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CABLE ITEMS.

Queen Victoria to Visit Darmstadt—Rochefort's Murder Reported—Elopement in German Society.

Fast Cruisers for Germany—Mormons Expelled From Silesia—Movements of the Kaiser.

LONDON, Jan. 21.—The Court Circular says Queen Victoria will go to Darmstadt in April, where she will meet the Czar and Czarina, the Empress of Germany, ex-Empress Frederick, the Duke and Duchess of Saxe-Coburg-Gotha and the Duke and Duchess of Cumberland.

It is rumored in Paris that Henri Rochefort has been murdered. Great excitement prevails.

Ex-President Perier has vacated the palace, and M. Faure took possession. M. Bourgeois has not yet succeeded in forming a cabinet.

The condition of the Duke of Argyll is unchanged.

Lord Randolph Churchill is weaker.

Dr. Von Szilagyi has been elected president of the Hungarian chamber of deputies.

Count Bernstoff, a member of a prominent and wealthy family in Berlin society, has eloped with Sophie Barrison, an American theatrical performer.

An imperial decree will be issued imposing the duty upon each lieutenant in the army to undertake at least once every two years a long ride on horseback. The Kaiser will give prizes to each army corps for the best achievement.

The Kaiser took particular pains to emphasize his friendship for Count Schouvaloff on his retirement from the position of Russian ambassador at Berlin. He gave him a cigar case of pure gold encrusted with diamonds, and a fac simile of his signature in rubies, and also bestowed on him personally at the Russian embassy the diamond decorations of the order of the Black Eagle.

The demand of the Emperor that ten or twelve fast cruisers be added to the German navy will, judging by the feeling expressed by the members of the reichstag, be adopted without much trouble. The Hamburg chamber of commerce supports the scheme in its annual report, in which it declares that such an increase is necessary in order to strengthen German influence abroad and facilitate the extension of the colonies of Germany.

The chances of the passage of the anti-revolutionary bill in the German Reichstag have not improved. The repeal of the Jesuit law was authorized by the house, but the whole Government party, the Conservatives and the National Liberal parties, as well as the Radicals, opposed the motion, and it is likely that the Bundesrath will again nullify the reichstag's decision.

The news of the great political changes in Paris was received in Berlin with less amazement and disquiet than might have been expected from the peculiar relations existing between the two countries.

Emperor William has been exceedingly busy of late. A series of court festivities has not fairly begun. The great coronation festival occurs on Monday and the court reception is fixed for next Wednesday. The birthday of the Emperor is on Sunday, January 27, and preparations for its celebration are already under way. A special programme has been arranged for a gala performance at the royal opera house.

The government has expelled from Silesia two Mormon agitators, and another, William Tebler, of Santa Clara, Utah, is wanted by the police for an alleged crime.

The decision of the building committee of the reichstag respecting the inscription to be placed on the facade of the new reichstag palace has been announced to-day. Instead of being to "the German nation," it will be to "the German empire."

Emperor William has sent a number of his own drawings, representing warships of the latest construction, to the national library of the reichstag, each design being marked: "Wir, Wilhelm, Imperator, Rex."

The Emperor has just ordered from the Germania shipyards a twenty-rater racing yacht for the coming season. A number of the yacht clubs of Berlin, Hamburg and Stettin have given similar orders, and next summer a great yachting meeting is to take place. Berlin yachts for the first time will make the trip entirely by water, which will be possible after the opening of the Baltic canal. The Emperor, personally, will offer more than one prize to be competed for by the German yachtsmen.

During 1894 England imported from Canada 28,711 tons of hay.

CAYUGA, Jan. 21.—Dr. Baxter was nominated by the Haldimand Reformers for the vacancy caused by the withdrawal of Senn, the Patron candidate.

SIR CHARLES TUPPER.

His Recent Trip to British Columbia—Changes to Be Made in the Regulations.

Highly Gratified With His Reception—Impressions of the Province—Political Outlook.

