

46TH. YEAR. NO. 19543

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FIAT MATTER
AGAIN ARGUEDStay of Proceedings Was
Asked by Plaintiffs
in the Suit.JUDGMENT
WAS RESERVEDCase Was Up Before Mr. Justice
Latchford at Toronto on
Monday.

Mr. Justice Latchford faced half-a-dozen lawyers at Toronto on Monday on an interim motion to continue the stay of proceedings in the matter of the Beardmore suit against the city of Toronto to prevent the carrying out of the contract with the hydro-electric power commission, until the Attorney-General's fiat to add the commission as a party defendant is obtained.

"That," said the judge, "would mean forever." The action of Smith vs. the city of London, being similar to that of Beardmore vs. Toronto, was combined with it in this motion. His lordship reserved his decision.

Corporation Counsel J. S. Fullerton, K.C., represented the city of Toronto, and A. H. P. Levey, K.C., and E. A. DuVernet, K.C., the city of London. The plaintiffs were respectively represented by E. F. B. Johnston, K.C., and J. M. McEvoy, LL.B.

Mr. Fullerton maintained that the motion should be dismissed as frivolous and vexatious.

Mr. Levey urged that no action to set aside a contract could now be maintained unless all the parties to the contract be made parties to the action; and that if sincere in their defence they ought to add the hydro-electric commission as a party.

Mr. McEvoy contended that to succeed in his action he must add the commission as a party, and leave so to do, abandon all allegation of fraud or misrepresentation, so as to get on without the fiat of the Attorney-General.

Mr. Johnston's Argument.

Mr. Johnston maintained that when the crown enters into a contract with a subject, it abandons its prerogative of immunity, and takes a position in an action as between subject and subject. He intimated his purpose to take the matter to the highest court in England. He claimed that the Government had no right to pass an act authorizing the emanation from the crown—if it were such-of a power to the commission as a private individual, and rendering immune such a commission; and that it had no right to give the commission power to do what the council of the city of Toronto had the right to do for itself, nor had it a right to engage in electrical business any more than in the boot and shoe business on behalf of a municipality. As to prerogative, Mr. Johnston argued that the only prerogatives held now by the crown were that of declaring war and that of pardon; no one had ever heard of a prerogative being created by statute of Parliament. The prerogative of the crown was delegated to the Governor-General, and the latter, in turn, to the city of Toronto or the Legislature of Ontario or the Attorney-General thereof. He claimed that the Government could not prevent the issue being tried, though they might regulate the manner of its being brought about.

Two Ways.

Mr. Johnston said that he could not compel the hydro-electric commission to be a party defendant. But there were two ways in which the crown could come in. The commission might come in of its own accord; or, if it did not his client would attack the action of the Attorney-General as ultra vires of the Legislature, thus compelling the Attorney-General to come in and defend his action; in this way the crown would come in if, as was contended, the commission was an emanation from the crown. He urged that the case ought not to be choked off in its infancy, but allowed to reach some measure of maturity and have the opportunity of being fully argued on both sides, even before the highest court in the realm.

Mr. McEvoy's Argument.

Mr. McEvoy said what he argued for was a declaratory judgment that the council of London had no authority to sign the contract which they did sign. That was what he wanted at the trial, and his motion at the present time was for Mr. Justice Latchford to say that the matter was so preposterous that the case should not go to trial at all, but should be struck off.

His lordship said he supposed the principal objection to not adding a third party was the absence of finality. If, however, that third party, of his own accord, declined to come in, how should he complain?

Mr. DuVernet cited authorities to show that there was no difference between a contract and a tort with regard to proceeding without a fiat. He claimed that if the act is ultra vires the plaintiffs could make the commission a party and so proceed. Otherwise it would be unreasonable to deal with the matters affecting parties who were not present.

