

MAN.
K. B.
—
PESCOVITCH
v.
WESTERN
CANADA
FLOUR
MILLS CO.
—
Galt, J.

Haileybury an injunction restraining their sale. A motion to continue the injunction came before Hodgins, J.A., and, amongst other things, it was contended by the defendants that the action was not maintainable because the plaintiff was an alien enemy, being an Austrian and not naturalized. In giving judgment, staying the action, Hodgins, J.A., said, 18 D.L.R. 452, at 455:—

In the present case the Court has no means of knowing whether this Proclamation, the terms of which are relied on as giving a right to maintain this action, covers this particular plaintiff. He may or may not be quietly pursuing his ordinary avocation, or he may be, for all that is before me, one of the class excluded by its subsequent provisions, or otherwise disentitled to take advantage of provisions intended for those who have resided here and engaged in business for some length of time. Nor am I at all sure that the proclamation has the effect contended for. It appears to have been issued under sec. 6, sub-sec. (b), rather than under sub-secs. (c) and (f) of the War Measures Act, 1914, and may well refer only to police protection. It is not incumbent on the Court to make, still less to act upon, any presumption in favour of natives of either of the two nations now at war with the British Crown; and I think that every facility should be afforded for local inquiry, so that the Court should be fully informed as to whether or not the plaintiff is in fact entitled to set up the protection extended by the Crown under the wording of the Proclamation. . . .

The injunction will be dissolved and the action stayed meantime, with leave to apply on notice to a Judge of the High Court Division to permit the action to proceed after time has been given to make the inquiries I have indicated.

In *Topay v. Crow's Nest Pass Coal Co.*, 18 D.L.R. 784, it was held in British Columbia by Gregory, J., on October 13, 1914, that an alien enemy resident in Canada may, by virtue of the Orders-in-Council of August 7 and 15, 1914, maintain an action for personal injuries sustained in following his avocation. Mr. Justice Gregory, after quoting the Proclamation above mentioned, expresses himself thus:—

In view of the foregoing, it appears to me that it would be a denial of such protection to permit a coal miner, for example, to work at his usual occupation of coal mining and deny him the right to sue for his wages if they are not paid, or as in the present case, to deny him the right to maintain an action for personal injuries sustained in his work as a miner, and caused, as he alleges, by the negligence of the defendant, as during times of peace he has enjoyed this privilege, and the order proclaims that he shall be allowed to continue, etc.

I cannot agree with the view expressed by Hodgins, J.A., that the Proclamation casts upon resident aliens the burden of