BETWEEN:

RICHARD L. REESE *et al.* .....SUPPLIANTS;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

1954
Oct. 18
1955
May 12

Practice—Privilege of Crown to object to production of certain documents —Motion to compel production dismissed.

Held: That the Court will not order production of interdepartmental communications between public officials when the head of the department has in valid form objected to their production on the ground that they belong to a particular class of documents which it is not in the public interest to disclose.

2. That the right to the Crown privilege has not been waived by the production of some documents.

MOTION for an order requiring the Crown to produce certain documents.

The motion was heard before the Honourable Mr. Justice Cameron at Edmonton.

G. H. Steer, Q.C. for the motion.

K. E. Eaton contra.

The facts and questions of law are stated in the reasons for judgment.

CAMERON J. now (May 12, 1955) delivered the following judgment:

In the course of the Examination for Discovery of one Hilton Holmes—an officer of the Crown—counsel for the suppliants asked him to produce certain documents, contracts, files and correspondence. Some were produced but

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objection was taken to others on the ground that it was contrary to public policy or not in the public interest to produce them. Counsel for the suppliants now moves for an order requiring the respondent to produce the said papers and that the said Hilton be required to again attend for examination, and answer certain questions in regard thereto.

In order to appreciate the issues raised, it is necessary to state briefly the nature of the action. The claim is for a declaration that the suppliants are entitled to a conveyance of the mines and minerals in certain lands in the province of Alberta.

The suppliants are said to be soldier settlers (or the personal representatives of deceased soldier settlers), all of whom entered into agreements with the Soldier Settlement Board to purchase certain lands in Alberta under the provisions of P.C. 299, dated February 11, 1919, and the Soldiers' Settlement Act, Statutes of Canada 1917, chapter 21. It is alleged that all of the said lands (inclusive of mines and minerals) were acquired by the Board by grant of letters patent dated December 8, 1920, but that on payment by the settlers of the agreed purchase price to the Board, the settlers received transfers of their lands, subject, however, to a reservation from each parcel of all mines and minerals.

The suppliants' main claim to entitlement to the mines and minerals in their respective properties is based on an offer alleged to have been made by the Board on January 20, 1949. On that date Mr. Cutler, District Solicitor for the Board at Edmonton, wrote each of the suppliants a letter stating that a recent Order in Council provided that settlers who had repaid their loans could obtain title to such mineral rights in their lands as were vested in the director of Soldier Settlement by completing and returning an enclosed application form, together with a fee of $25.00 "when a transfer covering such mineral rights will be requested". It is alleged that each of the suppliants duly accepted the said offer in accordance with its terms and is now entitled to the mines and minerals. Alternatively, it is claimed that the suppliants are entitled to the mines and minerals pursuant to their original agreements to purchase the land.

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Many grounds of defence are raised by the Crown but I shall refer only to those which have some bearing on the particular matters mentioned in the present motion. The first two orders requested are:

(*a*) Directing the Respondent to produce and show to counsel for the Suppliants on the continued Examination for Discovery of the officer of the Respondent, the Contract between the Soldiers Settlement Board and the Superintendent General of Indian Affairs, and all correspondence relating thereto referred to in Questions 53 and 54 of the Examination for Discovery herein of Mr. Hilton Holmes.

(*b*) That the officer being examined for discovery do produce and show to counsel for the Suppliants on his Discovery herein the authority for the execution of the Contract referred to in (*a*) above, all as referred to in Question 58 of the Examination for Discovery of Mr. Hilton Holmes.

The questions mentioned in these two items refer to that part of the statement of defence in which it is alleged that the mines and minerals in question are reserves or parts of reserves surrendered to His late Majesty the King and required to be managed, leased and sold as the Governor in Council directs by virtue of section 54 of the Indian Act, R.S.C. 1927, chapter 98, and that the Governor in Council has given no direction with regard thereto; that neither the Soldier Settlement Board nor the Director of Soldier Settlement at any time had any interest therein. Exhibit 1 on the examination for discovery is the letters patent dated October 8, 1920, by which the ownership or the control of the land was passed to the Board and certain words therein suggest that there may have been a contract between the Soldier Settlement Board and the Superintendent General of Indian Affairs.

