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The Common Law

Although tort actions against judges have been considered by the courts over a period of approximately four h u n d red years, prior to 1975 the English courts had failed to articulate any clear or generally accepted principles, and the Canadian courts had scarcely considered the matter at all.[23] The very age of the authorities cited by the modern courts would call for a reexamination of the underlying principles, but beyond that, the principles tend to be expressed in obiter dicta, often contradictory, and usually so imprecisely worded as to be of uncertain scope. So unhelpful are the older authorities that the judges of the English Court of Appeal in *Sirros v. Moore*[24] were unable to agree upon what the principles had been prior to their decision, let alone agree upon what they ought to be in the twentieth century. Several authors have attempted vigorous and detailed examinations of the cases on point, but, by their own admission, have had considerable difficulty in extracting any satisfactory set of governing principles. There is little to be gained from repeating that exercise here; instead it is proposed to limit the com m on law summary to an analysis of *Sirros v. Moore*. That approach has the advantage of revealing some of the conflicting interpretations of the older authorities. More importantly, the judgments provide a model of analysis for a variety of theories of judicial immunity in trespass. Although it is theoretically possible to maintain a non-trespass action against a superior court judge, there are no modern com m on law cases directly on point,[25] and actions on the case against inferior court judges will be discussed later with reference to the relevant statutory provisions.[26]

It is worthwhile to set out the facts in *Sirros v. Moore* in some detail, because they are essential to understanding the perpetually troublesome definition of the term "jurisdiction" which haunts any action involving public authorities. The plaintiff, an alien had been fined by a magistrate who then recommended deportation, but ordered that the alien not be detained pending the Home Secretary's decision regarding deportation. The plaintiff appealed to the Crown Court, which in effect was empowered to conduct a rehearing and vary or affirm the order below in any respect. Specifically, the Crown

Court was empowered to recommend deportation, and consequent upon that recommendation, to order, or not order, that the alien be detained. The judge of the Crown Court held — erroneously as it turned out — that he had no jurisdiction to hear the appeal against the recommendation for deportation. The judge announced that the appeal was dismissed, and then, seemingly as an afterthought, ordered that *Sirros* be detained. The effect of his dismissing the appeal was to leave the magistrate's order intact; hence the Crown Court made no deportation recommendation, as was a condition precedent to a detention order.[27] Whether this detention order, clearly invalid, was an error within or without the jurisdiction of the Crown Court, is a point of some nicety to which we shall return shortly.

An order of habeas corpus was granted on the ground that the judge was *functus officio*.[28] Upon his release *Sirros* issued a writ claiming dam ages tor trespass and false imprisonment against the judge and police officers involved. In the Court of Appeal all three judges upheld the defendant's application to strike out the action on the ground that it disclosed no reasonable cause of action, but the reasons behind the decision differed. Lord Denning, with whom Ormrod L.J. essentially agreed, openly acknowledged that he was breaking from the rules established in the older cases, as he interpreted them. He held that any judge of any court should be immune from tort liability for any act done in his official capacity unless the judge knowingly exceeded his jurisdiction. Buckley L.J. interpreted the older authorities somewhat differently and arrived at a very com plex set of immunity rules. His expression of these rules is obiter dicta because he decided the case on a relatively uncontroversial basis, holding that the judge had simply made a procedural error within his jurisdiction.

Their analysis of the older authorities, which was somewhat less detailed than that of Buckley L.J., led Lord Denning and Ormrod L.J. to conclude that the com m on law had always distinguished between superior and inferior courts for the purposes of special tort immunity.[29] They seemed to agree that a superior court judge was immune from civil liability for anything said or done while acting judicially. This immunity extended to acts done within or without jurisdiction, and indeed "[n]o matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness. . .".[30] Judges of inferior courts were personally liable for acts done outside their jurisdiction, except when they genuinely believed on the facts that they had jurisdiction. This would seem to protect the judge from almost any error of fact committed in interpreting the evidence, provided there was some evidence on point for his consideration.[31] However, the judge of an inferior court was liable for innocent errors of law which caused him to exceed his jurisdiction. The cause of action arising from an order made outside jurisdiction would generally be trespass.[32]

