Very Scathing Judgment

The court of appeal which was in session Thursday afternoon rendered its judgment in the case of Julius C. Smith and Thomas Dunlop vs. H. G. Wills which is extremely interesting in that allegations of a fraud so flagrant having been committed in the trial of the cause before the gold commissioner are set out by his lordship, Mr. Justice Craig, who gave the decision, in language that can not be mistaken. His lordship reviews the evidence adduced in the lower court most critically and does not hesitate to say that in his opinion the parties engaged in the suit were guilty of a conspiracy so apparent as to be indisputable. The judgment of his lordship is as follows:

"This case is the usual one in this country of what is known as jumping or staking a claim when the original staker fails to perform the work under the regulations. There is first the conflict as to whether the work was done or not; next, as to whether an attempt was made to have the work done, which became abortive by reason of the default of the party employed, and thirdly, whether the gold commissioner having accepted evidence of the work done, his order should now be disturbed by this court under the circumstances, the defendant having purchased the property or obtained his bill of sale after the renewal grant was issued. The facts appear to be these: One Edgar staked the claim on the 19th of March, 1898, and received a grant on the 25th of March. The claim remained unworked for ten months and on the 13th of February was staked by the plaintiffs, who were delayed in obtaining their grant by reason of other protests pending in other stakers and judgment not having been given in their case. Before the judgment was given in the case of the prior stakers, the said Edgar discovered that his claim had not been represented by work and some one applied for a lay-over on the 16th day of February. Edgar says he did not apply for it. Therefore, it is only a matter of inference as to who did. Judgment was given by the gold commissioner refusing the application of the stakers prior to the plaintiffs, and upon the evidence adduced by affidavit on behalf of Edgar he issued the renewed grant to him. These affidavits were sworn to by Edgar, one Grant and a woman called Miller. They referred to original documents, and accounts and receipts or orders which, it is absolutely proven, were in the possession of the parties, if they existed at all, at the time when the affidavits were taken, but were not produced to the gold commissioner, were not filed, and upon their production being asked for as evidence of good faith, it is alleged that they were lost or destroyed by fire. The commissioner without calling upon the plaintiffs, who were then before him with a proper application, ex-parte, without hearing any evidence beyond these affidavits which were most suspicious in their form, issued the grant to Edgar from whom the defendant Wills derives his title. It is now alleged that the preparation of the affidavits, filing of them, and the obtaining of the grant or decree was a conspiracy hatched in fraud and carried out by perjury to defeat the title of the plaintiffs and deceive the commissioner.

"I have read every word of the evidence in this case, as I had to do, to get a full grasp of the case, and I am fully convinced that that allegation is perfectly true. It is not a matter of one isolated instance, or error, or mistake, or inadvertence, but the whole chain of evidence made to bolster up this application is so thoroughly bad and open to such grave suspicion; in fact, I do not think that a jury competent to grasp the whole situation could come to any other conclusion than that it was a conspiracy, as I said before, hatched in fraud and carried out by perjury. In the first place, the affidavits refer to a date, the 10th of May, as being the date upon which certain agreements were made, certain supplies advanced to one Ager and he was to go up the creek and carry out his representation. This 10th day of May is verified by a reference to the documents themselves. There could have been no error in that date if the original document existed. It afterwards transpires that the 10th of May is an absolutely impossible date, that no such transaction as is alleged to have taken place on that date, could have taken place upon it for several reasons. First, it is proved conclusively that Edgar, who made the agreement, had left the city of Dawson to go up the river in the April previous, that he could not have gone up the river on the 10th of May as the ice had not gone out, and that Ager, who was to do the representation work, could not without almost insurmountable difficulty have gone up the creeks to perform the work after that day. To bolster up the 10th of May as the real date, the witness Rutledge swears that a person could, after the Yukon river was open and running, have gone up on the rim of the river on the ice in a sleigh. That statement is so utterly absurd and idiotic that no one would believe it who knows the country, and it shews to what desperate straits the parties were driven in order to bolster up a weak case. But the defendant's counsel practically abandons the 10th of May and says it was inadvertent that that date was used that the date was the 10th of April. Now, they didn't abandon the 10th of May before the evidence is heard; they stick to it as long as they can; in fact, until an evening adjournment is made during the hearing when finding the untenable nature of their position, they retreat, being forced to because their position is absolutely untenable, and adopt a fresh date. They have no retreat because their position is untenable and only for that reason, and they shew no other ground, because they give no other reason to the court to believe that the 10th of April was the real date. Then that is absolute evidence to my mind of a put-up case. That the 10th of April could not have been the date which they hah in their mind when making the affidavits is shown by the fact that they swore that the man Ager, who performed the representation work and who received the payments, as they say, from Grant in August, had for the past three months been performing the work after he had just come down. Now, the part three months would bring it from the 10th of May, not from the 10th of April. So much for the date.

