

Power Company's Request For Injunction Denied

Chief Justice Takes Ground That Company Would Suffer No Irreparable Injury by Construction of Civic Distribution System—Trial Before Chancery Court on April 17.

Chief Justice Sir Douglas Hazen yesterday refused to grant an interlocutory injunction to restrain the city from constructing a distribution system. His judgment was delivered very soon after Hon. Dr. J. B. M. Baxter, K.C., M.P., City Solicitor, had concluded his rebuttal in reply to arguments advanced by Dr. F. R. Taylor, K.C., and M. G. Teed, K.C., acting for the plaintiff company.

Dr. Taylor opened his argument at the commencement of the afternoon session. He said that, as the Musquash development had been estimated at \$800,000, and that already an expenditure of nearly \$200,000 had been incurred, by the same process of "progression" it could be said that the civic distribution system estimated by Mr. Teed at \$600,000, would cost in the end several millions.

Dr. Baxter—"Your authorities?" Dr. Taylor—"I shall cite them in a moment." He went on to discuss the Kenit report, the Ross report and the Scheidtmann report, all of which, he said, had been paid for by the city and all of which condemned the Musquash. Yet, on the face of these adverse reports, the city had contracted for the current. "It is time to call a halt," said Dr. Taylor.

The Chief Justice remarked that while the courts might think that the Common Council was acting unwisely, they had no power to prevent their actions. Dr. Taylor replied that the councillors were not acting as trustees for the public by so doing. He developed his argument against the Common Council at considerable length.

Dr. Baxter—"That comes close to me, as I formerly was a councillor." Chief Justice, merrily—"That is why I qualified by remark." (Laughter). Continuing, Dr. Taylor contended that the contract between the N. B. Electric Power Commission and the city of St. John was not a valid contract, in spite of the fact that it had been ratified by the Lieutenant-Governor-in-Council. His reason for this contention was found in the N. B. Electric Power Act, 1920, one section of which very definitely lays down as a condition precedent to signing a contract that the municipality shall be furnished with a quotation on the current in terms of horsepower and not kilowatt hours, as set out in the city's contract.

Dr. Baxter interjected that the city could waive that and accept the quotation in kilowatt hours. Regarding the interference that a second distribution system would occasion to the Power Company, Dr. Taylor said that the Power Company would be deprived of the use of a considerable portion of its poles as a result of the decision to have the poles of the new system above ground. Respecting the poles in the north end of the city, Dr. Taylor argued that practically all the former poles had been replaced by the company, the city had no right to these poles.

Concluding his argument, the counsel suggested that His Honor might engage the assistance of an electrical expert. Chief Justice Hazen replied that he did not need such assistance now. M. G. Teed, K. C., followed Dr. Taylor and further elaborated on the argument advanced by Dr. Taylor regarding the question of power in horsepower and not in kilowatt hours. He contended that the city could not waive that condition.

Dr. Baxter replied. Dr. Baxter answered effectively several of the contentions of opposing counsel. Regarding the offer from the Power Company to take over the current at the power station on May 1 without prejudice to the city's interest, the city solicitor asked several pointed questions. In the first place, would the city agree to having this 60,000 volt high tension current car-

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friends regarding the Common Council was that, in view of the fact that it had not accepted advice, it must guarantee the success of the new enterprise. It could not humbly do that.

Regarding the North End poles, Dr. Baxter declared that the company's affidavits presented failed to show in one instance the height of the company's poles. The entire situation was not disclosed, he maintained. "Dr. Taylor," said the City Solicitor, referring to an incident during the course of Dr. Taylor's address, "I was set forth that unless it could be shown that irreparable injury would be done to the plaintiff it could not be remedied by a suit for damages. No interlocutory injunction should be given. 'Mere inconvenience is not sufficient.'" Sir Douglas, in passing, he remarked that it was a new doctrine to him that the city councillors were bound to follow the advice of experts.

Opening his short address on delivering judgment, the Chief Justice said he was basing his decision on paragraph 488, page 18, Vol. 17, of Halsbury's Laws of England, in which it is shown that irreparable injury would be done to the plaintiff if it could not be remedied by a suit for damages. No interlocutory injunction should be given. "Mere inconvenience is not sufficient."