In Lord Denning's view, inferior court judges were also liable "for acts done within their jurisdiction if done maliciously and without reasonable and probable cause".[33] The basis of this type of action would not be trespass but case, and will be discussed herein.[34] However, it is interesting to note that one author has argued most convincingly that it is not judges of inferior courts, but judges not acting as a court of record, who are potentially subject to this type of suit.[35]

After recognizing the dichotomy between superior and inferior courts, Lord Denning and Ormrod L.J. concluded that it ought to be abandoned for the purposes of tort law, and that the same liability rules ought to be applied to all judges and magistrates.[36] They adopted the broader immunity recognized as applying to superior court judges as the general rule — essentially absolute immunity for all acts done while performing a judicial function, within or without jurisdiction. Buckley L.J., in a sense, began where they concluded, because in his view the case law did not support a distinction between superior and inferior court judges.[37] Although agreeing that the same rules ought to apply to all judges, he disagreed significantly with the scope of that immunity. He expressed the possibilities, and their potential liability consequences as follows:[38]

> So the following questions may arise: (1) Was the act non-judicial? (2) If the act was, or purported to be, a judicial act, was it within the judge's jurisdiction? (3) If the act purported to be a judicial act in the exercise of a jurisdiction which the judge possessed and about the extent of which he was under no misapprehension, did the judge act as he did upon an erroneous judgment that the circumstances were such as to bring the case

> within the ambit of that jurisdiction? (4) If the act was not in truth within the judge's jurisdiction, did he act in a conscientious belief that it was within his jurisdiction, and, if so, (a) was this belief due to a justifiable ignorance of some relevant fact or (b) due to a careless ignorance or disregard of some such facts, or (c) due to a mistake of law relating to the extent of his jurisdiction? He will, in my opinion, be immune in cases (2), (3) and (4) (a), but not otherwise.

Although Buckley L.J. avoided the term "jurisdiction" in addressing the issue of whether or not the term was a judicial act, his test seems to amount to asking whether or not the judge had "preliminary jurisdiction"[39] to perform the act in question, and he later uses the term jurisdiction in this context.[40] But he also uses the term jurisdiction in questions (2), (3), and (4), and the term is then being used in a different sense from its use in question (1). For want of a better term, this may be called "secondary jurisdiction" as opposed to "preliminary jurisdiction".

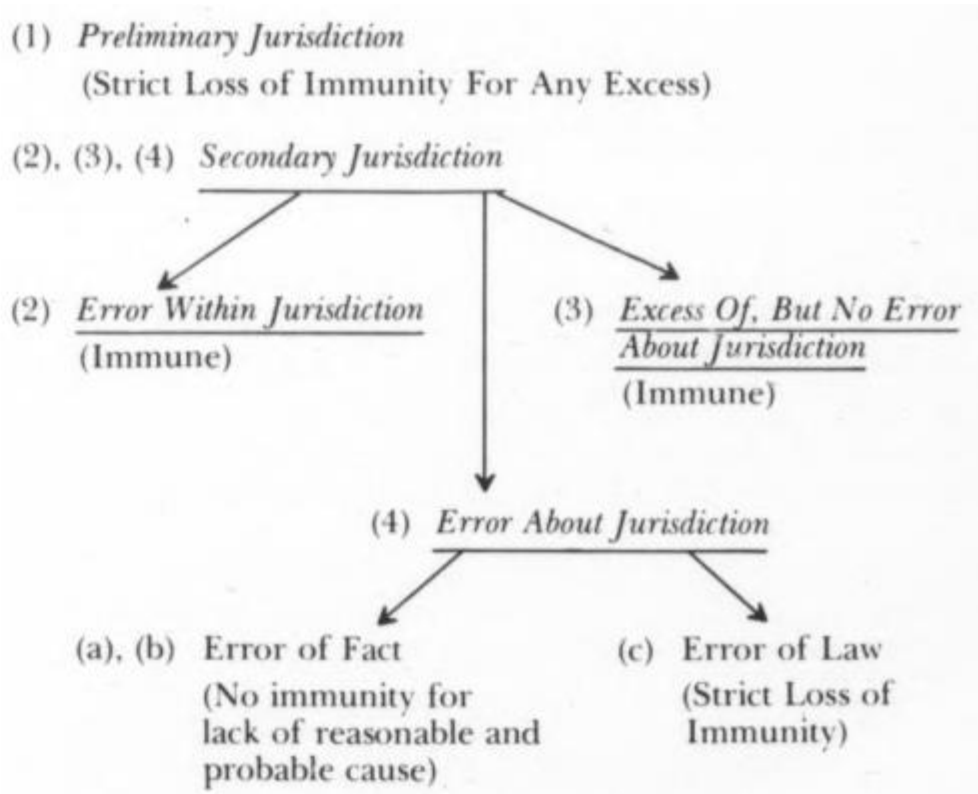
This slippery term has plagued administrative law for many years, and the distinction between jurisdictional and non-jurisdictional questions, as well as the distinction between the two types of jurisdictional questions, is extremely difficult to draw. Indeed, one of the advantages of the judgments of Lord Denning and Ormrod L.J. is that they make this difficult exercise unnecessary. However, these distinctions have been relied upon in tort cases involving other public authorities,[41] and it is necessary to come to grips with them in order to understand Lord Justice Buckley's views.

