The Weekly Colonist.

Tuesday, February 9, 1864.

SUPREME COURT.

BEFORE HIS LORDSHIP CHIEF JUSTICE CAMERON.

Monday, 1st February, 1864.

The first sittings at Nisi Prius for this year were commenced at half-past ten in the new Court House.

The cause list shows nineteen causes for trial, six of which are marked as postponed, and five are set down to be tried before special juries.

The following gentlemen were empanneled to serve as a common jury—Malcolm Munro, Foreman; A. J. McDonnell, James W. Trahey, Isidore Braverman, George Balls, Samuel George, William Lush, and James Crosson.

The first case called on was that of—

C. H. DeWolf v. John R. Fleming.—The plaintiff appeared in person and Mr. McCreight, instructed by Mr. Dennes, appeared for defendant.

Mr. DeWolf opened his case and addressed a few plain and sensible remarks to the jury. He stated that he had brought the action through his attorneys Messrs. Pearkes & Green, but that inasmuch as the case involved only a small amount, he did not feel it necessary to pay counsel's fees in addition to the costs of the Court, and therefore he came before them to conduct his own case. The action was brought for rent of a house and for the use of a room for Mr. Fleming's Chinaman, and for the use of the fruit in the garden attached to the house. Mr. DeWolf then tendered his own evidence to prove that Mr. Fleming had occupied the house under an agreement up to a certain period, and that after notice to quit had been given he continued to occupy the house and Mr. DeWolf charged him rent subsequent to the termination of the agreement at the rate of $40 a month. Plaintiff also charged for the use of the fruit in the garden.

The witness was cross-examined by Mr. McCreight at considerable length, and was asked whether he had not brought an action in the Summary Court to recover this same claim. Mr. DeWolf denied having done so. A summons addressed to Mr. Fleming, purporting to have been issued by Mr. DeWolf, was put in. Witness disclaimed all knowledge of the summons, and stated most positively that he had given no instructions to any one to issue such a summons. He had received $65 from Mr. Culverwell which had been collected contrary to his (Mr. DeWolf's) instructions.

Mr. McCreight—What amount did you instruct Mr. Culverwell to collect for you?

Witness—I am unable to give you the exact amount. I handed an account to Mr. Culverwell and have been unable to get it from him again.

When the learned counsel pressed Mr. DeWolf to give a decided answer, witness replied that he might press him and with the strongest machine that he could use, but he would not squeeze out of him that which was not in him.

Mrs. DeWolf, examined by plaintiff, proved the letting of the house, and that she had given Mr. Fleming notice to quit, and that he continued to occupy the house after the notice had been given.

This witness was cross-examined by Mr. McCreight with regard to the payment of rent, and admitted that the defendant had regularly paid up to a certain period.

S. A. White called and examined by plaintiff, proved calling upon Mr. Fleming for the rent, and upon Mr. Fleming having refused to pay in advance, having gone to him again with Mrs. DeWolf.

Thomas Dyson was called by plaintiff to prove the value of the fruit in the garden. Mr. McCreight objected to the evidence as irrelevant and taking up the time of the court unnecessarily. Mr. DeWolf suggested that the learned counsel should have thought of that before whilst he was asking a great number of useless questions.

Dr. Allyn was called to corroborate this evidence.

Mr. McCreight opened the case for the defendant, and alleged that the fruit trees were included in the agreement, and that the charge was made for the fruit in order to swell the amount of the debt to over $100, in order that Mr. Fleming might be held to bail.

Mr. Culverwell was called to prove that he had demanded rent, and that he had taken $72 from Mr. Fleming, and been instructed to sue him in the Summary Court for $20.

Cross-examined by plaintiff.—Were you not asked by my attorney for the papers connected with this cause? A. Yes I was, and I did not know that I had them until I searched this morning.

Plaintiff—Did you not charge me 10 per cent. for collecting this money?

Witness—I did.

Plaintiff—Did you take any trouble about collecting it, or is it usual for you to charge 10 per cent. for doing nothing?

Ans.—Ten per cent. is my regular charge. You paid me nothing for the lawyer's fee for issuing the *capias*.

Plaintiff—I should like to know if you took anything from Capt. Fleming to keep this matter quiet?

Witness—Ask me the question as a counsel should do and I will answer it.

