

IMPORTANT JUDGMENT

Decisions by Mr. Justice Craig

Case of Bank of Commerce vs. the Syndicat Lyonnaise Contested.

Mr. Justice Craig rendered several very important judgments this morning during chambers, one of which was in the case of the Canadian Bank of Commerce vs. the Syndicat Lyonnais du Klondike and Joseph Barrett. The decision of his lordship, which is very voluminous, covering 14 pages of closely type-written paper, is likewise very complete, showing a most exhaustive research into every point brought up in the argument of counsel. The judgment is on a motion on behalf of the plaintiffs to have certain portions of the defendants' pleadings struck out upon the ground that the paragraphs referred to do not disclose any reasonable defense and that they are frivolous and vexatious. The history of the case is fully gone into, the transaction resulting in the sale of a number of mining claims by Joseph Barrett to the defendant company for a consideration of \$187,500, of which the sum of \$75,000 was paid in cash. The deferred payment was secured by a note and mortgage in the sum of \$92,500 due October 1, 1901, afterward assigned by Barrett to the Bank of Commerce and which is now sued upon. After reciting the various details in the case, his lordship continued:

"These mortgages contain certain clauses providing for abatement in price on failure to give title. It is agreed on this point that evidence shall be taken as to the title of the parcels in question. However, that is not the main issue before me. It is alleged by the defendant company that Barrett was guilty of fraud and misrepresentation leading up to the sale of these properties, and wilfully misled the defendant company re-

garding the values of the property with fraudulent intent, and that they relied upon his representations in purchasing the property and were by these representations defrauded. They do in some of their pleas set up that the plaintiff participated in these representations or misrepresentations; but their allegations that the plaintiffs wilfully misrepresented these things, so as to come within the definition of fraud, are not very clear. If that is their intention they had better amend their pleadings accordingly. Perhaps they do not propose to attempt to prove that, but rely upon the other grounds which they set up. It is also alleged in the pleadings, and for the purpose of this motion must be taken to be true, that the defendant company assigned the said mortgages to the bank (the plaintiffs) for a present advance to be made upon the security of these assignments and after the mortgages were so assigned the plaintiffs came to the defendant company and requested them to make the note now sued upon, stating that they wished the same to be made so that they might enter it in their books as a proper banking transaction and for the purpose of avoiding and evading the banking act which prevents bankers from advancing money on real estate security or upon mortgages given for the purpose of securing the advance when made. The defendants further allege that the plaintiffs understood that the note should not be used as a note and that it was not delivered as a note at all; that there was no consideration given for the making of it; that it was handed by the defendants to the plaintiffs for the purpose stated and under an express agreement from the defendants that the note should not be separated from the mortgages or the mortgages from the note, and that it should be held simply as a memorandum for the purposes before stated and not as a paper binding on them (the defendants) in any manner; in short, that the paper sued upon was never delivered as a completed contract or a note as such."

In taking up the various pleas which are objected to by the motion of plaintiff, each one is followed out to a most logical conclusion. One which is to the effect that the note sued upon was made without authority and notification, his lordship holds must stand, it being considered a complete answer if proven. Another plea that is attached is that parole evidence cannot be given for

the purpose of varying the note. This phase is thoroughly gone into, many authorities and decisions being cited and in several instances quoted in support of the position taken by his lordship. The conclusion arrived at is that parole evidence is admissible under the plea for the purpose of establishing it. Another one of the pleas attached was to the effect that the note sued upon was no note because it is payable upon conditions, and as to its terms it is subject to those conditions and to the mortgages which are collateral to it. His lordship finds that the notes were given as collateral security and while it was not so expressed in their body, yet the endorsee was said to be fully aware of all the facts. His lordship also holds that the other pleas will stand, dismissing the motion of plaintiffs with costs.

Mr. Justice Craig also delivered judgment in the case of Gustavson vs. Orcutt & Parlin and in the case of Frank Barry vs. James E. Lewis et al.

Has Been Arrested.

Seattle, April 18.—Thomas Carberry, an alleged disreputable character, was arrested last night in the Middleton saloon by Detectives Freeman and Hubbard after a fight, in which Carberry attempted to draw an unseathed razor from his outer coat pocket, rather than go to jail for making threats against a woman whom he is said to have once attempted to kill in California.

Fannie Hall, a variety actress, with whom the man is reputed to live, sought the protection of the police against Carberry's threats shortly after 11 o'clock. She stated that he had entered her room and threatened to kill her. Freeman and Hubbard were sent to locate the man, and found him in the Middleton saloon on Columbia street, near First avenue. Carberry reached for his pocket as soon as told that he was under arrest, but a well directed blow of Hubbard's fist sent him to the ground. He was handcuffed and sent to the station vowing vengeance against his captors.