GRAND TRUNK WILL ABANDON
TELEGRAPH FOR OPERATINGTelephone Is To Be Installed as Quickly as Possible—Number of
Operators Will Not, However, Be Reduced—Phone Is
Much Quicker Than the Telegraph.

Superintendent Nixon, of the Grand Trunk, announced to The Advertiser this afternoon that as soon as is practicable, the Grand Trunk will do away with the present system of operating their trains by telegraph and will install what is known as the telephone system.

Mr. Nixon states that this will not in any way reduce the number of operators required, but will give the railway a much quicker and fully as efficient a system of operating.

The change will probably be made within the next month or two.

A Year's Trial.

"A year's trial of the telephone as a means of dispatching trains," said Mr. Nixon, "has proved its practicability; railway telegraph men recognize that the day of the ticker is past as far as they are concerned, and they are preparing to hasten the change all over the continent of America."

In December, 1907, the first installation of the telephone was made on the New York Central road, over a small stretch between New York and Fond du Lac, today, the new system extends over 4,900 miles; and by the end of another year, it will cover fifteen thousand miles of track in the United States and Canada.

The Great Advantage.

The great advantage of the telephone over the telegraph in railway work lies in the speed of transmission which allows for the transaction of a much greater volume of business. The cost of installation is great, about seven times as much as the installation of a telegraphic connection, from the fact that two copper wires must be used instead of one iron wire; the cost of maintenance is greater and the cost of operation is about the same; but the increased facility of operation,

especially over the congested portions of the railway are held to justify the change. While the telephone is supplanting the telegraph, the same operators are used, so that there is no change in this respect. The telephone has also the advantage that the operator may speak to any trainman direct and not necessarily through a second operator, a third party. It is claimed to be just as safe, if not safer than the telegraph.

The First to Try It.

The New York Central Railway was the first company to seek an improvement on dispatching by telegraph and during the year 1907 made a series of experiments with an independent telephone circuit before finally making a permanent installation. The tests were closely watched by the other railway companies of the continent, and immediately after the system was adopted in an experimental way.

At present it is in operation over 4,900 miles in the United States and Canada; over 6,700 other miles of road the construction of telephone equipment is authorized and in large part under way; while for 2,300 miles more it is under consideration for the coming year.

On the C. P. R.

When asked regarding the use of the telephone system, the C. P. R. officials informed The Advertiser that while the system has been adopted on their lines east of Montreal, it is not talked of for the western division yet.

"The first installation of the telephone system on our line," said one official this afternoon, "was made in June last, when a line was used between Farmham and Montreal. It has worked most satisfactorily, and we are now busy constructing a system between Montreal and Ottawa."

The Charge Made Against Boudreau
Is Disproved, Declares Judge CasselsMarine Department Agent Did
Not Receive a \$3,000
Bribe.

Ottawa, Dec. 22.—An extraordinary charge against a Government official was disproved this morning, and J. B. A. Boudreau, assistant accountant of the marine and fisheries department, was declared by Judge Cassels not to have committed the offense charged by A. B. Van Felson, former manager of the Quebec branch of the People's Bank of Halifax. This charge was that he, on behalf of James Holliday, paid Boudreau \$3,000, to get \$30,000 which the marine department owed Holliday.

Van Felson swore that he cashed the checks for \$1,000 each, signed by

Holliday, and paid the money to Boudreau. He swore this was before June 10, 1905, and Laurence, accountant of the People's Bank, swore he saw Boudreau in the bank on that date. The attendance book showed Boudreau in the bank before June 5, 1905, and left the employment of the bank on that date. The attendance book showed Boudreau to have been in Ottawa throughout May and June, 1905.

Today the records of the Quebec banks were examined for the \$3,000 transaction. Three checks of \$1,000 each were found to have been cashed, but two on June 16, and one on June 19, 1905, after the time Van Felson and Boudreau swore the transaction occurred. Holliday got his \$30,000 on June 16. Therefore Judge Cassels declared Mr. Boudreau could not have committed the offense charged him.