Plaintiff—On your oath did you receive any money from Mr. Fleming to keep this matter quiet?

Ans.—I did not.

D. S. Wallace was called to prove that Dr. DeWolfe had offered him the house for $20 a month.

Capt. Fleming was called, and sworn, stated that he had delivered the furniture of the house and had also paid $13 50 to Mr. McIlray whom he believed to be the agent of the plaintiff; that he had never heard of any charge being made for the fruit in the garden.

Mr. McCreight summed up his case and asked the jury to find a verdict for the defendant on the evidence; the learned counsel commented strongly on the conduct of the plaintiff in abusing the process of the court by issuing a capias against the defendant.

Dr. DeWolf replied and stated that he had applied to the defendant through his Attorney to take the case in the Summary Court, which proposition had been declined, and addressed the jury at some length and with considerable ability.

The judge summed up briefly, the jury retired and after deliberating for half an hour, gave a verdict for defendant.

February 2d, 1864.

Malcolm Munro, Foreman, J. Bullon, J. Carveth, G. Balls, W. Lush, John Lee, Trickey, and Alfred Jeffray.

Muir v. Dougall & Son—Mr. McCreight, instructed by Messrs. Pearkes & Green, for plaintiff. Defendants appeared in person.

Mr. McCreight opened the case and briefly stated the facts.

Mr. Muir was called and proved that he had ordered some machinery for his mill; that it had been made and he was ready to pay for it, but the defendants refused to let him have it unless he paid something beyond the price of the machinery, being the alleged value of some goods supplied previously and which Mr. Muir disputed having received. He had tendered the amount of the bill for the machinery ordered and had actually paid $130 for a portion of it which he had not taken away. The machinery was ordered in March, 1862. The plaintiff had made arrangements to place the new machinery in the mill in April, and in consequence of the delay and refusal to deliver the machinery, the mill had been out of work from April to the end of August, when the plaintiff obtained his machinery from Messrs. Spratt & Kriemler. In consequence of the mill not being at work the plaintiff had lost the opportunity of freighting a ship, by which he estimates he sustained a loss of $2500.

Mr. Wright was called and proved that Capt. Gay of the bark Bessie, had ordered a cargo of lumber from the plaintiff, and owing to the plaintiff's mill being closed he had lost the contract.

Samuel George proved the tender of the amount of the bill.

Dougal, sen., addressed the jury. The substance of his remarks were embodied in the statement that "it was all a parcel of humbug." He then gave his evidence, which was to the effect that there had been some previous dealings between Muir and their firm, and that a balance was due on an old account; and that the plaintiff refused to pay cash, but wanted to set off some lumber instead of money.

Dougall, jr., gave evidence to the same effect.

His Lordship in summing up, told the jury that unless they were satisfied that the plaintiff had tendered the full amount due to the defendants, their verdict must be for the defendants; and this notwithstanding the defendants had in their possession a quantity of iron belonging to the plaintiff.

The learned counsel suggested that this was a somewhat novel interpretation of the law of lien, and that an offer of payment was all that the law required.

The jury retired to consider their verdict, and upon their return into court after an hour's absence, having agreed upon their verdict, the Judge informed the jury that he had discovered an error in the pleadings. The defendants had pleaded a set off which they had no right to do, where the action was for unliquidated damages, and he thought it would be his duty to strike out the plea, and allow the defendants to bring a cross-action.

The learned counsel said that he waived any objection, and wished the matter to be settled at once.

The Chief Justice said that under the circumstances, before accepting the verdict of the jury he must give leave to the defendants to move for a new trial if the verdict were against them.

Mr. McCreight protested against such a course being adopted by the Bench unasked by the plaintiff, who for the sake of getting the matter settled, waived the objection.

The Court at last consented to receive the verdict which was for the defendant.

BANKRUPTCY COURT.

[BEFORE HIS HON. DAVID CAMERON, ESQ.]

3d Feb. 1864.

Re Theodore Robert Christian—surviving partner in the late firm of Christian & Zadesky, bankrupts. This was the day appointed for the bankrupt to surrender, and for choice of assignees. A number of creditors proved their debts, and the following gentlemen were appointed trade assignees, Messrs. Thos. Harris, David Lenevue and W. P. Sayward.

