# From THE DAILY COLONIST, Feb. 8.] | i. e., municipal council); the

Important Decision by the Full Court in Consolidated Railway v, the City.

Reasons Given for Allowing the Appeal From Mr. Justice Drake's Judgment.

The Full court yesterday gave judgment, allowing with costs, the appeal of the city against the judgment of Mr. Justice Drake in the Consolidated Railway v. the City, in reference to the pile

regular course of their business subject to the terms and conditions of paragraph 33 of the agreement in the pleadings mentioned. Further, it was ordered that if any doubt arise as to the strength of the proposed bridge that the plaintiffs are to be at liberty to move on twenty-four hours' notice for an injunction to restrain the further construction of the said bridge until the defendants make satisfactory arrangements for compliance

with this order.
The defendants, the city council, appeal against this order. A preliminary objection was taken by counsel for the plaintiffs that compliance with the order by the defendants prevents their appealing. I am not sure that there was the compliance for I understand that the carry tramcars. I may observe that this allocat orievance still exists that the new bridge is not sufficiently strong for tram car traffic, but the objection I think fails in other respects.

Three cases were cited in support of it, Noir v. Corporation of Huntingdon, 19 Can. S., C. 363, where all the court decided was that the court world re-

decided was that the court would no entertain an appeal from any judgment for the purpose of deciding a mere question of costs. The next was the Intion of costs. The next was the in-ternational Wrecking Company, v. Lobb, 12 Pr. r. 207, where in the judgment, however, it is stated at page 210, "that notwithstanding the appeal the appellants' proceeded to ex-ecute the judgment of which they complain, and this, the two proceedings being radically inconsistent, they could not do without abandoning the appeal" (and see pp. 210 and 211 and McConnoll & Co. vs. Wakeford, 13 pr. R.O., where it was held that the irregularity of an order might be waived by compliance with it (see page 458 of the report). The cases also, at pages 308 and 638 of 12 P.R.O., only further show that a party having elected to comply with an order cannot appeal from it. It cannot be said that the defendants in this case exercised an election, for that presupposes a right voluntarily to choose which of two inconsistent courses a party will pursue. Here the defendants by electing to disobey would have rendered themselves liable to penal proceedings, for an injunction whilst it stands must be obeyed—see Kerr on injunctions, 641, in other words they had no choice. For these reasons I think the preliminary objection should be overruled. With respect to the declaratory order appealed from I think scussion about it may be conven iently postponed till after the manda-tory injunction is considered. And the tory injunction is considered. And the first thing to bear in mind with reference to the injunction is, do the circumstances exist which are requisite to entitle the plaintiffs to invoke this remedy? Briefly have they any cause of action against the city, for in the words of Lord Esher, then Lord Justice, in the London Railroad Company v. Great Northern Railroad Company 11; Q. B. D., at page 38—"there is nothing in the judicature act, which enables ny part of the high court to issue an in junction in a case in which before the judicature act there is no legal right on the one side or no legal liability on the other, at law or in equity "—or to use the emphatic language of Cotton, L. J., at page 40. "In my oninion the sole in. at page 40, "In my opinion the sole intention of the section is this, that where there was a legal right which was independently of the act capable of being enforced either at law or in equity, then whatever may have been the previous practice the high court may interfere by injunction in protection of that right."

shall not be bound to repair it; but if I voluntarily stop it, an action lies against me, for the mis-feasance but for the bar non-feasance, viz., in not repairing the when it is out of repair no action lies." It seems plain, then, that if the company had agreed with a private individual instead of the city council had of these tays passed into the head of the seal of the sea lies." It seems plain, then, that if the company had agreed with a private individual instead of the city council he would not be liable; to use the words of Lord Mansfield in Taylor v. Whitehead, 2 Douglas reports, 749, approving of Pomfrett v. Ricroft: "I entirely agree with my brother Walker that by common law he who has the use of a thing ought to repair it. The grantor may bind himself, but here he has not done

sole charge is one of nonfeasance that when the road has fallen into a bac that when the road has fallen into a bad condition they failed to execute the necessary repairs. If, then, they are liable in the present action, it must be either because that liability has been expressely imposed by some enactment or because the legislature has imposed some duty upon them for the breach of which a right of action accrues to any person injured by it."

