

The Weekly Colonist.

Tuesday, February 21, 1865.

SUPREME COURT

Before His Honor Chief Justice Cameron and a Special Jury.

A. D. BELL vs. G. STREET

This was an action for assault, false imprisonment, and malicious prosecution, brought by Mr. A. D. Bell, the proprietor of the Vancouver Times, against Mr. Charles Street. The damages were laid at \$10,000.

Mr. McCraith, opened the proceedings.

Mr. A. D. Bell, the plaintiff, deposed that he entered into negotiations with the defendant in this suit to take the premises now occupied by him in Government street, after carefully considering the matter I thought the amount of rent asked excessive; I took a clerk—Mr. LeLievre—and went to Mr. Street's office next day, Mr. Street had come to talk to him about the office and hoped he would not ask such exorbitant terms; he was a little nettled, as I wanted the office I pacified him, and agreed to take it at \$55 per month, terms to be payment in advance each month, on a lease for eight months; the first month's rent was due on the Monday following; these were the only conditions; I wanted to go into the premises at once; he said, then you want possession now, the rent to begin on the first of the month; I said, exactly; this was between ten and eleven o'clock on Friday morning; he hesitated for a moment and then said, very well, you may have it; I asked him for the key; he said there was no key to the front door, it was only fastened by a brick; after that we entered into conversation about ordinary matters; before I left Mr. Street said he would have the papers for the eight months lease drawn up for Monday; I said the first month's rent would be ready when I signed the lease; Mr. LeLievre was present during the whole of the second conversation; Mr. Parsons was present on the first occasion; the next I saw of Mr. Street was about the middle of the same day in what is now the Times office; I remember previously to Mr. Street to get an Indian to clean the place out; the front door generally stood open during the latter part of August; Mr. Street came in and made some remark about the improvement in the premises, and said they were very cheap; I pointed out several repairs which were necessary; he said he would not expend a cent; I said if you won't put it in repair, I will not make good any damages when I leave; he replied it would make no difference, as it would be pulled down; LeLievre asked if there were no keys for any of the doors; Mr. Street said there was one key in his office, and said that LeLievre might go to his office and fetch that key; it might belong to one of these doors; he laid particular injunction on LeLievre to return the key to the office if it did not fit any of the doors at my place; LeLievre brought the keys but I do not remember whether it fitted or not; I paid that day for some new keys for the doors; I thought nothing more occurred at that time; I moved in some furniture on Friday morning from my own house; the door was locked on Friday night; on Saturday morning I put in a large counter and chairs; the next I saw of Mr. Street he rushed into my bedroom on Saturday morning while I was dressing, about half-past eight or a quarter to nine, and said look here, Bell, are you not going a little too fast? I was rather surprised, as he seemed a little excited, and asked him what he meant; He said a man was painting the Vancouver Times on the window of the office; this was done by my directions the day before; Mr. Ring asked witness if that was done in consequence of anything you heard or said?

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gold coin and tendered it to Mr. Street in presence of Mr. Green, saying, Mr. Street, here is your rent, although it is not due till Monday; at the same time, I told him I should hold him accountable for the damage I had sustained by my office being closed in the middle of the day; he refused the money; I said the premises were mine, and I should not give them up; we left Mr. Street and walked together towards the Vancouver Times office; we stopped a few minutes opposite the Barrister-Collector office; Mr. Street passed us there and then ran to the Times office and stood in front of the door when I got up to the door; he put his stick, which is a very tough cane, across the door and refused to allow me to pass; by that time some 20 or 30 persons had gathered round; I took the money out of my pocket, turned round and said, these premises are mine, I took them yesterday, the rent is not due till Monday, I tender it now; he refused to take it; I said I was going out; he said I must go over soon through him, or something of that sort; after half a minute's conversation with Mr. Green, I went up to Mr. Street and put him on one side, with a little force as was necessary; I was standing in front of the door, with one hand on the handle; he stood on my right side; I had a light straw hat on; he had a stick in his hand with four ounces of metal in the end of it; I said to Mr. Street, it is foolish for us as respectable men to fight in the street, I have used force enough to justify you in appealing to the law; I had put my hands on his shoulders and moved him aside, but not before I had asked him to move; I asked him again to give me admission, or I should take it by force; he said, if you do, I'll split your skull; Mr. Green was standing just behind me; I raised my foot and struck the door near the lock, and it flew open; at the same moment I received a blow across the head from Mr. Street with the cane; I had a strap hat on, and the metal of the cane leaped over the hat and struck the side of my head; the metal did not strike me fair or I should not have been here to-day; the cane was broken and the metal flew off; I had handled the cane before in Mr. Street's office, and remarked to him what a formidable weapon it was; the next thing I know was that Mr. Street was inside the office; I went in after him, but did not strike him; I took him up and kicked him out; I would have killed him, but I had made up my mind to take the proper remedy; I took the stick from him and tried to break it, but it was a tough cane, and although it was partially broken over my head, I could not break it; I went across to Wilson's and bought a new coat, as mine was torn; I felt very sick and went to Dr. Haggins', but he was not in; I then went to Dr. Trimble's and was told he would soon be in, so I laid down on a sofa; I felt very low and weak and very sick; I was suffering an acute pain in the head; a little blood was trickling down; after some time I fell asleep, and when I woke at 8 o'clock the pain had ceased; I got a prescription from Dr. Trimble which I took to Langley's and had made up; if my business had not been so urgent, I would have gone to bed.

