

AUSTRIAN AN ALIEN NOT ALLOWED TO SUE IN CANADIAN COURT

Important Decision Handed
Down by a B. C.
Justice.

CASE ESTABLISHES
A PRECEDENT

Toy, an Austrian, Seeking
Damages Against Crow's
Nest Coal Co.

Ottawa, Ont., Dec. 16.—The text of an important judgment dealing with the rights of alien enemies under the laws Canada has just been received by the Department of Labor here. The judgment which finds generally that an alien of an enemy's country, who living about his duties in the Dominion as a peaceable citizen, is entitled his rights under the laws, may be appealed, but if not, or if upheld, may form an important precedent in Canada's courts.

In the action which was tried, before Justice MacDonald, of British Columbia, the plaintiff, an Austrian named Topay, sought to recover damages from the Crow's Nest Coal Company for injuries received at Nichehe, it was claimed, through negligence on the part of the company or its officials.

The question arose as to whether the plaintiff was entitled, being an alien enemy, to consideration at the hands of the court, and on the point the judge ruled as follows:

"Generally speaking, an alien enemy cannot resort to our courts for protection. It was thought advisable, since commencement of the war, to give an order-in-Council as to the rights and liabilities of Germans and Austrians. It provides that all persons in Canada or Germany so long as they quietly pursue ordinary avocations be allowed to enjoy the protection of the law, and be accorded respect and consideration due peaceable and law-abiding citizens. It is submitted, on behalf of the defendant company, that the protection of the law referred to should receive a restricted consideration. So far that restriction is to go, I hardly appreciate. I presume that an Austrian walking the street should be entitled to the protection of law in the sense that if he were a Canadian he could seek the authorities' protection. If his property were injured he would assume the like case, then why deprive him of the right of his employer? I feel that the restricted construction should not be allowed. I feel that the Austrian plaintiff in the action residing peacefully, I take it, in our community and pursuing his ordinary avocation, should be entitled to the benefit of the law and recover whatever damages he may be entitled to."