Re Francis.—An application was made by the Attorney General, instructed by Messrs. Pearkes & Green, and by Mr. Bishop on behalf of the principal creditors for the appointment of new trade assignees, on the ground that the present assignees neglected to make any attempts to recover property alleged to be in the hands of the bankrupt. Mr. McCreight instructed by Mr. Dennes, appeared to oppose the motion, but it did not appear very clear whether he appeared for the bankrupt or for the assignees. His Honor gave time for filing counter affidavits, and fixed Wednesday next to dispose of the matter.

Re Farrell.—This bankrupt was brought up to complete his first examination. Mr. Reinhart, who is one of the creditors, who has proved his debt, was examined by Mr. Wood, with the view of showing that there was no sort of complicity between himself and the bankrupt. Mr. Reinhart stated that he was a creditor for about $20,000; in Dec. 1262, Farrell had made an assignment of his property to Reinhart, to whom at that time he was indebted about $34,000. Mr. Reinhart produced a statement of his own accounts with the bankrupt, witness had never been in partnership with the bankrupt, nor had Farrell ever had any sort of share in his business.

On being cross-examined by Mr. Cary in behalf of the bankrupt, it was stated that Farrell had to the best of his knowledge and belief delivered up all his property, he believed he had nothing left in his possession. None of the creditors put any questions to the witness; and no opposition was offered to the bankrupt passing his first examination. Mr. Cary applied for the bankrupt's discharge from custody, on the ground that there was no opposition and that the bankrupt had done all that he could for his creditors. His Honor refused to discharge him from custody, and postponed his second examination for one month.

SALE OF A CLAIM.—One quarter interest in the new Richfield Company, in Cariboo, was sold to Mr. Robert Jackson, of this city, yesterday, for $1000 cash.

LOCAL INTELLIGENCE.

TUESDAY, Feb. 2.

CUTTING AND WOUNDING.—A Tsimpsean Indian named William was brought before Mr. Pemberton yesterday, charged with stabbing and wounding another Indian named Jim, on Humboldt street. Two witnesses were called, who proved the circumstances under which the assault was committed, the parties having as usual quarreled over their cups. Mr. Pemberton said the Assizes were a long way off, and there might be some difficulty in getting the witnesses together. It was not a case in which he ought properly to adjudicate, but in order that the ends of justice might not be defeated he would inflict the highest punishment he could, and sentenced the prisoner to pay $25 or suffer three months imprisonment.

A "MILL" ON BEACON HILL.—Our readers must not imagine from the above caption that the idea of erecting wind-mills on the coast to blow flour in the eyes of assailants, as lately suggested by an advocate of coast defences, is about to be carried into effect. The mill in question was a genuine stand up fight (without gloves) between two proficients in the "noble science," residing in this city, and lasted we understand for an hour and a half, when one of the combatants having become worsted, the sponge was thrown up. The fight we learn took place early in the morning of the election day, and was intended to settle some differences which had occurred between the parties.

ROYAL CARTES DE VISITE.—His Majesty King Freezy I., and his Royal spouse the Queen of the Songishes, visited the city yesterday, and honored Mr. Gentile, Photographic artist of Fort street, by sitting for their portraits. Their Majesties appeared to be highly delighted with their counterparts, although in neither case could the words of the poet be applied with justice, "Love and beauty still that visage grace." Before taking his departure the wily but uxorious old King requested the artist to *potlatch* his better half *four bits*, which was immediately done, and the *chickamen* having been safely esconced in the folds of the Royal robes (three point blankets) their majesties stalked off with a dignity becoming their exalted station.

CHAMBER OF COMMERCE.—The annual meeting of the Chamber for the election of President and officers for the ensuing year took place yesterday in Smith's brick building, when the following officers were elected: C. W. Wallace, Jr., President; Jules David, Vice President; J. G. Shepherd, Treasurer; A. F. Main, Secretary. Arbitration Committee—D. A. Edgar, Jr., J. M. Work, David Lenevue, Thos. Lett Staheschmidt, J. P. Couch, G. Sutro.

MATCH FOR $250.—A number of people congregated yesterday on Beacon Hill to witness the match between Keenan's horse Sir James Douglas and Fitzpatrick's Oregon mare for $250 a side, distance one mile. The race was admirably contested, horse and mare keeping so close together that it was decided to be a dead heat, and it was agreed that the same race should be run over again on Thursday. A match was also run between Munro's and Clark's horses, resulting in favor of the former.

