are correct upon principle. However, they do raise a practical difficulty. It would be possible for a court in the same divorce and custody action, whether or not there was a counterclaim, to find that the plaintiff had failed to satisfy the burden of proof of adultery, and therefore failed to obtain judgment for divorce, and at the same time to find upon the custody issue that the defendant spouse was guilty of the adultery alleged as the ground for divorce in such circumstances that he or she was disentitled to custody. Such a result, it is fair to say, would be inexplicable to the plaintiff or to any other layman. This problem can not arise in England because there the practice is to try contested issues of custody apart from the divorce petition.[9]

The proper solution to the problem is the repeal of section 7. It is difficult to appreciate why any privilege against asking questions with respect to adultery, especially in an action brought in consequence of it, should exist at all. At one time persons guilty of it were subject to ecclesiastical penalties but that jurisdiction has long since fallen into desuetude in England[10] and never did exist in this country. The privilege, though statutory, is most likely an aspect of the privilege against self-incrimination which has been abolished in this country.[11] Like all other privileges, it suppresses the truth in furtherance of some extrinsic policy. What is the policy involved? As Denning L.J. recently said in interpreting the similar English section: "At this stage in the history of the law of evidence, the anomaly is not that he should be compellable to give evidence, but that he should have this privilege".[12]

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leges of exemption from this duty are exceptional, and are therefore to be discountenanced." Wigmore on Evidence (3rd. ed.), s. 2192.

[9] Rayden on Divorce (4th ed.), p. 344; Latey on Divorce (13th ed.), p. 235.

[10] *Blunt* v. *Park Lane Hotel, supra,* footnote 6.

[11] In its place, the witness is given immunity from use of his evidence in subsequent proceedings: Canada Evidence Act, R.S.C., 1927, c. 59, s. 5. This would afford sufficient protection to the inhabitants of New Brunswick where adultery is a criminal offence.

[12] *Tilley* v. *Tilley,* [1948] 2 All E.R. 1113, at p. 1122. Here the Court of Appeal held that a witness, being competent under section 198 of the Judicature Act (similar to section 7), is also compellable to testify. The

It is a matter of regret that the Commissioners on Uniformity of Legislation in Canada, in their draft Evidence Act,[13] extend this privilege against questions tending to show adultery to all actions instead of omitting the privilege completely. This is a retrograde step. If the draft Act is adopted by the provincial legislatures, then in proceedings for custody, affiliation, alimony, defamation, dower, dependents' relief, in which adultery is either an issue or merely evidentiary, a party would be afforded a statutory protection for a character he or she did not merit or possess.

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There are many noble things in human life, but to most of them attach evils which are fated to corrupt and spoil them. Is not justice noble, which has been the civilizer of humanity? How then can the advocate of justice be other than noble? And yet upon this profession which is presented to us under the fair name of art has come an evil reputation. In the first place, we are told that by ingenious pleas and the help of an advocate the law enables a man to win a particular cause, whether just or unjust; and that both the art, and the power of speech which is thereby imparted, are at the service of him who is willing to pay for them. Now in our state this so-called art, whether really an art or only an experience and practice destitute of any art, ought if possible never to come into existence, or if existing among us should listen to the request of the legislator and go away into another land, and not speak contrary to justice. If the offenders obey we say no more; but for those who disobey, the voice of the law is as follows:– If any one thinks that he will pervert the power of justice in the minds of the judges, and unreasonably litigate or advocate, let any one who likes indict him for malpractices of law and dishonest advocacy, and let him be judged in the court of select judges; and if he be convicted, let the court determine whether he may be supposed to act from a love of money or from contentiousness. And if he is supposed to act from contentiousness, the court shall fix a time during which he shall not be allowed to institute or plead a cause; and if he is supposed to act as he does from love of money, in case he be a stranger, he shall leave the country, and never return under penalty of death; but if he be a citizen, he shall die, because he is a lover of money, in whatever manner gained; and equally, if he be judged to have acted more than once from contentiousness, he shall die. (Plato: Laws XI. 937. Jowett translation)

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issue upon which the witness was compelled to testify was condonation, not adultery.

[13] Proceedings of the Canadian Bar Association, 1945, p. 274: "6. No witness in any action, whether a party thereto or not, shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same action in disproof of the alleged adultery."