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# The Anti-Racetrack Gambling Campaign.

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The Course Pursued by  
Hon. A. B. Aylesworth  
Minister of Justice.

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Report By

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## THE RECENT ANTI-RACETRACK-GAMBLING CAMPAIGN.

*Report of Mr. W. E. Raney, K.C., and Rev. J. G. Shearer, D.D.*

### INTERVIEWS.

In December, 1907, a delegation waited upon the Right Honorable, the Prime Minister, and the Honorable, the Minister of Justice, requesting, *inter alia*, that the Government should ask Parliament to amend the Criminal Code making *the business of race-track gambling* unlawful. At that interview it was made clear that so far as the Moral and Social Reform Council was concerned, it did not desire to see Legislation passed making it a crime for one private individual to bet with another upon a horse-race or other event; that whatever opinion the members of the Council might hold upon the ethics of betting, *per se*, they did not consider it a proper subject for Criminal Legislation. At every subsequent interview, either with the Minister of Justice, or with the Prime Minister, or with other members of the Cabinet, this distinction was clearly drawn and repeatedly emphasized.

### CORRESPONDENCE.

This was made clear also in various communications addressed to the Prime Minister and the Minister of Justice. In a communication addressed to the Minister of Justice, of date 9th January, 1908, this request for Legislation is pressed for, and its import indicated in the following language: "making unlawful *the business of negotiating bets* on race-courses and elsewhere." In another communication, of date 11th February, 1908, it is referred to as "making the business of negotiating bets on race-courses clearly unlawful." In a letter to the Prime Minister, of date 28th March, 1908, asking for certain other amendments, the following sentences occur: "In addition to these three amendments is one that we regard as extremely important, which you may recollect was asked for by a delegation that waited upon you last Autumn, or early Winter. It is that the Criminal Code should be amended so as to make the business of negotiating bets on race-courses, that is, the work of the bookmaker, clearly unlawful." In another letter to the Prime Minister, of date 2nd June, 1909, the following sentence occurs: "As you know, it is *not betting per se*, but *the business of the professional bookmaker*, which we have asked you to have prohibited. This is now unlawful anywhere else, but on the race-track." And on 12th October, 1909, a letter was sent in which the following sentences occur: "The Council desires the Government to ask Parliament to amend the Code as follows:—Regarding the business of race-track and other betting, their request is that the business of betting on the race-track, under all circumstances, and the business of gambling in all forms elsewhere than on the race-track should be entirely

suppressed and that the publication of information intended to aid in the carrying on of the business of betting upon events taking place either within Canada or in other countries should be prohibited, and that owners or lessees of buildings should be made responsible for permitting their premises to be fitted up as gambling dens, with devices, whose object it is to defy the authorities in the enforcement of the Law against gambling."

#### DRAFTING.

When the proposed amendments to the Code affecting gambling were to be drafted, the instructions to the draftsman made equally clear that it was the business of betting and gambling, or *professional betting or gambling, not betting or gambling per se* that was to be clearly covered by the proposed amendments.

#### PETITIONS.

When the petition was drafted on the 24th September, 1909, its prayer was expressed in the following terms: "We, the undersigned electors, humbly pray your Honorable Body to enact without delay such amendments to the Criminal Code as will, under adequate penalties and by simple process, *make pool-selling, book-making, and the business of gambling, clearly unlawful everywhere and under all circumstances*, as well as the publication of information tending to aid in gambling, and in other respects to render the law effective for the suppression of gambling." These petitions were distributed and largely signed throughout the Dominion, and it was in this form that they were presented in great numbers to Parliament in January and February of the current year.