Before examining the Victoria Electric Railway & Lighting Company Act, 1894, and the agreement in the schedule A, to see whether the city council have according to the above test incurred any lighting to the above test incurred any l

rding to the above test incurred any liability to the company, it seems proper to observe that the legislature must have intended that the municipal act of 1892 and the provisions relating to the contracting of debte, sections 110 and the following sections should not be interfered with. In other

terday, is as follows:

The decree in this case declares that the plaintiffs are entitled to operate their tramway system and cars upon and over any bridge or bridges now existing or hereafter to be built over the body of water known as the Victoria Arm for vehicles connecting Work street with the Esquimalt road. Again, that the bridge now partially erected in the place of the broken bridge be made of sufficient strength and stability to carry the cars of the plaintiffs in the ordinary and regular course of their business subject.

says that in addition to the powers construct, maintain and operate a single or double track, etc., and special reference is made to the bridges and the approval and supervision in reference thereto in a manner which is far from suggesting any liability on the part of the city towards the company. Section 26 of the agreement makes the company "liable for all damages arising out of the construction or operation of the works, etc."

I don't think section 12 of the act of 1894 says that in addition to the powers construct, maintain and operate a single or double track, etc., and special reference is made to the bridges and the approval and supervision in reference thereto in a manner which is far from suggesting any liability on the part of the city towards the company. Section 26 of the agreement the company are authorized and empowered to construct, maintain and operate a single or double track, etc., and special reference is made to the bridges and the approval and supervision in reference thereto in a manner which is far from suggesting any liability on the part of the city towards the company. Section 26 of the agreement the company are authorized and empowered to construct, maintain and operate a single or double track, etc., and special reference is made to the bridges and the approval and supervision in reference the company and the approval and supervision in reference the company of the company and the power section of the construction of the construction of the construction o I don't think section 33 of the agreement in schedule A helps the company

-the provision as to the company fur-nishing and laying at their own expense a new flooring over the whole of any bridge so crossed, may be considered ac-cording to the maxim "expressio unius exclusio alterius," as negativing liability to strengthen or repair the bridge in other respects on the part of the com-pany (though this maxim is frequently nisunderstood). But the real question is whether, in accordance with the authorities to which I have referred, a liabilthe city council as between them and the company to repair the bridge, and to repair it in such a man-

whether an action could be main-tained." But here it cannot be seriously

contended that the city council by r pairing the bridge so as to render it f for wehicles and at the same time omi traffic, have acted contrary to the statu or the agreement, or committed an breach of duty whatever. It follow that the declaration of right in the decree must, as well as the remainder it, be reversed. I think it is clear plaintiffs have no such right, and th judgment must be reversed, and, usual, with costs

Mr. Justice McColl—"I concur."
W. J. Taylor and C. D. Mason for th city; E. P. Davis, Q.C., and L. P. Du or the tramway.

### HEARD IN THE HOTELS.

Mr. J. F. Bledsoe, B.C.M.E., of Albert ni, who has been in that district for the past two years, is in town in connection with some mining properties in which he is interested. Speaking generally i regard to the progress of mining in Alberni, Mr. Bledsoe remarked last night
"The mill on the Alberni Consoli
dated is running full blast and the re sults in some medium grade ore that he of these have passed into the hands of parties able and willing to extensively

Meet in Montreal in June to Fix The Schooners "Beatrice" and

The Behring sea claims commission

of the Paris tribunal of arbitration be-

of the Paris tribunal of arbitration between Great Britain and the United States it was decided to refer to a commission the claims of British sealers illegally seried in Behring as by sum of compensation to which the claimants of compensation to which the claimants of compensation to which the claimants of compensation to the claimants of compensation to which the claimants of compensation to which the claimants of compensation to the claimants of the mail control that the claimants of the mail control that the control that the control that the control that the claimants of the mail robbery, the control that the control that the control that the control that the claimants of the mail robbery, the control that the claimants of the mail robbery that the control that the clai