(From Our Own Correspondent.)

OTTAWA, Jan. 18.—Sir Charles H. Tupper is busily engaged these days in grappling with the details of the many important questions which come before him in his capacity as Minister of Justice. A day or two ago, however, your correspondent called upon him and asked if he would kindly say something in reference to his recent trip to the Pacific coast.

The Minister replied that he had abstained from discussing the matter for some days for obvious reasons, but that he took advantage of my question to record his sense of gratitude at the cordial reception accorded him at every stage of his Western journey. It was completely beyond his expectation or deserts. "Having reached Victoria," remarked Sir Charles, "I immediately arranged a series of conferences, first of all with those representing the sealing industry whom I had gone more particularly to consult. The explanations given and the exchange of opinions were very valuable, I think I may say to all concerned. Everything was discussed in a most business-like manner. Subsequently I had the advantage of a very full discussion and interchange of opinion with those interested in the prosecution of

THE SALMON CANNING INDUSTRY."

I was greatly impressed with the unanimity of sentiment in British Columbia in support of many of the views of the canners which were opposed to the views of my late officers, and while I heard nothing to minimize the strength of the opinions advanced by our officers here from a theoretical standpoint, it was impossible for me to ignore the testimony of the canners and the actual condition of the fisheries as I found them, particularly in view of the enormous extent of the fisheries, the complete difference of the water out there from that on the Eastern coast, the extraordinary differences in many of the habits of the salmon from those on the Atlantic coast, and above all the uniformity of size of the fish taken for market. In short, while as yet I have reached no final conclusion on the matter, I feel certain that after discussing the subject with Hon. Mr. Costigan, the present minister of Marine and Fisheries, and ultimately with my colleagues in council, we shall be able to make further concessions respecting the regulations without running the danger of doing serious injury to the wonderful piscine wealth of British Columbia. I believe that theoretically our regulations are sound in the main, and that where a mistake has been made it has been on the side of safety. It is impossible, however, in view of the strong opinions put forth by leading men of the province, men of intelligence and ability, members of the local legislature and of the boards of trade, who endorse emphatically the views put forward by the representatives of the province in the House of Commons, to insist upon a stringent adherence to the departmental view. I take this ground chiefly on the hypothesis that as regards the fish which are caught for canning purposes the good average size is being maintained. This solution of the vexed question, therefore, occurred to me, and I advanced it for the consideration of the canners who were with me on the Fraser river when the sad news of my late leader's death reached us. If the canners' contention be correct that the Department

CAN YIELD CERTAIN POINTS

in the regulations, they must be of the opinion that the size of the fish will be maintained. Therefore, if they will agree that for ten years to come the department shall not entertain or consider any suggestion to reduce the size of the mesh as now prescribed, most of the concessions they desire will be possible. To refuse to accept this proposal would imply that they are not sure of their ground. My suggestion was informally made and they promised to have a meeting of those interested and to acquaint me with their views. On the vexed question of the disposition of the offal from the canneries it is possible also that a compromise may be effected, but of course to attain this legislation will be necessary. I need hardly say, however, that Mr. Costigan and I will give the matter prompt attention. The other questions concerning the fishing regulations, such as permission to take salmon along the coast and the application of the regulations to the Skeena river can, I think, be easily adjusted. The question of the use of seines is a very perplexing one. The proposition submitted to me in British Columbia is altogether opposed to the best advice I can get from fishery experts. However, local peculiarities are again urged and probably some compromise may be adopted. You may say, however, that the whole question will be thoroughly inquired into. I had arranged that Professor Prince, commissioner of fisheries, whose ability and scientific attainments are well recognized, should enter into a practical investigation of the fishery question in British Columbia. I have no doubt that Mr. Costigan will carry this out. On being asked as to

