

On the admitted facts, the defendant was arrested upon a charge which did not lie, and convicted under an order in council which, as any reasonable man must see, did not cover his case. The prosecution was wholly inexcusable, unfounded, and unlawful.

The learned Judge could see nothing in the case justifying him in relieving the respondents from payment of the costs.

As to an order for protection: the defendant was arrested upon a charge of an offence of which he was admittedly not guilty; there was not one word of evidence against him. There was no possible ground for an order protecting the respondents. If the defendant desired the opinion of a jury of Canadians as to whether what the magistrate did was done maliciously and without reasonable and probable cause—Public Authorities Protection Act, R.S.O. 1914 ch. 89, sec. 3—he should have the right to take that opinion. His Majesty's Courts should not be closed against the stranger in the land.

It was said by counsel for the respondents that the Government had decided to prosecute, generally and rigorously, defaulters under the Military Service Act, and that the judgment originally pronounced in this case had made magistrates reluctant to act in connection with these prosecutions. But this was no legitimate argument. The Court had nothing to do with the policy of the Government; and, if magistrates declined to do their duty, the writ of supersedeas was as valid to remove them as it had been for centuries.

The order as at first pronounced should stand.

RIDDELL, J., IN CHAMBERS.

JANUARY 15TH, 1919.

*RE S.

Infant—Illegitimate Child—Mother Unable to Maintain—"Neglected Child"—Statutory Meaning—Order of Commissioner of Juvenile Court Placing Child in Custody of Children's Aid Society—Motion to Quash—Adoption of Child by Stranger—Jurisdiction of Commissioner—Juvenile Delinquents Act, 7 & 8 Edw. VII. ch. 40 (Dom.)—Children's Protection Act of Ontario, R.S.O. 1914 ch. 231, secs. 2, 9, 28—Amending Act, 6 Geo. V. ch. 53, secs. 3, 4—"Anglican"—"Protestant"—Roman Catholic Institution—Irregularities in Procedure—Discretion.

Application by Ellen McD., as the person having the actual custody, at the time a certain order was made, of the person of