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sly		Seized	\$30,00
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it-	I I Hormton	Seized	32,00
ar	H. Guttornsen(Capt)	Personal	2,50
ite	H. Norman (Mate)	. "	2,50
ny	Onward	Seized	29,00
ws	D. Munroe (Capt.)	Personal	2,50
ie-	J. margotich (mate).	"	2,50
	ravourite	Warned	7,00
of		Ordered out	7,50
he	W. P. Sayward	Seized	31,00
he	G. E. Ferey (Capt.)	Personal	2,00
28	A. Laing (Mate)	"	2,00
	Anna Beck	Seized	38,00
	L. Olsen (Capt.) M. Keefe (Mate)	Personal	2,00
he	M. Keefe (Mate)	- 66	2,000
	Alfred Adams	Seized	25,00
uff	Dolphin		2,57
,	J. D. Warren (Capt.)		2,000
	J. Reilly (Mate)	- Match	2,00
	Grace	Seized	50,00
	W. Petit (Capt.)	Personal	2,000
_	Ada	Spized	37,000
r-	C. A. Lundberg (Cp't)	Personal	2,000
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on	1	Int'rfe'ce	11,000
ch	Juanita	Seized	18.000
in	Pathinder	66	30,000
1-	Black Diamond	- "	23,000
t:	Lily	64	22.000
i-	Minnie	"	22,000
-	Triumph	Warned	25,000
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k	Pathhfinder	Seized	2,000
ie:	Henrietta	"	30,000
16	Uscar and Hattie	**	12,000
- 1	Winnifred		15,000
ıt	Capt. Hansen	Personal	3,500
of	Wanderer	Warned	10,000

commissioners left for home last night, and the counsel for both sides leave for

Francisco before going East. The United States representatives ex-

bind himself, but here he has not done it."

Now, it is hardly necessary to say that it is even more difficult to make a municipal council liable in such cases than a private person. In the Municipal Countil of Sydney v. Rourke, 95 A.C., at page 435, the Lord Chancellor in deliverage to malfeasance is made against them

A "prominent member of the Players of New York" informs a Philadelphia reporter that Mark Twain received in London malfeasance is made against them

again in Montreal, and there fixes the place for the final argument.

The sealers here are greatly pleased with the industry and painstaking interdeat with the industr

Into E. B. Marvin & Co.'s wholesale has now closed its sittings in so far as establishment on Wharf street came yesthis city is concerned, and the results of terday afternoon a piece of wreckage the findings after the final argument in which was picked up at Beacher bay the East will be awaited with great in- earlier in the day. It was in the shape way v. the City, in reference to the pile bridge across the Arm. Mr. Justice Mccreight's judgment, handed down yessions. Now, section 12 of the act of 1894

Considered what a large amount of name Victoria symmetrically carved in terest. The importance of this commission to Victoria is very great when it is
considered what a large amount of
name Victoria symmetrically carved in
name Victoria symmetrically carved in
to victoria symmetrically carved in
total membership of 138. The association intend forming a baskatball team

stamping out the trouble which that out of place briefly to recall the reasons played in white paint on a dark backwhich led to the formation of the com- ground. The board was found by Mr. mission and the work on which it has Wilson, who lives at Beacher Bay, and been engaged.

Wilson, who lives at Beacher Bay, and been engaged.

Wilson, who lives at Beacher Bay, and been engaged. Under the facts as found in the award fragmentary wreckage, recognizable of the Paris tribunal of arbitration he of the Paris tribunal of arbitration be-tween Great Britain and the United rudder. All was found among a

val nospital, lectured in the Blue Ribbon hall, Esquimalt, last evening. His lecture, which was the second under the auspices of St. Paul's church, Esquimalt, contained reminiscences of the Doctor's extensive travels and the succeeded in getting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting the succeeded in getting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting the succeeded in getting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting the succeeded in getting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 of the cash was sent by the Bank of British Columbia in this city to a resting about \$1,100 in all; \$1,000 in all; ture, which was the second under the dauspices of St. Paul's church, Esqui-billed auspices of St. Paul's churc the Mediterranean service.