THE POLITICAL OUTLOOK,

in the West, the Minister of Justice replied, "I believe that public sentiment in British Columbia is strongly in favor of the policy of the present Dominion government, and that the only capital our opponents are able to make is connected with minor defects of departmental management and the impossibility of fully meeting all the demands that are made on the different departments. In support of this statement it is important to remember that at the meeting which I addressed in Victoria members of the local legislature, sitting both on the right and left of Mr. Speaker, occupied seats on the platform, and I ascertained that the leader of the provincial opposition was as good a friend of the Conservative party in federal politics as the leader of the government, Hon. Mr. Davie. I visited the house of assembly when it was in session and they paid me the extraordinary compliment, on the suggestion of Mr. Speaker Higgins, of adjourning in order that they might have the opportunity of meeting me. In the Speaker's rooms, in the presence of gentlemen of both sides of politics, Hon. Mr. Higgins proposed my health in most felicitous terms. The meeting which I addressed in the opera house was a grand success, and was rendered all the greater by an abortive attempt on the part of the local Grit organization to break up the meeting. The crowd, however, who came to interrupt were too good-natured and generous to continue the disorderly conduct they were induced to begin. Their interruptions at times were humorous as well as mischievous, but on the whole tended to the success of the meeting. An active and energetic local Grit was given an opportunity of exposing his ignorance on political questions, and his interruptions becoming exceedingly rude subjected the man to the disapprobation of leading Liberals present, who were among the most attentive of the audience. I never addressed any meeting with greater pleasure than that which was held in the Victoria opera house, and I am satisfied that we have an

OVERWHELMING NUMBER OF FRIENDS

in that city. Wherever I went, in British Columbia, my friends vied with each other to make my visit as delightful as possible. At Nanaimo I had the pleasure of addressing a public meeting, as well as one under the auspices of the Board of Trade. I was sorry to find, however, that our friend Mr. Haslam, M.P., was confined to his house by an attack of illness. I learned that he was deservedly strong in his constituency, and if he can be induced to run again for parliament at the next election, he will win in a canter. The members of the Board of Trade are a well informed body of business men, proud of their little city and of their magnificent harbor, which is one of the finest I ever saw in my life. There are some matters there which require the attention of the government, and will receive it. Mr. Haslam has pressed their importance on the different departments, and so far as the marine department is concerned, a personal visit was all that was needed to convince me that speedy action should be taken towards making the port as effective as possible. Where local enterprise has done so much, the government ought to be able to lend a hand. My meeting there was as successful as the one at Victoria. As I looked into the kindly and independent faces of the audience it was with pride that I remembered many of them were "bluenoses" like myself. After the meeting a banquet was tendered to me, the mayor of the town in the chair, and the president of the board of trade in the vice-chair. From Nanaimo I went to the Fraser river, where I met the canners and was about to continue a practical investigation of the canning industry when the sad news of Sir John Thompson's tragic death reached me. This, of course, brought an end to my visit. I had to cancel all my remaining engagements, both in British Columbia and Manitoba, and proceed to Ottawa at once. Certainly one of the most gratifying features of an ever-to-be-remembered trip was the invitation extended to me by the members of the Manitoba Club. These gentlemen were good enough to ask me to accept a banquet at the club on the night preceding the evening I was advertised to speak in the city. I have been favored since with a list of the names of the members of the club who were to be my hosts. You readily understand how gratified I am at this preferred compliment when I say that included in the list were two members of the Manitoba government, as well as the most prominent Liberal in the city of Winnipeg.

CAPITAL NOTES.

John Bull Did Not Buy Uncle Sam's Compressed Fodder—Manitoba Wheat.

Ottawa's Winter Carnival Opened Under Most Discouraging Auspices—Unfavorable Weather.

(From Our Own Correspondent.)

