

JUDGMENT RENDERED

In Case of Norwood Versus Marshal

Trial Consumed Several Days and Decision is of Unusual Interest.

Judgment was today handed down by Mr. Justice Dugas in the case of Norwood et al vs. Marshall et al, an action quite complicated and one which consumed several days at its trial. The decision is quite lengthy and reviews to considerable extent the causes which preceded and led up to the action. The gist of his lordship's opinion is as follows:

"During the year 1904 the plaintiffs made advances to the defendants Faulkner and Kronert to the amount of \$18,682, whereby they became interested in certain claims mentioned in the statement of claim and also in an agreement between the defendant Faulkner and the plaintiffs, dated 26th December, 1900. During the different transactions which took place Kronert was disinterested and the plaintiffs with Faulkner remained alone proprietors. Finding that operating the mines together was not satisfactory, as Faulkner was demanding more advances in order to continue the working of the claims, the plaintiffs determined not to advance any more moneys. There was an informal agreement that if the interests of the plaintiffs could be sold and they reimbursed for whatever they had put into the transaction, they would be satisfied. Faulkner represented, in the month of September, that he had found some purchasers, which evidently were the defendants, Marshall and Pauley, whereupon the plaintiffs passed the agreement already referred to.

"The defendants, Pauley and Marshall, have pleaded separately, and in their statements of defence, declare that in September, 1900, Faulkner, holding himself as representing the plaintiffs Clark and one H. H. Norwood, offered to sell to them their interests in the claims in question, as well as the machinery, plant and tools in connection therewith by which, amongst other things, they were to advance upward of \$8,000 to pay off prior encumbrances upon the said property, pay all the share of the plaintiffs' indebtedness in the property, and they admit that they agreed afterwards with Faulkner, who represented the plaintiffs, that they should purchase plaintiffs' share in the claims in question and in the machinery, tools and implements for \$18,682 in gold dust at \$16 per ounce payable on or before the 15th day of July, 1901. It is alleged that when, on the 26th day of September, 1900, the agreement to that effect was reduced to writing, it was not accurately signed by the defendant Faulkner, as purchaser, who thereafter transferred the same to these defendants, and by the plaintiffs that it contained inaccurate recitals and that the said written contract should be reformed so as to express the true intent thereof, though they do not say how. Upon said transfer of said agreement to these defendants by Faulkner they proceeded to mine and operate the claims in question in partnership. They further allege that the dumps, worked out contained \$50,000 and the expenses for wood were \$3,065.25, supplies \$12,362.42, and wages \$22,910.80, part of which has been paid and part of which is still due; said amounts paid were partly produced from said claims and partly supplied by the defendants, Marshall, Pauley and Faulkner, from their own personal funds. Faulkner in his defence recites the different transactions with the plaintiffs and with Pauley and Marshall, and alleges as to the other defendants that the sale was to be made to Pauley and Marshall, though Faulkner appears in his own name therein, and repeats in part the allegations contained in Pauley and Marshall's statement of defence. He alleges also that before the signing of the agreement it had been orally understood that the plaintiffs would be paid after the payment of the share of the laymen, prior encumbrances, the cost of labor, machinery, tools, implements, repairs and supplies used in connection with the working of said claims. During the operation and working of the claims the plaintiffs found that contrary to the special clause in the said agreement, the defendant applied some of the gold dust otherwise than to pay the first encumbrances, and afterwards pay them. The uncle of the plaintiff Nor-

wood, who admits that he had some interest in the deal, was, by a common understanding, sent on the claim to receive the gold dust and see that it would be applied as by the deed it was understood. He received a certain amount of the gold dust of which he disposed in a manner it seems agreeable to everyone, but afterwards the defendants refused to abide by this understanding any more and, as their pretention was that the deed did not convey the conditions agreed upon they would themselves dispose of the gold dust and it is admitted that their intention was to pay part of it on account of the wages due for the working of the claims. Upon application Captain H. H. Norwood was appointed receiver, and there is now in court 707 ounces of gold which the plaintiffs claim should be applied in part payment of their advances.

