VICTORIA TIMES. FRIDAY, JANUARY 11, 1907.

the conditions by reason of the hter-ference. It certainly could not have been the intention of the legislature to leave it open to any person to come in and say to the company that it must take its water from Goldstream from above a certain point to supply the ter form below that point. There is also the circumstance to be taken into account, referred to by the the water is to be taken, and it seems clear that the option as to these mat-ters is left entirely to the company; the agplicants to divert and appropriate water for sundry purposes, is left entirely to the company; the applicants to divert and appropriate water for sundry purposes, is left entirely to the company; the applicants to divert and powering the applicants to divert and provide that the rigits granted are to be subject to future legislation. But even if these conditions had not been inserted, I fink the legislation. But even if these conditions had not been inserted, I fink the legislation. But even if these conditions had not be an inserted, I fink the legislation for the the company were and are use to fake the regulations. But even if these conditions had not be an inserted, I fink the legislation for the the company were and are use to fake the regulations. But even if these conditions had not be anstreed, I fink the legislation for the the company were and are to the taken into a tranted are to state to future legislation. But even if these conditions had not be anstreed, I fink the legislation for the taken into a company were and are to the taken into a tranted are to state of the streem. But even if these conditions had not be taken into a termonany were and are to the taken the legislation. But even if these conditions had not be taken into a termonany were and are to the taken the legislation. But even if these conditions had not be taken the taken the company were and are to the taken the taken the the state stream. But even if these conditions had not be taken the taken the company were and are toread to ta taken the taken the c

been inserted, I think the legislature must be taken to have known that to establish waterworks plants requires large sums of money, and that unless

In the number of the company of the system of models and the target of the system of models and the system of models a

It was strenuously argued for the city that the company were and are using the waters of Goldstream for a nurpose not authoried by its charter, purpose not authoried by its charter, namely, the supplying of water which is used by the B. C. Electric Railway

waters flowing in the natural bed of the Goldstream river as to prevent any other person from acquiring that water under the provisions of the Water Clauses Act of 1897? That question must be answered by considering the objects. which were contemplated by the act of 1892, and the scope of the Water Clauses Consolidation Act. 1897.

Vater Clauses Consolidation Act, 1897. plication in 1990. The preamble to the act, after referring o the Water Privileges Act of 1892, Company, the plaintiffs, were incorpor-

The preamble to the act, after referring to the Water Privileges Act of 1892, goes on to say: "And whereas it is necessary and ex-pedient at the present session, to pro-vide for the due conservation of all water and water power so vested in the crown as aforesaid, and to provide means whereby such water and water power may be made available to the fullest possible extent in aid of the in-goustrial development, and of the agri-

astrial development, and of the agri- purpose from Thetis lake and Dead- an injunction or even a declaration of man's river. By section 9 they acquired rights of lature has made ample provision for ultural and mineral resources of the man's river.

