NOTE AND COMMENT.[1]

* * * THE bicentenary of the birth of Sir William Blackstone fell on the 10th July of the current year. His "Commentaries on the Laws of England" is one of the best abused books in literary history. Abuse was its lot from the start. Bentham, who had learned to dislike Blackstone while attending his lectures, wrote his "Fragment on Government" to refute certain doctrines espoused by the author in the first volume of the Commentaries. That was in 1776. In 1785 he had retained so much of his rancour that he could speak of the departed Judge and jurist in the following lurid terms: "His hand was formed to embellish and corrupt everything it touches . . . His is the treasure of vulgar errors, where all the vulgar errors that are, are collected and improved . . . He is the dupe of every prejudice, and the abettor of every abuse." John Austin is the chief singer in the modern chorus of dispraise of Blackstone; and recruits for that chorus never seem wanting. And yet it is an undoubted fact that the Commentaries were regarded as the chief repository of common law principles both in the United States and Canada during the nineteenth century. Not so long ago Leith's adaptation of the Commentaries to the Law of Ontario was of paramount importance to the student. So late as 1890 Prof. Hammond said in the preface to his (American) edition of the great work:

> "Blackstone's Commentaries in their original shape are still the book most frequently put into the beginner's hands. Even the attempts which have been made to adapt it to their use by leaving out parts now regarded as obsolete . . . have not been so successful as the unabridged editions. . . . The difference between English and Ameri-

[1] EDITOR'S NOTE.—Contributions to this department of the REVIEW are cordially invited. Matter not prepared by the Editor will be authenticated by the names or the initials of the writers.

can students in this respect deserves attention, and points to an essential characteristic of Blackstone's relation to the law of the United States.''

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* * * IN *Badman* v. *The King,* [1923] W. N. 242 the Court of Appeal in England (reversing Horridge, J., at Chambers), decided that under sec. 7 of The Petition of Right Act of 1860, the Court had jurisdiction to allow a petition of right to be amended, provided the amendment was of such a nature that the allowance of it would not derogate from the prerogative of the Crown, which sec. 2 shows it was the intention of the Act to preserve. The Court laid down the following test as to whether any particular amendment ought to be allowed: If the petition had originally been presented in the form in which it would stand were the proposed amendment allowed, would the Attorney-General have advised the grant of the fiat?

Hitherto there has been some dubiety as to whether a petition could be amended at all without a fresh fiat, notwithstanding the large powers of amendment mentioned in the English Act and such Colonial Acts as are based upon it. In Robinson on Civil Proceedings By and Against the Crown, p. 386, it is said:—

> ''Can a petition of right be amended? The Crown has granted its fiat to a particular petition, and it is obviously not within the subjects' competence to amend it into something else without the Sovereign's leave, in spite of sec. 7 of the Act. Strictly, therefore, a fresh petition should be presented and a fresh fiat obtained.''

Rule 117 of the practice of the Exchequer Court of Canada provides expressly for the amendment of a petition of right in the discretion of the Court or a Judge, but doubts have been entertained of its validity and it has been guardedly acted on. (See Audette's Practice, 2nd ed., pp. 447, 448). *In Smylie* v. *The Queen,* 27 Ont. A. R. 172, the Ontario Court of Appeal

was of opinion that a suppliant might amend his petition at the trial, but no reasons were given in support of this view. It would be well if this recent decision of the English Court of Appeal could be regarded as settling the question.

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* * * THE situation of affairs in Prince Edward Island in respect of liquor prohibition is a peculiar one. It savours of a collision between the courts and the legislature. By sec. 52 of The Prohibition Act (P.E. I., 1917, c. 1), it was enacted, *inter alia*, as follows:—

> "52. No person shall keep or have in his possession any liquor unless such liquor has been purchased from a vendor in accordance with the provisions of this Act. Any liquor in possession of any partnership or company shall be deemed to be in the possession of each member or shareholder thereof. All liquor purchased from a vendor shall, until actually used, be kept in the bottle or container on which the label has been attached by the vendor in accordance with the provisions of sec. 49. Any person having in his possession any liquor which is not in a bottle or container on which such label is attached shall be presumed to have such liquor in his possession in violation of the provisions of this section. This section shall not apply to wine for sacramental purposes in the possession of a clergyman or church goods' agent, provided such wine has been obtained by such clergyman or church goods' agent, in the manner provided by sec. 44; nor shall this section apply to liquor in the possession of a vendor licensed under this Act; nor to alcohol in the possession of a druggist in a package under seal or on which a permit has been affixed in accordance with the provisions of sec. 187."

