

case shews that the plaintiff there was resident in the foreign country at the date of his action, and he was suing on a judgment obtained in the Courts of his own country. In the present case the plaintiff has been resident in Canada for a long time and peaceably pursuing his usual occupation.

In *Alcenius v. Nygren* (1854), 4 E. & B. 217, the judgment of Lord Campbell, C.J., in giving judgment against the alien enemy shews clearly that he relied on the fact that the plaintiff though then in England was not there with the permission of any one entitled to act for the sovereign.

In the present case I am unable to read the Order-in-Council of August 15, 1914 (appearing in the Gazette of August 22, 1914, p. 617) together with that of August 7, 1914 (appearing in the Gazette of August 15, 1914, p. 531) as anything but an express permission to Germans and Austrians to reside in Canada so long as they pursue their ordinary avocations in a peaceful and quiet manner, etc. The Order of August 15, recites that there are many such

persons quietly pursuing their various avocations in various part of Canada, and it is desirable that such persons should be allowed to continue in such avocations without interruption.

It then goes on to proclaim that all such persons, "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," etc.

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. The application will, therefore, be dismissed. Costs to the plaintiff in any event of the cause.

*Application dismissed.*

B. C.  
S. C.  
TOPAY  
v.  
CROW'S  
NEST PASS  
COAL CO.  
Gregory, J.