Using the facts in *Sirros* as an example, one might address the preliminary jurisdiction question by looking at the matter as it stood at the outset of the case, and asking whether the judge could (given certain findings of fact, conclusions of law, and procedural regularity) lawfully perform the act in issue. Buckley L.J. dealt with this issue simply by observing that the judge did have jurisdiction to detain the alien if the subsequent conditions were complied with.[42] The matter would also have to be within the territorial competence of the court, within the limitation period, properly instituted by the proper party, and, in a civil matter, within the monetary jurisdiction of the court.[43] Facts might also come to light during the course of the action which were relevant to preliminary jurisdiction; for example, the evidence might establish that an issue which initially appeared to be within the territorial competence of the court was upon further examination found to be beyond it.[44] In the view of Buckley L.J., any error of preliminary jurisdiction would deprive a judge's act of its judicial character, and hence deprive the judge of immunity.

Ormrod L.J. distinguished between the two meanings of the term jurisdiction as follows: ". . . a distinction must be drawn between questions which are strictly questions of jurisdiction [preliminary jurisdiction] and questions which relate to the powers which the court can exercise in the course of exercising its jurisdiction".[45] It is the latter type of jurisdictional question which Buckley L.J. refers to in (2), (3), and (4). It is tempting to use *Sirros* again as an example and say, as Lord Denning and Ormrod L.J. seem to,[46] that although the Crown Court judge had preliminary jurisdiction to detain *Sirros*, that power was only exercisable after a recommendation for deportation, and hence, that the judge lacked jurisdiction in the second sense to make the order, having failed to satisfy the necessary precondition. Unfortunately — and this is a perfect illustration of the futility of attempting to distinguish jurisdictional and non-jurisdictional questions — Buckley L.J. classified the judge's act as an error of procedure within his secondary jurisdiction, and hence immune.[47] He went on to say that even if the decision in such a case were particularly perverse or irrational, the judge would still be immune from civil liability, although perhaps subject to removal from office.

It is no easier to distinguish question (3) from question (4) than it is to distinguish both from questions (1) and (2). Question (3) seems to posit a situation w here the judge knows his jurisdiction, in the second sense, but erroneously concludes that the circumstances of a case bring it within that jurisdiction. Since the judge knows his jurisdiction, this is an error of judgment rather than an error of jurisdiction. As an example, he cites *Hamond v. Howell*[48] where the judge knew he had jurisdiction to punish a misdemeanor, but made an error in judgment in concluding a misdemeanor had been committed. Question (4) appears to contemplate the situation where the judge is in error as to the scope of his power, or jurisdiction in the second sense. Questions (4)(a) and (c) are consistent with the rules which Lord Denning and Ormrod L.J. felt had applied previously to inferior courts, but (4)(b) seems to go somewhat further, suggesting that due care rather than genuine belief is the required standard.

