

# Canada Law Journal.

VOL. XLVI.

TORONTO, NOVEMBER 15.

No. 22

## APPEALS TO THE KING IN COUNCIL.

A correspondent, whose letter we publish elsewhere, writes in terms of severe condemnation of the Lords of the Privy Council, who in giving judgment in the case of *Gordon v. Horne*, on appeal from the Supreme Court of Canada, did not accept as credible the statements of a witness whose credibility was accepted by the trial judge and by the judge of the Supreme Court.

It is necessary for a proper understanding of the discussion to note some features connected with it which do not appear in the letter above referred to. Our correspondent does not refer to the fact that the Supreme Court of British Columbia, consisting of three judges (as appears from the report in 42 S.C.R. 240), reversed the judgment of the trial judge. They apparently did not feel pressed with any necessity to defer to his view of the evidence, but, on the contrary, after a review of the evidence, disagreed with him. They were surely nearer the scene of action than even the Supreme Court of Canada, which our correspondent says also carefully considered the evidence and declined to interfere.

The result, therefore, seems to be that three judges in British Columbia, two in the Supreme Court of Canada, and four in England disagreed with the trial judge as to his view of the evidence, whilst only three judges of the Supreme Court of Canada (out of five) either declined to differ with the conclusion of the judge who had heard the evidence, or perhaps agreed with that conclusion.

The contention of our correspondent is that where the question at issue is simply one of fact that is not an issue which should be removed from the jurisdiction of the trial judge, who had the opportunity of hearing the witness, of testing his veracity, and of forming the safest opinion as to how far his evi-