Yard Engine Struck Grocery Wagon

Roy Moore, a young man who drives Ryan & Russell's grocery rig, and a companion named Chas. Howard, of Askin street, South London, who was riding with him, had a remarkable escape from being seriously injured at the Richmond street crossing of the C. P. R. yesterday afternoon.

The young men were driving across

and did not notice a yard engine approaching until it was too late. The driver, Moore, whipped up the horse, but the engine struck the rear end of the wagon, throwing it around to one side and pitching the boys out.

Fortunately, beyond a few bruises, they sustained no serious injury. The wagon was not badly damaged.

Knocked Down as Stepped From Car

About 8 o'clock last night a middle-aged lady was knocked down at the corner of Dundas and Richmond street by a butcher sleigh belonging to Mr. George Jackson, 87 Wellington street. She was carried into McCallum's drug store, where it was soon found that she was a little shaken up and a good deal of accumulated dust and dirt, no damage was done. She was able to continue on her way, having refused to give her name. The horse was coming along fairly rapidly and struck the lady a glancing blow just as she stepped from the side of a car. Though the horse was under control, and was stopped immediately by the driver, it was more good luck than good management that prevented the accident taking on a more serious aspect.

A Lawn Cutting Case in Court

A peculiar case was heard in court this morning as a result of the close watch the police are keeping for those who cut across boulevards. On Monday afternoon shortly after 4 o'clock an officer was watching on Wellington street, near the library, when a lady walked across the boulevard. The officer, in accordance with orders he had received, took her name. A number of high school pupils who were on their way home gathered and jeered the officer. One of them the officer alleged in court this morning called

him a "son of a gun," and shook his fist at him.

The officer had him summoned, and the boy went with him to the police station, where he wanted to lay a counter charge against the policeman. In the box this morning Magistrate Love asked the boy if he did not think he was wrong in calling the officer such a name. The boy admitted that he was rather excited, and said he would not have done it had he been cooler. The case was finally settled by the officer withdrawing the charge.

DEATH AT ST. THOMAS
OF WELL-KNOWN LADYWife of Venerable Archdeacon Hill
Succumbs to Short Illness.

Mrs. Hill, wife of Venerable Archdeacon Hill, of Trinity Church, St. Thomas, died at her home there last night after a short illness with pneumonia. Mrs. Hill was widely known

throughout the country on account of the keen interest she always took in church work. The news of her death will be a sad shock to her many friends, as she had only been ill a few days. Mrs. Hill was well known in this city also.

The funeral will be held tomorrow in St. Thomas, and Bishop Williams and a number of local pastors will attend.

XMAS SHOPPING
GOES MERRILYPurchasers Flocked to the
City in Large Num-
bers Today.BUSINESS IS
EXCELLENTSome Merchants Say It Is Very
Much Better Than That
of Year Ago.

The merchants are happy! The volume of Christmas business is much ahead of last year, and with three more days to run, they are all confident that the Christmas trade will be much better than last year, and will compare favorably with any year in the past ten years.

This morning the rear guard of Christmas shoppers was out. They were largely out-of-town buyers. A large number of farmers came in to sell their produce, and also to buy their Christmas goods.

All the stores were filled with them, and as they had plenty of money, they bought a fine class of goods, and plenty of trade.

Many Visitors.

Shoppers from the smaller towns round about London were also conspicuous. Every train brought in a large contingent, and the visitors were crowded in all the stores.

That there were more visitors from the smaller towns than usual was the opinion of many merchants who were spoken to, and they bought a good class of goods.

No trade feels the stress of hard times, sooner than the jewellers, as people generally cut down their purchases of that line of goods as soon as hard times strike the community.

This year the jewellers are more than pleased with the volume and quality of trade.

Better Than a Year Ago.

It is much better than a year ago, and compares quite favorably with the best of years.