Although the following chart will not resolve the classification difficulties, it may enable the reader to recognize the distinctions as seen by Buckley L.J.



Although the views of Lord Denning and Ormrod L.J. represent the law as it now stands in England, the House of Lords has not yet ruled upon this new direction, and it is certainly open to other courts in other jurisdictions to reach an entirely different solution. Lord Justice Buckley's views have been presented in detail mainly to illustrate the possible distinctions in the scope of judicial immunity. After a review of the relevant statutory provisions these possible solutions will be tested against the factors which support judicial immunity.

Legislative Provisions

There are statutory provisions respecting the liability of certain judicial officers in all of the provinces of com m on law jurisdiction in Canada, as well as in England. In eight provinces the legislation governs provincial court judges, magistrates, and justices of the peace;[49] in Alberta justices of the peace are excluded;[50] in England the legislation specifically governs justices of the peace.[51] In addition, the British Columbia Supreme Court is expressly accorded the protection of a superior court of record,[52] and the Manitoba Court of Queen's Bench is given the same protection available to superior courts of record in England in 1870.[53] Although *Sirros v. Moore* might be adopted in British Columbia, in Manitoba the liability of a judge of the Court of Queen's Bench will depend upon which of the conflicting views of the older com m on law is adopted.

The Canadian statutes which deal with provincially appointed judicial officers are modelled upon the English **The Justice's Protection Act 1848.**[54] The full title of the Act (An Act to protect Justices of the Peace from vexatious actions for Acts done by them in execution of their Office) suggests that it was passed for the purpose of limiting groundless actions. As does most of the Canadian legislation, it distinguishes between acts done with and without jurisdiction. Jurisdiction is not defined, so the same definitional problems present in the common law are also present under the legislative schemes.

Consistent with the English legislation, when the act in issue was within the officer's jurisdiction six provinces specify no action will lie unless the act was done maliciously and without reasonable and probable cause.[55] Neither "malice" nor the presumably equivalent term "bad faith" which appears in the British Columbia legislation,[56] is defined. Interestingly, in British Columbia and Prince Edward Island the legislation reads "malice or without reasonable and probable cause,"[57] and depending upon how that word is interpreted, those statutes may recognize a far narrower immunity rule than the others.[58] In New Brunswick, there is no specific statutory reference to an action on the case. Instead there is a prohibition against any action being brought against an officer acting within jurisdiction.[59] It is always possible to argue that a knowing or malicious error in itself takes the officer out of his jurisdiction, but the distinctive nature of the New Brunswick legislation suggests that this approach was not intended by the legislature.[60]

None of this legislation is as clear as it might be, because while at least eight provinces and England recognize an action on the case for errors committed within jurisdiction, none specifies clearly the elements of that action. Assuming one could determine the com m on law in the nineteenth century, were the Acts intended to change it or confirm it?[61] Moreover, the Acts are worded in the negative, raising the possibility that malice and want of reasonable and probable cause are necessary, but not always sufficient, criteria of liability. It has been argued that the absolute immunity in the com m on law for errors within jurisdiction committed by justices acting as courts of record would protect an English justice of the peace from an action of malicious conviction, notwithstanding the legislation.[62] Thus, much of the uncertainty of the com m on law remains with the legislation, and the same is true of the legislation governing errors of jurisdiction.