THE Chinese new year celebration yesterday was a great day for the small boy. Perhaps it was owing to the fact that so many other coast cities had this year refused the usual permission to celebrate the natal day of their almond-Capt. Hansen Personal Warned 10,000 celebrate the listal day of their simulations developed experience of the color of the simulations of the color and circumstance of their own little Seven per cent. interest on these spree. Certain it is that Victorians brings up the whole amount to have never before been favored with a claims brings up the whole amount to over \$800,000.

In connection with the closing of the commission's sittings here may be mentioned the fact that Judge Lafayette Dawson, district judge of Alaska from 1885 to 1888, and who tried and condemned at Sitka the Carolena and other schooners seized in 1886, died on Friday at his home at Marysville. Missouri. this home at Marysville, Missouri. favored white brethren should not miss any of the glories of the occasion—particularly the band—a promenade was taken through Government street.

the East to-night. Sir Charles Tupper, who is just recovering from an attack of illness, goes by way of the C.P.R., the others making the trip down to San Congressman James Hamilton Lewis of these have passed into the hands of parties able and willing to extensively develop them. This ore is a copper pyrites very strongly resembling that of the Trout Creek country, and in most instances surface assays have run even higher in both gold and copper.

"There is a feeling of satisfaction among those interested in the Alberni country over the outlook for the coming and prospectors and prospectors are now out.

The United States representatives expressed themselves asgreatly pleased with the welcome and hospitality shown to the welcome and hospitality shown to the min Victoria, and Mr. Warren even basid that Victoria was the pleasantest that Mr. Lewis is preparing a case against the English government to collect damages for wrongful seizure of American sealing vessels and their confiscation, the amount of the claims being enough to offset the Canadian claims against the

on the other leg, Mr. Lewis' visit to Van-

couver being no doubt in connection with the claim for damages that will be made against the United States for the illegal seizure of the steamer Coquitlam, which was set free by the San Francisco ourts a couple of months ago

THE sixth annual meeting of the James Bay Athletic Association was held last evening, there being present a large number of members and shareholders. Mr. A. C. Flummerfelt was re-elected honorary patron, and the committee of honorary patron, and the committee of management chosen for the coming year was emposed as follows: H. D. Helmcken, R. Eckardt, A. J. Dallain, C. E. Bailey, J. S. Yates, C. Fletcher, D. O'Sullivan, F. A. Gowen, W. J. Scott, Archdeacon Scriven, G. Byrnes, C. W. Newbury, E. E. Billinghurst, and A. C. Anderson. President H. Dallas Helmcken presented his annual report, in which he mentioned that the year just passed proved tion intend forming a basketball team, and will start practice Friday evening,

England Circuit and Court of Appeals, for the United States, and in the event of these two disagreeing the President of the Swiss Republic was named as referee.

The commission held its first sitting in The commission held its first sitting in The commission held its first sitting in The commission November 23 the counsel for the New Swiss Republic was named as referee.

The commission held its first sitting in The commission held its first si "regimental" depot, he left for Ross-land, where he was again heard from in connection with some petty crookedness. Walker considered that the outbreak was

be a bove maxim is to use the expression in the last edition of Maxwell on stantes of of of one page signature of the last edition of Maxwell on stantes of section 33 of the agreement repetation of the several of the withdrawn from the market. What will be done with the vessels is not yet known.

THE "LAURA MARSDEN" SAFE.

The American schooner Laura Marsden, Captain Rasmussen, which sailed from Salaverry, Peru, on November 6 for Vancouver arrived at Port Angeles on Sunday. She has a cargo of raw sugar for the British Columbia refinery and experienced an unusually rough and show the state of the state of

The Union Steamship Company of Vancouver have had returned to them the bonds they put up for the release of the steamer Coquitlam when she was seized in Behring sea.

THE CITY.