#### INTRODUCED BY MR. MILLER.

Meantime the Government had decided not to introduce the proposed legislation as a Government measure, but to open the way and give a fair field to the proposed amendment in the hands of a private member. At the time of the opening of Parliament in November, 1909, the Minister of Justice himself, handed the draft amendments to Mr. H. H. Miller, of South Grey, with the suggestion that he should undertake this task, and should have his Bill introduced at the earliest possible moment. On this suggestion, Mr. Miller acted, and his Bill was No. 6 for the Session of 1909-10, and was given its first reading on the 1st day of regular Parliamentary business. It came up for its second reading on the 2nd of December, and both on its introduction for a first reading and in moving for its second reading, its sponsor, Mr. Miller, took pains to emphasize the fact that it aimed at *making only the business of gambling and betting*, whether on the race-track or elsewhere a crime. As reported in Hansard, Column 905, in answer to a question by Mr. Campbell as to whether he had understood Mr. Miller "correctly

to say that the object of the Bill is not to suppress betting, but only some forms of race-track gambling," Mr. Miller replied: "I am glad that question has been asked. It does endeavor to suppress entirely the business of race-track gambling, but we have carefully *avoided any attempt to suppress the making of private bets between private individuals.*"

#### **SECOND READING—MR. AYLESWORTH'S ATTACK.**

The Minister of Justice, in the debate on the second reading, made a speech strongly criticising the Bill. In opening his address, as reported in Hansard, Column 937, he said: "In essence the thing struck at in the Bill under consideration is the making or taking part in a bet. Now the trouble is that the making of a bet is not considered by a large portion of the people in this country to be in itself a crime, and by this legislation, which is now proposed, as by legislation already on our Statute Books, you are making by Statute, that thing a criminal offence, which in the eyes of the average citizen is not an evil thing." He then compares race-track betting with the playing of marbles for keeps by boys, with the buying and selling of stock, and with ordinary life insurance, apparently seeing no essential ethical distinction as between betting and these other transactions. He goes on to criticise the draftsmanship of the Bill, and especially to make game of the definition of 'place' which definition read: "The word 'place' as used in this section and in the preceding section, includes any place, whether enclosed or not, and whether it is or is not a fixed place, and whether there is or is not exclusive right of user." He took very special exception to the phrase "whether it is or is not a fixed place," and concluded by calling the proposed Bill, especially this part of it, "verbal trickery."

#### **REFERRED TO SELECT COMMITTEE.**

The Bill was however, given its second reading, and referred to a select committee consisting of Mr. H. H. Miller, afterwards appointed Chairman, and Messrs. J. B. McColl, F. D. Monk, R. Blain, J. R. Stratton, J. H. Sinclair, W. M. Martin, (Regina).

#### **ALTERATION TO MEET OBJECTIONS OF MR. AYLESWORTH.**

In view of the criticism by the Minister of Justice of the form of the Bill, and particularly of the definition of the word "place," Mr. Miller, and subsequently Messrs. Raney and Shearer, representatives of the Moral and Social Reform Council of Canada, had conference with the Honorable Minister, and asked him whether his objections to the form of the Bill would be met if for the phrase, "whether it is or is not a fixed place," there was substituted "whether it is used permanently or temporarily." To Mr. Miller, and subsequently to Messrs. Raney and Shearer, the Minister replied to this question that his "objection would be met."

## BEFORE SELECT COMMITTEE.

The select committee began its work early in January, and continued at intervals for a period of six or seven weeks. There appeared before the committee, in opposition to the Bill, Counsel representing the various Jockey Clubs and Horse-Breeding interests, among them being Mr. John H. Moss, K.C., a member of the legal firm of which the Minister of Justice is the head, is according to the Canadian Law List for 1910. On the suggestion of Mr. Raney representing the Moral and Social Reform Council the phrase "whether it is used permanently or temporarily" was substituted for "whether it is or is not a fixed place," in the definition of the word "place," as agreed upon in conference with the Minister of Justice.