The Act also contained the following general provisions applicable to its construction:—

> "162. While this Act is intended to prohibit and shall prohibit transactions in liquor, which

take place wholly within the Province of Prince Edward Island, except as otherwise specially provided by this Act, and to restrict the consumption of liquor within the limits of the Province of Prince Edward Island, it shall not affect and is not intended to affect any *bonâ fide* transactions in liquor, which may be beyond the powers of the Legislature of this Province to prohibit or restrict, between a person in the Province of Prince Edward Island and a person in another province or in a foreign country, and the provisions of this Act shall be construed accordingly.

"163. If, for any reason, any section, paragraph, provision, clause or part of this Act shall be held unconstitutional or invalid, that fact shall not affect or destroy any other section, paragraph, provision, clause or part of the Act that is not of itself invalid, but the remaining portions shall be in force without regard to that so invalidated."

Under the provisions of this statute the defendant in the case of *Rex* v. *Flood*, 70 D. L. R. 310, sub nom. *Re Flood*, was convicted before the Stipendiary Magistrate of the City of Charlottetown, of having in his possession intoxicating liquor which had not been purchased from a "vendor" in accordance with the requirements of the statute. An application was made on behalf of the defendant to the Supreme Court of Prince Edward Island for a writ of *certiorari* to quash this conviction, and an order *nisi* therefor was granted. On the hearing before the full Court it was held that sec. 52 of the Act was *ultra vires* of the Provincial Legislature as it interfered with the trade and commerce of Canada. After the decision was rendered in the case of *Rex* v. *Flood*, the legislature of the Province by an Act, passed on the 3rd May, 1922, intituled *The Prohibition Amendment Act*, 1922, attempted to meet the situation created by the decision by providing as follows:—

"3. (1) Nothing in The Prohibition Act or in this Act shall prevent any person from having liquor for export sale in his liquor warehouse,

provided such liquor warehouse and the business carried on therein complies with the requirements of this section, or from selling from such liquor warehouse to persons in other provinces or in foreign countries or to a wholesale vendor under this Act; but no warehouse shall be deemed to be a liquor warehouse within the meaning of this section if the person having liquor therein has failed to comply with the provisions of this section.

Subsequent to the passing of this amending Act a conviction was had against the defendant in the case of *Rex* v. *McKenna* for having in his possession intoxicating liquor which had not been purchased from a vendor in accordance with the provisions of The Prohibition Act. An application for a writ of *certiorari* to quash the latter conviction was also made to the Supreme Court of Prince Edward Island, on the ground that sec. 52 of the Act last mentioned was *ultra vires,* notwithstanding the amendment of 1922, and the judgment of the Court on the hearing sustained this contention. This is the situation which savours of a collision between the judicial and the legislative branches of government in the Province.

It so happens that the learned Chief Justice delivered the judgment of the Court in both cases above referred to.

In the case of *Rex* v. *Flood* the Court held that there was an essential difference between the Prince Edward Island legislation and that of Manitoba, inasmuch as the Manitoba Act "expressly provided for the Export Trade, keeping an open but guarded channel through which it was to flow, while the legislation of this province with which we have to deal attempts to extinguish the Export Trade." With due submission let us say that it is hard to read an intention into the Prince Edward Island Statute "to extinguish the Export Trade" in liquor when sec. 162, above quoted, declares that "it is not intended to affect any *bonâ fide* transactions in liquor, which may be beyond the

powers of the Legislature of this Province to prohibit or restrict, between a person in the Province of Prince Edward Island and a person in another province or in a foreign country, and the provisions of this Act shall be construed accordingly." If this language does not except "the Export Trade" from the general operation of the Act, then the English speech is a medium for concealing rather than disclosing the intention of legislatures. The construction of Canadian statutes in relation to constitutional limitations is not an enterprise before which the intellect should stand aghast or one's reason totter on its throne. To quote the late Judge Clement: "The problem as to any Canadian Act, federal or provincial, is simply this: Is the Act repugnant to the British North America Act? Does the impugned Act overstep the limits prescribed by this Imperial charter for federal or provincial legislation as the case may be?" ("Constitution of Canada," 3rd ed., p. 373.)