It now appears from the affidavit of L. A. Couture, departmental legal adviser, dated April 29, 1954, that no formal contract was entered into between the Soldier Settlement Board and the Superintendent General of Indian Affairs, but that the arrangements were entered into by an exchange of six letters between the Commissioner of the Soldier Settlement Board and the Deputy Superintendent General of Indian Affairs in September and October 1919. It is these six letters which the Crown is now asked to produce.

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The third and fourth orders requested in the Notice of Motion are as follows:

(*c*) That the officer being examined for discovery do produce and show to counsel for the Suppliants herein the complete files of the Suppliants referred to in Question 82 of the Examination for Discovery of Mr. Hilton Holmes.

(*d*) That the officer being examined for discovery do produce and show to counsel for the Suppliants herein the documents referred to in Questions 83 to 113 in the Transcript of the Examination for Discovery herein of Mr. Hilton Holmes.

Both of these relate to the alleged "offer" in 1949 to sell the mines and minerals for the sum of $25.00. In defence the Crown denies that there was a valid offer to sell the mines and minerals and that if any such offer was made it was made without proper authority, was never intended to have legal consequences and was never accepted. It is alleged that there was no Order in Council, nor a Minute of Cabinet, which authorized the transfer of the mines and minerals for the sum of $25.00. In the alternative it is said that the mines and minerals are part of the public lands of Canada which may not be disposed of without the authority of the Governor in Council and that no such authority has been given for their disposition.

Item (*c*) (*supra*) is for the production of the entire Soldier Settlement Board file for each of the suppliants. No objection is raised by the Crown to the production of the correspondence in these files between the settlers and the Board, but objection is taken to the production of the files as a whole on the ground that, other than the correspondence mentioned, the contents consist of interdepartmental memoranda.

Item (*d*) relates to documents which it is thought might disclose the authority of Mr. Cutler, District Solicitor of the Board at Edmonton, to write the letter of January 20, 1949. On the examination for discovery, Mr. Holmes admitted that certain instructions in writing were given by the Board to Mr. Cutler; that the Deputy Minister of Veterans' Affairs had given certain instructions in writing to the Director of Soldier Settlement and that the Secretary to the Cabinet had written a letter to the Department of Veterans' Affairs in regard to the matter. Counsel for the suppliants now asks for the production of these letters also.

The production of these two series of letters might possibly be of some assistance to the suppliants in endeavouring to establish that the mines and minerals did become the property of the Soldier Settlement Board and that there was authority for the "offer" contained in Mr. Cutler's letter of January 20, 1949. The question I have to decide is whether in this action—a civil action in which the Crown is a party —the Crown can be compelled to produce them.

Counsel for the Crown submits that in such a case, where the Crown is a party to a suit, it cannot be required to give discovery of documents at all as it is still a prerogative of the Crown to refuse discovery; that in any event the papers here requested are of a class which it is not in the public interest to disclose; and, finally, that the papers are not relevant to the issues raised.

In the United Kingdom it is now well settled that in such cases the Crown cannot be compelled to give discovery. In Halsbury, 2nd Edition, Vol. 10, 3352, the principle is stated thus:

> 423. Where the Crown is a party to the matter it has the same right to discovery as a subject has against a subject, but it cannot be compelled to give discovery though, in practice, it often does unless some principle of public interest is involved.

The principles and authorities were discussed in the well-known case of *Duncan* v. *Cammell, Laird & Co.* (1). That was a unanimous decision of the House of Lords delivered by Viscount Simon, L. C. A portion of the headnote reads as follows:

> When the Crown is a party to a suit, discovery of documents cannot be demanded by the other party as of right, although in practice, for reasons of fairness and in the interest of justice, all proper disclosure and production would be made.

At page 632 of the Report, Viscount Simon said:

> There is thus express authority in this House that a court of law ought to uphold an objection, taken by a public department when called on to produce documents in a suit between private citizens, that, on grounds of public policy, the documents should not be produced. It is important to note what are the circumstances in which this specific objection may arise. When the Crown (which for this purpose must be taken to include a government department, or a minister of the Crown in his official capacity) is a party to a suit, it cannot be required to give discovery of documents at all. No special ground of objection is needed. The common law principle is well established: see *Thomas* v. *Reg.* (1874) L.R. 10 Q.B. 44. There is also the authority of Abinger C. B. for the view

(1) [1942] A.C. 624.