WAGES SUITS.—Mr. Jacobi, restaurant keeper on Yates street, was summoned yesterday in the Police Court by two Indians named Joe (a Stekin) and Jim (a Tsimpsean) or $5 75 and $9 50 wages respectively, alleged by them to be due. After hearing the evidence, Mr. Pemberton ordered Joe to foomplete three days service, as agreed with the defendant, or to forfeit his wages, and Jim's complaint was dismissed, he having got drunk and left his employer.

THE RECENT MURDEROUS ASSAULT ON AN INDIAN.—Kockyah, *alias* Charley, the Hydah Indian boy, charged with assaulting Charley *alias* Nantla with intent to kill, was again brought up on remand yesterday in the Police Court, and remanded for one month, in consequence of the precarious condition of the injured man. A chargo of stealing clothes was also entered against Kockyah, and he was sentenced to three months imprisonment with hard labor.

JENNY LIND CO.—Great expectations are entertained of the result of the analysis of rock from this company, which is now being made.

WEDNESDAY, Feb. 3.

DROWNED IN A WELL.—An inquest was held at Esquimalt yesterday at 2 o'clock, by the coroner, upon the body of John Longstaff Brafield, a little boy of five years of age, who was found drowned in a well six or seven feet deep. It appeared that the poor child left school about 4 o'clock on Monday afternoon and was not again seen alive. Search was made in every direction by the parents and friends, and the body was eventually (about eleven o'clock) discovered by a man named Charles Lenton, in a well near by. The doctor of H. M. S. Cameleon was sent for, but pronounced that life had been extinct for some time. After hearing the evidence of Lenton and the doctor, the jury returned a verdict of "accidental death," but recorded a complaint against the dangerous practice prevalent in the village of leaving wells uncovered. We hope this melancholy accident coupled with the verdict of the jury, will serve as a sufficient warning to parents and others.

RECEIVING STOLEN GOODS.—Jim, a Hydah Indian, was charged yesterday before Mr. Pemberton with receiving one shawl of the value of $4, the property of Charles Simon, knowing the same to be stolen. The offence was proved to the satisfaction of the Bench, and the prisoner was sentenced to three months imprisonment with hard labor.

RETURN OF THE OTTER.—The steamer Otter returned yesterday from Sangster Island and Nanaimo, having visited the spot where the Sangster Island Copper Mining Company are at work on Sunday last. The company's men have not made much progress in opening up the vein, but further exploration has developed the undoubted wealth of the lead. Specimens which were brought down by the Otter will undoubtedly cause a considerable rise in the value of the shares, as they are pronounced by practical men who were on board for the purpose of inspecting the mine, to contain over 20 per cent. of copper exclusive of gold or silver. A meeting of shareholders will be convened at once when a report will no doubt be presented.

WHISKY SELLING.—Emanuel Bastow pleaded guilty yesterday in the Police Court to supplying spirits to Indians, and was ordered to pay a fine of $50, or to suffer four months imprisonment.

THURSDAY, Feb. 4.

NONE SO DEAF AS THOSE WHO WON'T HEAR.—An Indian named Charley occasioned some amusement yesterday in the Police Court by feigning to be deaf and dumb. The prisoner was told the nature of the charge in Chinook, but only put on a vacant stare. The magistrate made a second attempt to explain to Charley that he was charged with being drunk and obstructing the sidewalk. Charley however, still maintained the same imperturbable rigidity of countenance, and after the Court had indulged in a good laugh, he pointed to his ears without moving his lips, to signify that he was deaf. Sergeant Hill thereupon shouted in his ear that he was required to *potlatch ikt dollar pe ikt quarter*, and master Charley immediately recovered his faculties sufficiently to communicate with his *tillicums* to provide the required fine.

STRUCK RICH PAY.—We learn from one of the passengers who arrived last evening by the Enterprise, that the Foster, Campbell Company of Williams Creek after a chequered experience of good and bad fortune, had at last struck the lead, and were taking out big pay.

☞ The Joe Lane entered the harbor last evening.

THE POLICE ENQUIRY.

