

Correspondence

APPEALS TO THE PRIVY COUNCIL.

To the Editor, CANADA LAW JOURNAL.

DEAR SIR,—

The decision of the Privy Council in the recent case of *Gordon v. Horne* (see 42 S.C.R. 240) calls for notice, as I think, not only from the profession, but from Canadians generally. In this case the Privy Council reversed the decision of the trial judge upon a pure question of fact, which decision had been affirmed by a majority of the Supreme Court of Canada.

The details of the case are not material. It is sufficient for the present purpose to say that it was common ground that the question presented for determination was purely one of fact, each party in his factum stating the question, to be what were the terms of a certain verbal agreement. The plaintiff gave one version of it, and the defendants quite another. The trial judge said in dismissing the plaintiff's action: "I accept Horne's evidence and believe it implicitly." Horne was the principal defendant in the suit. A majority of the Supreme Court of Canada consisting of the Chief Justice and Davies and Duff, JJ., said that after a careful consideration of the evidence they agreed with the trial judge.

One would have thought that their Lordships of the Judicial Committee might have left the final determination of such a matter to our own Canadian courts, assuming in them the requisite ability to deal with such a simple matter as the credibility of witnesses. It cannot be gainsaid that upon a question as to which of two parties is to be believed the judge who saw and heard the parties give their evidence is more likely to form a right judgment than judges who have not had that opportunity, and when, as in this case, such judge's decision was concurred in by four other Canadian judges, was it likely that the ends of justice would be better served by substituting for that opinion the view of four English judges sitting in Downing Street? The judicial misadventure in this case is that while five Canadian judges including the one who saw and heard them give their evidence believed the defendants, four others sitting in England preferred to believe the plaintiff. Lord Mersey, de-