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that the former process in equity of a bill of discovery was not regarded as available against the Crown: *Deare* v. *Attorney-General* (1835) 1 Y. & C. 197, 208, but that learned judge went on to say: "At the same time it has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of any proceedings for the purpose of bringing matters before a court of justice, where any real point of difficulty that requires judicial decision has occurred." Similarly, in *Attorney-General* v. *Newcastle-upon-Tyne Corporation* [1897] 2 Q.B. 384, 395, Rigby L. J. said: "The law is that the Crown is entitled to full discovery, and that the subject as against the crown is not. That is a prerogative of the Crown, part of the law of England, and we must administer it as we find it. . . . Now I know that there has always been the utmost care to give to a defendant that discovery which the Crown would have been compelled to give if in the position of a subject, unless there be some plain overruling principle of public interest concerned which cannot be disregarded." Where the Crown is a party to a suit, therefore, discovery of documents cannot be demanded from it as a right, though in practice, for reasons of fairness and in the interests of justice, all proper disclosure and production would be made. The question which we have to decide can only arise as a matter of law in England in cases where a subpoena is issued to a minister or a department to produce a document (usually, but not necessarily, in a suit where the Crown is not a party), or where it intervenes in a suit between private individuals (as is the present case), to secure, on the ground of public interest, that documents in the hands of one of the litigants should not be produced. A similar situation might conceivably arise in litigation between the Crown and a subject where it was considered necessary to prevent the subject from producing a document in his possession on the ground that this would be injurious to public interests.

In the case of *Miller et al* v. *The King* (1), heard by me in 1951, counsel for the suppliants demanded the production of certain documents in the possession of the Crown. Counsel for the Crown objected to their production on the ground that it would be contrary to public policy to admit them in the Court. In making my ruling, I said at page 170:

> When an objection . . . is validly made, it is conclusive, and it is not for the Court to determine whether it is in fact against public policy.

And at page 175:

> I have said that the decision in the *Duncan* v. *Cammell, Laird* case is binding upon me. The result of that decision is that it is not for the Court but for the ministerial head of the department of government to determine whether or not it is in the public interest to refuse to produce documents.

Had there been no decision of the Supreme Court of Canada in the meantime on this question, I would have adhered to the opinion which I expressed in *Miller's* case. I would have considered Crown privilege in regard thereto as a prerogative of the Crown which has not been cut down or

(1) June 20, 1951 (unreported)

limited by any provisions of the Exchequer Court Act, the Petition of Right Act, or by any other statutory provision. Counsel for the suppliants, however, refers me to the recent decision of the Supreme Court of Canada in *Regina* v. *Snider* (1), and submits that the Crown privilege is not now in Canada as stated in the *Cammell, Laird* case, but must be determined by the decision in *Snider's* case.

The *Snider* case came before the courts in this way. At a trial under the Criminal Code, the Crown in the right of the province summoned by writ of subpoena the Director of Taxation of the District of Vancouver, requiring him to give evidence and to produce the income tax returns of the accused. The Minister of National Revenue in an affidavit, objected to the production of the documents and to the giving of oral evidence, basing his claim that it would be prejudicial to the public interest on section 81 of the Income War Tax Act and on section 121 of the Income Tax Act, which prohibit such communications to any person other than a person "legally entitled thereto". Consequent to the ruling of the trial judge that the returns must be produced, and, if relevant, given in evidence, certain questions were submitted for the opinion of the Court of Appeal for British Columbia pursuant to the Constitutional Questions Determination Act, R.S.B.C. 1948, chapter 66, including the following.

1. On the trial of a person charged with an indictable offence, where a subpoena *duces tecum* has been served on the appropriate Income Tax official to produce before the Court on such trial returns, reports, papers and documents filed pursuant to the provisions of the *Income Tax Act,* and the *Income War Tax Act* or the *Excess Profits Tax Act,* 1940, and to give evidence relating thereto, and where the Minister of National Revenue has stated on oath that in his opinion such evidence and the production of such returns, reports, papers and documents would be prejudicial to the public interest; ought such Court to order the production of such returns, reports, papers and documents and the giving of oral evidence relating thereto: (*a*) when such subpoena is served at the instance or on behalf of the Attorney General of the Province; (*b*) when such subpoena is served at the instance or on behalf of the accused?

Another question had to do with the effect of sections 81 and 121 of the Income War Tax Act and the Income Tax Act on the right of the Minister of National Revenue to object on the ground of prejudice to the public interest to the production of documents mentioned in Question 1, but that question need not here be considered.

(1) [1954] S.C.R. 480.