OTTAWA, Jan. 21.—Some time ago a paragraph, which originally appeared in the London Canadian Gazette, and was therefore thought authoritative, went the rounds stating that the British government had ordered from the United States a large consignment of compressed fodder, consisting of crushed oats, maize and chopped hay, the question being asked: "What has Canada been doing on the subject?" Under the circumstances of the specific statement, an inquiry was made through the High Commissioner with the object of obtaining some information, if possible, regarding this alleged large consignment of compressed fodder bricks, with the result that the whole thing appears to be a myth. Nothing is known at the War Office in London of any orders having been given for a consignment of compressed fodder from the United States.

The government have decided that Manitoba wheat now in the elevators at Buffalo cannot be reimported without payment of duty. The price of Manitoba wheat in Canada is higher than in the United States, and several Toronto grain handlers are anxious to bring many thousand bushels back to the Dominion. To have granted this request would have been to allow coasting in Canadian waters by American vessels, and, moreover, no means for the identification of this wheat are available.

Ottawa's winter carnival was opened to-day by Sir James Grant. The weather was very unfavorable, the rain falling all afternoon, rendering the platform and roadways one vast sheet of ice. Sir James Grant, Sir Adolphe Caron, Hon. John Haggart and Mayor Borthwick delivered addresses and the ice castle was then formally opened. The decorations in the principal stores are elaborate and at night present a brilliant spectacle. Electricity is being utilized in hundreds of different ways.

The cabinet met to-day, but only routine business was transacted.

BOURGEOIS, PREMIER.

PARIS, Jan. 19.—M. Bourgeois had an interview with President Faure at 9:45 o'clock this evening. He definitely accepted the task of forming a cabinet and expects to have his list ready to-morrow. It is understood that part of his programme is an amnesty for political offenders.

The election of M. Felix Faure to the presidency has been well received by the moderate press, but is violently criticized by the radical and socialistic newspapers. The working classes were astonished at M. Brisson's defeat, but no demonstrations were reported. At a meeting of socialists at the Maison du Peuple resolutions strongly condemning M. Felix Faure and demanding suppression of the presidency were adopted amid cries of "Vive la revolution sociale!" "Down with reaction!"

BERLIN, Jan. 19.—The Hamburger-Nachrichten, Bismarck's organ, says that the future of the French republic was never so gloomy as to-day.

MONTREAL MATTERS.

MONTREAL, Jan. 21.—(Special)—A deputation representing a number of citizens called upon the Governor-General this morning to tender to His Excellency a ball to be held at an early date. Lord Aberdeen received his visitors cordially, and expressed himself pleased to accept the invitation. The date of the ball will be decided later on.

Hon. Mr. Taillon attended a meeting of the cabinet to-day.

Hon. Henry Starnes is getting better.

LOOKING FORWARD.

TO THE EDITOR:—I appreciate the compliment contained in the letter of Mr. Robert T. Williams, but having selected the signature "Onlooker" as one descriptive of my attitude towards British Columbian interests will, for the present at least, retain it. As you know I am an onlooker, an interested one no doubt, but simply an onlooker so far as this province is concerned. My observations in regard to Canada have led me to believe that British Columbia is approaching an era of great development, and I regard the opening of Asia to colonization and commerce as one of the chief factors in that development.

History inspires faith in the destiny of the Anglo-Saxon race. If we look abroad we will see abundant reason to believe that our race, that portion of it at least which looks to the Union Jack as its flag, has not spent its energy, but is to-day more potent in all the elements necessary for aggressive progress than at any time in its history. If we had no other proof than South Africa affords we could have no doubt upon this point. Therefore, I contend that when China and Siberia are fully opened to the world, the commercial instincts, the indomitable courage, the far-seeing enterprise of the British people will win peaceful victories there as they have won them in every other arena.

I claim that the vast natural resources of British Columbia, and especially its forest wealth and its fisheries, will be drawn upon to an extent which we cannot now appreciate to meet the demands of the New Asia. I claim that the commerce between the Orient and Western Europe will find its way across Canada and therefore will be handled at British Columbia ports, and that the cereals of the Canadian prairie region will find in China a market which will expand to an enormous degree. This prospective expansion is a point which the United States consul at Tient-Sing has lately brought out very strongly, and the increasing trade in flour between San Francisco and the Puget Sound on the one hand and China on the other, fully corroborates his anticipations. There are some features of the flour trade with China which require careful study in a practical way, but these it is not necessary to speak of at present.

