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COURTS ASSUME EXCESS POWER

New York Judge Says They Go Too Far in Overruling Will of Legislatures.

NEW YORK, Oct. 9.—In accepting the nomination of the Democratic and Republican parties and Independence League, Supreme Court Justice William J. Gaynor declared yesterday that judges must cease to be reactionary, as they have been in the past. The law must not be a stumbling block in the way of progress. The laws regulating the price of gas at 80c and railroad fares at 2c a mile were, he thought, constitutional and should not be regarded by the courts as confiscatory. Justice Gaynor continued:

"This country is now passing thru great economic changes. I hope these are not to be obstructed or thwarted by the judiciary. The judges should not be mere oostructionists to the wholesome reforms of statesmen and the people. This is a subject that we judges and lawyers should begin to discuss. We must not let things run until we are condemned from the outside.

"As a rule, judges have stood against the natural progress of the community, against every wholesome reform, whether freeing the slave here, or freeing commerce, or freeing opinion, the world over. I need not cite in proof of this the bigoted and reactionary judicial decisions, not to mention the judicial murders, which dot and disfigure the pages of history.

"We have also to consider whether the trend of the courts has not come to be too great toward setting aside acts of the legislatures. Many are of the opinion that the courts are going too far, and are too eager in that direction.

"Our legislatures have the unquestionable right to regulate the rates of fares of public service corporations. In this state the legislature, by a committee appointed by it for the purpose, and aided by eminent counsel and the highest expert advice, made an exhaustive examination of the cost of the manufacture and supplying of gas, with a view to reducing its price in our large cities.

"On the report made, the legislature, with due deliberation and care, reduced the price to 80c. A master in chancery and a judge forthwith declared the statute void on the ground that it violated that provision of the federal or state constitution which forbids the taking of private property without compensation. It is certain that those who framed and passed the constitutional provision, never dreamed of it being put to such a purpose.

"There is no danger, in my judgment, of our legislature confiscating private property. It has never been done in the Anglo-Saxon world, or anywhere else for that matter, unless in revolutions in which wrongs were righted.

"The same thing is being done with railroad rate legislation all over the country. Altho our great railroad in this state is allowed by statute to charge only 2c a mile for passengers, and thrives on that rate, we see two judges in Pennsylvania declare a statute fixing the same rate for the great Pennsylvania road unconstitutional on the ground that it is confiscation."

THREE YEARS FOR McCULLY.

Pal From Kingston Gave Evidence Against Him.

ST. THOMAS, Oct. 9. — (Special).—Three years in Kingston Penitentiary was the sentence imposed to-day on Fred McCully, charged with assault and robbery.

McCully was charged with having, on Dec. 12, 1906, with Stephen Walsh, assaulted Frank Sweedland of Union, on the St. Andrew's Market, and robbed him of $25. Walsh was tried by Police Magistrate Glenn and sentenced to four years' imprisonment in Kingston Penitentiary. Walsh was brought from Kingston to give evidence against McCully, who first elected to be tried before Police Magistrate Glenn, but afterwards changed his plea and elected to be tried by jury.

JAIL FOR THE RIOTER.

First Conviction in Anti-Asiatic Troubles.

VANCOUVER, B.C., Oct. 9.—W. H. Reid, the first man to be tried in the Criminal Assizes Court in connection with the recent anti-Asiatic riots, was sentenced this morning to six months' imprisonment.

He was seen to pick up a stone and throw it thru a window.

Judge Clement was impartial in his charge. The jury was out a very short time.

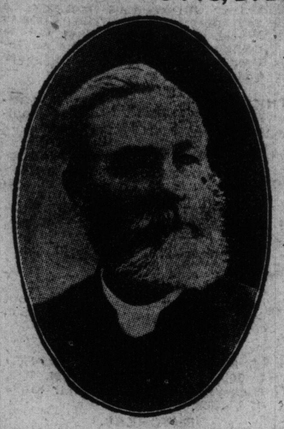
HON. G. F. DIDN'T THEN AGAIN HE DID

BROCKVILLE, Oct. 9.—(Special.)—An Ottawa despatch to The World gives an interview with Hon. G. P. Graham, wherein he denies having said anything about resigning his portfolio in connection with the Brockville provincial by-election.