## COMMITTEE REPORTS.

After the evidence for and against was all in, and various amendments had been suggested, the committee, after due deliberation reported in favor of the Bill as it had passed its second reading with certain amendments intended to make more clear its application, and to strengthen it in various particulars, refusing other amendments submitted by the racing and horse-breeding interests in opposition. The vote of the committee in reporting the Bill stood five to two, Messrs. McColl and Monk voting against the Bill.

## MR. MILLER CONFERS WITH MR. AYLESWORTH.

Before submitting to the House the report of the select committee, Mr. Miller submitted the Bill as reported by the select committee to the Minister of Justice. Mr. Miller stated in the House what took place between him and the Minister at that interview:

(1) Column 6726:—"I submitted the language of this Bill to the Minister of Justice. I did so in perfect frankness, and no doubt his reply was equally frank. I said I wanted his opinion in order that I might use it, and it was with that understanding the opinion was obtained. When I submitted the Bill to my Hon. friend, he said he did not think it was his duty, as Minister of Justice, to give his opinion on a public Bill submitted by a private member, but he said that the Bill had been drafted by three most able lawyers, that they had given a great deal of thought and time to its drafting, and that it was *admirably drawn*. I said to the Hon. Minister: Do you think any other language could be used which would better carry out the purpose of its promoters. He said he did not."

(2). Column 6873:—"A word as to what the Minister of Justice has just said. His objection to the Bill was largely because it would interfere with private betting. The Minister of Justice said to me, when I was consulting him about the Bill, as I said before in the House, that it had been very carefully drawn by three clever lawyers, Mr. Raney, Mr. Cartwright, of Toronto, and Sir

Thomas Taylor, late Chief Justice of Manitoba. The Minister said: These are three clever lawyers, they have given a great deal of attention to the drafting of the Bill, and I do not think it can be improved on, and the Minister of Justice said, he added the words 'for the purpose for which it was intended,' and if he says he added those words I take it for granted that he did. But I took the care at times to tell the Minister of Justice *that it was not the desire of the promoters of the Bill to in any way interfere with private betting. Knowing that that was not the intention, he suggested that the Bill could not be improved upon for the purpose for which it was intended.* I said to the Minister of Justice: If this Bill, in your opinion, would affect the man who makes a private bet, I would like you to suggest any language that you can suggest, that would leave out the private bettor and exempt him. He said: I cannot suggest any language that would be an improvement on the Bill, as it is drawn in that respect. Afterwards I myself, fearing the Minister of Justice might make some further objections to the Bill in that regard, that it was interfering with private betting, *drafted a clause, and submitted it to him,* and as he in his own writing amended in order, as he thought, to fit the case. I said: *Will the amendment, as you have changed it, fill the Bill, and exempt the private bettor?* He said: *I think it will.* The Minister of Justice then *must have known that that was my intention.*"

#### **DEBATE ON COMMITTEE'S REPORT.**

The report of the committee had, however, by this time been printed, without the special amendment exempting private bettors.

Then the principal debate upon the merits of the Bill took place in the committee of the whole House, on the report of the select committee presented by Mr. Miller. In concluding his able speech in support of the committee's report, Mr. Miller said, as reported in Hansard, Column 6579. "In conclusion I may say that when we get into committee, to deal with the Bill section by section, I shall offer amendments that will make it perfectly clear, that section 227 does not relate to bets between private individuals."

#### **MR. AYLESWORTH'S SECOND ATTACK.**

Among those who spoke in opposition to the report of the committee, this to the surprise of very many, was the Minister of Justice. As reported in Hansard, Column 6693, he said: "It exposes to the danger of prosecution any person on the grandstand of a race-meet, who makes a bet with his neighbor of either sex." And again in Column 6695: "Is a person sitting there looking at the races a person who is using that seat for the purpose of betting with his neighbor? I do not think it would be a far cry for a Magistrate so to hold, and I apprehend in all serious-