DR. Kirher, R. N., of the Royal Na.

Also found about \$1,000 in bills.

It appears that Leitch stole a horse at Fort Steele on Saturday night. He rode to Wasa, took the mail pouch the horse loose. He took the mail to his house and leisurely went through the letters. After each letter was opened, the money, if any, was extracted, and they were then thrown into the fire. He succeeded in getting about \$1,100 in all:

"THE CITY."

DR. Kirher, R. N., of the Royal Na.

other was strong against Leitch and he was committed for trial at the first court of proper jurisdiction either at Donald or Kamloops.

Reports having been circulated that the Albion Cricket Club do not intend to continue during the season of 1897, their late captain states that the club will be carried on and fixtures arranged as usual. The club will use their ground as usual. The club will use their ground at Beacon Hill and intend to have it in first-class shape.

### 2666666666666 \*\*\*\*\*\*\* A Claim

WE CLAIM there is only one preparation n Canada to-day that is guaranteed to cure BRONCHITIS, and that is DR. CHASE'S SYRUP OF LINSEED AND TURPENTINE. It is MOTH-ER'S cure for her child when it is all stuffed up with CROUP and coughing its little lungs out with WHOOPING COUGH. One small dose immediately stops that cough. By loosening the phlegm, puts the little one to sleep and rest. Dr. Chase compounded this valuable syrup so as to take away the unpleasant taste of turpentine and linseed. WE OFFER to refund the price if Dr. Chase's Syrup will not do all that it is claimed to do. Sold on a guarantee at all dealers, or Edmanson, Bates & Co., 45 Lombard St. Price, 25c.

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## BOARD OF HEALTH.

A Number of Important Questions. Dealt With at the Meciing Yesterday.

Dr. Walker's Recommendations on Better Sanitary Requirements to Be Sent to Kamloops.

The Provincial Board of Health had both afternoon and evening sessions on Tuesday, one of the most important subjects coming up being the report of Dr. Walker in regard to the sanitary conditown has had with typhoid. In regard to the work of the board, Dr. Davie, the president, said that while it was their aim to initiate sanitation throughout the province, want of means had pre-vented them from securing that desirable end. What the board desired was, not to

land, where he was again neard from in connection with some petty crookedness. His daring deed in plundering the mail would therefore appear to be only one more downward step in a career of more downward step in a career of It might be from the water supply that was taken from the river, which could have been contaminated from a variety of causes. One was that a slaughter house was situated near the river above the intake pipe of the water supply; or was situated near the river. Then there was a tannery, which was also liable to lowed to run into the river. The scavenging of the town was also very poorly attended to. He had made a number of suggestions to the local medical health cer and the board of health to have all these things remedied, among other things advising that the in-take pipe of the water supply should be extended further into the river; that a proper dumping ground for the city should be

for the British Columbia refinery and experienced an unusually rough and lengthy passage. The American schooner Pioneer is also en route with sugar for the same port.

The same port is also en route with sugar for the same port.

The same port is also en route with sugar for the same port.

The same port is also en route with sugar for the same port.

The same port is also en route with sugar for the letter sack and a watch. In the stove was a fire, the ply with the suggestions made in it and the governments attention be called to the state of the jail. The provincial sanitary regulations of 1896 were also put in force in Kamloops in accord with the same port.

was also instructed to write to the other municipalities asking if they wished to have the same thing done for them, though the board at the same time wished it understood that they did not wish to force these regulations on the municipalities. The remainder of the evening was taken up discussing reports and it was not till a late hour that the board adjourned to meet to-day.

Winnipeg Board of Trade. Winnipeg, Feb. 2.—D. W. Bole was elected president of the board of trade

Special Tariff for Manitoba WINNIPEG, Feb. 2.—The board of trade held a successful banquet this evening. Premier Greenway, in speaking, advo-cated special tariff legislation for Mani-

Blood is Life.

It is the medium which carries to every nerve, muscle, organ and fibre its nourishment and strength. If the blood is pure, rich and healthy you, will be well; if impure, disease will soon overtake you. Hood's Sarsaparilla has power to keep you in health by making your blood rich and pure. Blood is Life.