Mr. Graham made a vigorous speech at the meeting when Mr. Lewis was nominated, and the next day he was reported in his own paper as follows:

"Rather than see an undue advantage taken of the present vacancy and the Liberal party of Ontario deprived of this seat, I would resign my portfolio at Ottawa and again become a candidate."

REV. JOHN POTTS, D. D.



The distinguished Methodist clergyman was unconscious all day yesterday. Asked by The World at a late hour last night, Dr. W. J. Young said that he was sinking rapidly. Dr. Young did not expect that his patient would live thruout the night.

C.P.R. AWARD READY TO-NIGHT

Wage Question Settled, But Holidays and Cost of Living Rock on Which Split.

At 5 o'clock yesterday afternoon, in the offices of Superintendent Oborne at the Union Station, the board of arbitration in the difficulties between the Canadian Pacific Railway and its employes were just about to complete their award when some little matter arose, not wages, which set the whole conference back for another day.

It is announced on authority that the award will be ready to-night.

The arbitrators were not very far apart when the conference closed last night, and still they were. Almost reaching a decision, a peculiar new phase of the difference arose, which the members of the board were not in a position to discuss last night.

It was not a question of wages, but The World learned from a good source that the matter of holidays and at the same time the increase in the cost of living were the big factors in arriving at an award.

The general opinion of the board is that to-day a satisfactory and amicable decision will be reached, at the same time one that will be definte on certain questions which for years have been a matter of argument between the operators and the company.

Cost of Living Considered.

Each particular division, city and town will be reckoned in the award, and in some cases where the men are insistent, will be granted quick, in other cases a further adjustment will be made.

The men are unanimous that a strike is inevitable if certain concessions are not made, but at the same time, should the award of the board be "within bounds," as one agent expressed it to The World last night, "it will be a case of 'Back to the wires,' for there will be no strike to-night."

Concession by Company.

It was admitted by officials of the Canadian Pacific that while the arbitration commisssioners have been wrangling over their report, the company has taken the bull by the horns and made an independent concession to the telegraph operators, which it is hoped will avert a strike.

On Saturday telegrams were sent out to all divisional points, with instructions that an increase of 12 1-2 per cent. was to be given all telegraphers, this increase to be retroactive from the first of October. At the same time the divisional officials were notified that the company had conceded the men's demands for pay for overtime performed on Sundays in hauling trains and that the usual overtime allowance would continue for nightwork. On the other hand, the company withdraws the present privilege accorded the telegraphers of taking two weeks' holidays each year with full pay.

When this was first presented at the vice-president's office it was denied, but later it was admitted to be a correct summary of the company's last offer. This is the result of the work of Vice-President McNicoll and his assistant, J. W. Leonard, who have been busy for some time past trying to arrive at some plan which will satisfy the men and avert the strike, which has of late appeared imminent.

It is not known as yet what position the Order of Railway Telegraphers will take on this new offer. As soon as the heads of the union were notified, they called a vote, and since then every member of the order on the C. P. R. has been sending in his vote by wire. It is expected that the result will be known within a few days.

Commercial Men Notified.

The Commercial Telegraphers' Union are keeping in close touch with their railway brethren on the matter and were at once notified of the offer. Amongst them it is not expected that the new decision of the C. P. R. will settle matters, as they point out that cutting out the two weeks' holiday pay is a setback that equals the 12 1-2 per cent. increase, so that the men will only be better by the Sunday overtime, instead of the general 20 per cent. increase demanded.

In the meantime the question is of considerable interest. Should the O. R. T. accept the C. P. R. offer as a solution of their dispute, what will happen when the arbitration committee files its report, if it ovtr agrees upon one?

NESBITT TALK ONLY TWADDLE

Premier Whitney Declines to Defend Hon. W. J. Hanna Against Insinuations.

Asked yesterday whether any cognizance had been taken by the government of statements made at Gravenhurst by Dr. Beattie Nesbitt, the registrar of West Toronto, Hon. J. P. Whitney said:

"No cognizance has been taken of the statements. I have seen what the newspapers say with reference to it. And apparently certain newspapers would like to suggest that Mr. Hanna is opposed to the power policy. I do not feel called upon at the present time to say anything about the matter, unless I use an expression, which The Globe at any rate disapproves, and say that the language used, 'no matter by whom,' is simply twaddle. Probably this would be considered as an attack on some individual, but I cannot help that. I apply it to the story.