The Court here adjourned for three quarters of an hour.

Afternoon Session

Mr. A. D. Bell recalled—Examined by Mr. Ring—Once had a railway accident and lost my hearing for some months, but wholly recovered it again afterwards. Since the blow on the side of my head I have frequently suffered from headaches since, although I was subjected to them before that. I lost advertisements in consequence of the blow. I can name Anderson & Co. for one. They told me if I called at 2 o'clock I should have an advertisement, which I was prevented from doing, and so lost it. They were going to give me this to show their good feeling, although they did not particularly care about advertising. I was arrested about 10 o'clock that evening, marched to the goal with a policeman on either side, taken to the gaoler's room, searched, and my money and papers taken from me. I was then locked up in a cell.

Mr. Ring—Had you any company?

Witness—There had been an Indian baggage man, but the gentleman was considered enough to remove him.

Mr. Ring—Were there any other persons in the cell?

Mr. Ring—No really I must object.

Witness—No person who had ever been there once would have any feeling but one of disgust. They offered me blankets, but I preferred walking about. The trap was let down, and I was left in the dark. I remained there about 10 o'clock. I managed to collect about \$150 of advertisements in the previous two hours; and whether I had more or not I do not know. The paper was not quite full, and I was engaged when arrested in procuring advertisements to fill up.

Mr. Ring—Did your paper suffer in public estimation?

Witness—Certainly, but we made that the paper would not come out on Monday, and was questioned whether it would come out at all. I met persons in the street who asked me whether it would come out.

Mr. Ring—Did you suffer any inconvenience?

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you quote something from Taylor, an evidence.

Mr. Cary—You wouldn't understand it if I did.

Mr. Ring—That is a most conclusive argument.

Cross examined by Mr. Cary—Dr. Trimble gave me a prescription which I had made up at Langley's; Mr. Parsons was then in my employ; I was in the Police Court during the whole of the enquiry; the lease was to have been signed on Monday; He was to write it; I have told you that Mr. Street did offer in Culverwell's office to reduce the rent from \$65 to \$55, but I wanted \$50 and did not agree; Mr. LeLievre was present when I agreed to take the office for eight months; I heard Mr. LeLievre swear in the Police Court that nothing was said by Mr. Street in his presence about giving security or any other conditions. (The depositions of LeLievre and Parsons were here handed over to witness and read.) Mr. Street did not offer sufficient opposition to me when I entered the office to resist my force; I heard sufficient of the conversation between Mr. Street and Mr. LeLievre about the key to be able to state what I have already sworn to; all I remember Mr. Street saying was "don't make a police case of it." I don't remember his saying "don't use force." I placed my hands on Mr. Street's shoulder, and pushed him on one side; the cane which he used was stouter than the one you produce; it had a heavy solid metal head, about 3 oz., a dangerous weapon and I was surprised that any gentleman should think it necessary to carry such a murderous weapon in a peaceable city like this; it was a life preserver in the shape of a walking stick; I had previously had it in my hands and examined it and concluded that Mr. Street used it for walking home at night; Before forcing the door I remonstrated with Mr. Street; I was bailed out and never heard that Mr. Street offered to bail me out; afterwards heard that he had said if he had known I was locked up he would not have minded going bail for me; I told Mr. Street that I should hold him accountable for damages for closing my office; I have not heard and don't believe that Mr. Street offered to deposit \$100 as security for me.

Re-examined by Mr. McCraith—I should have devoted the whole of the afternoon from 1 o'clock to 4 o'clock, to collecting advertisements for the paper; had it not been for the interruption, I am still in possession of the office.

Dr. Trimble sworn—I had a conversation on Saturday noon with Mr. Street about the Vancouver Times, but it was some time ago, and I hardly remember the particulars.