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On appeal to the Supreme Court of Canada, it was held in regard to Question 1:

1. (Per Rinfret C.J., Kerwin, Taschereau, Rand, Kellock, Estey and Fauteux JJ.). That the Court may order the production of the documents in question and the giving of oral evidence relating thereto, unless special facts or circumstances appearing in the Minister's affidavit make it clear to the Court that there might be prejudice to the public interest in the disclosure, but only to the extent of the document or documents within the special facts or circumstances.
2. (Per Locke J.). That the Court may order the production of the documents in question and the giving of oral evidence relating thereto to enable the Court to determine whether the facts discoverable by the production of the documents would be admissible, relevant or prejudicial or detrimental to the public welfare in any justifiable sense.
3. (Per Cartwright J.). That the Court may order the production of the documents in question and the giving of oral evidence relating thereto, limited however to a case in which the objection of the Minister is to the production of any documents belonging to the class consisting of returns, reports, papers and documents filed pursuant to the provisions of the *Income Tax Act*, the *Income War Tax Act* or the *Excess Profits Tax Act*, 1940, on the ground that they belong to that class.

Counsel for the suppliants does not suggest that the Court has the right to inspect the documents and papers in question in order to determine whether their production would be detrimental or prejudicial. That practice was followed in the Privy Council decision in the case of *Robertson* v. *State of South Australia* (1), but the House of Lords in the *Cammell, Laird* case expressly disapproved of the practice. In *Snider's* case only two of the judges referred to the practice; Locke J., who agreed with the opinion of the Chief Justice of British Columbia (2), approved, but Estey J. stated at page 494:

> The different opinions expressed by the authorities as to the right of a presiding judge to examine the documents appears to have been resolved by the observations of Viscount Simon in the *Cammell, Laird* case.

In *Snider's* case Rand J., while insisting that the Court had the right of preliminary determination of possible prejudice as a protection against executive encroachment upon the administration of justice, pointed out that in certain cases if the Minister asserts the existence of a public interest, the courts must accept his decision. At page 485 he said:

> Once the nature, general or specific as the case may be, of documents or the reasons against its disclosure, are shown, the question for the court

(1) [1931] A.C. 704. (2) [1953] 2 D.L.R. 9 at 11.

is whether they might, on any rational view, either as to their contents or the fact of their existence, be such that the public interest requires that they should not be revealed; if they are capable of sustaining such an interest, and a minister of the Crown avers its existence, then the courts must accept his decision. On the other hand, if the facts, as in the example before us, show that, in the ordinary case, no such interest can exist, then such a declaration of the Minister must be taken to have been made under a misapprehension and be disregarded. To eliminate the courts in a function with which the tradition of the common law has invested them and to hold them subject to any opinion formed, rational or irrational, by a member of the executive to the prejudice, it might be, of the lives of private individuals, is not in harmony with the basic conceptions of our policy. But I should add that the consequences of the exclusion of a document for reasons of public interest as it may affect the interest of an accused person are not in question here and no implication is intended as to what they may be.

The problems raised on this motion can be determined by considering the question of Crown immunity from production of documents only in so far as it relates to the particular papers in question. As I have said, they are all of one class, namely, interdepartmental memoranda or interdepartmental correspondence.

I am invited by counsel for the suppliants to exercise the right of preliminary determination of possible prejudice (as referred to in the opinion of Rand J. in *Snider's case*). In so doing it is the function of the Court to examine the nature, general or specific, of the documents as disclosed by the evidence and the reasons assigned for claiming Crown privilege, and if it be found on any rational view that the public interest requires that they should not be revealed, the Court must accept the opinion of the Minister that such an interest exists. In such a case I do not think that the Court is required to re-examine the matter by applying the tests set out by Viscount Simon on page 642 of the *Cammell, Laird* case. As I read that case, the tests there stated are not intended to be applied by the Court but are rather general exhortations to the heads of departments as to the manner in which they should exercise the privilege of non-production.

