

*FINAL COURT OF APPEAL FOR THE EMPIRE.*

By the law of Ontario, in all matters of controversy relative to property and civil rights, resort is to be had to the law of England. The law of England, especially the common law or equity law, is only to be ascertained by the decisions of the English Courts. But where the English Courts decide a point in one way, and the Judicial Committee of the Privy Council decide it in another, we may possibly be left in the peculiar position of having our cases decided not by the law of England which our statute says is to govern, but by the law of the Privy Council. How is this dilemma to be avoided? A case in point may be found in our last volume at p. 808: *Duleau v. White* (1901), 2 K. B. 669.

Where the construction of a provincial statute was in question, though it was in similar terms to an English statute, the provincial Court of Appeal has preferred to adhere to its own opinion on the proper construction of the Act, rather than adopt a different construction which had been subsequently placed by an English Court on the corresponding English Act. Such a procedure is apparently no violation of the statute compelling our Courts to decide cases according to the law of England, because it is obvious that that provision is not intended to apply to cases which are governed by express provincial legislation, in which, it is clear, cases must be decided according to provincial, and not English, law, and our provincial Courts may well assume the right to construe our provincial enactments independently of English decisions on corresponding English enactments, though, of course, the latter decisions will always be regarded with due respect, even though they be not considered judicially conclusive. But where, as in the case to which we have referred, the question is one of pure common law or equity, the case seems to be somewhat different, and in that class of cases the statute seems to make it imperative upon the Courts dealing with Ontario cases to take the law from the most authoritative existing exposition of it by English Courts, and in such cases it seems doubtful whether even the Privy Council could properly disregard a decision of the House of Lords on the point in controversy. It may be competent for the Privy Council to say in the case of an inferior English tribunal, that it has not correctly decided the law, but such a contention could hardly be admissible in reference to a decision of the House