Concerning the market for lumber the consul above quoted says that China will have to depend upon the outside world for her supplies. At present most of the lumber imported into China comes from Japan, where the rate of cutting is so rapid that there is a prospect of the forests being exhausted at a very early day.

It would exceed the limits which you would perhaps feel like placing at my disposal to speak at full length upon the many and varied factors that will contribute to the expansion of commerce upon the Pacific ocean. It is hardly necessary to say that British Columbia has only begun to feel the benefits which will accrue from this source. What seems to me to be wanting now is that this province shall justify the "British" part of its name by exhibiting its confidence in the old motto that the gods help those who help themselves, and by developing its own magnificent resources show to the world that it is alive to the really majestic possibilities of its position as a part of the empire.

The world at large really knows very little of this province. Tourists come across the plains on the C.P.R. and then plunge with that road into the heart of the mountains. They go home and tell of wonderful vistas of mountain peaks, of terrific canyons through which foaming rivers flow, of towering rocky crests and great glaciers. They do not tell, for they cannot see, anything about the great mining regions of the Kootenay, the rich valleys of Yale district, the priceless wealth of Cariboo and the region further north, the great pasture lands of the central plateau, the fertile and extensive bottom lands of the Fraser, the Nechaco and other rivers, the immeasurable value of the forests, the admirable farming sections of Vancouver Island and the other islands, the incalculable deposits of coal and iron, the vast possibilities of its deep sea and fresh water fisheries. When artists select a subject to illustrate this province they generally take some glacier, or Mount this, that or the other. Edward Blake told the world that the province was a sea of mountains, and the press and the picture-makers have done all in their power to confirm the impression thus created. But if the sea of mountains were cut out altogether there would be a province of imperial proportions left, and not only of imperial proportions but capable also of a development that will be imperial in its grandeur.

What the province needs is a policy of development. The time is ripe for the inauguration of such a policy. The time has come when the people who live in British Columbia must show to the world that they themselves have faith in the province. My observations elsewhere lead me to believe that if this province shall determine upon such a policy there are thousands and tens of thousands of persons who will hasten to seek the advantages certain to follow from it. There is a vast deal to be done. The British Pacific railway is one feature of this policy, but it is only one. It is perhaps the most potent feature of it, for it would mean the enlisting of the active co-operation of men of capital, whose interest it would be to fill the country with population, expand the market for our lumber and further the exploitation of our mines. A representative of a large number of capitalists said to me not long ago: "The moment you can tell me that the Cariboo country is certain to be opened by a railway within two or three years, that moment I will be able to place my hands upon money to buy up good mining propositions there to almost any extent." In more than one place have inquiries been made of me as to the agricultural resources of this province, and I heard many persons express the opinion that when this province exhibited a disposition to help itself thousands of farmers from the United States, who have grown discontented with the conditions existing there, will convert what they possess into money and seek homes in British Columbia.

I am satisfied that British Columbia's hour has come, that the time is propitious for a new advance. I concede that the occasion is one that demands a statesmanlike grasp of the situation and courage to face the criticism of narrow-minded men. But these are the qualities that win. Qualities like these are what made Cecil Rhodes and South Africa synonyms in everyone's mind with all that is progressive and inviting to enterprise and capital. In some respects we have a better country here in British Columbia than that which the Anglo-Saxon is subduing in Africa. IN RESPECT TO GEOGRAPHICAL POSITION AS REGARDS THE TRAFFIC BETWEEN EASTERN ASIA AND EUROPE WE STAND SUPREME. I would like to get this one fact ingrained into the mind of every British Columbian. What has made the cities on the Atlantic seaboard of this continent great is the enormous volume of traffic and travel that has flowed through them? A greater flood will pour between America and Asia when once the commerce of the Pacific has been fully developed. It is time for British Columbia to get ready for her share.