It is settled law that there are particular classes of communications which the public interest requires should be

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protected from production. In the *Cammell, Laird* case Viscount Simon said at page 635:

> It will be observed that the objection is sometimes based upon the view that the public interest requires a particular class of communications with, or within, a public department to be protected from production on the ground that the candour and completeness of such communications might be prejudiced if they were ever liable to be disclosed in subsequent litigation rather than on the contents of the particular document itself. Several cases have been decided on this ground protecting from production documents in the files of the East India Company held in its public capacity as responsible for the government of India: see *Smith* v. *East India Co.*, 1 Ph. 50; *Wadeer* v. *East India Co.*, 8 De G. M. & G. 182. In the earlier of these cases Lord Lyndhurst L. C. said (1 Ph. 50, 55): "Now it is quite obvious that public policy requires, and looking to the act of parliament, it is quite clear that the legislature intended, that the most unreserved communication should take place between the East India Company and the Board of Control, that it should be subject to no restraints or limitations; but it is also quite obvious, that if, at the suit of a particular individual, those communications should be subject to be produced in a court of justice, the effect of that would be to restrain the freedom of the communications, and to render them more cautious, guarded, and reserved. I think, therefore, that these communications come within that class of official communications which are privileged, inasmuch as they cannot be subject to be communicated without infringing the policy of the act of parliament and without injury to the public interests." On the same principle, it has been held in *H.M.S. "Bellerophon"*, 44 L. J. Adm. 5, that where a collision occurs between a ship of the Royal Navy and a ship belonging to a private owner the Admiralty cannot be required to produce the report made by the officer who is in command of the former ship.

and at page 642:

> The minister, in deciding whether it is his duty to object, should bear these considerations in mind, for he ought not to take the responsibility of withholding production except in cases where the public interest would otherwise be damnified, for example, where disclosure would be injurious to national defence, or to good diplomatic relations, or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. When these conditions are satisfied and the minister feels it is his duty to deny access to material which would otherwise be available, there is no question but that the public interest must be preferred to any private consideration.

In *Snider's* case Kellock J. said at page 487:

> There is, accordingly, not only a public interest in maintaining the secrecy of documents where the public interest would otherwise be damnified, as, for example, where disclosure would be injurious to national defence or to good diplomatic relations, or where the practice of keeping a class of document is necessary for the proper functioning of the public service, but there is also a public interest which says that "an innocent man is not to be condemned when his innocence can be proved"; per Lord Esher M. R., in *Marks* v. *Beyfus*, (1890) 25 Q.B.D. 494 at 498. It cannot be said, however, that either the one or the other must invariably be dominant.

It seems to me that there is a clearly discernible public interest in protecting from production correspondence and memoranda passing between members of one or more departments of government to the extent that the head of the department considers that they should not be disclosed. That interest need not be found in the contents of the particular communications. In fact, I think it reasonable to assume from the evidence as to the nature of the memoranda and correspondence here in question that they are concerned with matters the disclosure of which would not affect the safety of the state to any degree. The interest is to be found rather in the fact that public policy requires that such official communications between officers of the state should be completely unreserved. If they were made with the knowledge that they might later be subject to disclosure in the courts, they would in many cases be shorn of that candour, completeness and freedom of expression which is desirable in such matters. They would tend to become more cautious and reserved and expressions of opinion would be affected by the possibility of subsequent public disclosure. The officials of the state would be hampered in the performance of their proper functions.

It is my opinion, therefore, that even if the prerogative of the Crown in Canada in this regard, and in civil actions in which the Crown is a party, is not as absolute as it now is in England, there is a public interest which requires that interdepartmental communications between public officials should not be produced when the head of the department has in valid form objected to their production on the ground that they belong to a particular class of documents which it is not in the public interest to disclose. There is nothing novel in upholding such an objection for as far as I am aware it has been the constant practice in the Canadian courts to refuse to order disclosure of documents in such cases. Indeed, the Evidence Acts of several of the provinces have placed Crown privilege in relation to documents in statutory form, a list of which may be found in volume 8 of Wigmore on Evidence at page 2378, and at page 2378 of the supplement to that volume. For example, section 27, Revised Statutes of Ontario 1950, chapter 119, provides as follows:

27. Where a document is in the official possession, custody or power of a member of the Executive Council, or of the head of a department of

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the public service of Ontario, if the deputy head or other officer of the department has the document in his personal possession, and is called as a witness, he shall be entitled, acting herein by the direction and on behalf of such member of the Executive Council or head of the department, to object to produce the document on the ground that it is privileged, and such objection may be taken by him in the same manner, and shall have the same effect, as if such member of the Executive Council or head of the department were personally present and made the objection.