"The only question in the case is, whether the defendants are bound by the deed of agreement as signed between Faulkner and the plaintiffs. Whatever may have been spoken about orally, either with Faulkner or with Pauley and Marshall, I have no hesitation in declaring that the deed so definitely signed between the parties is the agreement to be accepted and to be acted upon. What happened afterward shows that Faulkner had in view a subsequent transaction between him and the defendants Pauley and Marshall, by which he could put into effect his undertaking to meet his liabilities toward the plaintiffs. The deed being clear in its terms and the defendants not having been able to prove either mistake, surprise or fraud, I could not permit to prove anything which would have contradicted the same and more particularly the special clause which relates to the payments to be made to plaintiffs. I believe that the undertaking by Pauley and Marshall to advance \$8,000 as they did, strengthens the terms of the agreement as the labor was to be paid in part, at all events, out of that sum. There is no doubt that there exists in this territory a great feeling in favor of the laboring man who is too often deprived of his hard earnings. This is due to the circumstances under which claims here are worked, by which the laborer is made to wait a longer time than in any other place before he is paid his wages. In a place where wages are paid generally weekly or monthly, a provision to protect the same in a deed would not generally be thought of. Here there is an inclination to believe that the rights of the laboring man should always be protected, and I for one regret that the condition under which he is generally should not permit him either to be less provident or to obtain better chances of not losing his earnings, yet, whatever sympathy one may have for him cannot change the law, nor give him any right of preference whenever, either by agreement or otherwise, that preference is not secured to him. I take the agreement as binding upon all the parties, and as operating an equitable assignment, in favor of the plaintiffs, by which, after the first encumbrances are paid out of the products of the mines in question, they become entitled to get whatever gold is produced until they are paid their \$18,682, which Faulkner so agreed to pay.

"It must be remembered that the plaintiffs had great interest in protecting themselves that way as the more placer claims are worked and the gold extracted therefrom, the less value they have, and, therefore, a deed of this kind must be taken or accepted as protecting deserving interests. Judgment will, therefore, be entered in favor of the plaintiffs, who will, after accounts are established as to what may be the balance due to the first encumbrances, be entitled to receive whatever gold is in court, the value thereof to be applied in deduction of their claim at the rate of \$16 an ounce, and also, to the other products of the said claims until paid. I think, by what I understood at the trial, that the parties can agree as to what is due the first encumbrancers. In that case it would not be necessary to establish the accounts by the ordinary reference, otherwise it will be ordered and judgment drafted to meet the case."

Five Suspects Taken

Chicago, Aug. 8.—Gus Hyatt, who escaped with fifteen other convicts from the Nashville penitentiary last Monday night, is now sought as the leader of the train robbers who held up the Burlington express at Savanah, Ill., twenty-four hours after the escape. At St. Paul, Minn., five men who are suspected of complicity in the robbery, are under arrest. They were taken in a body as they alighted from a Great Western train. They gave their names as Geo. McKinnon, H. D. Coleman, Henry Lee, F. D. Patchen and William Dunn. Steps have been taken to ascertain whether these men or any of them can be identified as escapes from the Tennessee penitentiary.

AMONG THE STRIKERS

Experience of Company of Soldiers

Which Rescued Family of a Miner—Wife Tells of Petty Acts of Violence.

Shenandoah, Pa., Aug. 8.—A platoon of the governor's troop of cavalry went to Turkey run hill today on an errand of mercy and rescued a small family from violence of the neighbors. Petty acts of violence have been reported from that territory nearly every day for a week. Today Gen. Gobin received a pathetic letter from the wife of a non-union workman who is employed in the Gilberton colliery of the Philadelphia & Reading Coal & Iron Co., in which she tells of the treatment accorded her by strikers in that vicinity. Among other things she said rocks had been thrown through the windows at night, one of them nearly striking her sleeping child; the house was damaged and while she was out doors one night a shot was fired at her. She also said crowds gathered around the house, hooted and jeered at her and the child, and hung crepe on the door. Her husband, she concluded, was compelled to stay in the mines in order to earn money to keep them from starving, and as he could not leave his work she asked the commanding officer of the troops to protect her. Turkey hill run has no police protection and Gen. Gobin decided to help the woman. He learned that she was not in the best of health, and it was decided that she had better be taken from the place to the Pottsville hospital. To carry this out the general ordered a platoon of cavalry to make a demonstration in that section, and while there to escort the woman and child to the railroad station. This was done.

The troops rode all over the territory and found that the population which is made up of many foreigners, was not in the best frame of mind. The soldiers were hooted and jeered and called uncomplimentary names. Only one stone was thrown at the horsemen, and this was done by someone in a crowd on a high ridge out of reach of the soldiers. The cavalrymen stopped their horses and the crowd scattered instantly.

The two Lithuanians, who were yesterday held responsible for the death of Joseph Boddall in the riots of last week, were today committed without bail to the county jail at Pottsville on the charge of murder. Another Lithuanian charged with rioting was released on \$2,000 bail. It is understood that a large number of other arrests will be made and more charges of murder will be brought.

The police officials are having much difficulty in ferreting out the participants in the riots. The foreigners are standing together and are not volunteering any information. It was feared that an attempt would be made to rescue the two Lithuanians held for murder and the other charged with rioting from the little lockup early this morning. In consequence a company of soldiers on guard duty close at hand are kept in readiness to march. Extra guards are on duty at the borough building, in which the men are confined.

