

MAY BE APPEAL IN O.T.A. CASES, NOT REHEARING

Attorney - General Raney
Deals With Vexed Report
of Special Committee

IS SPIRIT OF DEBATE
Minister More Than
Code

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Jan 27 21

Right of appeal to County Judges under the Ontario Temperance Act was conceded by the Ontario Government in the Legislature last night. Attorney-General Raney, in presenting the decision, stated, however, that it was not proposed to meet the demand for a rehearing of evidence, which was part of the recommendation in the minority report of the Special Committee on O. T. A.

As has been usual in discussion of O. T. A. matters, the debate was carried on with all the vigor at the command of the members participating. Attorney-General Raney was brought to task by the Liberal Leader for defining the present issue of appeal under the O. T. A. as one between supporters and opponents of that act. Cross-floor questions and retorts occupied considerable of the time in discussion, the controversy waxing hottest when the Attorney-General sought to maintain that the Special Committee on O. T. A. had never voted for the right of appeal to County Judges.

Right of Election.

R. L. Brackin, Liberal member for West Kent, who followed T. H. Lennox, North York, in the debate, did not think that the right of appeal to County Judges was worth very much unless a stenographic report of the evidence taken at the Police Court trial was available for the Judge. He suggested to the Government that the proper procedure was to allow the right of election to trial by Police Magistrate or County Judge, with no appeal.

Regarding appeal, the Attorney-General went on to show that the provisions of the O.T.A. in this respect had been lifted almost bodily from the old Liquor License Act. The right of appeal of non-licensees, he said, had been abolished in 1890, and had remained off the statutes until 1916.

"Therefore," said the Attorney-General, "we have a continuous history of right of appeal on the basis, practically, of the present law dating back for 31 years."

It was rather significant, he thought, that in the old days no one had bothered himself regarding the rights of "blind-piggers."

Arguments advanced for a change in the law Hon. Mr. Raney divided into two kinds. One was that the O.T.A. removed the right of trial by jury; the answer to that, he said, was that there never had been any trial by jury under the Ontario law. The second argument was that the onus of proof was placed upon the defendant, referring, as examples, to instances where large stores of liquor, claimed to be for personal use, had suddenly disappeared.

Hon. Mr. Raney asked why, in such cases, onus should not lie on the defendant. Shifting of the onus

of proof was a common thing in the Criminal Code in order to secure convictions.

Law Not "Un-British."

In a broad sense, however, he took exception to the common charge that, under the O.T.A., "a man was guilty until proven innocent."

"That is not true," asserted the Attorney-General. "That statement has been made again and again, and it is not true. This law is no more un-British than the Criminal Code. It is not so un-British as the old Liquor License Act."

Regarding the difficulties of enforcement, Hon. Mr. Raney stated that he was not unaware that there was a highly respectable and influential body of the public opposed to enforcement of the act.

"Certain honorable members of the House," he said, "have told the House that they were opposed to the O.T.A. That is their right. But, while the law is the law, there is not an honorable member of this House who will stand in his place and say that the law ought not to be enforced."

Continuing, the Attorney-General expressed his conviction that the sentiment of the Province of Ontario was in favor of the Ontario Temperance Act and its proper enforcement. He was sure, he said, that no one in his hearing would vote for a return to the old license system. (Applause.)

What Lies Ahead.

What, then, lay ahead? he asked. Either prohibition, such as seven Provinces in Canada had adopted, or Government control, such as Quebec and British Columbia were trying to enforce.

"In this regard this Province has decided that question," he declared. "It has decided that question by a vote of the people, a vote of two to one. This law has been put by a vote of the people into the constitution of this Province, and this law cannot be repealed—and it must not be impaired—by this Legislature without the consent of the people of this Province."

"Legalized Bartenders."

Mr. Brackin brought down upon himself the censure of Dr. Forbes Godfrey when he stated that half the doctors in this Province were merely legalized bartenders. The member for West Kent expressed the opinion that the huge majority of prescriptions issued were for liquor for beverage purposes.

Says No Hardships.

Continuing his address after supper, Attorney-General Raney said he agreed with those who said the O. T. A. was a drastic law. It was necessarily so. But no case had been made out, nor did he think could be made out, of hardships imposed, or of innocent persons suffering under the system of enforcement as at present. "During my tenure of office," he said, "no case has come to the attention of the Government where there has been an injustice to a defendant that has not been cured, either by the conviction being quashed or by the exercise of clemency."

R. L. Brackin, West Kent, arose in his seat and quoted an instance of where a man was fined \$2,000 and served three months in prison upon conviction of selling a hundred cases of liquor which he maintained had been stolen. Subsequently three men confessed to having burglarized his premises and taken the liquor. Later Mr. Brackin said he could quote other cases.

"Well, would an appeal have helped him?" asked the Attorney-General.

Mr. Brackin—I don't know. The County Judge might have believed him.

"I do not say, however," proceeded the Attorney-General, "that no right of appeal should be allowed to a person convicted of bootlegging or of blind-pigging, but I do say that the appeal that is to be allowed should be carefully safeguarded so as not to increase the already great difficulties of enforcing this law. The responsibility of enforcing it is on the Government, and especially on the Attorney-General. Therefore I feel he ought to have some consideration when the machinery for the enforcement of the law is be-