

MORE ARGUMENT WILL BE HEARD

Provincial Treasurer's Motion Regarding Wagers Tax Goes to Appeal

IS DISMISSED BY JUDGE

More argument on the much-debated Provincial race-track betting tax, on the subsequent injunction, "Declaratory Act," and motions arising therefrom will be heard before the Second Appellate Court at 2 o'clock this afternoon.

Dismisses Motion.

Yesterday morning, after a strenuous argument by W. N. Tilley, K.C., in which he objected that the motion of the Provincial Treasurer should not be heard by a Judge with pronounced views on the legislation in question, Mr. Justice Riddell dismissed the motion of the Provincial Treasurer "pro forma." Justice Riddell and counsel taking part in the hearing of the motion walked over to where the Appellate Court was sitting, but, as it was then engaged, it was arranged that the motion should be spoken to this afternoon.

The motion asked that the \$183,070,455 per cent. betting tax, accumulated in court under the order of Mr. Justice Middleton, be handed over to the Provincial Treasurer.

W. N. Tilley, K.C., and Adam Ballantyne, K.C., appeared before Mr. Justice Riddell in the morning, and J. T. White, K.C., represented the Provincial Treasurer.

Mr. Tilley asked that the motion stand, pointing out the fact that notice of motion had not been served until noon on Saturday. Such notice was inadequate, he argued, particularly as the constitutionality of two acts of the Legislature was involved. That the Attorney-General of the Dominion should be served was another reason for delay urged by counsel. His Lordship refused to delay hearing on that account.

Mr. Tilley's Plea.

Stating that he had been advised that Mr. Justice Riddell had expressed strong views on the legislation under which the motion came, and without hearing argument had refused to grant a stay, Mr. Tilley urged that this motion should not be heard by his Lordship. Mr. Justice Riddell stated that he would hear argument; he was not aware of having expressed strong views on the legislation in question.

"The question involved goes right to the foundation of the jurisdiction of the Legislature; the Dominion should be notified," said Mr. Tilley, who quoted precedent in a judgment of Mr. Justice Middleton in the electrical development case.

He differed with his Lordship on the point that the motion was for a decision as to who should be the custodian of the money. The Ontario Jockey Club proposed to distribute the money deposited with it according to law, and the Crown had stated that should it get this money it would not return it, irrespective as to whether or not the acts under which it was obtained were valid. "We are being asked to consider one of the most important cases which has ever arisen under the B.N.A. Act," declared Mr. Tilley. He also argued that, as Mr. Justice Middleton's order had been given in court, it could not be upset by a Judge-in-Chambers.

Mr. White, for the Provincial Treasurer, said that the only objection raised was that the Attorney-General of the Dominion had not been notified. He took issue with Mr. Tilley and said the only point to argue was the ownership of the money.

Mr. Tilley—That is one thing that can't be argued. The statute says that the court cannot determine the ownership of the money.

On Mr. Tilley's suggestion that he would go to the Court of Appeal immediately Justice Riddell dismissed the motion "pro forma."

STATED CASE NOT ORDERED

Judgment Reserved As to Relevancy of Telegrams to Huston Inquiry

By a decision of the Second Appellate Court yesterday morning, Commissioner MacIntosh will not be ordered to grant a stated case in the dispute as to the relevancy of certain telegrams received by The Evening Telegram over the C.P.R. telegraph wires in the commission's inquiry into the death of Captain Orville Huston at Fort Frances. After hearing argument in camera in the afternoon, the court reserved judgment, as to the relevancy of these telegrams.

At yesterday morning's session, before Chief Justice Sir William Mulock and Justices Masten, Kelly, Ferguson and Rose, a strong argument was brought up by John D. Spence, appearing for the C. P. R. Telegraph Company. He claimed that, under the Telegraphs Act, the strictest secrecy is enjoined on telegrams unless they were produced on an order of undoubted validity. It did not appear that Commissioner MacIntosh could command their production and afterward determine their relevancy, since the subpoena received by the company was too vague and general in its terms.

According to Mr. Spence, the documents had not been produced, but had been personally filed with Commissioner MacIntosh. Replying to questioning by Justice Masten, he claimed that the company was not a party to the transaction at all, but was only a witness, and hence incapable of determining the relevancy of the telegrams. Major Lewis' speech was alleged to have been based upon the documents in question, but nothing had been shown to him to prove connection between them and the Attorney-General's department, which would be necessary to prove the truth or falsity of Lewis' statements. His desire was, he said to protect the secrecy of the telegraph company.

Ed. Bayly, K.C., Deputy Attorney-General, stated, in reply, that the terms of the commission amply covered the "good Government" of the Province, and that supplementing a Coroner's inquiry related to this. He suggested that the documents be reviewed by the court to determine their relevancy. For The Evening Telegram, D. L. McCarthy, K.C., said that the only value of the telegrams could be whatever assistance they might give to the commission in the inquiry. He could not see the relevancy of Porter's opinion, which was expressed some two months after the death.

The discussion of the court with Mr. Bayly and Mr. McCarthy as to the relevancy of telegrams, held in camera in the afternoon, resulted in a reserved judgment. The Judges are seeking more information as to the exact statements made by Major Lewis in the House.