ONLOOKER.

CROASDAILE V. HALL.

(Full Court—Present, McCreight, Walkem, and Drake, JJ.)

JUDGMENT OF MR. JUSTICE WALKEM.

This action was brought by the plaintiff in his character of an agent to recover $15,000 for general services to the defendants as part owners of a group of mines known as the "Silver King." The services may be classified as services rendered in this province and the adjoining state of Washington during a period of three years and a half, ending in June, 1892, and as services in England during twelve months, ending in July, 1893. At the trial these distinctive periods were kept in view and a separate award was made by the jury in respect of the first period of $1,350, in lieu of the plaintiff's claim of $2,000, and in respect of the second period of $4,350 in lieu of his claim of $13,000.

The present litigation has arisen in consequence of the different interpretations placed by the plaintiff on the one hand and the defendants on the other upon the following resolution, which was passed at a meeting of the defendants, at which the plaintiff was present, in July, 1892:

"3rd. Resolved and carried unanimously, that Mr. H. E. Croasdaile be requested to accompany Messrs. Hall and McDonald to England and assist them in negotiating the sale of the mines, and that he be paid for his expenses $70 by each of the aforesaid thirteen interests, and such further sum as Mr. Winslow Hall shall consider right, upon the sale of the mines, in consideration of his general services to the partnership."

Acting upon the resolution the plaintiff accepted and received the $70 per interest provided for his expenses and proceeded to England, where he assisted Hall and McDonald as agreed upon. At the time of the passing of the resolution all parties seem to have been of opinion that he would not be detained there more than two months, whereas, as it turned out, he was detained twelve. It was also stated to us by his counsel, and not denied, that according to evidence given at the trial which does not appear in the appeal book, namely, that of two witnesses, Sir Joseph Trutch and Mr. Day, the sale of the mine was almost wholly due to the plaintiff's influence and business ability, and to the active part that he took in the negotiations that led to it. After the sale Winslow Hall refused to pay the plaintiff for any of his services, hence the present action. It is not denied that the term "general services" includes services performed before and after the passing of the resolution; and there is no reason why those services should not be separately dealt with, as was done at the trial when considering the question of remuneration.

Judgment having been given for the whole amount of the verdict, the defendants now appeal on the ground that the question of the plaintiff's remuneration having, by the terms of the resolution, been left by the parties to the decision of Winslow Hall, the action is not maintainable. A motion for a new trial for alleged misdirection has also been made; but as the rule requiring the instances of misdirection to be stated in the notice of motion has not been complied with, the motion must be refused with costs. Apart from this, as pointed out by the court at the hearing, the motion could not be allowed for want of merits.

With respect to the first branch of the case, viz, the plaintiff's claim for services performed between January, 1889, and July, 1892, that is, for the period preceding the resolution, I agree with my brother McCreight for the reasons he has just given, that as the plaintiff had acquired a vested right to be paid, nothing short of payment or a valid release would discharge the defendant. Hence the resolution in itself, although assented to by him, could not, fortunately for him, have the effect of divesting him of that right. The finding of the jury for $1,350 must therefore stand.