The learned Chief Justice in his reasons in the *Flood* Case contented himself with the statement above quoted of the difference between the legislation of Manitoba and that of Prince Edward Island, and did not attempt to elaborate the constitutional implications of such difference. But in the subsequent case of *Rex* v. *McKenna,* he attempts to formulate reasons to support the decision he had already rendered in the *Flood* Case, by a reference to the language of Lord Sumner in the case of *Rex* v. *Nat Bell Liquors Ltd.* (1922), 2 A. C. 128. This was a decision upon the Alberta Act, which had originally contained sec. 72, similar to sec. 162 of the Island Act, but which had been repealed previous to the decision in the *Nat Bell Liquors* Case. The legislature of Alberta had, however, in the year 1918 passed another statute, The Liquor Export Act, which, under conditions, legalized the export of liquor and authorized liquor to be kept in the Province of Alberta for the purpose of export trade.

In his judgment in the *McKenna* case, Mathieson, C.J., quotes from Lord Sumner as follows:—

> "The presence or absence by an express disclaimer of any such interference" (that is with interprovincial or with foreign trade) "may greatly assist, where the language of the Provincial Legislature does not in itself determine the question and define its effect. If, however, it is otherwise clear that there is such an interference, or that there is none, and the language actually used sufficiently decides that question, there is no such sovereign efficacy in such a clause as sec. 72 as to make its presence or absence in an enactment crucial."

We rather think that Lord Sumner's words strengthen the argument in favor of the validity of the Island Act, instead of furnishing a ground for declaring it invalid in whole or in part. It must be remembered that Lord Sumner was dealing with an Act which had not a saving clause such as sec. 162 of the Prince Edward Island statute.

It seems to have been argued that, without this saving clause, the Act, or parts of it, would be invalid, and Lord Sumner seems to have desired to uphold the validity of the Alberta Act if possible. As evidence of his desire to uphold the Act, he read into the Alberta Liquor Act the words, "or by the Liquor Export Act," after the words "this Act" in sec. 23 of the Alberta Act, but he specifically said that it was only in the peculiar circumstances that he did so, and that while the alternative presented to him was the one to be adopted. the Board "would be loath to apply this precedent in any other than an exactly similar case."

We take it that if sec. 72 of the Alberta Act had not been repealed, the Privy Council would have considered themselves bound by the judgment in *Attorney-General of Manitoba* v. *Manitoba License Holders Association*, [1902] A. C. 73, and that it was only because they were deprived of that simple ground of decision that Lord Sumner gave utterance to the remarks above quoted. However, Mathieson, C.J.,

found himself able to read these remarks in a different way.

The observations of Lord Sumner, it seems to us, are *obiter dicta*, and having this in mind, and the fact that the Privy Council had already held the Manitoba Act valid, it would seem that the decision in the *Nat Bell* Case is not applicable to the *Flood* or *McKenna* Cases.

In the *Manitoba* Case, Lord Macnaghten said of sec. 119 that,

> "That provision is as much a part of the Act as any other section contained in it. It must have its full effect in exempting from the operation of Act all *bonâ fide* transactions in liquor which come within its terms. It is not necessary to go through the provisions of the Act. It is enough to say that they are extremely stringent—more stringent probably than anything that is to be found in any legislation of a similar kind."

When the Manitoba Act was before the Manitoba Court of Appeal, that Court took the same view of sec. 119 that Mathieson, C.J., has taken, but the judgment of the Privy Council was an answer to that contention, and we cannot see that the absence from the P. E. Island Act of clause 52 of the Manitoba Act can make any difference to the decision. In our opinion Lord Sumner's judgment must be treated as confined to the particular facts of the case, and if we bear in mind that he was trying to uphold an Act which had not a section like 162 of the P. E. Island statute, and read the judgment in the light of that, it is easily distinguishable.

It is probably because sec. 72 of the Alberta Act was repealed that no reference to the *Manitoba* Case is made in Lord Sumner's judgment. This would be further proof that his remarks would not be applicable to the *Flood or McKenna* Cases, and would not support the judgments of the Supreme Court of Prince Edward Island in those cases.

