

Or (b) to empower the Lieutenant-Governor in Council to refuse to issue racing licenses for race-tracks on which race-track gambling . . . is carried on, and thus prohibit, etc., as in (a)?

The questions were argued before MEREDITH, C.J.C.P., RIDDELL, MIDDLETON, and LENNOX, JJ.

Edward Bayly, K.C., and J.M. Godfrey, for the Attorney-General for Ontario.

H. J. Scott, K.C., for the Kenilworth Jockey Club and the Metropolitan Racing Association.

D.L. McCarthy, K.C., for the Ontario Jockey Club.

J. W. Curry, K.C., for the Western Racing Association.

W. S. Montgomery, for the Thorncliffe Racing Association.

MEREDITH, C.J.C.P., read a judgment, in which he discussed the questions, and concluded:—

“The Province does not ask whether it can deal with horse-racing or gambling as a crime; it knows that it cannot; it asks only whether, in so far as Parliament has not made it a crime, it can deal with it otherwise than as a crime; as, obviously, I should have thought, it might if horse-racing were within any of the subjects assigned to the Provinces in sec. 92 of the British North America Act. *Thomas v. Sutters*, [1900] 1 Ch. 10, is much in point.

“The onus, as it were, of establishing provincial legislative power over the matter in question is upon those who ask these questions with the purpose of exercising such legislative power; and that onus they have not only failed to satisfy; but, on the contrary, it has been, in my opinion, made plain that there is no such power. And, I may add, the more carefully each legislative body keeps, and is kept, within its defined boundaries, the better must the purposes of Confederation be attained and maintained.”

Both questions should be answered in the negative.

MIDDLETON, J., read a judgment in which he said, among other things, that in the case in hand the proposed legislation was not in any way within the ambit of the provincial jurisdiction; it was an attempt by the Province to deal with the question of public morals. Parliament has undertaken, in the exercise of its powers, to lay down rules, in the interest of public morals, to regulate gambling. It has considered the question of gambling in connection with horse-races, and has declared that on certain race-tracks betting by means of pari-mutuel machines shall not be unlawful. The Province, thinking that this does not sufficiently guard public morals, seeks, in an indirect way, to accomplish that which it thinks the Dominion should have done, and so proposes to prohibit racing on all tracks upon which it is lawful under the Dominion Act to operate pari-mutuel machines.