As to the second finding of $4,350, for services performed in England, it is obvious that the same reasons for supporting it do not exists; for when the resolution was passed it interfered with no vested right, for none had been acquired as no reward had been earned. It was quite competent, therefore, for the parties to agree that the question of remuneration for prospective or contemplated services should be left, as was done, to Hall; and such an agreement implies that it was intended to be left to him and not, for instance, to a jury. The plaintiff, it is true, states that he so agreed on the understanding that he would be entitled to a fair remuneration and that he did not rely on the resolution alone as the foundation of his claim. But the fact remains that both he and the defendants acted upon the resolution and must, therefore, be taken to have adopted it. In support of the finding, the plaintiff's counsel cited Bryant v. Flight (5 M. & W., 14); but that case would appear to have been overruled twenty years later by Roberts v. Smith (4 H. & N. 315); and such is the opinion expressed of it by Mr. Justice Strong, now Chief Justice of Canada, in his judgment in Doutre v. Regina (6 S.C.R. at p. 397.) Roberts v. Smith was a case where, for instance, A and B agreed that B should perform certain services, and that in one event A should pay B a certain salary, but that in another event A should pay B whatever A might think reasonable. That other event having happened the court held that there was no contract which B could enforce. In commenting on the case Sir Frederick Pollock observes at p. 45 of his work on contracts: "Services, indeed, had been rendered by B, and of the sort for which people usually are paid and expect to be paid; so that in the absence of express agreement there would have been a good cause of action for reasonable reward." It follows from this that if the resolution had not contained the stipulation that the remuneration was to be such as Hall should "consider right" the plaintiff might have been successful in upholding the finding for $4,350. In Taylor v. Brewer (1 M. & S. 290) a person did certain work for a committee under a resolution "that any services to be rendered by him should be taken into consideration and such remuneration should be made as should be deemed right," and it was held that he could not recover for such work "as the resolution imported that the "committee were to judge whether any remuneration had been earned." (See also Chitty on contracts.) The promise there relied upon, like the promise in Roberts v. Smith, and for that matter like the promise in the present case, was an illusory promise, and hence a promise incapable of enforcement. Effect, therefore, cannot be given to the finding for $4,350, and accordingly the judgment given for the plaintiff must be reduced by that amount.

It was contended on behalf of the plaintiff that, as the resolution left the question of remuneration for his general services, or, in other words, for all his services, to the decision of Hall, the services for the two periods stood on the same footing, and that the second finding therefore should, like the first, be upheld, especially as the plaintiff understood that he was to be fairly remunerated; but such an argument cuts both ways, for it might be urged, as indeed was done, that the first finding should share the same fate as the second. With respect to the services antecedent to the resolution, no express agreement as to remuneration was made at the outset, but there was in law an implied agreement that they should be paid for, and that agreement was the foundation of the plaintiff's vested right to a reasonable reward, which Hall having refused to name, the jury settled at $1,350. On the other hand, with respect to the services to be performed and that were performed subsequent to the resolution, an express agreement as to remuneration was by the terms of that resolution made at the outset, namely, that Hall (and not a jury) should determine what, if anything, the plaintiff was entitled to. Effect could be given to such an agreement because, as I have said, no vested right had been acquired, for no reward or compensation had been earned.

There has been a growing inclination on the part of the courts in England to keep people to the strict letter of their agreements, even though hardship should be the result. Jones v. St. John's College (L.R. 6 Q.B.) is a notable example of this.

In view of the evidence in the present case, it would appear that the plaintiff has been harshly treated by the defendants. Their line of defence throughout has been of a highly technical character and one that a scrupulous man would, under similar circumstances, hesitate to take advantage of, and especially so after a jury had expressed the opinion which the present jury have expressed, of the value of the plaintiff's services.

As the appeal has only been partially successful there will be no order as to costs. The plaintiff's costs consequent on the dismissal of the motion for a new trial may be taken as balancing the costs occasioned to the defendants by the further hearing of the appeal which was granted at the instance of the plaintiff's counsel.

(Sd.) GEO. A. WALKEM, J.

JUDGMENT OF MR. JUSTICE DRAKE.

The appeal in this case is against the judgment rendered in pursuance of a verdict of the jury and there is also a motion for a new trial.

On the first hearing, for the case was twice argued, the only ground discussed was that the agreement tried on was an illusory contract, and such being the case the plaintiff was not entitled to recover.