Dealing with errors committed without or in excess of jurisdiction, there are basically two different legislative schemes. In three provinces, the legislation requires proof of malice and reasonable and probable cause, just as for the error within jurisdiction.[63] Interestingly, this creates broader judicial immunity than that which Buckley L.J. felt was available to superior court judges, or that which Lord Denning felt was available to certain inferior courts at com m on law,[64] and may now be roughly similar to the immunity for all but knowing error expressed by Lord Denning and Ormrod L.J. in *Sirros v. Moore*.[65]

In three other provinces, the com m on law relating to jurisdictional error is affirmed and the legislation states that it is not necessary to prove malice or want of reasonable and probable cause.[66] Therefore, unless these provinces adopt the decision in *Sirros v. Moore*, there will be strict liability in trespass for jurisdictional error. In New Brunswick, there is simply a prohibition against suing a judge for an act performed within jurisdiction, and presumably the effect is the same as in the three provinces noted immediately above.[67] In Manitoba and Prince Edward Island the phrase "in the execution of his duties" appears in otherwise similar legislation.[68] If that phrase is interpreted as meaning "within jurisdiction" there would either be strict liability in trespass, or liability for knowing error, depending upon whether or not *Sirros v. Moore* were adopted. But it can also be argued that the phrase is meant to include the purported exercise of jurisdiction, in which case the legislatures may have contemplated liability only when the act loses its judicial character, as w here the judge knowingly exceeds jurisdiction.

It is interesting to note that the federal *Criminal Code*, and legislation in several provinces perm its the reviewing court, upon quashing a conviction, to issue an order immunizing the judge who made the error from tort liability.[69] For example, the Ontario legislation reads as follows:

> 7.(1) Where an order is made quashing a summary conviction, the court may provide that no action shall be brought against the justice of the peace who made the conviction or against the informant or any officer acting thereunder or under any warrant issued to enforce the conviction or order. (2) Such an order may be made conditional upon payment of the costs of the motion to quash or upon such other condition as may be considered proper.

It will be argued subsequently that the action on the case is preferable to the trespass basis of judicial liability. However, if trespass liability were to be maintained, then there is much to recommend such provisions whereby an action for an innocent error of jurisdiction may be precluded by the same judge who determines the error, hence eliminating the groundless suit at the earliest possible opportunity. The other advantage, which obtains equally if the trespass suit is abandoned altogether, is that the reviewing court may exercise its public duty without taking into account in any way the private liability which may otherwise flow from the decision to quash.[70]

Finally, in England there is statutory provision for indemnifying justices for costs and dam ages incurred in tort proceedings, with indemnity being mandatory if the justice acted reasonably and in good faith.[71] Since these elements would be fatal to an action upon the case, the utility of the provisions depends largely upon the continued recognition of the trespass action. The provisions are, however, responsive to one[72] but not all of the rationales for judicial immunity, and may reflect the government's desire to treat justices more as other public authorities than as superior court judges or courts of record.

In summary, the common law before *Sirros v. Moore* imposed strict liability in trespass for jurisdictional errors committed by any court in the view of Buckley L.J., or by inferior courts in Lord Denning's and Lord Justice Ormrod 's view. The legislation in England, and in all but the three Canadian provinces which insist upon an action on the case, contemplates the application of the com m on law, with the precise interpretation of the common law being an open question at the moment in Canada. In England and all of the provinces except probably New Brunswick, the legislation appears to contemplate liability for any judicial error committed with malice and/or want of reasonable and probable cause. At com m on law it appears that superior court judges, or perhaps courts of record, were immune from this type of liability, although in Lord Justice Buckley's view an error of fact committed without reasonable and probable cause would not allow immunity. Thus, although the legislation differs from the common law, the same factors — classification of court, classification or error, standard of care, and motive — are relevant to the determination of the scope of immunity.

Footnotes

[23] See Foran v. Tatangello, supra, footnote 8; *Crawford v. Beattie* (1876), 39 U.C.Q.B 13. See also the cases cited infra, footnote 11. For a summary of the common law as developed by state courts in the United States, see Comment, supra, footnote 9. Two recent interpretations of liability in the Federal jurisdiction are *Pierson v. Ray*, (1967) 87 S. Ct. 1213; 386 U.S. 843; *Stump v. Sparkman* (1978), 435 U.S. 439. These cases affirm a fairly broad immunity rule, imposing liability only for acts totally without jurisdiction which may then be characterized as non-judicial acts. The latter case in particular demonstrates how great the scope of immunity is.

[24] Supra, footnote 7.