culties to cope with. On the one hand, if the company has only a right to use wests the "waters" in the company is at least surplusage, as by section 9 it was already given the right "to divert and papropriate," if, indeed, it would hot be an absurdity to "forever after and parted with to the consumers in pursuance of the undertaking. Nor, season is on. and parted with to the consumers in pursuance of the undertaking. Nor, apparently, does it do to say that what is "forever" vested is a theorem" does it do to say that what vested, is a theoretical Vancouver Island. reneral comprehensive term, including all streams, creeks and bodies of water stristing over the area acquired, three would then be the anomaly of a differ-ent construction being placed on the same day respecting a similar under taking, viz., the Nanaimo Waterworks Company. That company's charter em-inches, then later 80 inches, and on the stat certain point as it might consider at a certain point as it might consider at a certain point as it must be clear that his right is yet to be filled. much of the water from Nanaimo river at a certain point as it might consider initable, and "forever after vests" the staters appropriated in the company, out it is of course hardly conceivable that the legislature meant to make an absolute grant of a particular cross-inction of the water in the river. It Then again assuming that the righthe royal suite. absolute grant of a particular cross-section of the water in the stream? would also appear to be too fantastic a conception to consider that the legis-lature intended that there should be successive grants in proportion to the amount diverted as the undertaking developed from time to time. The different time to time. Not under section 18, as that with to be an absolute grant is also en-bet to be an absolute grant is also ensulty of holding that there was intended ad to be an absolute grant is also en-hanced in the case of Goldstream by or Theths lake and Deadman's river. Iake and Deadman's river. By the City of Victoria Act, 1892, also assented to 23rd April, 1892, the city water commissioner was authorized to Giver and appropriate the waters of Goldstream and to acquire compulsorily set water waters of all the work of the Esqui-legislature proposed passing such an assented to 23rd April, 1892, the city water commissioner was authorized to Goldstream and to acquire compulsorily melt Water Works of the Esqui-by the City of Victoria Act, 1892, also assented to 23rd April, 1892, the city water commissioner was authorized to Goldstream and to acquire compulsorily melt Water Works of the Esqui-by the tity to avail them-set waters of the output that already or hereafter to be passed. When this act or some other act already or hereafter to be passed. When this act was before the legis-to the Vater Water of the city that already or hereafter to be passed. When this act or some other act already or hereafter to be passed. When this act was before the legis-to the volte of the Vater Clauses Act for a record of water in Goldstream. The commissioner, in con-part of the city to avail them-selves of all the work of the Esqui-legislature proposed passing such an water and appropriate the act of all the plaintific the city that the waters of the waters of already or hereafter to be passed. The order and the city in all appropriate the water and appropriate the waters of the water and appropriate the act of all the circumstances intend-ed by the legislature, including any instit of the plaintific there. The output and the circumstances intend-ed by the legislature, including any instit of the plaintific there. The output and the circumstances intend-ed by the legislature, including any instit of the plaintific there. The output and the circumstances intend-ed by the legislature, including any the the the the the the the the the there the the the the the there there the the the there the there th reason of the fact that there is no cor-responding vesting clause in the am-by the caption to part II. of the actending act of 1892. whole, I think the best solu-to be given under part III. of the act-Fort was received. tion of the problem is to be got not by not under the latter part, as the proor otherwise, the rights and privileges malt Water Works Company, but that of any person having any interest cannot affect the plain words of this tiffs led them to secure the subsequent in making this application are, in my This Risecting any portion of the legisla-sly, but by surveying the case of "unrecorded" water. visions of that part apply only to the "waters"—which of course it could do if it chose—but, what for most pur-poses amounts to the same thing, to in over the disposition of such an imposes amounts to the same thing, to sonfer an exclusive license to use them form time to time and at all times of regulations to apply to the purposes of the undertaking, which the purposes of the undertaking, which the purposes of the undertaking, which the purposes of the undertaking and to diver the disposition of such as many appropriation son of the operations to dollar party appropriation and to diver the insposition of such an in-infinite information of the operations to dollar party appropriation of the operations to dollar party and to diver the insposition of such an in-infinite information of the operations to dollar party appropriation of the operation of the opera the purposes of the undertaking, which water was unsatisfactory, and water power in the book effect in relation to any particular water was replaced by the more extensive act of 1897. Then there is the circumstance that is the circumstance that in those waters are recognized, and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and unappropriate so much of the said waters as they should be called and the s water from the time that all out-standing interests in respect of such more extensive act of 1897. Then there is the circumstance that remaining unrecorded and unappropriwater were acquired by the company; und I think a strong argument in favor of this view is the presence of the com-inter alla, to the waters in ind I think a strong argument in favor of this view is the presence of the con-fittons imposed in favor of tex cits in and amendment of its powers in the company's act of 1892. It is obvious that so long as those sould be permitted to interfere with the waters under the fact, to the company, in geography in of having its undertaking destroy-ind of having its undertaking destroy-ind because of its inability to carry out ind secure of the city did not in and amendment of its powers in the company sate of 1892. It is obvious that so long as those sould be permitted to interfere with the sould be permitted to interfere with the sould be permitted to put the company in geography in dof having its undertaking destroy-ind because of its inability to carry out ind secure of the city did not in the company, and ind amendment of its powers in the company sate of 1892 (concessions in its interest, and a declaration of its rights in do fhaving its undertaking destroy-ind because of its inability to carry out ind secure of the city did not in the company, sate of 1892 (concessions in tis interest, and a declaration of its rights in do fhaving its undertaking destroy-ind because of its inability to carry out in declared to be vested in the city did not in point. The company's Act of 1882 in the company's Act of 1882 in the company, sate of the company, and in the city did not in point. The Company's Act of 1882 in poin De la presidente de la companya de The American a server a set of the second

