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. His Honor took the ground that the company would suffer no irreparable injury in the injunction were not granted as the company could bring an action for damages against the city if it so desired. "Mere inconvenience is not sufficient," said His Honor. Having failed to secure the injunction the company will now bring the whole matter before the regular sitting of the Chancery Court presided over by Mr. Justice White. This court meets on April 17.

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 $3,000,000 had been incurred, by the same process of "progression" it could be said that the civic distribution system estimated by Mr. Kribs 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 Kensit report, the Ross report and the Scheidenhelm report, all of which, he said, had been paid for by the city and all of which condemned the Musquash. Yet, on the fact 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.

Chief Justice Hazen:—"Well, if the city of St. John cares to elect unreasonable men as councillors, that is the city's look-out." He said he did not suggest that the electors had placed unreasonable men on the council board.

Dr. Baxter:—"That comes close to me, as I formerly was a councillor."

Chief Justice, suavely:—"That is why 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 as 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 quotation being in horsepower and not in kilowatt hours. He contended that the city could not waive that condition.

Dr. Baxter Replies.

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 66,000 volt high tension current carried through a very thickly populated portion of the city?

Dr. Taylor interjected that this practice was followed in several large United States cities.

Dr. Baxter replied that that might be true. He asked why the Power Company objected to the city carrying a 3,000 volt line through the city for the ornamental street lighting system, as set forth in the affidavit by W. J. Canada, the Washington official.

Dr. Taylor replied that the 3,000 volt could be made as safe as the 66,000 volt.

Dr. Baxter—"I am real glad to hear it."

Continuing, Dr. Baxter asked who would pay for this line—the city or the Power Company?

Mr. Taylor on behalf of the company replied that the Power Company would pay any additional cost over and above what the city would have to meet in building a line from the civic sub-station to the city limits.

Dr. Baxter—"Yes, yes, but the city is not bringing 66,000 volts into the city."

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 regularity or irregularity of the contract. The Provincial Power Commission and the city had agreed on the contract. It was not 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 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 humanly 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, "asked you to look out the window and view a pole. He might as well have shown you a brick and said that was a sample of a house."

Judgment Given.

Opening his short address on delivering judgment, the Chief Justice said he was basing his decision on paragraph 488, page 18, Vo. 17, of Halsbury's Laws of England, in which it was set forth that unless it could be shown that irreparable injury would be done to the plaintiff that could not be remedied by a suit for damages, no interlocutory injunction should be given. "Mere inconvenience is not sufficient," said 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. The matter of "horsepower" and "kilowatt" quotations, he thought, was a matter purely and simply for the City of St. John. As for the assertion of Company counsel that the action was brought for the benefit of the citizens of St. John, the Chief Justice characterized this as "camouflage." The action was to protect the interests of the Power Company and it was quite right in bringing the action itself. In conclusion, he expressed the hope, as a private citizen and a large taxpayer, that the necessity of a duplicate distribution system would be avoided.

THE ELECTIONS IN NEWFOUNDLAND

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

Halifax, N. S., April 5.—(By Canadian Press.)—Newfoundland, buried under mountains of snow, besieged by tremendous ice fields and rocked by gales, is now in the midst of one of the most strenuous political campaigns in the history of the colony. Weather conditions have disrupted transportation, restricted the publication of newspapers and block the machinery of the election organizations by delaying communications, and for this reason no one knows just when the elections will be held. The first week in May is believed to be the critical time. In the meantime the two parties, the Liberal Government and the so-called "Tory" opposition are carrying the battle to the uttermost points, and telegraph wires are kept busy bringing messages of assurance and progress to the two headquarters.

Since Premier Sir Richard Squires came back from Montreal, where he successfully negotiated an arrangement whereby the Bell Island Iron Mines would continue operation in spite of the Ruhr occupation, which had threatened to result in the unemployment of several thousand men, and advised Governor Allardyce to dissolve the Legislature, which he did on February 15, the election has been the outstanding topic of consideration by the newspapers and the people generally. Premier Squires then declared that he was tired of having his every act for the betterment of the people of the colony interpreted and turned into political capital by the opposition. He was going to let the people decide at once, he said, whether or not they were satisfied with his actions. At once the two parties lined up and marshalled their forces for conflict.

Sir Michael Cashin, a former Premier and Minister of Finance, whose Government went out of power in 1919, resigned as leader of the opposition, although continuing to take an active part in the campaign. He was succeeded by John R. Bennett, who had held, at various times under previous government, the portfolios of Colonial Secretary and Minister of Militia. W. F. Linegar, John C. Crosbie and C. E. Hunt are two other prominent public men who lined up with the opposition in their election fight.

Sir Richard Squires, whose term in office would have normally terminated next November, retains the full support of the powerful Fishermen's Protective Union, which controls eleven out of the thirty-six seats in the Legislature. Hon. W. F. Cosker, father of the Union, and its president, is Minister of Marine and Fisheries in the late Government and a strong supporter of Sir Richard. The Government is going to the people, so it appears, to get approval of several outstanding measures accomplished recently, chief among them being the fisheries treaty with Spain, which permits Newfoundland fish to enter that country on the same basis as the Norwegian catches and places the Colony on the basis of a favored nation; the Humber Valley pulp development, and tax reductions.

Alleged exploitation of public money, utilization of the Armstrong-Whitworth pulp project in the Humber Valley as political powder, extravagant promises impossible of fulfilment, and robbery from the merchants by legislation are among the numerous charges brought by the opposition in their publicity campaign against the Government.

On the other hand, the Government charges their opponents with underhand methods of campaigning, blocking the Humber project, which they claim will furnish permanent employment to five thousand men and bring millions into the Colony, and exploitation of the fishermen in favor of the merchants, furnish ammunition for the Government barrage. Blockaded roads and the icebound state of the coastal towns render compilation of the voters' list a long and tedious task and announcement of nomination day and the polling date cannot be expected for some little time. In the meantime the party organs are indulging in the most outspoken and candid discussion of the various candidates, and neither hesitates to descend to personalities of the most intimate nature.

LOCAL NEWS

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Ungar's Laundry, Ltd., have installed up-to-date stationary tubs, and wash and iron all silks, fine flannels and all delicate articles entirely by hand. Phone Main 58.

Ladies Your spring suit is here at guaranteed prices.—MacNeill's Ladies' Ready-to-wear, 149 Union St. 4—9

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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. Coelho.

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

In another bill, Coelho 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.

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.