

872. MUST COURT ABDICATE?

respects as provided by the said orders-in-council notwithstanding the judgment, and notwithstanding any judgment or any order that may be made by any court, and that instructions be sent accordingly to the general and other officers commanding military districts in Canada."

It is apparent that if, as was held in *re Lewis*, the Governor-in-council has not authority to cancel the exemptions by order-in-council, this order-in-council can have no greater effect than the earlier ones, and that it, therefore, can be deemed only a notice that the decision of the courts of Canada are to be ignored and treated with contempt, and that the military authorities are to be so instructed.

Upon this situation two courses are open to this court. It can either abdicate its authority and functions and advise applicants to it for a redress of their wrongs and the protection of their legal rights that it is powerless, which, of course, means there is no power except that of force which can protect their rights, the consequence of which could scarcely mean anything less than anarchy; or it may decide to continue to perform the duties with which it is entrusted for the purpose of guarding the rights of the subject and not prove false to the oath of office which each member of it took when he "solemnly and sincerely promised and swore that he would duly and faithfully, and to the best of his skill and knowledge, exercise the powers and trusts reposed in him as a judge of the said court."

There can be only one answer to the question, Which way will this court act? It will continue to perform its duties as it sees them, and will endeavour, in so far as lies in its power, to furnish protection to persons who apply to it to be permitted to exercise their legal rights.

It is apparent that the refusal by Lieutenant-Colonel Moore and the order against him are only incidents in this application, and that the substance of the application is to obtain the release of the applicants. If the persons ordered to produce them will not do so, then, unless the court is to confess impotence, it must send