Hood's Pills are easy to take, easy to operate.

BIRTHS. STEWART—Feb. 2nd, at 14 Niagara street, the wife of J. P. Stewart, of a daughter. DIED.

CHUBERT—At Vernon, B.C., on Tuesday, Feb. 2nd, Frances Maria, beloved wife of J. E. Schubert, eldest daughter of Jno. Winger, of this city.

Flower and Vegetable Seeds with complete details of the farmer's requirements in FIELD ROOTS, CLOVER AND GRASS SEEDS, SEED GRAINS, FODDER AND ENSILAGE CORN. Write for a copy to JOHN A. BRUCE & CO., eed Merchants, HAMILTON, ONT.

[From THE DAILY COLON

B. C. Full Court Decid Mines Regulations Be Constitution

Judgments of Justices V Drake, in Which Mr. McColl Concur

The question as to whet Mines Regulation Act, 1890 tional was yesterday dec Columbia. This act prohi ployment of Chinamen un coal mines, and the question as to the power of the prov such a restriction the matt before the full court. Just and Drake yesterday gave ments with which Mr. Ju concurred. In this judgment Mr. Ju

"The question referred by His Honor the Lieuten in Council is as to whet Mines Regulation Amendm is constitutional or not. sists of two short clauses, short title clause and the peached, which is as follow "Section 4 of the Coal I tion Act is hereby amende between the words 'age on the second line the w hinaman.'
"With the amendment,

brackets, section 4 will rea "4. No boy under the a years, and no woman or gi (and no Chinaman), shall in, or allowed to be for t employment in, any mine act applies, below ground. Thus the employment of any of the persons speci bited. Part only of this objected to, viz., that refer men. The objection is b constitutional grounds, prohibition trenches upon tion of Trade and Commer deals with 'aliens'-two ed to the control of the section 91 (sub-section 2, 2

A. act.
With respect to the fi "With respect to the fi is said that the exclusion is not only unjust and opp case, but is equally so i mine-owners, as it mat competition in labor, an creases the expense of the their coal, thus, in a meas its price, and to that exte with it as a trade or busin "The exclusion of th boys, although not comple obviously, be open to the s The exclusion of women

The exclusion of women terests, as it is evidently grounds; and the exclusio their benefit on account of as well as for the protec who might suffer from thei Sections 5 to 19 show this for they place a limit on working hours above g they may be employed. they may be employed them from being over-wo scale of working hours for ing ages between twelve and, moreover, define the which the latter may o

Section rules, intended for the pr and property, such as r ventilation, fencing, signs and other matters; and, rule 34 provides that, 'No person unable to speak appointed to, or shall occ tion of trust or responsib mine subject to thi through his ignorance negligence, he might en or limb of any person e about a mine, viz., as ba ter, signalman, brakesm furnaceman, engineer, or ed at the windlass of a si "This is the only e that under discussion, are specially mentioned; it, as well as to sections fording some explanation of the legislature for pro men from being employ There are also other act, from section 80 onw vide for the adoption l prietor of what are t rules,' after they have be a conspicuous place, and amended form or oth miners, and sanctione ment inspector. As a riety, exceedingly few understand English, and count for Chinamen bei

rule 34 with persons English.' Special rule fore, he unintelligible to orders or warnings req tention, by reason, for ger, would be equally s In construing the discussion I must be gu going sections as the principal act in we ment has been incorporated young dispute, observes in Colqubon v. Brooks, indeed bound, when terms of any provision ute, to consider any act which throw light of the legislature, and to show that the par ought not to be constru f considered alone and

rest of the act.'

"Rule 34 is, as I ha group of 35 rules which protect life and propert ent impeached provision section which it amend tions which follow, are lations in the same dir "Admitting, for the st that any one of them pressive, that is no gro the act in question inv matter is within the ilegislature. A court (I am quoting from C tional Limitations, che a statute unconstitutio on the ground of u sive provisions.' "The act in quest