

WILL GRANT FIAT FOR ACTION TO TEST 'RAKE-OFF' LEGALITY, BUT ONLY TO PRIVATE BETTOR

After an all-day debate in the Legislature, Attorney-General Raney's Declaratory Act, which is intended to forever stay the injunction granted to the Ontario Jockey Club against the Provincial Treasurer in the matter of the collecting and paying over of the 5 per cent. tax on betting, was carried, without any division, through second reading late last night.

Questioned concerning his intention of granting a fiat to allow action to be brought against the Government on this matter, Hon. W. E. Raney declared that the Government would grant a fiat, but not to the Ontario Jockey Club alone. A fiat would be granted to a bettor who considered he had cause for action. The Jockey Club could combine with bettors in such application.

Discussion Lasts All Day.

The discussion started immediately after the House assembled, there being practically no preliminaries. It ended a little after 11 o'clock—and ended then, in fact, unexpectedly, as it was thought that the Conservative Leader, for one, would speak on the measure.

During the debate the only two Government members who spoke, the Attorney-General and the Premier, held high the doctrine of the sovereignty of Parliament.

"The true Canadian looks upon Canada as a nation; looks upon Ontario as a sovereign State, and looks upon this Legislature as a sovereign Legislature, a sovereign Parliament," said Mr. Raney in his speech. He said that if the decision of Mr. Justice Middleton stood it meant the establishment of a system of Government by camera for the Province, and that if the Judge could hold up any law of the Legislature on the ground that a litigant was contesting the constitutionality of the law, then he could do the same in respect to the laws of the Parliament of Canada.

Cites Notable Precedent.

Premier Drury cited the incident of Sir James Whitney's legislation of 1909, to stay proceedings brought by Mr. Beardmore against the city of Toronto, in an effort to stop the erection of a Hydro-electric plant. Within its jurisdiction, claimed the Premier, the Legislature was supreme. He claimed it had power to levy a direct tax and that the tax levied on race-track winnings was a direct tax.

It was a field day for the lawyers in the House, and many excellent speeches were delivered. The Attorney-General made a vigorous presentation of his case, and Wellington Hay, Liberal Leader, supported the measure, but thought a fiat

should be granted. Mr. Raney said a fiat would be granted upon application, but only by a bettor, and the Jockey Club could combine with bettors in applying for a fiat.

Four Different Courses.

In the early part of his speech the Attorney-General reviewed the events that led up to the application and the granting of the interim injunction at Osgoode Hall on Saturday of last week. After referring to two liquor cases, one in western Ontario and the other in eastern Ontario, in which injunctions had been issued restraining the officers of the Crown and mandamusing them, Mr. Raney said that in the case of last week certain courses had been before the Government.

First, the Government could have adopted the attitude referred to in a recent speech by the Conservative Leader as "helplessness and inefficiency." The consequence would have been that the money would have been deposited at Osgoode Hall, and probably would have been held there until the final disposition of the case in the courts. By that time there probably would be five to six millions of dollars at Osgoode Hall.

Could Have Entered Appeal.

The second course was to appeal against the decision of Mr. Justice Middleton. But in his view, said Mr. Raney, that appeal would be an admission of the supremacy of the courts in this, and he was not prepared to take the view that the Legislature had attained its position to the courts.

The third course was, the Jockey Club having failed to pay over the money to the Government, and the advice of the department being that there was no jurisdiction of the court, "we might have used the strong arm and locked the gates. That was not a desirable thing to do."

The fourth course was to come to the Legislature, and the Government now was asking the Legislature to enact a law that would settle the matter.

Mr. Raney said that, in his opinion, the plaintiff in this action had no status to maintain an action.

Mr. Raney then delved into the purely legal aspects of the matter to support his argument that no injunction could lie against the Crown. In these instances he quoted the judgments in the cases of the Attorney-General vs. the Toronto Junction Recreation Club, Murdock vs. Kilgour, and referred to the action brought by the Electrical Development Company against the Attorney-General.