MOVEMENTS OF THE LEADERS **ITINERARY OF MESSRS** MACDONALD AND M'INNES Liberal Candidate in Skeena Nomin-

ated --- Manson Will Be Defeat-

d un-the claim, must be dismissed. The counter Claim. Tan-The learned trial judge dismissed in the city might take in respect of its sives of proceedings that the city might take in respect of its sives of the companys Act of bigs response of proceedings that the city might take in respect of tis sives of the city may be to the response of the sequinal Water Works Cc. by the city in the prosecution of these waste waters, the dismissed in the city might take in respect of tiss and the found to the sequinal twater works Cc. by the city in the prosecution of these waste waters, the dismissed in the city might take in respect of tiss and the found to the sequinal twater works Cc. by the city as under that water works Cc. by the city as under to cits each of the sequinal twater works Cc. by the city as under the city might take in respect of this reason to open up the judgment to the city as under to cits each of the sequinal twater works Cc. by the city as the matter stands, the dismissed in the transfer the city might take in respect of take companys and the found to companys and the company sector the series and not company sector the sequinal twater works Cc. by the city as the company to the sequinal twater works Cc. by the city as the contervalue the take the sequinal twater works Cc. by the city as the contervalue the company to the sequinal twater works Cc. by the city as the contervalue the take the sequinal twater works Cc. by the city as the contervalue the take the sequinal twater works Cc. by the city as the contervalue that water to cits as the matter stands, the set city as the contervalue that water works the the sequinal twater works Cc. by the city as the contervalue the company to the sequinal twater works Cc. by the city as the contervalue the company the city as the contervalue the city might take the sequinal twater works Cc. by the city as the contervalue the company the city as the contervalue the city might take the city might take the tapproaching the city as the contervalue the city migh

Skeena shows Dr. Kergin's chances in a more favorable light. C. W. D. Clif-

and regulating the enjoyment and use thereof, known as the Water Clauses

Consolidation Act. 1897. Section

attempts to define "unrecorded water.' Included in that definition is water

pulsory powers and no monopoly, than Kergin, has scarcely a chance for election. He was hurriedly su back yesterday by the Skeena Conservative organization Advices from Alberni state that as

the campaign canvassing progresses in Alberni district the evidences of a Lib-eral landslide become more and more

pened is the fact that every man whose name was mentioned for nomination along with Mr. Brewster is now out ir

and important area of high pressure moving down cover Columbia and nearly the enti part of the continent and position during the remaind week. These conditions caus. week. These conditions caused fall in temperature, especially in dle west provinces: heavy snot the Mainland and the higher lan correr Island. Skating has pre-several days at Victoria and Westminster the ice on the Fra is reported to have interfered running of the steamers, and, snow on the country roads has r produce being brought to mar the northwest coast, too, the sn reported as being several feet on the ground and causing almost tire cessation of logging operati-At Victoria, there was regis hours and 24 minutes of bright to the highest temperature was 46. the highest temperature was 46 the lowest, 24.3 on 6th; total tion, 0.50 inch, including 1.90

WEEKLY WEATHER SYN

The chief characteristic of during the past week has be ed decrease in temperature a fall in the southern part of On the evening of the 2nd

of decided character deve

Mf decided character develop Washington coast and passed on the 3rd through the Pacific progress caused a fresh so gale on the Straits and outs and it was accompanied by h fall in this province and ar rainfall in Oregon and Washin ing at Portland and adjacen

rannah in Oregon and wasning ing, at Portland and adjacent Tapld rise in the Columbia river ing very closely if not quite to ger mark. The weather continued unse cold until the 5th, when the pro-

gan to increase in the north

Victoria Meteorologica January 2nd to

At Vancouver-Highest temp on 3rd; lowest, 12 on 7th; tota tion, including 6.20 inches of

New Westminster-Highe 3rd; lowest, 10 on 6th; total pre cluding several inches of

At Kamloops-Highest, 22 on st, 14 below zero on 6th; five

At Barkerville-Highest, 6 on st, 28 below zero on 2nd, snow, At Port Simpson-Highest, 3 7th and 8th; lowest, 10 on 5th;

At Atlin-Highest, 26 on 8th; 1 eelow zero on 2nd; snow, 2.20 inc At Dawson-Highest, 4 on 8th 28 below zero on 6th and 7th; nches.

LOCAL NEWS.

-The total clearings at the clearing house for the week January 8th were \$1,013,092.

—Steamer Venture will se northern British Columbia po Wednesday, January 9th.

--Dr. Lewis Hall has anno intention of contesting Ward I the approaching municipal e

-There will be a meeting board of school trustees at 4.30 morrow in Supt. Eaton's offic

-Richard Phillips, a pioneer aged 74 years, a hative of Co England, and for many years en as storehouse man at H. M. do Esquimalt, died Tuesday at U dence of his son.

