

DECISION HELD UP IN SMALL CASE

Judge Coatsworth Defers Decision in Small Appeal

Counsel For Sisters of Missing Millionaire Claims Wife Should Wait Seven Years Before Legal Declaration of Death Is Asked.

Canadian Press Despatch.
Toronto, March 23.—After listening for three days to evidence concerning the disappearance on December 2, 1919, of Ambrose J. Small, the Toronto millionaire, Judge Coatsworth announced late yesterday, after counsel had summed up, that he would reserve judgment on the application of Mrs. Small for a declaration of legal presumption that her husband is dead, which declaration is sought in order that the will, leaving the \$2,000,000 estate to herself, may be probated.

A. G. Slaght, K.C., counsel for the sisters of the missing man, who are attacking the validity of the will, cited numerous cases in which the courts had insisted upon full seven years' interval after disappearance before giving legal approval to the presumption of death and distribution of the estate.

W. N. Tilley, K.C., counsel for Mrs. Small, argued that the seven years' rule might be quite proper in a case of mere disappearance, but in the case of Small there was plenty of circumstantial evidence that he had not with foul play. He submitted that death occurred no December 2, 1919, the day he was last seen in his theatre. He had on that day received a million dollars on payment of his theatre.

Claims Foul Play.
"We find Doughty takes bonds, goes to Montreal, returns, sees Mrs. Small and leaves, and he is not heard of again for some time, when he is run down," said Mr. Tilley.

"All this points to possibility of something untoward happening to Mr. Small." Further, counsel argued, Mrs. Small had put large sums of her own money into the estate and was therefore directly interested in the proper administration of the property.

Reviewing the evidence in support of his contention that the estate should not now be turned over to Mrs. Small, Mr. Slaght said:

"I propose to invoke the principle of the equitable principle—that one who comes into equity must come with clean hands. That is a principle as old as the Blackstone," he declared.

Mr. Slaght then reviewed Mrs. Small's evidence. Between the 2nd and 7th of December she knew he was away, he said, and yet when Mr. Flock called her up she said she thought he was away with her husband in Montreal.

Counsel said the appellant had taken no steps to telephone to London or to Montreal to obtain information during that period. Why did she not confirm the facts that the missing man was in either of these two cities, as she had supposed? he asked.

On December 16 she gives Detective Mitchell false impressions in regard to what was her belief as to what had happened, said Mr. Slaght, concerning Mrs. Small's talk with Mitchell at the first interview. Then enough had said that the next day he got "enough to clear up the facts or lack of facts of the day before," Mail and Empire, she states.

"I know where my husband is. He is in a sanitarium, he is safe; he is going to return to his place of business,"

Counsel said the claimant declared that she told Mr. Flock that in her opinion her husband was voluntarily absent.

Mr. Flock was not quite sure what happened, but confronted with a letter over his signature and dated December 30, in which he said:

"Mrs. Small expressed her opinion to me that her husband was voluntarily absent." Flock had admitted in the witness box, "Yes, I did make that statement, because Mrs. Small asked me to."

Would Let 7 Years Elapse.
Referring to Flock's letter to James Cowan, stating that Mrs. Small seemed to be of the opinion that her husband was voluntarily absenting himself, Mr. Slaght said: "She was putting forward, through Flock, and with his co-operation, a statement

that wasn't true, and which she knew was not true."

Then, said Mr. Slaght, there were Mrs. Small's conflicting statements about the date she learned of her husband's deposit of his million-dollar check in the bank. She said in court proceedings that she knew of the deposit on Dec. 2. In her affidavit to the master-in-chambers she had said: "I have since learned that it was made on Dec. 2, 1919." It was difficult to reconcile these two statements.

"Mrs. Small says positively that she requested James Cowan to inform the police for her. She admits that she did not do so herself. She does not suggest that she called up the police, and in regard to her statement regarding Mr. Cowan, he says Mrs. Small is mistaken. 'She neither asked me to go to the police,' he said, 'nor did I discuss the matter with her.' Mr. Cowan said he went to the police at his own initiative and on Mr. Flynn's suggestion.

"If Mrs. Small now desires this court to pronounce that he is dead and omitted to take the matter to the police while the thing was hot, whose fault is it if there is not reliable police evidence?" asked Mr. Slaght, who suggested it was not "visiting her with severe results" to ask her to wait for the elapse of the seven-year period before declaring her husband dead."

Arguing the disappearance of Ambrose J. Small, theatrical millionaire, was a world-famous case and the news of it had spread all over the globe, yet with no real clue as to his whereabouts or his fate, despite the long and patient search of the police, W. N. Tilley, K.C., began his plea to Judge Coatsworth in the surrogate court today for a declaration of the court that Small may be presumed to be dead, so that his wife, Mrs. Theresa Small, might proceed to administer the estate.

Mr. Tilley further told the judge that the allowance of Mrs. Small from the estate had been cut off. The affairs of the estate were not in a satisfactory state. The absentee act was not working properly under the circumstances, and they were coming to the court for relief. Mr. Justice Meredith had suggested the probating of the will, and this was a preliminary step.

Death Certain.

He cited the opinion of Austin Mitchell, sergeant of detectives, who had conducted the search for Small, as being in itself sufficient foundation for a declaration that Small was now dead, and that he had come to



WIFE OF MISSING MILLIONAIRE.

Mrs. Ambrose Small, who is asking the Toronto courts to declare her husband, missing since December, 1919, dead, and to grant probate of his million-dollar estate.

his death on or about December 2, 1919.