Mr. McCraith offered to hand in the depositions to witness, which Mr. Cary objected to, and after considerable argument, the Court disallowed it. Mr. S. came out of the office, he asked if I would go security for the payment of Mr. Bell's rent; I said certainly not, and asked him who told him so; he said Mr. Bell; I went into the office and saw Mr. Street and Mr. LeLievre; Mr. S. said something about letting the offices, and that there was a person outside who would give \$10 more; Mr. Bell told me at my house that he was much shocked at Mr. Street then asking for security; I remember saying that I thought the rent was safe, and the Times was not going to burst so soon; I think something was also said about Mr. Street wishing to become security, but am not sure.

Mr. Parsons—I remember a conversation between Mr. Street and Mr. Bell previous to the disturbance about leasing the offices; Mr. Bell asked Mr. Street if the premises were his and what he would take for them; I think Mr. Street said \$55 and then consented to take \$55; I was present during the whole conversation in Culverwell's office, not one word was said about security or guarantee.

Cross-examined by Mr. Cary—I don't think anything was said about a term of eight months.

Witness explained an apparent contradiction.

Mr. Sebright Green—I am solicitor to Mr. Bell; I remember on Saturday, September 23rd, Mr. Bell came to my office with Mr. LeLievre, and they had a conversation about the premises, and Mr. LeLievre proposed to get in, at Mr. Bell's request I went with him towards Mr. Street's office; Mr. LeLievre was with us, we met Mr. Street near the door; Mr. Bell handed Mr. Street the key, which he refused; I recommended Mr. Bell to go and receive possession of the office, which he had before occupied; we turned in that direction; Mr. Street crossed over and Mr. Bell and Mr. LeLievre standing by the door; Mr. Bell held or beckoned me to go to the door; Mr. Street stood there with a stick in his hand, said to Mr. Bell, don't make a police case of it; I thought he meant don't let us have a street row; I said to Mr. Bell, that the premises were this, and he had a right to go into them; I passed a few pages away, still watching what took place; Mr. Street said something about going over his body; he held his stick across the door; Mr. Bell lifted his foot and pushed against the door; I caught my eye, he forced it open; Mr. Street then lifted his stick and struck Mr. Bell on the head, with all his force; they disappeared inside, and when Mr. Bell came out he had the stick in his hand, I had not seen him since; the blood was trickling down Mr. Bell's face; I advised him to keep himself quiet; the steps of the assault, I wrote a letter to Mr. Street, threatening an action. (Witness read letter from Mr. Drake to him, offering to pay \$500 to settle the case, and his reply declining same.)

Cross-examined by Mr. Cary—As regards the encounter I said something to the effect "don't use force, and thus make it a police matter." I saw Mr. Bell lift his foot up; he was ready to go forward towards the door; I could not see exactly what happened, therefore I am unable to say that he forced in the door.

The deposition of Mr. Lyndon LeLievre taken by special commission, and duly attested by the judicial authorities at New Westminster was here put in, and read, which was to the following effect: I have been residing in Victoria, V. I., eighteen months prior to last November, in which month I came up here; I know the parties in this case; on Friday the 2nd of September, 1865, Mr. Bell asked me to go with him to Mr. Street's office in Government street, Victoria, as he wished to have possession of the office which Mr. Street had rented to him prior to this. The office was in Government street, between the Colburn and Chronicle offices, and had been previously occupied by Walton and Barnett. I went as requested with Mr. Bell to Mr. Street's office. Mr. Bell asked Mr. Street to give him at once possession of the office; he had agreed to take from him, in order to have it cleared out by Monday morning, on which day the rent was to commence, and the first month's rent was to be in advance, and so monthly thereafter. Mr. Street at once agreed to this; His words were as well as recollect that will do, or all right; I had been engaged by Mr. Bell as his assistant; Upon the arrangement, I have mentioned being made, I asked Mr. Street for the keys of the office; he replied, "There are none, the doors are open." "Go right in;" We went immediately and took possession. By "we" I mean Mr. Bell and I. We got a Swiss and set him to work to clean the office. Mr. Street came into the office when it was partially cleaned out, about two hours and a half after we had taken possession, and remarked that the place was beginning to look better, I again spoke to him about the keys and pointed out several things that were damaged in the office, such as a back door sash gone, broken off, and asked him at whose expense it was to be repaired. He said at the tenant's expense, that he would not spend a cent upon it. But as to the keys, he thought he had one in his back office that would fit; He told me to get it and if it did not fit to return it. The key did not fit and I returned it. He told me I had better buy keys which did. Mr. Bell