

THE SUPREME COURT AND ITS CRITIC.

The plaintiff appealed against the ruling, but the Court of Queen's Bench in Quebec upheld it. This judgment disposed of the only point before the Court, which, as an appellate Court, was then *functus officio*, and had no jurisdiction to decide as to the legality or illegality of the Orange Association. The judges, however, took upon themselves to state their opinion that the association was an illegal one. The Court of first instance had not passed upon this question, and it was not, therefore, and could not have been, a subject of adjudication for the Appellate Court. The plaintiff again appealed, and brought the case before the Supreme Court of Canada when the insufficiency of the notice was affirmed. The Judges, however, declined to discuss the legality or illegality of the Orange Order; one of the Judges, at least, Hon. Mr. Justice Gwynne, very properly remarking that the Provincial Court of Appeal unnecessarily and voluntarily took the functions of a Court of first instance, and that its opinion as to the legality or otherwise of the Orange Order was extra judicial and unwarranted.

A writer in the editorial columns of the *Legal News* of Feb. 10, over the signature R., says:—that "it is difficult to conceive expressions more offensive."

The difficulty is rather in conceiving it possible for any lawyer to take the ground advanced by this writer. If he had read the *English Reports* he would have noticed language much more severe and caustic by appellate judges in reference to the judgments of learned judges in courts below in matters of far less consequence. A moment's reflection will show that the language of the Supreme Court is exactly correct, and that this final Court of Appeal would have been derelict in its duty if it had failed to remark upon the unwarrantable and unheard-of action on the part of the Court of Queen's Bench, in giving an opinion on a subject which was not before the Court as a Court of Appeal, and had not even been discussed in

the Court below, and of the existence of which the Queen's Bench had no judicial notice. The voice of the profession, we venture to say, will even go beyond the language of Mr. Justice Gwynne, and say that his remarks were more moderate than the occasion warranted.

The person who writes the article from which we have quoted not only shows that he is incompetent to speak of the law of the case, but exhibits a spleen and disregard of the decencies of journalism, when commenting on the judgments of the judges of the land, not only remarkable in itself, but especially so in view of the allegation to which we shall presently refer. The article goes on to say: "The effect of such denunciation will probably, however, be less striking than Mr. Justice Gwynne expected. It will not hurt the reputation of that Court, and it cannot well hurt his. It suggests, however, two reflections. The first is, why so much passion? * * * The second reflection is that in declaring that the decision of the Court of Queen's Bench as to the merits of *Grant v. Beaudry* was extra judicial and unwarranted, Mr. Justice Gwynne blundered in his law, as is his wont." We perfectly agree with R. that the judgment of the Supreme Court will hurt neither the reputation of that Court nor that of Mr. Justice Gwynne, one of its brightest ornaments. As to the Bar and the public of Ontario, the last remarks of R. above quoted will only excite contempt as to his capacity to judge of such matters, and pity for his ignorance. As to the readers of the *Legal News* in Quebec we can tell them, without fear of contradiction, that Mr. Justice Gwynne enjoys the confidence of the profession in Ontario to a very marked extent, and that when advising on appeals to the Supreme Court they are not uninfluenced by the fact that there is on the Bench of the Supreme Court a man of such high personal standing, of such an acute mind, and such deep research and learning as Mr. Justice Gwynne.