ness that if this measure should pass in the form in which it is reported by the special committee, any person who chooses to institute a prosecution against a visitor at the races for having made a bet of a pair of gloves with his fair companion will have a perfectly fair case to present. It may be said that such a thing will not happen. I only point out the distance to which this Legislation is going, when, what many of us at least think harmless is being constituted into a crime." And again in Column 6692: "I do not know where it is going to end. We have had during the short time I have been in this House a very stringent law, which makes it a crime to fish or indulge in what most people regard as comparatively innocent amusement, on Sunday. We have passed a law making it a crime for a boy all but grown up to smoke a cigarette. We are now proposing to pass a law which will make it a crime for a man to make a bet, it may be with a young friend of either sex. Very possibly before the end of this Parliament we shall have a proposition to make it a crime to play cards or to dance, or to indulge in any of the other amusements, which there are some in the community think constitute very nearly, if not quite, a sin. I deprecate that manner of Legislation."

#### **KNOWS BETTER—INSULTS CHRISTIAN PUBLIC.**

No one knows better than the Minister, for he piloted the Bill through the House, that the Lord's Day Act does not "make it a crime to fish or indulge in what most people regard as comparatively innocent amusement on Sunday." Only the business of fishing, and the business of amusement is prohibited by the Lord's Day Act. The Minister must surely know this.

In view of what has already been said over and over again in the above report, is it possible to believe that the Minister did not know that it was untrue to say "we are now proposing to pass a law which will make it a crime for a man to make a bet, it may be with a young friend of either sex?" And when he hinted at the possibility of Parliament being presently asked "to make it a crime to play cards, or to dance, etc.," was he not deliberately flinging an insult at the Christian people of Canada, as represented by this Council?

#### **THE ADVERSE VOTE.**

Then amid great excitement, the unrecorded votes of the Committee of the Whole were taken, and the first decisive vote stood 78 to 77, against section 1 of the Bill, as reported by the select committee. There were other adverse votes on other sections, and then, on motion of the Prime Minister, the committee rose, and reported progress, asking leave to sit again.

Is it any wonder that Mr. Miller, according to Hansard (Column 6871), said: "If I had used the Minister of Justice as he has used me in this matter,

I would have thought that I had struck below the belt, and that I had not acted either honestly, or honorably."

### **THE COMPROMISE BILL PERMITTING THE BUSINESS OF RACE-TRACK GAMBLING.**

Subsequently the opponents of the Bill approached Mr. Miller and proposed a compromise, which was finally agreed upon, and Mr. Miller's Bill without substantial alteration was passed by the Commons, and later by the Senate, and is now the law of Canada, with an exception allowing pool-selling and book-making on the race-tracks of incorporated Associations during race meetings, and on races being run thereon, provided the race-meetings,

(a), in the case of running races do not last for more than seven consecutive racing days, and that not more than two meetings are held in one year, and that at least 20 days elapse between, and

(b), in the case of race-meetings at which there are trotting and pacing races, exclusively, the race meetings do not last more than three days in any calendar week, and do not aggregate more than fourteen days of racing in any calendar year.

### **MR. AYLESWORTH NOW APPROVES, AND IS CONTENT.**

It is important to note that the language characterized by the Minister of Justice as "verbal trickery," remains in the Bill as enacted. Yet when this compromise Bill was being passed by the House of Commons, and when Mr. R. L. Borden asked: "Have these amendments the approval and concurrence of the Minister of Justice?" Mr. Pardee, chief liberal whip, answered "Yes they have." And later when Mr. Borden repeated his question, Mr. Pardee again replied, "I have submitted these amendments to the Minister of Justice and he is quite content."

Whatever may be gained from the viewpoint of reform by the compromise Bill in the suppression of hand-books, and of the publication of racing information to aid in pool-rooms, it will be manifest that the principle for which we have contended, namely that the business of gambling must be made uniformly criminal wherever, whenever, and by whomsoever practised, has not been adopted by Parliament.

Signed,—W. E. RANEY

—J. G. SHEARER