Mills Close Down

Pittsburg, Aug. 8.—One of the twenty-eight plants of the American Tinsplate Company, operating 274 mills, fifteen plants with a capacity of 179 mills, have been closed indefinitely. These suspensions have followed the refusal of the tinsplate workers to accept a reduction in wages in order that export business to the amount of 1,500,000 boxes might be obtained.

Gasoline Starts a Fire

Salt Lake, Utah, Aug. 8.—A special to the Telegram from Silver City, Utah, says that fire there this afternoon destroyed eight buildings in the heart of the town, involving a loss of about \$25,000. The insurance is less than half. The fire is supposed to have been caused by the explosion of a gasoline stove. The town is without fire protection, and but for a fortunate change in the wind would probably have been totally destroyed.

Clothing cleaned, pressed, repaired and made to fit.—R. I. GOLDBERG, at Hershberg's.

Felicia at Auditorium.

Edith Godfrey at Auditorium.

WE'RE GOING TO MOVE!

On or about August 20th we will move to our new store on First Avenue, 3 Doors North of Queen St.

FIRST AVENUE
Opposite White Pass Dock

HERSHBERG

The Reliable Clothier,
1st Ave.

CARNEGIE DONATIONS

To Provide Equipment as Well as Building

Mr. A. F. Nicol Thinks No Difficulties Will be Met in Making That Arrangement.

Mr. A. F. Nicol, who has conducted the negotiations dealing with the proposed institution of a Carnegie library in Dawson, was seen by a representative of this paper today.

"I am of the opinion," said Mr. Nicol, "that no difficulty will be experienced in securing Mr. Carnegie's consent to divide his donation of \$25,000 between a building and proper equipment for the same.

"I am heartily in accord with the view of the matter as taken by the Nugget and I think that no difficulty will be experienced in arranging with Mr. Carnegie on some such lines as have been suggested.

"I shall begin correspondence immediately, and anticipate that when the situation is explained in detail to Mr. Carnegie that he will consent to have the donation disposed of in the manner noted. I am quite agreed with the idea that an expensive building without books or other equipment would in no way serve the required purpose.

We can do your repairing on short notice. Geo. Brewitt, the tailor, Second avenue.

See Capt. Daniels—Auditorium.

Returns From Panama

Victoria, B.C., Aug. 8.—H. M. S. Amphion, which has been spending four months at Panama looking after British interests, arrived at Esquimaut this morning. The officers while at Panama visited the camp of the rebels at St. Davids bay, and they report that the men are well drilled and well armed. The Chileans, whose country was also visited by the cruiser, were feeling uneasy, fearing trouble with Argentine. While at one of the Chilean ports a stoker of the ship, named Payne, was murdered. He was enticed into a lane by a woman and killed by a man, who lay in waiting for him. He was given a naval funeral. Some of the exciting scenes of the revolution in Panama were witnessed by the crew of the cruiser.

No Lives Lost.

New York, Aug. 8.—An overturned lamp in the engine room of the ferryboat New Brunswick, plying between New Brunswick, N. J., and New York, set fire to the boat and so rapidly did the flames spread that the vessel had to be beached on the Meadows about three miles below New Brunswick and allowed to burn

to the water's edge. The boat carried a crew of twenty-three men, and there were sixteen passengers aboard. Capt. George F. Rogers of Brooklyn gave orders that the lifeboats should be lowered when it became apparent that the flames could not successfully be fought and the passengers were taken ashore so speedily that there was no excitement. The engineer of the boat, William Traver, of Bath, N. Y., was badly burned about the face and hands.

Two race horses were pushed overboard and swam ashore uninjured. The vessel was valued at \$60,000; partially insured.

A Suggestion to Carnegie

Cleanliness is next to godliness and possibly far ahead of "book-larnin'." Perhaps if Mr. Carnegie were informed that 77 per cent. of the inhabitants of large American cities have to do without bathtubs, he might be so shocked that he would at once write checks for a public swimming pool and bath in every town where the unwashed constitute the majority of the population. — Baltimore Sun.

Mons Godfroy at Auditorium.

How Is Your Nerve ?

We sell KOLA to build you up. Fine for the bright eyes and rosy cheeks. Take one drink of Kola and you will find it O. K. For sale by all dealers.

I. Rosenthal & Co.

...Wholesale Liquors...

In Their New Quarters

Mail Orders Receive Prompt Attention.

MCDONALD HOTEL BLDG.

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FOR WHITEHORSE!

STEAMER THISTLE

Saturday, Aug. 16, 8 p. m.

For Rates, Tickets, Etc., Apply

Merchants' Transportation Company

R. W. Calderhead, Manager. L. & C. Dock.

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Clear away the muck with the use of a little GIANT POWDER. We have a large stock on hand.

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