-Far West lodge, K. of P. cided not to make their install officers on Friday next a publ

tion. Deputy Grand Chancell R. Smith will install the office: usual way. Grand Chancello s expected to pay this city his visit in the near future.

stream; the city contending that there is only a right to use it for the purposes of the company, and that such as goes to waste is recordable under the pro-visione of the water Clauses Act, 1897; while the company maintains that it has member of the sentence the ambig-teven then, I think the fallacy in the argument for the city lies in asuming to waste below the power house is wasto waste is recordable under the pro-visions of the Water Clauses Act, 1897; while the company maintains that it has an absolute grant of the water, and that therefore no one can interfere with it. Both contentions have diffi-culties to cope with. On the one hand, if the company has only a right to use -Complaints are being skaters of the practice which among the boys attending Ward school of throwing st e at Goodacre's lake, and ion has been made that some taken to prevent it while the -The quarterly general m the Victoria board of trade wil in the board of trade building day next at 3 o'clock. The various committees will be and an address will be delive the development of the west _____» -The vacancy in the sub-High staff, caused by the resignatio McGregor, who has received pointment in the Waseda Japan, was filled yesterday , of the Boys' Central sch The vacancy caused by his pr -------According to the Kobe Hera ral notable Japanese will isit Victoria next spring. Fushimi, who will leave on th eamer Devanha on February England, is expected to retur n via Canada, in which vill likely visit Victoria. Adm and General Kuroki will be inc -0----The attendances at the rec e public schools yesterday arger than usual. At the Bo tral a total of 518 pupils hemselves, while at the Girl he total was 459. At Vict e number enrolled was 211; treet school also had a very ndance for the size of the to less than 166 little tots be Rock Bay school, with the only other school from whi -- On Saturday evening Mrs. andora street, heard a noise in her residence, and, upon in discovered a tall man w uch hat lurking in the shad rglar, for such he eviden shed a pocket lamp at her hade his escape. Chief of Po was apprised of the inc lephone, and sent a couple of scene, but no trace of the was discovered. He had enter front door, but was surprise hall before he could take anyt -----the Friday evening next needing of the Oak Bay m ctors will be held in the ouse, Foul Bay road, when t council will present a eir work during the past ye lections for reeve, counc hool trustees will be held on inst., the poll being taken at the

This definition appears to be not alderogating from any grant or privilege acorded to the city under the provi-sions of the said act. Then by section addition to water held and used under is totad that the the the the reason to be act to be not al-together free from ambiguity, for in addition to water held and used under rights which could have been declared sions of the said act. Then by section 10 it is stated that the powers as to Goldstream are conferred only on the condition that the company will sup-ply, on terms which are specified, a maximum quantity of 5,000,000 gallons per diem to the city if so required. Much of the argument was devoted to the true meaning of section 10 of the principal act, i. e., as to what is the nature of the grant as regards the wa-

nature of the grant as regards the wa-ters, particularly as regards Gold-stream; the city contending that there

tention so the Corporation of

ALONE DISSENTED

fwo Judges Favored the City's Con-

TEXT OF WATER

CHIEF JUSTICE

CASE JUDGMENT

such parts of the land within a pre-scribed area as they might require for the purposes of their undertaking, and to divert and appropriate the waters of Thetis lake and Deadman's river and its tributaries as they should judge its tributaries as they should judge

I will asume, nowever, that the fran-chise does not amount to the exclusive suitable and proper, and to acquire any interests in the said lands or waters or any privileges that might be required only a right to divert and that there was only a right to divert and appropriate

only a right to divert and appropriate the water conferred. Even then I think the the divert and appropriate lands, privileges and waters which shall that the city's claim to record the solands, privileges and waters which shall be ascertained, set out or appropriated by the company for the purposes there-of as aforesaid, shall thereupon and for ever after be vested in the com-

provisions of the principal act as to appropriation and diversion (but vest-ing) were extended so as to embrace Goldstream river and its tributaries, acter of the application and the cirexcept that there is no vesting clause similar to that contained in said section 10. It is also provided that the power to divert and appropriate water from this river and its tributaries, is to be subject "to any grant of rights, priv- or under special grant by public or pri-

derogating from any grant or privilege

leges or powers, arising under the provisions of the Corporation of Victoria Waterworks Act, 1873"; and by unoccupied or not used for a beneficial section 9 that nothing in the act is to purpose." be construed as in any way limiting or

of course once vested cannot be divest-By the amending act of 1892, the ed without a new record or grant), and

Is Ambiguous.

question is wholly one of statutory con-struction, and there can be no object

the powers of expropriation conferred

after the facts have been ascertained by a long and expensive litigation, in

the city in the prosecution of those rights, and I do not think that we ought to leave any uncertainty on the subject. It being therefore proper for this reason to open up the judgment to that extend at least, it seems to me that it is competent to us to exercise our own discretion. The counter-claim asked, among other things, for a declaration as to the right of the city to divert and appro-priate under the above mentioned acts. It is to be observed that there are no iacts left in dispute to enable the court to gives such a declaration, and that the question is wholly one of statutory con-