Assuming, however, that the decision in the *Flood* Case was not altogether erroneous, it should, it seems to us, have been limited to stating that sec. 52 of the P. E. Island Act was *ultra vires* in part—that is, in so far as it purports to apply to transactions beyond the limits of the province. It could not be properly held that sec. 52 was *ultra vires* or inoperative in so far as local transactions are concerned. This being so, all that was required to make sec. 52 entirely unobjectionable was to pass legislation which made it clear that it was not intended to apply to export transactions. On this point we should like to quote from Lefroy's Constitutional Law of Canada, p. 100:—

> "Although part of an Act, either of the Dominion Parliament or of a Provincial Legislature, may be *ultra vires*, and therefore invalid, this will not invalidate the rest of the Act, if it appears that the one part is separate in its operation from the other part, so that each is a separate declaration of the legislative will, and unless the object of the Act is such that it cannot be attained by a partial execution.

Assuming for argument's sake that sec. 162 of the Prince Edward Island statute was not clear in its intendment as to export transactions, it appears to us beyond a doubt that the Prohibition Amendment Act, 1922, clarified the doubt, and entirely cured sec. 52 of any such supposed defect.

Mathieson, C.J., in his judgment in the *McKenna* Case, in referring to the amending legislation of 1922, says:—

> "After an exhaustive examination of all the authorities available, I can find no case in which a statute, held invalid as to part, has been amended without direct reference to the defective section or part intended to be affected . . . The method of amendment uniformly adopted in such cases as this, appears to be to remove the invalid section by the amendment and substitute therefor the section as validated together with the validating provisions."

We must confess that this is a somewhat novel objection so far as English law is concerned. Now, while authority may be found in the United States Courts to the effect that an Act totally unconstitutional and void does not admit of amendment, the current of decisions, even in those Courts, is altogether in favour of the possibility of amending an Act which is void in one section only, or in part of a section. The highly technical objection made by Chief Justice Mathieson to the effect that the partial invalidity of sec. 52 could not be remedied except by a statute which made a direct reference to the defective section, does not appear to us to rest on any sound foundation. It is true that in the constitution of many of the United States there is a requirement that the amended section shall be set out in the amending statute, but this is merely in order to avoid confusion of thought and expression, and while it may be a very wise rule to introduce into a State constitution, it has no counterpart in the British North America Act.

In the case under consideration it seems to us that the most that could be said is that sec. 52 was unconstitutional and inoperative in part, *i.e.*, in so far as it purported to affect transactions outside the province. But it cannot be pretended that a judgment so holding would delete the section altogether, as if it had been repealed and removed from the statute book. Consequently, when the legislation of 1922 introduced the qualification which was held to be necessary in order to make sec. 52 unobjectionable, we cannot see that any further difficulty could arise.

With profound deference to the views of the learned Chief Justice of Prince Edward Island, we are unable to share his conclusion that the Prohibition Amendment Act of 1922 did not completely cure the defect which was supposed to exist in sec. 52 of the Island Act.

Furthermore, it does not appear in either of the judgments that the convictions were in respect of transactions in liquor relating to the export trade;

and, for the reasons already stated, that sec. 52 could at most be considered *ultra vires* only as regards such transactions, it would seem that on this ground alone the convictions in both cases should have been maintained.

We cannot leave our consideration of this matter without stating with all possible emphasis that it is unfortunate that important constitutional questions, such as have arisen in the two cases under discussion, involving the jurisdiction and authority of a provincial legislature, should be allowed to rest with the decision of a provincial Court.

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* * * THE reception given in the Privy Council to the first group of Irish appeals is of particular interest to Canadians, since the terms of the Anglo-Irish Treaty expressly assimilate the constitutional position of Ireland to that of Canada, so that the precedents established for either Dominion are materially relevant to the status of the other. All the applications for leave to appeal were refused, although one of the cases raised questions of difficulty and importance upon which there had been much conflict of opinion in the Irish Courts. From the remarks of their Lordships we are reminded of the significant fact that the Judicial Committee is still technically a board of advisers to the executive, and is therefore free to consider questions of policy which cannot properly affect the decision of a purely legal tribunal.

Lord Haldane said in effect that the Committee would take notice of the growth of autonomy in the Dominions, and would govern its attitude towards appeals in the light of the new political development. He indicated that in the future applications for leave to appeal would generally only be granted in constitutional questions, and that cases of private right, irrespective of their difficulty or importance, would be dealt with finally by the Irish Courts.