[25] Rubinstein, supra, footnote 9, at 319-323.

[26] Infra, at 88-92.

[27] Supra, footnote 7, at 131-2, per Lord Denning.

[28] *Ibid*

[29] For a definition of a superior court, see *infra*, at 92-93.

[30] Supra, footnote 7, at 132, per Lord Denning.

[31] The plaintiff is not permitted to establish a jurisdictional fact in the tort suit contrary to the record in the original case. See Rubinstein, supra, footnote 9, at 323-4.

[32] When the plaintiffs action is for pure economic loss or indirect damage the trespass action is of no use. It has been suggested that the plaintiff will have great difficulty in finding a useful cause of action in these circumstances. See Rubinstein, supra, footnote 9, at 229-230. However, in recent times there has been a considerable widening of the negligence action to permit recovery for pure economic losses. Recovery for an intentional tort has also been permitted in a number of cases, albeit the basis for recovery has not always been clear. See *Roncarelli v. Duplessis*, supra, footnote 2; *Greshman v. Manitoba Vegetable Producers' Marketing Board* (1977), 69 D.L.R. (3d) I 14 (Man. C.A.).

[33] Supra, footnote 7, at 134.

[34] Infra, at 88-89.

[35] Infra, at 89.

[36] Supra, footnote 7, at 136, per Lord Denning; at 149, per Ormrod L.J.

[37] ibid., at 141-143.

[38] ibid., at 140-141.

[39] See de Smith, **Judicial Review of Administration Action** (3rd ed.), at 99-101.

[40] Supra, footnote 7, at 143.

[41] Supra, footnotes 2 and 3.

[42] Supra, footnote 7. at 143.

[43] See de Smith, supra, footnote 41. at 100.

[44] That case must surely be viewed as one where the court had jurisdiction to determine whether or not the matter was indeed within its jurisdiction. For an example of how confusing this type of jurisdictional question may be see *Bell v. The Ontario Human Rights Commission and Carl McKay*, (1971) S.C.R. 756, where prohibition was granted to prevent a Board of Inquiry from proceeding to enquire whether or not a complaint was within its jurisdiction.

[45] Supra, footnote 7, at 150. In *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 1 All K.R. 208, (H I..), at 213-214, Lord Reid drew the following distinction between questions of preliminary jurisdiction, and other questions which would render a tribunal's decision a nullity, which correspond to questions of so-called secondary jurisdiction:

> It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. 1 do not intend this list to In- exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.
>
> The consequences of both categories of error are identical for purposes of judicial review, and perhaps for that reason the term jurisdiction is frequently used to include all the examples given by Lord Reid.

[46] Supra, footnote 7, at 137, per Lord Denning; at 150, per Ormrod L.J.

[47] Ibid. at 143-4.

[48] (1674), I Mod. 119. 184; (1677), 2 Mod. 218 (K.B.).

[49] **The Provincial Courts Act**, R.S.O. 1970, c. 369, s. 1(a), s. 13; **The Public Authorities Protection Act**, R.S.C). 1970, c. 374, s. 1; **Provincial Court Act**, R.S.P.K.I. 1974, c. P-24, s. 1(f),

s. 1 I, as. am. S.P.E.I. 1975, c. 78, s. 1; **The Justices and Other Public Authorities (Protection) Act**, R.S.N'. 1970, c. 189, s. 2(b), s. 4; **The Provincial Court Act**, S.N. 1974, c. 77, s. 34(1); **The Provincial Judges Act**, S.M. 1972, c. 61, s. 1(6), s. 12; **The Provincial Court Act**, S.S. 1978, c. 42, s. 2(f), 5(3), s. 23; **The Provincial Court Act**, S.B.C. 1975, c. 57, s. I , s. 31 (s. 31 renumbered by S.B.C. 1977, c. 60, s. 37); **The Justices' and Magistrates' Protection Act**, R.S.N.S. 1967, c. 157. s. I, 2; **The Judges of the Provincial Magistrate's Court Act**, S.N.S. 1976, c. 13, s. 2(6); **Protection of Persons Acting Under Statute Act**, R.S.N.B. 1973, c. P-20.

