

Canada Law Journal

VOL. LVIII.

TORONTO, JUNE, 1922.

No. 6

THE CROWN AND ITS COURTS.

GOVERNMENT BY INJUNCTION.

A question has arisen in the Province of Ontario as to whether a court (or a judge having the power of a court) can lawfully refuse to enforce an enactment of a Legislature (which has the right to make such enactment) or to promulgate a judicial order which in any respect changes the wording or character, or lessens the force of such enactment, or seeks to prevent the makers of the law from enforcing it. In other words, can a court or a judge make an order which seeks to enforce its own view as to what it considers the law ought to be, but which it is not? And would not such an order be legally impertinent and practically impotent?

The facts leading up to this question are as follows:—

At the present session of the Legislature an Act was passed entitled The Corporations Tax Act, 1922, which provided among other things that every incorporated company, association or club conducting a race meeting and becoming the custodian or depository of money, bets or stakes, shall deduct and pay to the Treasurer of Ontario for the use of the Province five per centum of the amount bet or staked, and shall pay the amount so deducted to the Treasurer of Ontario. This Act received the Royal Assent shortly before the spring meeting held by the Ontario Jockey Club at Woodbine Park, Toronto.

On the day before the opening of this race meeting, the Ontario Jockey Club issued a writ against the Hon. Peter Smith, Treasurer of the Province of Ontario, and Major-General V. A. S. Williams, representing himself and all other members of the Provincial Police Force, asking for an injunction restraining the defendant Peter Smith, as Treasurer of Ontario, from giving instructions to the Provincial Police Force, or any of them, to stop all racing upon the plaintiff's race-track at Woodbine Park,