Regarding the point raised that the city could not waive the condition precedent in the contract, as claimed by the company's counsel, Dr. Baxter argued that the city of St. John was unique among other cities in Canada in that it possessed a Royal charter. It was not a question of irregularity of the contract. The Provincial Power Commission and the city had agreed on the contract. It was within the province of a third party to come in and say there was no contract, certainly not in a collateral proceeding. That section in the act was merely a provision, he argued, it was not an imperative section. And if the Power Company were seeking to void the contract, then it should have made the Attorney-General or a member of the Power Commission a party to the suit. "Counsel knew that before the case came here," said Dr. Baxter.

The attitude taken by his learned friend regarding the Common Council was that, in view of the fact that it had not accepted advice, it must guarantee the success of the new enterprise. It could not humbly do that.

Halifax, N. S., April 6.—(By Canadian Press).—Newfoundland, buried under mountains of snow, besieged by tremendous ice fields and roiled by gales, is now in the midst of one of the most strenuous political campaigns in the history of the colony.

Some of the Issues in Contest Waged While Colony is Buried Under Mountains of Snow.

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WOULD HAVE HOLIDAYS ALL FALL ON MONDAY. Honolulu, March 21.—(A. P. By Mail).—Complete dislocation of the calendar, at least so far as holidays in Hawaii are concerned, is sought in a bill introduced into the house of the territorial legislature by William J. Coelco.

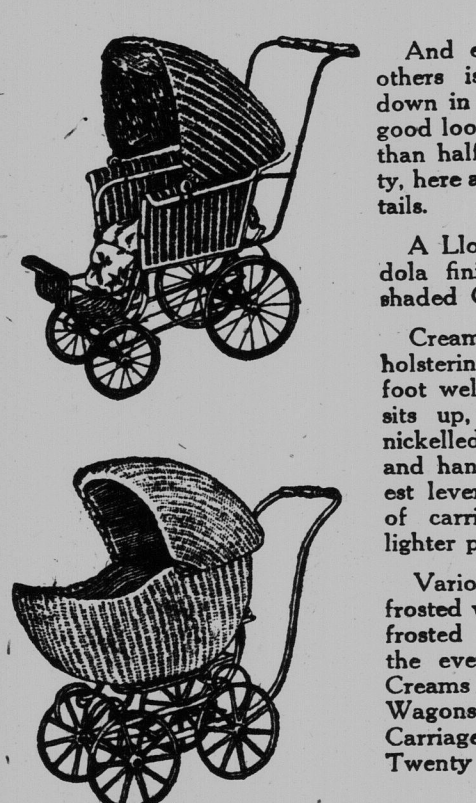
The bill provides that each holiday observed in the territory, Christmas, Thanksgiving, Fourth of July, New Years and all others, shall be celebrated on Monday, and that it be declared on the Monday nearest the date upon which it ordinarily would fall.

The purpose, Coelco explained, is to provide "two days of feasting and rest every time a holiday comes along."

In another bill, Coelco suggests that certain dates be designated as the times at which historical events happened in Hawaii. He explained that no one now living can give testimony as to the exact dates of these occurrences, and that such dates must be established for the benefit of court proceedings.

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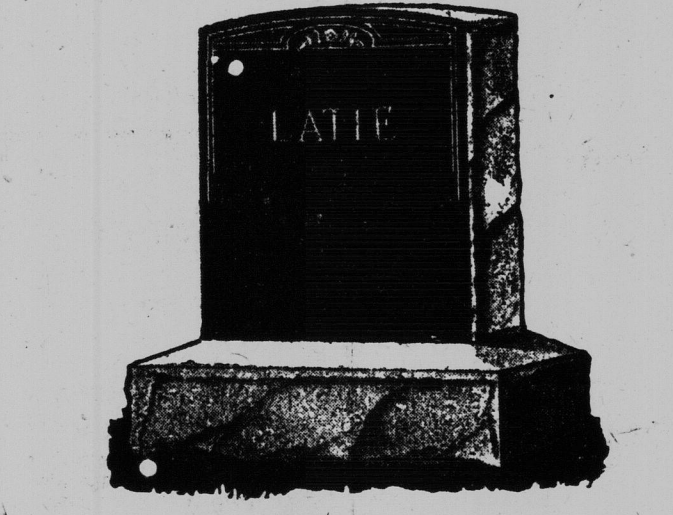
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The Men's Club of the Stone church held the regular monthly meeting last evening in the club rooms with C. W. de Forest, the president, in the chair. The meeting was largely attended and the members enjoyed a special illustrated lecture by William McIntosh on "Indians in Early Days in New Brunswick." A short address was given during the evening by Rev. A. L. Fleming, rector of the church. Herbert Mayes sang a solo in a pleasing manner. Refreshments were served at the close.



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