

NOTES on Recent Cases

R. v. Bach

Common Assault—German Prisoner of War Prefers Charge Against Canadian Civilian—Justice Available to Enemy Alien

Last summer a unique case arose when a German prisoner of war from the internment camp at Fingal, Ont., charged a Canadian farmer of Mitchell, Ont., with assault. The complainant, Franz Kotzian, said the offence took place while he was working on the defendant's farm.

To R.C.M.P. investigators who questioned him, Dr. H. Goettelmann, another prisoner of war at Fingal, stated that Kotzian had returned from the Bach farm in a generally nervous condition, with his lip swollen, scratches on his throat and excoriations on both elbows.

Kotzian himself stated that for two weeks following his arrival at the farm on May 15, 1946, everything had gone smoothly. Then Bach began complaining that not enough work was being done. The situation didn't improve, according to Kotzian, and one day about a month later he was taken to a patch of small tree plants and told to weed them. By mistake he cut one of the plants down with his hoe, whereupon Bach in a burst of anger kicked him. Refusing to work under such treatment, he went to his room to pack his belongings, but Bach followed and a scuffle ensued which ended up with Kotzian falling down the stairs and hurting his elbow. Later during a further altercation, so Kotzian alleged, Bach struck him with his fist.

That evening Bach drove Kotzian to Mitchell but refused to take him any further stating that he had no gasoline to waste on a trip to the internment camp. The result was that at about 2 a.m. both men returned to the farm, and there Kotzian was told that he would have to clean the stable at once, otherwise he would not be permitted to sleep in the house.

Next afternoon the farmer took the

prisoner of war back to the internment camp.

Powerfully built, Bach had the appearance of being physically capable of overcoming Kotzian. His version of the affair was vague, but he was quite emphatic in stating that Kotzian was ill-tempered and had been entirely unsatisfactory in his work.

At Stratford, Ont., on Aug. 16, 1946, Bach pleaded not guilty before Magistrate A. F. Cook to a charge of Common Assault, s. 291 Cr. Code. W. E. Goodwin, K.C., of Stratford, conducted the prosecution of this unusual case in which the complainant, who appeared in court dressed in a German infantry tunic displaying the German rank equivalent to sergeant in the Canadian Army, saw justice being dispensed in a manner vastly different from the travesties dealt out in his own country by the Nazis. Defence counsel was E. G. Thompson, K.C., also of Stratford.

The Crown's stand was that in accordance with Article 3 of the Geneva Convention a prisoner of war in this country retains his full civilian status and thus has the right to lay a complaint against a Canadian civilian. Defence counsel, however, moved for a dismissal on the opposite grounds that the court lacked jurisdiction to try the case, contending that under an old common law rule still operative by virtue of s. 16 Cr. Code an enemy alien in this country has no rights whatever while legal measures establishing war exist, and that Kotzian under the circumstances had no right to set the law of the country in motion by swearing to the information.

The court convicted the accused, binding him over to keep the peace for six months on \$100 bond and suspending sentence upon payment of costs.