"Our trade has been excellent," said one jeweler. "It is much better than we expected, and we have been kept very busy attending to customers. As a rule, the class of goods purchased is better than last year, and consequently we are feeling quite jubilant."

Oil trades are of the same opinion. "There is confidence everywhere," said one oil merchant. "We are doing a much better trade than for some time past."

"Up to last night our trade was quite a bit ahead of last year at the same time," said one of the big dry-goods merchants. "With three more days, practically, we expect to show a 25 per cent increase over the same week in 1907. People are buying with more confidence, and as a rule a better article. We are satisfied."

Fifty Per Cent More.

"Business is much better than last year," said another. "We are doing 50 per cent more business today than at the same day last year. We are well satisfied."

"Trade good; much better than we hoped for," said another.

"Business increased remarkably this week," said another. "With two full days and a part of another before Christmas Eve, we will be all to the good."

Juveniles Are Out.

The army of shoppers was increased this morning by several tribes of juveniles just out from school. Not that they purchased so much, but they caused some excitement, and kept the clerks on the jump answering questions.

This Christmas-time will be a joyful one for most people concerned. Shop early. The earlier the better.

—Mr. F. W. McNaughton, formerly of this city, and later of St. Paul, Minn., left Friday for Philadelphia, where he will act as chief instructor in a ladies' large technical school.

THE WEATHER.

TOMORROW—COLD.
FORECASTS.

Toronto, Dec. 22.—8 a.m. Today—Northerly to easterly winds; fine and cold.

Wednesday—Continued cold, with some local snow.

TEMPERATURES.

	Today.	Yesterday.
	8 a.m.	Min. Max.
London	11	9 32
Calgary	12	16 38
Winnipeg	14	0 16
Fort Arthur	12	2 12
Perry Sound	4	16 24
Toronto	16	26 35
Ottawa	4	10 18
Montreal	4	4 18
Quebec	6	4 12
Father Point	2
Battleford
Vancouver	..	33 42
Kamloops	..	18 32
Edmonton	..	12 30
Battleford	..	2 10
Moosejaw	..	7 21
Qu'Appelle	..	6 28
St. John's	..	12 34
Halifax	..	20 32

Minus (—) means below zero.

A cold wave which has moved quickly from the northward is now centred in the Ottawa valley, accompanied by zero temperature, and a storm is developing in the Southern States.

In the Western Provinces the weather is fine and moderately cold.

ENGINEER KELLY IS COMING
TO LONDON ON WEDNESDAYGrand Trunk Railway Official Will Then Take Up the Matter
of Track Elevation With City Engineer Graydon
—Looks Like the First Move.

Engineer H. G. Kelly, of the Grand Trunk, will be in the city Wednesday morning to take up the question of track elevation with City Engineer Graydon.

It is some time now since Third Vice-President Fitzhugh notified Mayor Stevely that he would reopen the negotiations, and promised that Mr. Kelly would visit the city at his earliest possible convenience.

However, the latter was engaged with the railway commission at Toronto, and it was impossible for him to come to London.

The city was informed this morning that Mr. Kelly would be here on Wednesday, and as a result track elevation is once more a live question in the city.

A letter from Mr. Fitzhugh was also received. He explained that when the company expressed themselves as will-

ing to open negotiations for the elevation of the tracks, they did so with full intention of keeping their word.

Still Anxious.

He denied absolutely that they had any desire to withdraw, but were still anxious to take the question up. He regretted exceedingly that the company had not been treated better on a former occasion when negotiations were under way, but hoped for generous treatment in the future.

Of course, little can be done this year, except gather all the necessary information for opening negotiations after the new year.

Then the whole question will be opened up in earnest.

The opinion is rife that if there is a deadlock between the company and the city the whole matter will go to the railway commission and will be settled for all time.

Students Want Man in Legislature

Toronto, Dec. 22.—It is stated that the University of Toronto students are making an attempt to secure representation in the Provincial Legislature, and have secured the co-operation of many prominent graduates in the undertaking.

