

Court of Jefferson County, and also correspondence between Hogate and his wife, in 1917 and 1918, were admitted in evidence, notwithstanding objection.

There was sufficient proof of the marriage without the aid of the certificates and correspondence. Assuming that the certificates were inadmissible, there was still the evidence of the wife that Case was a Justice, and the presumption that a person acting in a public or official capacity is entitled so to act.

The correspondence between the husband and wife was admissible as evidence of the status of the parties, though not relevant upon the question of the prisoner's knowledge that Hogate was a married man.

The first question should be answered thus: There was evidence, apart from that afforded by the certificates, which, if believed—as it was by the trial Judge—sufficiently proved the first marriage.

And the second question should be answered in the negative.

The third question should be treated as if it were: "Was there any evidence, properly admissible, to warrant a conviction?" To answer this question it was necessary to consider whether there was any evidence that the prisoner, when she went through the form of marriage with Hogate, knew that his wife was living. It was clear that she knew that the woman Anna Moore was living; and there was evidence, believed by the Judge, that the prisoner knew that Anna Moore was Hogate's wife; and so there was evidence, properly admissible, sufficient to warrant a conviction.

Reference to *Rex v. Naoum* (1911), 24 O.L.R. 306.

*Conviction affirmed.*

FIRST DIVISIONAL COURT.

DECEMBER 20TH, 1918.

SUTHERLAND v. HARRIS AND McCUAIG.

*Appeal—Finding of Fact of Trial Judge—Credibility of Witnesses—Duty of Appellate Court—Action on Cheque—Alleged Delivery in Escrow—Transfer by Payee to Third Person—Holder in Due Course—Absence of Knowledge in Transferee of Equities Existing between Drawer and Payee.*

Appeal by the defendant McCuaig from the judgment of MASTEN, J., at the trial, in favour of the plaintiff for the recovery against the appellant of \$5,000, the amount of a cheque, dated the 27th October, 1917, drawn by the appellant, payable to the defendant Harris, and endorsed by Harris to the plaintiff,