A provision which is almost precisely the same is found in section 33, Revised Statutes of Alberta, 1942, chapter 106. It is of some interest to note also the provisions of section 36 of the Canada Evidence Act, Revised Statutes of Canada 1952, chapter 307, which are as follows:

36. In all proceedings over which the Parliament of Canada has legislative authority, the laws of evidence in force in the province in which such proceedings are taken, including the laws of proof of service of any warrant, summons, subpoena or other document, subject to this and other Acts of the Parliament of Canada, apply to such proceedings.

I am of the opinion, also, that the objections to production were properly taken. In the affidavit of documents of T. J. Rutherford, Director of Soldier Settlement, dated November 2, 1952, a large number of documents were set out to the production of which no objection is taken. Then in the Second Part which states the documents in possession of the Crown, the production of which is objected to, there is the following:

1. Memorandum to Cabinet by Cabinet Committee, dated November 3, 1948.
2. Memorandum to Cabinet by Cabinet Committee, dated April 5, 1951.
3. All interdepartmental memoranda and correspondence. I object to produce the above documents, memoranda, and correspondence, as being contrary to public policy.

From the beginning, therefore, the objection has been taken that it is contrary to public policy to produce interdepartmental memoranda and correspondence. That position was taken by counsel for Mr. Holmes on examination for discovery and was substantially stated in the affidavits of the ministers having charge of the Departments of Veterans' Affairs and of Citizenship and Immigration.

Counsel for the appellant also submits that as some documents and papers have been produced by the respondent, the right to the Crown privilege has been waived and that all such documents should now be produced. I am unable to agree with this submission. In ordinary litigation a

party does not lose the right to claim privilege from production of certain documents merely because he has consented to disclose others, and the Crown's rights are not less than those of the subject. If, however, the objection is based on the ground that some documents, the production of which might validly have been objected to, have been produced, the short answer is to be found in the fact that in this case none of the documents which have been produced fall within the category of interdepartmental communications, and it is in respect of that class that the objection is taken.

The only remaining item of the Notice of Motion which need be referred to is:

> (*e*) that the said officer of the Respondent produced for examination for discovery do attend and answer the questions the answers to which were refused on the said examination for discovery.

In *Snider's* case, Kellock J. stated at page 487:

> In considering the applicability of the rule as to secrecy of documents in the public interest, it is to be remembered that where it does apply, not even a copy of a document, no matter from what source it may be forthcoming, nor any oral evidence as to its contents are admissible.
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> In *Chatterton* v. *Secretary of State for India,* [1895] 2 Q.B. 189, A. L. Smith, L. J., laid down the rule at p. 195 as follows:
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> The cases have gone the length of holding that, even if no objection were taken to the production of such a document by the person in whose custody it was, it would be the duty of the judge at the trial to intervene, and to refuse to allow it to be produced: and it has further been held that, if an attempt were made to get round that difficulty by giving secondary evidence of its contents, the judge ought also to prevent that from being done.
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> Viscount Simon, L.C., referred to the above with approval in the *Cammell Laird* case at p. 595, where he said:
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> The present opinion is concerned only with the production of documents, but it seems to me that the same principle must also apply to the exclusion of verbal evidence which, if given, would jeopardize the interests of the community.

On the principles so stated, this part of the Notice of Motion must also be dismissed. In view of my conclusions, it becomes unnecessary to discuss the further objection taken on behalf of the respondent, namely, that the documents were not relevant.

The opinion which I have expressed has been on the assumption that the Court has jurisdiction in proper cases to entertain an application such as this. Inasmuch as the powers of the Court are purely statutory, there may be

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some question whether it has the power to compel the production of books, documents and papers from the custody of the Crown. That question was not raised on the argument and in view of the conclusions which I have reached on the merits, I do not find it necessary to consider the general problem of jurisdiction. It will be understood, therefore, that nothing which I have said is to be construed as a finding that the Court has such jurisdiction and I specifically reserve that question for consideration until an occasion arises in which it is necessary to determine it.

In addition to the cases which I have cited above, I have read with interest the following: Wigmore on Evidence, 6th Edition, page 2378 ff., on Privilege for Secrets of State and Official Communications; The Solicitor's Journal (1943), Vol. 87, page 61, on Production Injurious to Public Interest; an article by Mr. John Willis in Vol. 33, Canadian Bar Review, page 352; and Vol. 58, Law Quarterly Review, page 436.

For the reasons which I have stated, the motion must be dismissed with costs to the respondent in any event of the cause.

Order accordingly.