

War was declared between Great Britain and Austria-Hungary on August 12, 1914. The defendants contend that the plaintiff occupies simply the position of an alien enemy, and is thereby incapacitated from enforcing any rights in our Courts. By Royal Proclamation published at Ottawa on August 15, 1914, the Government has directed

that all persons in Canada of German or Austro-Hungarian nationality, so long as they quietly pursue their ordinary avocations be allowed to continue to enjoy the protection of the law and be accorded the respect and consideration due to peaceful and law-abiding citizens; and that they be not arrested, detained or interfered with, unless there is reasonable ground to believe that they are engaged in espionage, or engaging or attempting to engage in acts of a hostile nature, or are giving or attempting to give information to the enemy, or unless they otherwise contravene any law, order-in-council or proclamation.

The plaintiff states in his affidavit:—

2. I am and have been for a period of more than five years past a resident of and domiciled in the city of St. Boniface in the Province of Manitoba.

3. For almost the whole of the past five years I have been employed by the defendant company as a labourer in their flour milling plant at the city of St. Boniface aforesaid.

4. Since the 21st day of February, A.D. 1914, as a result of the accident which occurred to me on that date, I have been unable to engage in any kind of work. During the whole of the period since the said date up to the present time, I have been giving my whole attention to the work of regaining my health and strength and, with that end in view, I have been living quietly at my home in St. Boniface aforesaid, leading a very simple life and indulging in light exercise.

5. I have, ever since the outbreak of the war between Great Britain and Austria-Hungary in August last, been quietly pursuing my usual and ordinary avocation as before mentioned, and have been conducting myself as a peaceful and law-abiding citizen. I have not engaged in espionage, or engaged or attempted to engage in acts of a hostile nature, nor have I given or attempted to give any information to the enemy, nor have I otherwise contravened any law, order-in-council, or proclamation.

The meaning to be given to the Proclamation of August 15 has been considered in other provinces of the Dominion already.

In *Bassi v. Sullivan*, 18 D.L.R. 452, 50 C.L.J. 539, decided in Toronto on September 11, the plaintiff, who was the holder of an unregistered chattel mortgage, had brought an action to set aside a chattel mortgage registered by the defendants against the same goods, and had obtained from the Local Judge at

MAN.

K. B.

PESCOVITCH

v.

WESTERN  
CANADA  
FLOUR  
MILLS Co.

Galt, J.