[50] **The Provincial Court Act**, S.A. 1978, c. 70, s. 20(3); **The Justices of the Peace Act**, S.A. 1971, c. 57.

[51] **The Justices Protection Act 1848**, 11 & 12 Viet. c. 44.

[52] **The Supreme Court Act**, R.S.B.C. I960, t. 374, s. 5, as. am.

[53] **The Queen's Bench Act**, R.S.M. 1970, c. 280, s. 6.

[54] Supra, footnote 51

[55] **The Public Authorities Protection Act**, R.S.C). 1970, c. 374, s. 2; **The Justices and Other Public Authorities (Protection) Act**, R.S.N. 1970, c. 189. s. 5; **The Justices' and Magistrates' Protection Act**, R.S.N.S. 1967, c. 157, s. 3; The Provincial Court Act, S.S. 1978, c. 42, s. 23; **The Provincial Court Act**, S.A. 1978, c. 7(1, s. 2(1(3);

[56] **The Provincial Judges Act**, S.M. 1972, c. 61, s. 12. ****The Provincial Court Act**, S.B.C. 1975, c. 57, s. 31, as am. S.B.C. 1977, c. 60, s. 37.

[57] Ibid., **Provincial Court Act**, R.S P.E.I. 1974, c. P-24, s. 11.

[58] If the "or" is intended to be read disjunctively, the plaintiff could succeed by proving simple negligence. While there would seem to be some significance to the choice of "or" instead of "and", which appears in the English model, it is difficult to imagine the legislatures creating such a broad liability base, never recognized at common law.

[59] **Protection of Persons Acting Under Statute Act**, R.S.N.B. 1973, c. P-20.

[60] There is common law authority before 1848 in England which recognized the action on the case, most clearly when the judge was not acting as a court of record. See Thompson, supra, footnote 6, at 528. In view of the statute, it is difficult to argue that such authority has survived in New Brunswick.

[61] See Thompson, supra, footnote 6, at 528-533.

[62] Ibid.

[63] See **The Provincial Court Act**, S.S. 1978, c. 42, s. 23; **The Provincial Court Act**, S.B.C. 1975, c. 57, s. 31, as. am. S.B.C. 1977, t. 60. s. 37; **The Provincial Court Act**, S.A. 1978, t. 70. s. 20(3).

[64] Supra, at 84-88.

[65] Infra, at 102.

[66] See **The Public Authorities Protection Act**, R.S.O. 1970, c. 374, s. 3; **The Justices and Other Public Authorities (Protection) Act**. R.S.N. 1970, c. 189, s. 5; **The Justices' and Magistrates' Protection Act**, R.S.N.S. 1967, c. 157, s. 3.

[67] Supra, footnote 61. See also supra, at 88-89.

[68] See **Provincial Court Act**, R.S.P.F..I. 1974, t. P-24, s. II; **The Provincial Judges Act**, S.M. 1972, c. 61, s. 12.

[69] See **The Public Authorities Protection Act**, R.S.O. 1970, c. 374, s. 7(1); **The Justices and Other Public Authorities Protection Act**, R.S.N. 1970, c. 189, s. 14(1); **The Criminal Code**, R.S.C. 1970, c. C-34, s. 717.JUDICIAL IM M UNITY 91

[70] infra, at 100-101.

[71] **The Administration of Justice Act 1964**, c. 42, s. 27 (L'.k.).

[72] The lack of financial backing for potential liability is one of the main reasons why the term "judge" was defined for the purposes of this article to include justices of the peace. Supra, footnote 5. Again, the desirability of treating officers who perform quasi-judicial functions differently from superior court judges or judges of courts of record, has not been considered in this article. If a distinction is justified, the indemnity provisions are one argument for treating justices similarly to quasi-judicial officers. In *Sirros v. Moore*, supra, footnote 7, and *Foran v. Talangello*, supra, footnote H, the courts took the view that no distinction between justices of the peace and higher court judges was justified.