So far as Canada is concerned, this reasoning will not apply to direct appeals from the provincial courts, where the appeal in certain cases lies as of right, but will presumably govern the practice of the Committee in dealing with applications for leave to appeal from the Supreme Court. If so, the decisions of the Supreme Court of Canada will be final in all except constitutional cases. This is the converse of the position established by the Australian Constitution, where it is expressly provided (s. 74), that the decisions of the Commonwealth High Court shall be final in constitutional questions, unless that Court itself grants leave to appeal. In South Africa the form of the constitution leaves almost no scope for the judicial determination of constitutional problems, so that under the new ruling appeals from South Africa, which are already extremely rare, will practically become obsolete.

H. A. S.

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* * * THE Supreme Court of Nova Scotia *en banc* rendered a decision recently of unusual interest in relation to the liberty of the subject. Livingston and MacLaughlin, who were respectively President and Secretary of District No. 26 U.M.W. of America, were charged before a Police Magistrate at Halifax with having published a seditious libel in connection with the recent strike at Sydney. Upon being arraigned they were remanded for a preliminary inquiry without bail. Counsel on their behalf applied to Mr. Justice Chisholm, of the Supreme Court, for a writ of *habeas corpus,* and on its return moved that the decision of the magistrate be rescinded and the accused be admitted to bail. The application was referred to the Full Court and on the argument the Attorney-General for Nova Scotia showed cause and contended that under the provisions of sec. 698 of the Criminal Code there was no power in a Superior Court to bail a prisoner on remand by a Justice; that under the writ of

habeas corpus, which the Attorney-General conceded was open to the accused on the question of bail, there was no power at common law to review the decision of a magistrate with jurisdiction in the premises and who was acting judicially; that the power of a Superior Court on *habeas corpus* to bail at common law in cases of felony or misdemeanor was confined solely to cases where the accused had been committed for trial. The Crown referred to the recent case in England of Arthur O'Brien, who was charged with a similar offence. As in the Halifax case the magistrate there refused to bail on remand. An application was then made to a Judge of the High Court at Chambers who refused the application, declining to review the magistrate's discretion. The Supreme Court of Nova Scotia decided, without handing down written reasons, that it had authority to bail.

With great deference to the Court, this decision would appear to be open to some question, and in the absence of a reasoned judgment it is difficult to see why the well-known principle, that a judicial officer with jurisdiction regularly obtained and exercising a judicial discretion will not be disturbed by any prerogative or corrective process, is not in point. Bail is a judicial process. (*Linford* v. *Fitzroy,* 13 Q. B. 240). The Courts frequently have held that in respect to judicial functions such as the granting of a warrant, etc., a writ of *mandamus* will not go, and this principle would seem to be equally applicable to *habeas corpus* proceedings where a justice *bonâ fide* exercises his judicial discretion. (*Thompson* v. *Desnoyers,* 3 C. C. C. 68.)

In this case the magistrate had power in his discretion to bail on remand: Cr. Code, sec. 681. This he refused to exercise. It was conceded that the Court could not interfere with this discretion under sec. 698 of the Code which only applies after committal: *R.* v. *Cox.* 16 O. R. 228; *R.* v. *Vincent,* 22 C. C. C. 98, and Cf. *R.* v. *Hall,* 12 C. C. C. 492.

Can the discretion of the magistrate under sec. 681 on remand be reviewed on *habeas corpus*? Douglas,

Summary Jurisdiction Procedure, p. 365, says that it has been doubted in England and cites *R.* v. *Bennett*, 34 J. P. 701, and *R.* v. *Atkins*, 49 L. T. Newsp. 421, in support of the power, and *Ex parte Mullins* (unreported), in the negative. See also Archbold, Criminal Pleading, 25th ed., p. 89. Fitz-James Stephen, History Criminal Law, vol. 1, p. 243, refers to the anomaly existing in England where the Judge of the High Court must bail under the *Habeas Corpus* Act, whereas a magistrate acting under the statute 11 and 12 Vict. ch. 42, has a discretion. The law on this subject would seem to require elucidation. See Douglas, p. 358.

V. C. M.

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* * * IN the New Brunswick case of *The King* v. *Sharp* (55 D. L. R. 626), a wife, concluding that she could no longer live with her husband, left his home taking their three children with her. *Habeas corpus* proceedings were instituted by the husband. The Court was of the opinion that the wife was wrong in leaving her husband; that either parent was as likely to foster and protect the religious and moral welfare of the infants as the other. No attempt was made by the mother to show she had adequate means with which to support the children, while on the other hand it appeared that the husband was amply able to do so. The father was given the custody of the children.