"I would be putting a slight on Mr. Hanna if I were to defend him against mere insinuations, because no direct charges have been made."

WHEN DOCTORS CAME BACK DAZE'S BODY WAS GONE

Hospital Surgeons, It is Alleged, Refused to Sell Them Gloves to Perform Autopsy.

OTTAWA, Oct. 9.—(Special.)—A sensational incident has developed in the fact that Daze's body was taken from the Water-street Hospital Morgue and buried before the doctors, McKinnon and Dowling had finished their post-mortem.

They had done part of the work, but had conducted no autopsy. They told the jury about it last night, and the 12 men decided they wanted the two house surgeons and an orderly to explain matters.

There will be another session to-night to hear these three and others. Mrs. McKinnon and Dowling say they could not do all their post-mortem work the first night, as the hospital surgeons refused either to lend them gloves, or sell them any, and that when they arranged to come back next day, and did so, the body was gone.

SIR H. M. ALLEN CHOSEN.

Elected to Steel Company Board of Directors.

MONTREAL, Oct. 9.—The deferred annual meeting of the shareholders of the Dominion Steel Company was held in this city to-day, when Sir H. Montague Allan was elected to the board of directors, vice Sir Henry Pellatt, resigned, and Dr. F. S. Pearson of Boston, who has resigned, withdrew his resignation and remains on the board, obviating the selection of a second new director.

There was no discordant note thruout the meeting, and it lasted only a short time. Mr. Plummer announced that proxies representing 174,000 shares were in the hands of the executive.

CARD GAME PINCHED.

Police Get Men and Coin at Elm-Street House.

Inspector Cuddy and Sergt. Armstrong of No. 2 police division butted in at 100 Elm-street about 10 o'clock last night.

They found $300 and some poker chips on a table. They also found Harry Gold and Hyman Stockman, who keep the house, and Israel Greenbaum, 129 Agnes-street; Zelic Hershorn, 56 Hayter-street, and Hyman Greenberg, 54 Centre-avenue. They took these also.

Gold and Stockman are charged with keeping a common gaming house, and the others as frequenters.

KIPLING AT VICTORIA.

VICTORIA, B.C., Oct. 9.—The Canadian Club of this city had as their guest at luncheon to-day Rudyard Kipling, who, with Mrs. Kipling, is spending a vacation at Mt. Baker Hotel.

The galleries of the A.O.U.W. Hall, in which lunch was served to-day, were packed by ladies, as was also all available space in the auditorium. Mr. Kipling's address was greeted with rounds of applause and the singing of "He's a Jolly Good Fellow."

VERDICT WILFUL MURDER.

QUEBEC, Oct. 9. — The coroner's jury in the case of Bardi, the Italian who was killed last week at Hervey Junction on the Great Northern Railway by another Italian named Demonte, rendered a verdict of "wilful murder," and the prisoner is now in Quebec Jail waiting the preliminary investigation, which will take place to-morrow before Judge Chauveau.

RAILWAY COMMISSIONER'S MEET

OTTAWA, Oct. 9. — (Special.) — The railway commission will probably sit in Toronto on Oct. 25.

Fell From Car.

Mrs. Ethel H. Wood, 104 West Lodge-avenue, fell in alighting from a street car at O'Hara-avenue and West Queen-street last night. Her right leg was broken above the knee. She was removed to the Western Hospital.

A PRESENT FOR JAMES

OLD MAN ONTARIO: Don't you mind him, Son. You got that melon 'cause you honestly earned it.

Railroads Must Safeguard The Lives of Passengers

Public Demand That Transportation Systems Shall Exercise Caution and Be Vigilant—Evils of the Penalty for Not Making Fast Time.

ST. THOMAS, Oct. 9.—(Special.)—The grand jury this morning made what was practically a plea for mercy in the case of Murray Stephens, the convicted Wabash engineer, and a serious charge against the railway companies, that it is calculated will arouse much comment.

