

The learned judge (Middleton, J.) in his judgment did not refer to any cases, and indeed he could have referred to none, although many cases besides those already referred to, both in England and here, could be cited against enjoining the Crown or its Ministers or servants. The injunction, in effect, orders Crown taxes to be paid into court and enjoins a Minister of the Crown from exercising powers given to him by Act of the Legislature, although no one has even suggested that the granting of such powers was beyond the capacity of the Legislature.

In the improbable supposition that some court will eventually determine that a tax upon winning bettors' money is indirect taxation, the bettors will receive no relief because the money is not collectable by suit from the Ontario Jockey Club or from anyone else, and the amounts claimed by each bettor are so small and the evidence in support of each claim so vague that no practical relief was afforded by the injunction. The learned judge in his judgment declined to determine the constitutional validity of the taxing statute, or his jurisdiction to enjoin a Minister or an officer of the Crown, nor did he apparently realize the practical futility of the injunction. He merely granted the order. On this theory the operation of any Act of Parliament or of a Legislature could be postponed indefinitely on the mere allegation that such Act is unconstitutional, e.g., the Judicature Act, on the ground that the Master of Chambers exercised the functions of a Superior Court Judge and therefore should be appointed by the Governor-General and not by the Lieutenant-Governor; the Surrogate Courts Act, on the ground that the Surrogate Judge should be appointed by the Governor-General and not by the Lieutenant-Governor; the Police Magistrates Act, on similar grounds; the Law Stamps Act, on the ground that it is indirect taxation; the Ontario Railway and Municipal Board Act, on the ground that the Board should be appointed by the Governor-General; the Municipal Act, on the ground that the provisions of many of its by-laws infringe the criminal law, and so on ad infinitum.

In the field of Dominion legislation the Criminal Code might be attacked on the ground that many of its provisions interfere with property and civil rights, which subjects are excluded