A much argued question in this case in deciding between the claims of the father and mother was whether or not a father has the paramount or primary right to his children. The English decisions prior to The English Infants Custody Act of 1873 all recognized this paramount right, though in Chancery a discretionary power was exercised to control the father's rights where real injury would result to the child, or the father was a man of gross moral turpitude. By the Act of 1873 a mother was enabled to petition the Chancery Court for access to an infant

under the age of sixteen, or for the custody of the infant until it attained that age. It is submitted that the intention of that Statue was to abrogate the common law rule of the father's primary right and make the welfare of the infant the real consideration. Be that as it may, the Courts still kept reiterating that the father had the paramount right, until, to clear the atmosphere in this regard, a later act, The Guardianship of Infants Act of 1886 was passed, which gave power to the Court upon the application of the mother of any infant to make such order as it thought fit regarding the custody of the infant and the right of access thereto of any parent, having regard to the welfare of the infant, the conduct of the parents, and the wishes as well of the mother as of the father. This Act is known in England as "The Mother's Act." In the case of *In re A. and B., Infants* (1897), 1 Ch. 786, Lopes, L.J., at p. 792, points out that the Court must look primarily to the welfare of the infant, then to the conduct of the parents, and then take into consideration the wishes, "not of the father, which, it is suggested to us, are paramount," but the wishes as well of the mother as of the father; and Lindley, L.J., at page 790, asserts that if any other interpretation was given to the section, it would reduce it to a nullity. New Brunswick has a statutory provision similar to the English Act of 1873, with an additional section providing that it shall be the duty of the Court to take into consideration the interests of the infant "in deciding the claims of the parents to such infant."

The argument was advanced in the principal case that this latter section had the same meaning as the English "Mother's Act" of 1886, but the Court decided it did not go that far, and that the law of New Brunswick was correctly laid down by Barker, J., in two cases in 1895, when he stated that in determining between the claims of the parents the Court will take into consideration: (1) The paternal right, and (2) the marital duty of a husband and wife so to live that the child

will have the benefit of their joint care and affection, (3) the interest of the child. Of these three however, the Court is most emphatic that the dominant consideration is the welfare of the infants, and it is not easy to conceive of a case where the result obtained under the New Brunswick Act would be different from that arrived at under the English Act.

In the principal case the Court expressed a strong opinion that if the conduct of a husband had been such as to justify the wife in refusing to live with him, such failure on his part to perform his marital duty might well outweigh his claim by reason of his paternal right; and a similar view was taken by Hazen, C.J., in a recent case before him in Chancery, *St. Thomas* v. *St. Thomas,* 48 N. B. R. 132.

In the principal case the granting of the custody of the children to the father was made conditional upon him giving his undertaking in writing, signed by him and by his counsel, to keep the children within the jurisdiction of the Court, and that they should not depart the Province without leave. In addition to the undertaking he was ordered to give a bond to the King with two sureties to the satisfaction of the Registrar in a sum stated, conditioned for his due performance of the terms of the undertaking; and it was further ordered that the children be kept together and suitably educated and maintained at the City of Saint John, with the right of access to the mother at all times. It had been quite customary in this Province to order that the parent who was deprived of custody have access to the infant, but this is the first case where the Court, following the English practice, made an order as to where children should be kept. No precedent was found for the order that the husband give a written undertaking, nor could precedent be found for requiring him to give a bond. It is submitted however, that the Court acted within its powers in doing so, on the ground that the Court has an inherent power to make such orders as it deems necessary for the carry-out of its decrees.

There was an interesting sequel to the case. After some months the father applied to a Judge for permission to take the children to Nova Scotia, where he had better business prospects. This leave was refused, but nevertheless the father took the children to Nova Scotia. A warrant was issued in New Brunswick for his arrest under sec. 180 of the Criminal Code, which makes it an indictable offence wilfully to attempt in any way to obstruct, pervert or defeat the course of justice. He was arrested in Nova Scotia and brought back to the City of Saint John on that warrant. As soon as the man was within the jurisdiction, the Appeal Court held a special session in the City of Saint John and committed him for contempt, which contempt was considered purged by his producing the children, who were handed over by the Court to the custody of the mother. See *R.* v. *Sharp & Lingley* (N.B.), 61 D. L. R. 263; 36 Can. Cr. Cas. 1.

C. F. I.