

[Constitutional Law Cases]

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Commentary

Citation Information

Anonymous. "[Constitutional Law Cases]." *Osgoode Hall Law Journal* 3.2 (1965) : 190-190.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol3/iss2/5>

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A. CONSTITUTIONAL LAW

This year was a busy year compared to the preceding two (see statistics *supra*) in the field of constitutional law. The court dealt with four constitutional law cases and in a fifth case *Esso Standard (Canada) Ltd. v. J. W. Enterprises et al.*, it dealt with a case on company law in which one argument raised was the constitutional validity of s. 128 of the federal Companies Act. This case will be dealt with under company law (*infra* p. 217).

In the *A.-G. of Ontario v. Barfield* the court surprisingly, if agreeably, reversed the Ontario Court of Appeal and upheld the *Unconscionable Transactions Relief Act* as *intra vires* the province. The commentator on the case emphasizes the necessity of appreciating the nature of the exact grounds upon which the majority bases its decision. He warns that the decision should not be regarded as a back-entry invitation to provincial legislatures to deal with any "interest" question as their fancy may dictate.

Two cases, *Lieberman v. The Queen* and *Robertson and Rosetanni v. The Queen* dealt with by-laws passed pursuant to Lord's Day Acts in operation in New Brunswick and Ontario respectively. In both cases convictions under the Acts were upheld and the Acts considered to be *intra vires*. Counsel in the *Robertson* case did attempt to argue that the Bill of Rights had the effect of suspending the operation of a Lord's Day Act insofar as such an Act constituted an infringement of religious liberty. This particular problem has been much litigated in many states of the United States and the jurisprudence built up in these cases was partially applicable to the distinctive constitutional setting in Canada. The commentator suggests that the Court made too easy an assumption concerning the liberties the Bill of Rights were intended to protect. Both judgments were written for the Court by Ritchie J.

The commentator on the last case noted under this heading: *Oil Chemical and Atomic Workers Union et al. v. Imperial Oil Ltd.* while conceding characterization in constitutional law to be as mystical an exercise as the exchange cited from *Hamlet* to preface their remarks, feels somewhere in his policy bone that the general atmosphere necessary to democratic institutions is to some degree dispelled by the Court's decision. Money dictates much political action. By freezing the funds of a group like a trade union purportedly to protect the political wishes of individuals, the British Columbia legislation which was upheld may constitute a threat to one party, at least, which has a navel-cord tied to trade unions.

Three of the cases have civil liberty implications. In all three according to our commentators the court failed to act in a "liberal" tradition.