The Hall woman claims that the man once shot her in the neck in California, and she fears for her life whenever he is drinking.

River Still Rising.

Since yesterday afternoon at 5 o'clock the Yukon has risen 1 foot and 2 inches, the rise since 7 this morning being 6 inches. The total rise since May 1 amounts to almost 4 feet.

Our Guessing Contest Will Close Monday

May 5th, at 6:00 p. m.

WHEN THE ICE WILL MOVE IN FRONT OF DAWSON, 50 FEET WILL DECIDE THE CONTEST

A representative from the Nugget, News and Sun will count the ballots and award the prize to the winner.

If you have not the time to bring us your guess, send us same by mail or carrier and it will be taken care of as well as if you were here.

FIRST AVENUE HERSHBERG, The Reliable Clothier, 1st Ave. Opposite White Pass Dock

READY FOR BUSINESS

Office Has Brand New Equipment

Comptroller Lithgow Ready to Receive Export Tax on Gold Output.

Last Saturday there was installed in the office of the comptroller a new pair of gold scales of the finest and largest make capable of weighing 1,200 ounces at a time. They will be used in computing the royalty or export tax, as it is now termed, on gold that is shipped out of the country. From Assistant Comptroller Hinton it is learned that with parties applying to pay their royalty it is optional whether or not their output is sealed and withdrawn from circulation. It is assumed that only those who apply for the royalty receipts will be such as are preparing to make immediate shipment and their boxes must be sealed in order to pass the boundary line without delay. Should the seals at the boundary be found to be broken or in any way tampered with it will be

necessary to reweigh the gold to see that the amount corresponds with the figures given in the receipt which accompanies the shipment. In the event, however, that a miner does not care to box his gold up after paying his royalty and thus reduce his assets, his receipt will stand good at all times for the amount shown on its face as to the number of ounces upon which the tax has been paid. If he should sell his gold here he would simply turn over his receipt to the buyer which would afford the latter the same protection when a shipment was eventually made. The comptroller has so far not received any of this year's crop of dust, sluicing having been under way only such a few days. Within another week the golden stream is expected to begin pouring in.

Kelly & Co., Leading Druggists. Leroy Tczier has removed to Monte Carlo building.

Suffering a Relapse. Postmaster Hartman is again confined to his room with a severe attack of neuralgia. Yesterday he was convalescent and it was thought the trouble was over, but today a turn for the worse took place.

A La Dawson. Special to the Daily Nugget.

El Paso, Tex., May 5.—Public gambling is ended in El Paso. All saloons are also rigidly closed on Sunday. Yesterday was the first dry day in the city's history.

N. F. Hagel, K.C., has removed to Monte Carlo building.

Prisoner's Escape. Special to the Daily Nugget. Chicago, May 5.—Prisoners Blackerfield and Saydon escaped from Fort Sheridan prison yesterday, overpowering the guard and using his own weapons to intimidate him.

Sunday Collision. Special to the Daily Nugget. Pittsburg, May 5.—Two immigrants were killed and 45 injured by a collision on the Connellsville division of the B. & O., yesterday.

Try the "Old Crow" at Sideboard.

A young heiress with a penchant for farming was explaining at length the many difficulties she encountered in pursuing her fad. "I really am a farmer," she protested, and then added, regretfully, "although it must be confessed that almost all I plant I lose." "Therein differing from me" courteously rejoined her table companion, a rising young physician, "for I find in my case that all I lose I plant."—Chicago News.

"How is George getting on with his courting?" "Nicely. He plays ping-pong with Lucy every evening now, and last night they bumped heads under the table seven times."—Cleveland Plaindealer.

BANK SALOON McDONALD & TRABLO Wines, Liquors and Cigars 25c 1st Ave. and King St Opp N. C. Co.

WATCH THE RED FLAG!

When our Flag on the ice on the river commences to move, indicating that the ice is going out, the big steam whistle of the Yukon Mill will blow five blasts, giving every one a chance to witness the break-up.

Do not wait until you hear the whistle to take advantage of our

BIG BREAK UP IN PRICES.

Hardware Department.

PAINTS AND OILS.

- Colors in Oil, for 1-lb can . . . \$.50
Boiled Oil, per gal. 2.50
Turpentine, " 2.00
Dry Roof Paint, per lb15
Asbestos, 7-lb paper per lb12 1/2
Asbestos, 14-lb paper per lb10

REDUCTION IN PRICES

-ON-

Doors, Sashes and Glass.

REDUCTION OF 20 PER CENT. ON WALLPAPER.

Drug Department.

Big Cut All Along the Line.

NORTHERN COMMERCIAL COMPANY.