The plan is to model the proposed university legislative representation on the same lines as those governing the elections to the British House of Commons from the Universities of Oxford and Cambridge. The candidates

would be duly nominated in accordance with the statute, and the faculty and all graduates and undergraduates of the age of 21 years would be accorded the franchise. It is suggested to have one university member.

The desirability of having the operation of Queen's, Laval, McGill, Western and the Manitoba University in a subsequent movement to obtain federal representation for the leading Canadian universities has also been mooted.

Two Killed in a Temagami Mine

Cobalt, Dec. 22.—Through the accidental explosion of a portion of a stick of dynamite, which had remained in a drill after the original discharge without its fuse being snuffed, two men were killed outright in the Temagami Gold Refractory Mine, and a third so terribly injured that he cannot recover. The other miners were at the bottom of the shaft, 75 feet below the surface, at the time, but escaped with their lives.

The explosion occurred several days

ago, but information has just reached here. The accident is the most serious that has thus far occurred in Cobalt mining operations.

The remains of Doherty and Roux have been sent to North Bay. The men were almost literally blown to pieces. The explosion shattered large sections of rock, which were hurled with terrific force upon the miners working in the shaft. One flying fragment struck Brennan on the forehead, inflicting terrible injuries.

Great Things From Small Beginnings

This has been the case in the Christmas stamp campaign for the Muskoka Free Hospital for Consumptives.

About three weeks ago this campaign was inaugurated in London, and less than one hundred dollars' worth of stamps were distributed for sale among about a dozen people.

Since that time the interest has grown wonderfully until now about

one thousand dollars' worth of the stamps are out for sale, and the prospects are that they will all be disposed of before Christmas.

The object of providing a ward to accommodate four patients from London in the Muskoka institution for the year 1909 is a worthy one, and if you have not already bought stamps you have yet a chance to add your mite to the fund.

Stamps may be obtained from members of Adult Bible Classes of the city; also, from the book stores and at the London postoffice, or from any member of the London committee.

Pittsburg Aldermen Under Arrest

Pittsburg, Dec. 22.—Following the arrest of seven of the most prominent members of the Pittsburg city council, charged with bribery and other crimes in connection with establishing a city depository, came the apprehension late last night of W. W. Ramsay, president, and A. A. Vilsack, cashier of the German National Bank, on the same charges.

They immediately gave bail and were released.

Charles F. Fagan, vice-president of the bank, in a statement issued early today, announced that the directors immediately on hearing of the charges against the officers mentioned, had ordered their discharge from the institution. The bank, the statement added, was in no way affected.

Venezuela Ends Quarrel With Dutch

Willemstad, Curacao, Dec. 22.—The new Venezuelan administration has revoked the decree prohibiting the transshipment at Willemstad of goods destined for Venezuelan points. This measure has been the principal difficulty in the strained relations of Holland and Venezuela, and the revocation

is regarded by well-informed persons here as meaning practically the end of the dispute between the two governments.

The deduction from latest news received here from Caracas—the enforced resignation of the Castro cabinet—is that the reign of President Castro in Venezuela is over.

Schools of London Close for Holidays

The schools officially close this afternoon.

Many of them have closed already for the Christmas holidays.

Some of the "kiddies," in fact, a young army of them, considered that Friday was the limit of school attendance, and quietly but most effectively absented themselves from school. Yesterday and today the attendance has not been up to the normal.

This morning there was a merry troop of the youngsters, in the majority of cases of the younger classes, downtown looking in the shop windows and imbibing the Christmas spirit by anticipating what Santa Claus was going to bring them.

There were exercises in many of the schools, and a fine programme was given by teachers and scholars. The schools will reopen on Monday, Jan. 4.

No Christmas Tree for This Little Lad

Mr. and Mrs. John H. Quait, of Evelyn, will have the sympathy of a wide circle of friends in the death of their little 5-year-old son John, which occurred at Victoria Hospital this morning after an illness extending over many weeks.