The case is nearing its close. Evidence was all in by noon today and then the argument of the counsel began. Mr. Tilley for Mrs. Small, leading off, and A. G. Slaght, K.C., for the Misses Small, who are fighting the application, following.

The evidence given at this morning's hearing of the surrogate case was largely a cross-examination of some of yesterday's witnesses and the examination of minor witnesses, whose statements have already been published.

Nathan Sabine, a news vendor, reiterated previous statements that he sold Ambrose Small a New York newspaper at 7:10 p.m. on the evening of the day he disappeared. This was on the corner near the theatre.

Barber Testifies.
Arthur Weatherup, the barber who shaved Small the day he disappeared, testified that the photograph of Small on the police circular showed him with a drooping moustache, whereas the ends had been trimmed a year before. Witness was questioned closely as to a certain watch Small had with him that day. Small had promised him "two cases" if the theatre deal went through. He never got the "cases."

Tom Flynn, the friend of the missing man, on being recalled today denied stating to the police that Small wore a tweed suit the last time he saw him. Small wore his overcoat that day, according to Flynn.

Bert Keyser, one of Weatherup's fellow barbers, gave evidence corroborative of Weatherup's statements. Judge Coatsworth sustained objection of counsel to the questioning of an official of the Capital Trust Company as to what Mrs. Small had drawn from the estate. Before adjournment for luncheon, the judge arranged to visit the Grand Opera House and go over the ground mentioned as appertaining to the Small movements on the last day he was seen there.

CONSERVATIVES MEET TO NAME CANDIDATE

South Essex Members To Gather At Leamington For Decision.

Windsor, March 23.—Members of the Conservative party in South Essex are to meet at Leamington Friday to select a candidate for the provincial elections this year. They may decide whether it is advisable to advocate a beer and wine plank for the party platform, prominent members of the party said yesterday.

In the last election, when the vote was taken on the prohibition issue, South Essex voted strongly against modification of the Ontario temperance act, but Conservatives believe they say, an amendment to the existing liquor laws will be demanded by party leaders when they announce their policies for the campaign.

R. M. Selkirk, mayor of Leamington, A. C. Awrey, barrister at Leamington and Arthur Brown of Kingsville, are mentioned prominently as probable candidates for the nomination at the convention Friday.

VENIZELLOS ON HIS WAY TO LONDON CONFERENCE

Associated Press Despatch.
Paris, March 23.—Former Premier Venizelos of Greece, who has been resting in the Riviera since the Lausanne conference, passed through Paris yesterday on his way to London, where the conference among allied representatives over the Turkish counter-propositions to the Lausanne peace treaty draft is in progress.

FIND WATCHMAN DEAD AT STRATHROY REFUGE

Special to The Advertiser.
Strathroy, March 23.—Angus Knight, night watchman at the Middlesex House of Refuge, was found dead yesterday morning by Supt. Anderson. Deceased was in his 66th year, and appeared to be enjoying good health. He was well known here, having

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When Mr. Myers of Winston-Salem, North Carolina, stepped into the drug store and asked his druggist for the best medicine he had in his store for woman's ills, it is a wonder that he was handed a bottle of Lydia E. Pinkham's Vegetable Compound. Mrs. L. K. Myers, in writing of it, says: "I had been weak, running down, and had a pain in my left side for a long time, so I could not do my work. Lydia E. Pinkham's Vegetable Compound helped me in a short time so I was able to do all of my housework, including washing and ironing, and now I feel fine all the time. As Lydia E. Pinkham's Vegetable Compound holds the record for benefiting 98 women out of every 100 women who take it, it will pay every suffering woman to try it.—Adv.

Keep Out of the Puddles

COURTLY Sir Walter Raleigh—cynic, savant and first-class fighting man—desired a favor from good Queen Bess. A puddle in the queen's path made his opportunity. Across it he flung his costly cloak. Her majesty, smiling at his devotion, trod on, dryshod, and Sir Walter's unique self-advertising produced results.

Though most advertising is less spectacular today, it is far more serviceable. It smooths out the every-day pathways of each one of us.

Because of advertising, luxuries and necessities that once would have been worth a king's ransom are yours at little cost. Advertising pits merchant against merchant, artisan against artisan, manufacturer against manufacturer. This competition brings out the best there is in everything for your personal benefit.

You wouldn't know about many boons of modern life were it not for advertising. That is why you are not taking full advantage of the better things in life today if you consistently overlook the advertisements.

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Silk and silk and wool sweaters, \$5, \$9 and \$12.

Disfranchise, smart hats, \$5, \$9 and \$12.—Second Floor.

EASTER SHOWING OF—DISTINCTIVE COSTUMES

Easter time is such an enthusiastic clothes time, particularly when that is the time that spring fashions make their formal debut. Presentations here lend charming variety in clever adaptation of style, of fabric, and of color.

New Easter Suits

Nothing has been spared to make them a triumph. To see these new spring suits is to agree with Paris that suits will be worn more this season than for many seasons—even many years.

Elaborate with braid and embroidery, they have retained that simplicity, difficult to portray, that makes the distinctive suit. It is the most interesting collection of two and three-piece suits we have seen for a long time.

\$29 to \$55

Suits of this nature sold a year ago for \$45 to \$75.

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Beautiful fabrics and elaborate embroidery, make these an achievement. Elegant Coats, Capes and Wraps, in the newest notes of fashion, made of bolivias, velours and tricelines. The presentation emphasizes the wrap-around tie to the side, circular and straightline effects.

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