ARE CANADIAN COURTS BOUND BY ENGLISH DECISIONS

"A Provincial trial court in Canada is not bound by the decisions of any other court except one to which its judgment may be appealed either directly or subsequently."

This statement may seem startling to some at first but on subsequent investigation it seems to be the now accepted rule.

In the recent case of Safeway Stores Ltd. v. Harris, 1948 4 DLR 187, the Manitoba Court of Appeal brought out once more the fact that decisions of the English Court of Appeal are not binding on a Canadian trial judge. One wonders why Williams CJKB in view of past authorities made the statement in his decision, in reference to Rook v. Fairrie, 1941 1 KB 507, "that decision is binding upon me." The appeal court dealt with a number of cases showing the relationship between English Courts and Canadian Courts and properly held that decisions of Appeal Courts of England are not binding on Provincial courts.

Possibly one of the earlier cases on the point was Trimble v. Hill 5 AC 342 (1879) in which the Judicial Committee of the Privy Council laid down that Colonial Courts **ought** to follow the decisions of Courts of Appeal in England. This received much criticism as being too absolute a statement and in Jacobs v. Beaver 1909 17 OLR 496 the Ontario Appeal Court decided not to follow it. When one considers that Canada does not have colonial courts the statements in Trimble v. Hill have no direct effect. This is pointed out in Pacific Lumber Co. v. Imperial Timber & Trading Co. 31 OLR 748, where we read, "The observations of their Lordships of the Judicial Committee of the Privy Council in Trimble v. Hill as the duty of the colonial courts in general and Supreme Court of New Zealand in particular have no application to the three great Dominions . . . which are composed of a Federation of self-governing colonies with a federal Supreme Court."

Later in Re Western Canada Fire Insurance 1915 22 DLR 1100 we come across the short but potent statement given by the Alberta Court of Appeal in reference to a decision of the English Court of Appeal, "and that as we are not bound by decisions of English Courts of Appeal we should not follow the latter decision."

To go a step further past Appeal Courts. Canadian Courts are not bound by decisions of the House of Lords although admittedly they have the greatest weight. Some persons place reliance on Robbins v. National Trust 1927 2 DLR 97 as authori-

ty for saying our courts are bound by the House of Lords. However, on analyzing the statement given by Viscount Dunedin which is as follows: "When an appellate court in a colony which is regulated by English law differs from an appellate court in England it is not right to assume that the Colonial Court is wrong. It is other wise if the authority in England is that of the House of Lords. That is the supreme tribunal to settle English law . . . and the colonial court which is bound by English law is bound to follow it." We find that this does not apply to Canada as we are not a colony bound by English law.

Although the case of Will v. Bank of Montreal 1931 3 DLR 526 attempted to interpret Viscount Dunedin's statements as applying to Dominions we venture to disagree with this interpretation. Yet as that case decided that when a decision of the House of Lords conflicted with a decision of the Privy Council, our courts could follow the better of the two decisions, possibly it bears merit on that ground. To further strengthen the statement, 'the House of Lords does not bind our courts,' we find in Pacific Lumber Co. v. Imperial Lumber & Trading Co., "The Supreme Court of Canada primarily settles the laws of Canada being only subject to review by the Judicial Committee of the Privy Council and may if it sees fit disregard the opinions of any other court in the Empire, including the House of Lords which only settles the laws of the United Kingdom." Similarly the Provincial Courts being subject to review only by the Supreme Court of Canada may disregard the opinions of any other court.

Trumbell v. Trumbell 1919 1 WWR 195 gives us a somewhat similar statement when we read, "The Supreme Court of Canada primarily settles the law of Canada being only subject to review by the Judicial Committee of the Privy Council and its decisions are to be followed in preference to, or even if contrary to, English decisions including those of the House of Lords." Other authorities may be cited which confirm the statement Canadian Courts are not bound by the House of Lords.

Now as a Parthian shot we find that even decisions of the Privy Council are binding only upon the Country or Colony from which the appeal is had. This idea is discussed in Negro v. Pietros Bread Co 1933 1 DLR 490. Possibly this being based only on decisions of Appeal Courts is not too strong a statement but nevertheless the question is raised and the idea expressed very emphatically that a decision of the Privy Council is not binding upon a Court of a Dominion or Colony other than that from which the appeal was had.

Thus we may conclude that the Canadian legal Profession is slowly becoming cogniscent of a situation which has prevailed since Confederation. Namely, that a Provincial Trial Court although it should pay the greatest respect and give the greatest consideration to any judgment of the Appeal Court of England or the House of Lords, it is actually not bound by the decisions of either of these judicial bodies delivered after 1867.

MARITIME INTERCOLLEGIATE DEBATING LEAGUE

On October 15, St. Thomas College in Chatham played host to representatives from eleven universities throughout the Maritimes. The highlight of the conference was the resolution that the M.I.D.L. be represented in the Canadian University Debating Association. A scheme was devised and adopted whereby the winner of the M.I.D.L. for the year would pay one-third of the cost of sending a team which will consist of two with one alternate to the C.U.D.A. finals. The remaining two-thirds to be split among the universities. This will be done by apportioning to the non-winners an amount relative to the number enrolled.

The possibility of holding radio and French debates was discussed at the conference. A number of needed amendments were made in the M.I.D.L. constitution.

The U.N.B. Law School was represented by Gerard LaForest, a third-year student from Grand Falls, and J. Eric Young, a second-year student from Bathurst, N. B.

MOOT COURT

Twice, the Juridicial voice of the Supreme Moot Court has spoken with authority this term. A hypothetical case on contracts, presented by Mr. William Ryan, was heard before Fairweather C.J.M.C., Hicks J.M.C., and Lunney J.M.C. The case for the plaintiff was ably presented by Percy Smith and John Baxter. It was successfully defended by John Gray, assisted by Carlisle Hanson. The controversial Re Polemis was appealed from the English Court of Appeals for the second sitting of the moot court. The appellants, represented by James Crocco and Roy McIntyre, convinced the judges, Harrigan, C.J.M.C., Maddox, J.M.C., MacAuley, J.M.C. (dissenting), that the English Court's decision was incorrect in law.

For the first time Law School Co-eds filled positions on the Bench and Bar for the third sitting of the Law School Moot Court. Margaret Warner, C.J.M.C., a third-year Co-ed and Neil Price, J.M.C., allowed an appeal in Hillman-v-Zwicker, Gerard LaForest, J.M.C., dissenting. The appellants represented by Beatrice Sharp, a second-year Co-ed, and Dollard Savoie, were strongly opposed by the respondents, represented by Elizabeth Hoyt, a second-year Co-ed, and Thomas Bell.