"Then another element of weakness in the case is this, that Edgar tells a story of writing to this man Grant who gives evidence that he had engaged Ager to perform the representation work and provided for payment to him. Now, Edgar admits that he did leave Dawson in April but had no intention of going to the outside, but that it was his intention to return immediately, and not until he got to the Stewart river or beyond it did he decide to go to the outside. There was no occasion for him to write to Grant, who was then in California, arranging with him to pay this man Ager $100, balance of representation work. He could have attended to that himself on his return. No letters are produced. No reasonable account or sensible account is given of when or how or where Edgar wrote to Grant. The time occupied in communication rendered it impossible, in my opinion, for letters to have reached Grant in California. Then, another thing which casts discredit on the story: Grant arrived here on the 7th of August. If Edgar had not sent him the order to pay Ager until after he left here on the 10th of May and went up the river, in the then state of mail communication Grant could not have received those instructions and got in here by the 7th of August. Then how did Ager know that Grant was to pay him? No letters were produced. Edgar can give no reasonable account of that. It is a most singular story that a man who was in California in May should be written to to pay a debt for a man who had no intention of going out of the country at the time, to come in here in three months and pay $100 to a man he did not know who was then on an almost inaccessible creek and that those two men should meet on the date mentioned. I do not believe Grant's story, neither do I believe Edgar, and I believe Mrs. Miller was in the conspiracy with them. I do not believe it for many other reasons that I have not set out. I do not see how any one could believe such a story bolstered up, as it is, by such weak evidence, hesitating, uncertain and absolutely wanting in any corroboration.

"The present position of the defendant Wills is to be considered and while I have considerable sympathy for him and believe that perhaps he was innocent in some degree, yet he was not wholly innocent; because the evidence shews that he what is called the 'jumping' of the Gold Run claims. That Rutledge was his agent appears from Rutledge's own evidence. It also appears from the fact that Rutledge managed the whole thing; that he applied for the lay-over, I believe; that he engineered the preparing of the affidavits; that he continued as manager of the claim; that seven days after the transfer was made he arranged with men upon it; that he had no further document from Mr. Wills, showing a created and continuing agency. He also had an interest in the claim because he received an interest in it shortly after at the cost price. If one is to take the effect of evidence at all, one must believe that Rutledge was the agent of the purchaser and was fully aware of all the facts surrounding the title, and I also believe that he was fully aware of the defects in the title and the fraudulent means which were adopted to perfect it, both because of his affidavits of the date—the 10th of May—and his evidence regarding going up the Klondike after the ice had gone out which was given to bolster up that date.