EDITOR BRITISH COLONIST: SIR,—The conduct of the police is always a very important consideration in any community if they acquit themselves well when emergency arises, they should be supported and upheld in their conduct, for the police is a very valuable institution; but if, on the other hand, there should be misconduct or misconception of duty, interfering with the liberties and feelings of individuals, it ought to be distinctly censured and intimation that wholesome punishment would follow the repetition of such objectionable behavior. It appears to me, taking the report in your paper as correct, relating to this police enquiry, that the main cause of these objectionable proceedings arose from the want of proper courtesy and forbearance on the part of the police. The argument that Mr. Welch's conduct was objectionable, and that had he been as prudent as Captain Reid, there would have been no disturbance, passes for little—it is because communities always consist of individuals who will on such occasions be impulsive and troublesome, that police assistance is required, and it is then that the value of the police is demonstrated by the judicious or otherwise, exercise of duty. It does not appear from the report of the proceedings, that the police adopted any conciliatory measures towards Mr. Welch; they did not condescend to tell him they had orders from the Commissioner of Police or the Sheriff; there was no courtesy or forbearance exhibited to an offending man, enough for them, they had received their orders, and they carry them despotically out, without any consideration of how very sensitive all men are to the touch of a policeman; much more the being seized and pushed about by him. How different is the conduct of London policemen on all such occasions! they take the trouble to explain their instructions, and use persuasion; they do not want to come into collision with individuals, seize them rudely, or give them into custody; they do all they can to prevent it. But on this occasion, as I have frequently noticed in San Francisco, there seems a pugnacious and ready disposition to violence and arrest. I can easily imagine it might not perhaps suit the dignity of our police to say that he acts in accordance with instructions; that he is not his own master; and that he has a disagreeable duty to perform; *he is too anxious to exhibit his authority to do any such thing; armed with power* he likes to *show himself* off as a great man. So long as such feelings influence policemen, we shall always have the elements of discord amongst us, and it appears to me on the occasion of this *fracas*, they were the kind of feelings influencing our police. Then comes the question—was there anything in Mr. Pemberton's observations calculated to check this objectionable police conduct?—does he not rather try to excuse them by showing that Mr. Welch and others were in fault, and that it is expedient to pass lightly by irregularity on the part of the police, and to submit to being seized by the collar, and pushed about as if we were so many sheep or cattle, because it is so difficult to get good policemen. I write this in the hope that these observations may supply the omissions on the part of Mr. Pemberton, and that for the future there may be more forbearance, patience and care on the part of our police, in the discharge of duty.

Your obdt. servant,

A NEW ARRIVAL.

[We fully concur in the remarks of our correspondent as to the courtesy and forbearance which should be exercised by the police force before attempting to interfere with the liberties or feelings of individuals—such being in no way incompatible with the proper and faithful discharge of their duties. So far, however, as the stricture upon Mr. Pemberton's conduct is concerned, we would remark that Mr. Pemberton did not in any way attempt to justify the officer who arrested Mr. Welch; on the contrary, he severely censured him for his improper conduct, and imposed a fine to mark his displeasure. The question of the young man's discharge rested with Mr. Welch, who from creditable motives finally consented to accept an apology.—ED. COL.]

CROWN LANDS COMMITTEE.

MONDAY, Feb. 1, '64.

Committee met this a. m. at 11 o'clock. Present: The Chairman, and Messrs. DeCosmos and Duncan.

