

JUNIOR COUNSEL.

was made of this *dictum*, and some discussion as to its propriety took place. It is owing to the courtesy of Mr. A. J. Cattanach that we are able to give our readers the information contained in our article.

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In *International Bridge Co. v. Canada Southern Ry. Co.*, 7 O. A. R. 226, it was laid down that "junior counsel are not at liberty to take positions in arguments which conflict with the positions taken by their leaders."

The case under consideration involved the right of a plaintiff corporation to collect tolls for the use of a bridge under a certain Act. The senior counsel for the defendants, in opening the defence, conceded the right to collect tolls as incidental to the powers of of the Corporation, but contended that the tolls must be reasonable. The junior counsel being of opinion that the power was not incidental, and having obtained the leave of his leader to argue the point, contended that there was not even a limited power of collecting tolls as the power was not expressly given, and that therefore the plaintiff corporation was not entitled to collect any tolls under the Act in question.

The learned Chief Justice of Ontario, while denying the right of junior counsel to argue the point, permitted him to proceed owing to the importance of the case; but in delivering the judgment of the Court, expressed his disapproval of the course taken, and held that it was not open to junior counsel to take such a course.

The case was carried to the Privy Council, and in the course of his argument there Mr. Horace Davey, Q.C., called in question the practice as thus laid down. It was unnecessary to argue the point as it did not affect any of the issues involved in the case; but from the remarks made by Mr. Davey, and

the response of the Lord Chancellor, it appears that no such rule as that referred to by the Chief Justice of Ontario is recognized in England. It also appears from the stenographic report, that no mention was made in the Privy Council of the fact that junior counsel had been permitted by his leader to take the course under review, so that the conclusion to be gathered from the remarks of Mr. Davey and the Lord Chancellor does not appear to depend on whether counsel had or had not previously arranged between themselves as to the mode of conducting the argument. In their view apparently the Court cannot refuse to listen to junior counsel simply because he differs from his leader on a point in the case. We have been favoured with the stenographer's notes of what took place on this point. They are as follows:

MR. HORACE DAVEY.—. . . In the suit in which the railway company are plaintiffs, and the bridge company defendants, the same points are raised as in this suit, and the two were argued together. Mr. Crooks conceded—the leading counsel for the present appellants—"That it was incidental to the corporate powers of the bridge company to require payment of tolls from Railway companies for the use of the bridge, and to fix the amount of tolls to be paid for such user. This, indeed, was denied by his junior counsel, Mr. Cattanach"—then there are some observations on Mr. Cattanach which are hardly well founded.

THE LORD CHANCELLOR—It would require some argument before I accede to the proposition that junior counsel are not at liberty to take points which their leader has not taken.

MR. DAVEY—I have known junior counsel in this country, I think, who have taken that course.

It is difficult to understand why junior counsel should be fettered and held strictly to the line taken by his leader by the Court. The case can easily be imagined of there being an irreconcilable difference of opinion between counsel engaged in a case as to the best mode of conducting it, and of there being an evenly balanced question of law upon which the members of the Court itself might differ. Why in such a case should the Court interfere to prevent the case from