

houses to play cards, are not within the scope of this statute. It is not needful to consider whether it is in conflict with the criminal law of Canada—although the ultra vires question was broached on the argument—and thereupon to consider whether there is a distinction between the gambling house of the Provincial law and the common gaming house of Dominion Code, so that both may stand together because referring to different infractions of the law in its police and its criminal aspects.

For present purposes, it is enough to say that the by-law far transcends the terms of the enabling statute, and assumes to make illegal that which was not in contemplation of the Legislature as expressed in the statute.

Much that Mr. Justice Kennedy says in *Scott v. Phillimer*, [1904] 2 K. B. 895, may be applicable to the moral aspect of this case, but that should not lead us to penalize a man who has not violated public morals, in the use of his house, according to the charge made or the evidence adduced in support of it.

The conviction should be quashed because resting on an invalid by-law.

MEREDITH, J., gave reasons in writing for the same conclusion.

MAGEE, J., concurred.

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JANUARY 7TH, 1905.

DIVISIONAL COURT.

CAMERON v. DOUGLASS.

*Master and Servant—Injury to Servant—Death—Negligence—Contributory Negligence—Proximate Cause—Voluntary Incurring of Risk—Workmen's Compensation Act—New Trial—Questions for Jury.*

Appeal by plaintiff from judgment of BRITTON, J., 3 O. W. R. 817, dismissing the action, which was brought to recover damages for the death of a man in the employment of defendant, owing to defendant's negligence as alleged.

The action was tried with a jury, who answered questions in favour of plaintiff. On motion for judgment, BRITTON, J., decided that, upon the undisputed evidence, assuming that defendant had been guilty of negligence in not having cased the shaft in which the deceased was when he received the injuries which caused his death, it was shewn that the