George Greenwood examined—Had purchased land on this Island; the first I bought was a corner lot on Government and Yates street. I have paid the 1st instalment upon 80 acres up the arm; I have the instalment papers; I was put in possession of the land. I bought this 80 acres in '56 or '57; it adjoins the Puget Sound Co.'s land. I put my house on this land. Shortly after this Mr. Pemberton met me and said "George will you do me a favor, I am in some trouble with the Puget Sound Co. as I am short of land; will you give me 50 acres out of your 80 acres, for the Company." I told him I could not till I consulted my wife, after doing so I would give it to him. Mr. Pearse came and surveyed it; he could not get the 50 acres without removing my house; he only got 47 acres; when he came up and ran the line it went close to the corner of my house. Mr. Pemberton applied the 1st instalment I paid to the 33 acres left me after his taking the 47 acres from me, so that by this I paid twice on the same land. I told Mr. Pemberton he was in my debt by this transaction, and he replied "Yes, George, I am." I then told him I wanted to buy another section; he asked me where I would have it; I told him on Deadman's River. After some time he sent a letter to my house, telling me if I did not come down that day and pay for the land I had applied for he could not hold it, as he had so many applications for it. I came down same day and paid him $120 on 100 acres. After I paid him he told me to go to Mr. Homfray, and he would survey it off for me, which Mr. Homfray did. A few weeks after I sent a petition to the Governor for an allowance of rock and swamp. The Governor told me he would see Mr. Pemberton about it and try and do something for me. The next thing I knew of was Mr. Pemberton selling this land I had paid the first instalment on to another man. He (Mr. P.) being spoken to by the Governor, then surveyed off 200 acres for me in place of this back in the mountains in Highland District, 100 acres being allowed for rock; I met Mr. Pearse, who told me to bring in my instalment papers for the 100 acres on Deadman River; I did so and gave them to Mr. Pearse, who altered the numbers of the section to the numbers of the one surveyed for me in the mountains. When I found out what he had done and remonstrated with him he ordered me to walk out of the office. He told me Mr. Pemberton was in England and he had nothing to do with it. That was all the redress I ever got.

Mr. Pearse re-examined:—Witness said that Mr. Homfray had made a misstatement in regard to Mr. Clewston's lines. There is a clerical error in our books, to which Mr. Homfray alluded to. It is not an engineering error; the difference is not 30 or 40 degrees, but about 10 minutes. I believe that there is no actual error either on the ground or on the map. We do not pretend to complete exactness in our old surveys; they were frequently done by Indians under my directions, and only cost from one shilling to one shilling and six pence a mile, and could not be so exact as if they cost a pound.

Mr. Homfray through the Chairman, said that the difference as shown by the papers given him by Mr. Pearse was 44½ degrees.

Mr. Pearse said it could only be a clerical error. In regard to the statement about the Philharmonic Society, which Mr. Homfray had contradicted. Mr. Pearse said he was prepared to prove the fact he had stated. Mr. Tiedeman would if asked, come forward and state that he heard Mr. Homfray use the words he (Mr. P.) had attributed to him. Witness might have been mistaken about the time when the statement was made, but the fact was undoubted.

Mr. Homfray re-examined:—With regard to the lines between Mr. Work's and Mr. Clewston's property, witness insisted that there was a mistake in the papers given him by Mr. Pearse, of 44 degrees. Mr. Pearse told witness not to go by the lines on the ground, but by the papers he gave him. These papers would give 100 acres of Mr. Work's land to Mr. Wood. He (Mr. H.) had made no mistake.

Committee adjourned till to-morrow (Tuesday.)

Oregon and Washington Territory Items.

THEATRICAL ENGAGEMENTS.—We understand that Mr. George Waldron has effected an engagement with Mrs. Julia Dean Hayne, and other distinguished actresses, for the Portland stage.—*Daily Times.*

The Willamette Theatre was opened on the 21st ult., by Yankee Sanders, lessee and manager.

We clip the following list of prices from the *Boise News* of Dec. 19:—

Oregon flour, 35@36c., Salt Lake, 33@34; butter per lb., $1 25; potatoes, 25@30c. green apples, 50c; dried apples, 50@55c; bacon, 60@70c; syrup, per gall., $5@6; tea, $1 50@2; onions, 35@40c; beans, 40@45; hams, 65c; soap, 40@50c; lard, 70@80c; salt, 40c; sugar, 50@60c; coffee, 75; candles, $1; tobacco, $1 50 to $2 25.

The Washington *Standard* gives the new schedule for regulating the transportation of the mails between Portland and Olympia, as follows:—

Leave Portland on Mondays, Wednesdays and Fridays at 6 o'clock a. m., and arrive at Monticello at 1 p. m. same days. Leave Monticello on Mondays, Wednesdays and Fridays at 7 o'clock a. m., and arrive at Olympia at 7 p. m. next day. Leave Olympia on Mondays, Wednesdays and Fridays at 7 a. m., and arrive at Monticello on Tuesdays, Thursdays and Saturdays at 7 a. m., and arrive at Portland at 2 p. m., same day.

It will be observed that this schedule compels the mail both ways to remain at Monticello 36 hours, for it arrives there the same days *after* it has left for Olympia and Portland.