The plaintiff, it appeared, had acted for the defendants in various transactions protecting their interests prior to the date of the resolution of 19th June, 1892, and in respect of these prior services the jury have found a verdict of $1,350, and in respect of services connected with the sale of the mines $4,350.

The resolution on which this action is based in the first place appointed Winslow Hall and John McDonald attorneys to negotiate a sale of the mines known as Silver King and others, and it further specified the amount which should be paid to McDonald on the sale of the mine for his services.

The resolution proceeds as follows: That the plaintiff be requested to accompany Messrs. Hall and McDonald to England and assist them in negotiating the sale of the mines and that he be paid for his expenses $70 by each of the 13 interests, and such further sum as Mr. Winslow Hall shall consider right, upon the sale of the mines, in consideration of his general services to the partnership.

This resolution is open to more than one construction. One view is that he is only to be paid for his past services, if the mine is sold, and then only such a sum as Mr. W. Hall shall name.

The other is that any services he renders the partnership, whether before or after the date of the resolution, are to be valued by Mr. W. Hall and paid if the mine is sold. Both parties contend that the resolution refers to both past and future services, but the defendant says that whether is does or not the contract is illusory and dependent on the will of Winslow Hall; and as Winslow Hall refused to make any further allowance the plaintiff can recover nothing.

The plaintiff says that the very fact that past services are included brings the case within Bryant v. Flight, 5 M. and W., which was an action brought on an agreement worded as follows: "I hereby agree to enter your service as a weekly manager commencing next Monday, and the amount of payment I am to receive I leave entirely for you to determine." The majority of the court held that a contract to pay something was deducible from the paper itself, but Baron Parke held it a merely honorary obligation undistinguishable from Taylor v. Brewer, 1 Man. and Selw. 290. In the subsequent case of Roberts v. Smith, 4 H. and N. 315, it was decided that where future remuneration was left to the defendant to decide there was no contract upon which the plaintiff could recover, and B. Martin says that in his opinion if called upon to decide between Taylor and Brewer, and Bryant and Flight, he should say that Taylor and Brewer was rightly decided, and I cannot, therefore, say that as regards future services the plaintiff has succeeded in showing that he is entitled to hold his verdict. He has accepted Mr. W. Hall as the person to decide his remuneration, and Mr. Hall refuses to give anything. This may be a liability in honor, but it is not a liability by contract. With regard to past services the plaintiff had a claim and unless this resolution can be treated as accord and satisfaction, I do not think he is ousted from maintaining his right to some payment. He did not sign the resolution. A substituted agreement may be accepted as accord and satisfaction of an existing cause of action, the new promise only and not the performance being taken in satisfaction. See Hall v. Flocktin, 14 Q B, 380. But to make the new promise a discharge of the original debt it must be a promise binding on both and the original debt must be discharged.

I do not think in this case that there is any accord and satisfaction of the original debt, and I therefore am of opinion that the plaintiff is entitled to retain his verdict for $1,350 for past services.

With respect to the motion for a new trial I think it should be refused. The motion does not state the grounds on which it is asked. It states for misdirection, without in any way specifying the misdirection relied on. See rule 433 and Murfitt v. Smith, 12 P. D. 116, and Pfeiffer v. Midland Railway Co'y.—18 O. B. D., 243.

The other grounds are error in refusing to put questions to the jury submitted by defendant's counsel. On reference to the appeal book I think the jury were practically directed as requested, and the refusal to leave to the jury the construction of the resolution was right and proper. Having gone carefully through the evidence in support of the plaintiff's case I cannot help feeling that the defendants succeeded in obtaining the plaintiff's services for practically nothing.

I think the costs of the second argument should be a complete set-off against the costs of the motion for new trial, and, therefore, as costs on either side of appeal or application for new trial. Plaintiff is entitled to his costs in the court below.

(Sd.) M. W. TYRWHITT DRAKE, J.

Mr. Justice McCreight's judgment will be published in another issue, as a copy could not be secured yesterday. It agrees with those of the other judges.