Some time ago the little fellow was taken ill, and was brought to Victoria Hospital and operated on. He seemingly recovered, and only a few days ago was well enough to be taken home.

Soon after, however, complications developed, and another operation was deemed necessary this morning. Deceased was a very bright little boy, and was a general favorite with all who knew him.

While in the hospital deceased became very popular with all the nurses, and they had asked him to come back and be present at the Christmas tree celebration to be held on Thursday evening. The funeral arrangements have not yet been completed.

TURKEY PRICES
TOOK FLIGHTMany Birds Sold for as
High as 19 Cents
a Pound.OTHER POULTRY
WAS ALSO HIGHFarmers Are Reaping a Harvest
From the Christmas Trade
in London.

Turkeys provided the greatest surprise on the market this morning, when they executed an Orville Wright stunt by soaring in price above the heads of many Londoners.

When the market opened, turkeys were offered at 15 cents a pound for gobblers, and 17 cents for hen turkeys.

These prices did not last long, however, for the demand was brisk, and the farmers soon boosted the figure to 18 cents. This was followed by 19 cents, and by noon those who had any birds left were thinking seriously of asking for more money.

Only Turkeys Soared.

Other classes of poultry did not take such a pronounced rise, and many citizens are thinking of passing up the turkey for this time.

Butchers' meats also remained steady, the ordinary classes of beef bringing the prices quoted Saturday, while first-class Christmas beef brought as high as \$8.

Chicken Prices.

Chickens that had evidently been relieved of their clothing in a hurry were offered at prices that would not be considered by the buyer a few months ago.

Small birds, weighing but a few pounds, with badly lacinated pellets, sold for \$1 a pair, householders being glad to get them for the money.

The farmers were not at all of a condescending frame of mind, either, for they allowed all purchasers to come to them.

Ducks, Too.

Ducks, red and rusty, also brought prices that were highly satisfactory to the farmer. Grocers and buyers were on the job, and each stage that entered was quickly surrounded.

Farmers, who were unaware of the rise, sold their poultry before they left the vehicles, sometimes for 14 cents per pound. Needless to say, they were exceedingly angry about it when they learned the prevailing prices.

Other Lines.

Not much goods of other lines were brought in, the market being almost entirely poultry. It is said that practically all poultry from the surrounding districts has already been sold, and (Continued on Page Three.)

ALLEGED THAT THE
DEAL WAS IRREGULARRow in Council Over the Sewer for the
Battle Creek Corn Flake Company.

The only little flurry of the council last night occurred over the construction of a sewer for the Battle Creek Corn Flake Company.

At the last meeting of the board of works, it was decided to construct the sewer, the city to pay half the cost out of the committee's appropriation.

The work was commenced and practically finished before the council knew a thing of it, and when it came up last evening in the council there was trouble.

Ald. Beattie challenged the right of the committee to do that sort of work. Any expenditure of money must be ratified by the council, and in this case the board of works had ignored the council. As the work was done, the council would have to abide by it, but it was not proper.

Ald. Stevenson declared that the proceedings were very irregular, and the committee should be brought to task for it.

Ald. Saunders explained that the difficulty arose out of a misunderstanding, and not from any desire to ignore the council. It was done now, and would not be repeated.

FIRE AT CLINTON

Planing Mills Totally Destroyed Early
This Morning.

Clinton, Dec. 22.—About 4 o'clock this morning the Clinton planing mills, owned by S. S. Cooper, was totally destroyed by fire, which originated in the engine room. When noticed, the fire was beyond control. The loss is partly covered by insurance.

NEWMAN RESIGNS.

New York, Dec. 22.—W. H. Newman today resigned as president of the New York Central and Hudson River Railroad Company, his resignation to take effect on Feb. 1, 1909. It was accepted by the directors. It is expected that he will continue to be a member of the board of directors.