NOTES.

APPEAL—JURISDICTION—CRIMINAL MATTER—In *Rex* v. *Davis*,[1] a far-reaching decision has been given by the Supreme Court of Canada.

The crime was murder—Davis was convicted, but having appealed to the Court of King's Bench in Quebec, that court ordered the taking of certain testimony from the convict and one Morel. This was done before the court itself, with the result that while the majority of the court upheld the conviction, two out of the five judges dissented, namely the Chief Justice and Guerin, J.

The convict then appealed to the Supreme Court of Canada which decided that no appeal lay notwithstanding the difference of opinion among the judges. The reason given is that the Statute permits only one judgment to be given on questions of fact, although on questions of law, the court may permit separate and differing opinions to be expressed.

This conclusion is the more striking because although section 1024 remains unrepealed, it is made ineffective by this decision, as to questions of fact. Section 1024 allows an appeal to the Supreme Court of Canada, if the court below is not unanimous. Such was the case here, but the Supreme Court said that the words of the new section (1013) "no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court" involved the result that the judgment (to be pronounced by the President of the Court or at his direction) must be conclusive although not in fact unanimous. This is only relaxed by the statute when questions of law are involved provided the court below itself permits separate judgments to be given.

This decision entirely deprives a person convicted of a criminal offence—even a capital one—of an appeal on the facts to the Supreme Court.

The seriousness of this sudden cutting off of a valuable privilege to those convicted by a jury of serious crime may be seen when it is realized that success on the initial appeal to the Court of Appeal in each province is carefully limited to cases where "the verdict of the jury is unreasonable or cannot be supported by the evidence."

[1] 1924, S.C.R. 522.

In the above mentioned case much is said that will prove of great embarrassment to the Judges in certain appeals.

While not necessary to the decision, the learned judge who wrote it construes the words (which relate to cases where the court does not permit independent judgments) "no judgment with respect to the *determination of any question* shall be separately pronounced by any member of the court" as meaning that on a question of fact there can be no dissent expressed nor separate judgment pronounced by any member of the court, "and on a question of law it is only when the Court of Appeal so directs that dissenting members of the court can *pronounce their dissent.*"

He is of opinion that the statute is peremptory and excludes the expression of either dissent and lack of unanimity.

It was not necessary to go thus far. The statute does not say so. It only prevents the separate *determination of any question* involved on the appeal. There may be many grounds of appeal, each necessitating individual treatment. This, however, is forbidden and the majority view is accepted. But why can there be no dissent from that majority view expressed? Why should judges who in certain important or doubtful cases desire to disagree and to say so be precluded from so doing? The reason given is that the Statute so provides. Does it? Mr. Justice Mignault does not think so. In view of the manifest absence of proper provisions regarding appeals from a Judge alone, sitting without a jury, this restriction, if correct, adds greatly to the difficulty of administering with clearness and definiteness the criminal law—so far as the Court of Appeal is concerned.

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REX VS. LONG BRANCH RACING ASSOCIATION—56 O.L.R. 303.—Sub-section 2 of Section 235 of the Criminal Code exempts from the provisions of that section and Sections 227 and 228, which deal with betting operations upon the race course of any association incorporated before the 20th day of March, 1912, or since that date, by Special Act permitting betting upon the race course of such an association during the actual progress of a race meeting conducted by it. The defendant association in this case was incorporated as a company by Letters Patent in 1911, under a different name, with power to encourage athletics, but without power to operate race courses. By supplementary Letters Patent, issued in 1924, its objects and purposes were extended to encourage horse racing and to operate race courses. It is now held that the exempting sub-section of the Act did not protect the association, the supplementary Letters Patent having operation only from their date.

UNITED STATES OF AMERICA VS. NAMOTH OIL COMPANY—56 O.L.R. 307—AFFIRMED ON APPEAL, NOT YET REPORTED.—This is a very interesting discussion of the question of the privilege of a solicitor in respect of communications between himself and his client. As it arises out of the much-talked-of Teapot Dome transaction in the United States, and as the situation with which it deals affected a very well-known Toronto counsel, the case itself has attracted a great deal of attention. It is well worth serious consideration, however, if only because of the fact that it deals with a very important question of legal ethics.

CURRENT EVENTS.

TRIENNIAL ELECTION OF BENCHERS OF THE LAW SOCIETY OF MANITOBA.—The triennial election of Benchers of the Law Society of Manitoba took place on the 2nd of April when the following were declared elected: For the Eastern Judicial District—His Honour Sir James Aikins, K.C., Mr. Edward Anderson, K.C., Mr. A. J. Andrews, K.C., Mr. Isaac Campbell, K.C., Mr. R. B. Graham, K.C., Mr. R. D. Guy, Mr. A. E. Hoskin, K.C., Mr. T. A. Hunt, K.C., Mr. C. H. Locke, K.C., Mr. Edwin Loftus, K.C., Mr. H. Ormond, K.C., Mr. Isaac Pitblado, K.C., Mr. W. J. Tupper, K.C., and Mr. C. P. Wilson, K.C.; all of Winnipeg. For the Central Judicial District: Mr. E. A. McPherson, K.C., of Portage la Prairie; for the Western Judicial District: Mr. S. E. Clement and Mr. H. E. Henderson, K.C., of Brandon; for the Southern Judicial District: Mr. G. T. Armstrong, K.C., of Manitou; for the Northern Judicial District: Mr. G. A. Eakins, of Minnedosa; for the Dauphin Judicial District: Mr. C. S. A. Rogers, of Dauphin.

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The Civil Service Commission is receiving applications for the post of joint law clerk of the House of Commons. Forms of application and particulars relating to the appointment may be obtained from the Secretary, Civil Service Commission, Ottawa.