The clause in the address referred to is as follows:

"The people are awakening to the fact that the traveling public have a right to demand from railway companies that they exercise caution, and be vigilant in protecting the lives of passengers traveling on railway trains. From evidence before us we are forced to the conclusion that the officers administering the law have not prosecuted in some cases the parties primarily responsible for the great loss of human life during the past year. Trainmen will not 'run' semaphores when they know that, by so doing, they will incur instant dismissal and other punishment; but they will run them when the act is winked at by high officials, to make fast time. While we are in favour of enforcing the law in all cases, to protect human life, we do not favor the prosecution and conviction of the humble parties to the offence, and letting those in exalted positions escape the penalty incurred. Let no guilty man escape. We believe, if the law is administered in this manner, there will be fewer so-called railway accidents.

PROVINCIAL SECRETARY A VICTIM OF THIEVES?

Rumor Says He Was "Touched" for His Wad While Seeing Sights at the Fall Show.

CHATHAM, Oct. 9.—(Special.)—L. H. Edmunds, a prominent Blenheim horseman, was robbed of $250, the proceeds of the winning of his horses at Dresden Fair at the Pere Marquette station there to-day.

Mr. Edmunds was carrying a basket of grapes, which the stranger asked to see. Accommodatingly Mr. Edmunds held the basket up, and when his arm was extended the deed was done. One other man is said to have lost $400, and there was a rumor to the effect that Hon. Mr. Hanna had his pocket picked.

D. A. Gordon and P. P. Bowyer were also in attendance. The fair was a great success.

IRON FROM PORT ARTHUR.

First Cargo From Atikokan Comes to Toronto.

PORT ARTHUR, Oct. 9.—The first shipment of pig iron to the east from Port Arthur was made to-day. The steamer Edmonton was chartered and she went to the Atikokan Iron Company's dock yesterday to load the cargo of pig iron for Toronto.

J. J. O'Connor, who chartered the boat, points out that this is the beginning of a new business in Canada. In fact, it is so new that there is not an eastbound tariff for the carrying of pig iron fixed by any steamboat company.

Mr. O'Connor stated that from this on there would be an almost continuous trade between Toronto and other manufacturing points in the east and the local furnace.

M'MAHON ON THE TRAIL OF BAPTIST PREACHER

Says He Had No Business to Intrude—His Adopted Daughter Was Not Being Abused.

CHATHAM, Oct. 9.—(Special.)—Jeremiah McMahon, West-street, claims that Rev. W. A. Gunton, pastor of the Central Baptist Church, had no right to intrude in his household yesterday on the assumption that his three-year-old adopted daughter was being abused.

Mr. McMahon is very wroth and has been seeking to bring the minister to court on account of the matter, claiming that his adopted child had never been ill-treated. The minister, however, claims he can prove the point. McMahon has been unsuccessful in laying an information so far.

The reverend gentleman has been very active of late following up a crusade against harboring children in illicit places by making a tour of the factories in the city on the lookout for boys working under age.

SPARK EXPLODED FILMS.

Wonderland at Chatham Cleaned Out by Fire.

CHATHAM, Oct. 9.—(Special). — A disastrous fire occurred in Wonderland, a 5c and 10c moving picture theatre, just before the afternoon performance to-day, resulting in over $1000 damage and damage by water and smoke to the contents of a warehouse on the second floor.

The fire was caused by sparks coming into contact with the films. An attendant had his hand quite severely burnt.

ENGINEER MUST SPEND TERM IN PRISON

Has Been Struggling Since the Diamond Crossing Collision at Callings He Was Not Used to.

ST. THOMAS, Oct. 9.— (Special.) — Murray Stephens, the Wabash engineer, was this afternoon sentenced by Chief Justice Meredith to six months' hard labor in the county jail for disobeying rules and causing the death of two people at the C.P.R. crossing, this city, a year ago.

The engineer's counsel, Mr. Crothers, asked for a nominal sentence. He thought the prisoner was more the victim of a vicious system than anything else. He agreed with his lordship that no railway company would dismiss a man directly for making a stop and losing time, but there were other means of degrading a man. If he did not make time he was given slower runs.

There was no intention to do any harm, and this man was an unfortunate victim of circumstances. He had been struggling since the collision in callings he was not used to to support his wife and children, five in number.

His lordship expressed his regret at having to impose punishment on a man of so honorable a calling, but it was his duty to impose some punishment for the serious offence, which was made a crime by the statutes. On the charge of manslaughter the sentence would have been much more severe. He did not think it right for prisoner's counsel to try and place the whole blame upon the higher officials.