"Now, as to the law in the matter: I think the gold commissioner was wrong in accepting these ex-parte affidavits; that he should have called upon the plaintiffs and heard their story; in fact, he should have adjudicated judicially upon the question under section 39. * * * * * *

"As to the argument that the defendant is a purchaser for value without notice, I think I have already decided that Mr. Rutledge was his agent, and he is bound by his knowledge that the property was really purchased before the affidavits were prepared and that the affidavits were prepared simply to get a grant. It may be unfortunate that purchasers relying upon agents and paying their money after a renewal grant, may be prejudiced, and it may be a matter to consider whether the regulations should or should not be amended so as to provide that after renewal certificate is once granted, except in cases of fraud, the crown should recognize the grant, and that all irregularities and lapses committea before that should be healed under reasonable conditions. With that I have nothing to do. I think it safer to disregard any question of sympathy or equities. The only safe course to adopt is to proceed upon the regulations as they exist and as I construe them and upon the law as I find it. As I have said before, there are no equities arising under the mining regulations. What the miners get they get by virtue of the statute and nothing more, and they are to be held to the letter of it strictly. In my opinion, the appeal should be allowed with costs."

In his decision Mr. Justice Dugas dissents from that of his colleague. He does not regard Rutledge as the agent in fact of the defendant Wills, he having been employed, so the decision sets out, only for the purpose of ascertaining whether or not the title was good, acting otherwise for the vendor, Edgar.

"Therefore, whatever knowledge or even fraudulent action may be hinted at, Rutledge would not bind the actual defendant, whom I take to be in any event an innocent purchaser. Therefore, upon the facts themselves, I am in favor of upholding the defendant in his possession. Were I wrong in giving such a construction to the evidence I would still maintain, as I did in the case of Risser et al vs. Pinkert et al, that the the crown, not having dis-seized the defendant of the claim and re-taken possession thereof, through its mining inspector or the gold commissioner, after a proper inquisition and a declaration that the claim had been abandoned or forfeited to the crown for lack of representation, the plaintiffs had not until then any right to stake the same."

Concerning the question of the representation work having been performed, his lordship says:

"I must say that after a careful perusal of the evidence, as far as the representation of the claim is concerned, I find that the proof is doubtful on both sides. It being so I would not feel justified in disturbing the title of the defendant and his possession in favor of third parties having restaked over him even if I admitted principles contrary to those sustained Risser et al vs. Pinkert et al."

His lordship holds as in a former judgment rendered that a claim should not be considered open to relocation simply because it has not been represented. It is insisted that the crown through its mining inspector should satisfy itself first that the claim has been abandoned and is open to relocation because the representation has not been done and that the mining inspector may declare it so unless through trouble, sickness, a lay-over, death or other reasonable grounds he has satisfied himself that the forfeiture should not be declared His lordship concludes that the plaintiffs had no standing before the gold commissioner and that their appeal should be dismissed with costs.

Gold Commissioner Senkler also dissented from the opinion of Mr Justice Craig.

Notes of an Author.

Chicago, May 20.—Opie Read was today summoned to court to defend his art. Rand, McNally & Co., publishers, summon him on a "pot boiling contract that Mr. Read asserts is destructive to his art.

"The Confessions of Marguerite" is the particular bit of Read's fiction the publishers want to get. They say the author threatens to destroy the story unless they release him from a contract. Rather than see the book reduced to ashes, they would have the court restrain Mr. Read's impulsiveness and force him to live up to the agreement which, they assert, he signed.

According to the injunction bill Read was employed in July, 1897, by the publishers, to write an even dozen novels. They were to be turned out at the rate of two a year. While undergoing this literary labor Read was to receive $40 a week and 10 per cent royalty on the sale of his books.

Mr. Read could not turn out novels on the factory basis, and, according to Rand, McNally & Co., the two-novel-a-year arrangement continued only until July, 1901, when the author, they say, owed the firm four novels and also $6,000 which had been advanced to him.

In order to give Read more time for inspiration the contract was modified last year so as to allow Read to write one story a year, and further he was to publish nothing except short stories of less than 10,000 words until the contract was ended. According to the publishers Read now refuses to live up to this last of the contract.

Read was given a banquet by the Press Club last night at which two hundred of his friends were present.

Knocked Out and Killed

Boston, May 22.—Tommy Dixon of Chicago knocked out Tommy Noonan tonight. As Noonan fell his head struck the floor so hard that his skull was fractured. He was taken to the hospital where he died without regaining consciousness.