OSLER'S APPEAL IS HEARD.

Canadian Higher Court Considers Teapot Dome Issue.

Special to The New York Times.

TORONTO, Ont., Feb. 9.—Arguments in behalf of the refusal of H. S. Osler, K. C., President of the Continental Trading Company, to answer questions before United States Consul Shantz, as Commissioner investigating Canadian features of the Teapot Dome case, were heard by the First Divisional Court today on Mr. Osler's appeal from Justice Riddell's order in the action brought by the Commissioner.

That the clients, whose names Osler refused to divulge, are the defendants in the action was the contention advanced by N. W. Rowell, K. C. A. W. Anglin, counsel for Mr. Osler, said that Mr. Osler was not interested in the litigation pending in the United States and in which his evidence was desired by the Washington Government. The right Mr. Osler was urging was that of his client.

"Who is his client?" Justice Hogdins asked.

"The client's name is part of that disclosure, as yet refused," Mr. Anglin replied. "Mr. Osler is merely ascertaining the measure of his client's rights. Personally, he was indifferent."

Mr. Anglin contended that in Canada every man had the right to his own privacy, and against no man was there any inquisitorial right. In the United States, he said, a Grand Jury could start any sort of inquiry it deemed right without any definite charge having been laid.

"Every British subject," he continued, "has the prima facie right to keep his private affairs to himself, always with the overriding consideration that he may be required, in the interests of justice, to disclose what otherwise he might be entitled to keep to himself. That involves as the next step that he should only be required in the interests of justice when the questions are relevant to an issue properly brought before a competent court."

"You distinguish between the rights of British subjects and citizens of the United States. Is this client who objects a British subject?" Justice Smith asked.

"I don't know, my Lord," was the reply.

"Then how are we to say what his rights are?" asked Justice Smith.

Mr. Anglin later said:

"Mr. Osler—to the extent of his recollection—has made disclosure in regard to the particular lot of bonds referred to in the affidavit, and that was the only lot of bonds about which the inquiry was instituted.

"Mr. Osler refused to give the name of the person who originally instructed him. Then that person told him later that there were others associated with him. The names of these other persons were given Mr. Osler by the original client at a professional conference, and as to the naming of these other persons Mr. Justice Riddell says that answer need not be made unless the information was obtained in some other way than by confidential communication."

"But the order directs disclosure of the name of the original client," suggested Justice Hodgins.

Mr. Anglin then mentioned the questions required by Justice Riddell's order to be answered. He declared that Mr. Osler had said he had no recollection of receiving or distributing Liberty bonds, but, later, he had no objection to telling all he knew about it.

"Coming down to the main question, why should not the client's name be disclosed?" the Chief Justice asked.

"Because the measure of the privilege is the extent of the confidence," Mr. Anglin replied. "Generally speaking, the name of the client should be disclosed, but that is in cases in which the name of the client is not part of the confidence."

Justice Ferguson said that consultation for advice was privileged, but there was no privilege in a solicitor doing something that he was not required to do, as, for instance, the purchase or sale of grain. Such things did not come within privilege.

Argument, which was not concluded, will be resumed Wednesday morning.