There was no doubt that circulars were issued, pointing out the fact that the laws and rules were being violated.

BROKE JAIL; SEVENTY DAYS.

Problem Turner Was Sentenced at Brockville.

BROCKVILLE, Oct. 9—(Special.)—Problem Turner was arraigned before P. M. Deacon on a charge of breaking jail on July 22, to which he pleaded guilty, and was sentenced to serve seventy days, in addition to his six months' term in the Central Prison. His absence from jail numbered sixty-one days, so that in reality only nine extra days are added.

Don't Worry Your Rich Friends.

If you have a good position in view, and your prospective employers ask you for a bond, don't worry your friends and rich relations with a demand to go security for you. The bonding of trusted clerks and officials is our particular business. We furnish guarantee bonds for good men in every department of business. Our bonds are sought by the largest financial and mercantile institutions in Canada, and when we issue a bond in favor of a client that says the final word as to his fitness and integrity.

Phone Main 1642 for full and ready particulars. London Guarantee & Accident Co., Confederation Life Building, corner Yonge and Richmond-streets.

JAPANESE SOLVE PROBLEM—LOOK TO KOREA

May Be Unnecessary for Canada to Discuss Question With Subjects of Mikado.

TOKIO, Oct. 9.—The Japanese government has placed heavy restriction on emigration companies.

The announcement has just been made of a vast colonization scheme which will open up a million acres of land in Korea to Japanese settlement, and officials aver that this will solve the question of emigration to the United States and Canada.

MADE MISTAKE SAID ANCIENT

Spoke in Heat of Passion at Toronto—They Had Splendid Time In Toronto.

BOSTON, Oct. 9.—(Special.)—Ralph Goucy of the Ancient and Honorable Artillery Company apologized to-night to his associates at their headquarters in Faneuil Hall for his comments about the officers of the organization made at Toronto, when he was refused an extra invitation to the banquet, which he desired for a friend in the Canadian garrison there.

"My criticism," he said, "was made in the heat of passion and anger, at being refused an invitation, and I believed that I was being dealt with unfairly. I made a mistake in thinking so, for I soon learned that I was in error, but not in time to correct my position in the matter.

"I now take this opportunity for doing so and hope that the company will accept my apology."

The apology followed a speech by Commandant Major Henry Jordan, who said that the ancients had enjoyed one of the best outings at Toronto in the history of the company.

CITY HALL HOAXED.

Court Officials Saw Eagle Which Turned Out a Mere Flag.

Along West Queen and Teraulay-streets yesterday afternoon, hundreds of people were attracted by what was said to be a huge eagle perched on the top of the tank on the roof of the Purdy-Mansell Company's building, on Albert-street.

The officials in the city hall were much interested in the movements of the big bird as it swayed, bobbed its head and flapped its wings.

During the afternoon the Mansell-Purdy people were called up by several and informed that the eagle might be caught.

They thought it was a joke.

A morning paper reporter was sent to investigate, and when he had climbed to the roof, and from there to the tank, he found that there was no bird.

It was a small flag, all twisted up, with the top broken.

BASEBALL RECEIPTS BIG.

Players Will Divide Over Fourteen Thousand.

CHICAGO, Oct. 9.—The receipts for to-day's game, as announced by Secretary Bruce of the National Baseball Commission to-night, were $26,430. The players will receive $14,272, and each club is enriched to the extent of $4750. The national commission gets the rest, $2643.

CHINESE DEE-LIGHTED.

SHANGHAI, Oct. 9.—The comments of the Chinese press, officials and people on the visit to Shanghai of War Secretary Taft are most enthusiastic. The reports published in the daily newspapers of this city on the subject have been telegraphed to all parts of China.

TORONTO'S POSTMASTER

The two best bets:
T. C. Irving, manager of Bradstreet's, Toronto.
R. M. Coulter, deputy-postmaster-general, Ottawa.

SHOULD EXERCISE CARE.

The purchase of a fur-lined overcoat is a matter of importance, and is deserving of careful consideration. The gentlemen who are contemplating such a desirable investment could do no better than consult Dineen's, at Yonge and Temperance-streets, a thoroly reliable establishment, where there are many styles to choose from. The $65 special commands attention. For hats and every variety of ladies' and gentlemen's furs, Dineen's is the safe place to patronize, if you want quality, style, fit and finish at reasonable prices