

# The Weekly Colonist.

THIRTY-SEVENTH YEAR.

VICTORIA, BRITISH COLUMBIA, FRIDAY JANUARY 18 1895.

VOLUME XXXVII, NO. 6

## MECHANICS' LIEN.

Result of the County Court Action of Albion Iron Works v. A. O. U. W.

Text of the Judgment of Mr. Justice Grease in Favor of Plaintiffs.

Albion Iron Works Company, Limited, v. Ancient Order United Workmen Building Association, Limited. This was an action under the mechanics' lien act for goods sold, delivered and used on the Ancient Order United Workmen Building Association, Limited, on lot 389 block 4, Victoria city.

The contract was between the directors of the company and Eli Beam, the contractor, to whom the goods (chiefly iron work) were supplied. The contract was for \$10,210, payable in instalments. The first payment was 75 per cent. of the value of work done and materials supplied, and the subsequent payments were to be made monthly at the same rate until the whole \$10,210 was paid.

In the contract was a provision that "in each case of such payment a certificate shall be obtained from and signed by Thomas Hooper, the architect of the company, that the work has been done in strict accordance with drawings and specifications and that the payment is properly due, and a certificate from the clerk of the office for recording liens that no liens or claims are recorded against the works or on account of the said contractor followed by this provision (and it is hereby stipulated by a professional man) "Neither shall there be any legal or lawful claims against the contractor in any manner from any source whatever for work or materials furnished on said works."

And then the usual provision for production of a paid up payroll to the grant of the architect's certificate.

It is to be given to the words in inverted commas, practically the architect would be concerned in every contract for all the goods supplied.

This could not have been the intention of the contract, because it would of itself indirectly create an onus of proof of contract between the contractor and the owner, all through the contract and would enable the owner to sue directly by the suppliers.

In his evidence the contractor went a long way in that direction, for he seemed to think that every one who supplied materials must first come and have an understanding with him as to the issue of the certificate before he delivered any supplies. He did not certainly advance this as a proposition; but distinctly implied that if the suppliers had come to him first he would not have lost his money.

A practice like this would retard disastrously on the progress of the work and fetter and hamper the contractor and owner in working out the contract.

It would be a very poor substitute for the ordinary and only proper plan, in case of doubt, of taking proper bonds from the contractor for the due performance of his contract.

Another objection raised was, that there was no proof that the claim had been brought to the notice of the owner and no privity between the contractor and the owner.

But compliance with the provisions of the act—the acceptance of the work and materials by the architect on owner's behalf—and the direct benefit (vide the interpretation clause) to the owner by the material or machinery being placed on the building supply all the privity and consent necessary for the validity of the lien.

However, in this case, the result of the evidence on my mind is, that the goods in question were all supplied to the contractor as charged by the Albion Iron Works Company, and are now all used with the knowledge and approval by the architect in the construction of the building on behalf of the owner.

On the 28th August, 1894, Beam gave up the contract to be finished by the owners according to the terms of the contract (vide Hooper's evidence).

Only 75 per cent. of the work done and materials supplied (among the latter, those of the plaintiff) had been paid for by the contractor—only \$3,719 45 in all, as at the time he gave up the contract. Beam has been paid in full, his evidence as a whole gives the court to understand that Beam was only then entitled to receive 75 per cent. of the value (Hooper's own valuation) of the work done and materials supplied, and that, having received that, he considered Beam paid in full. That would be a dangerous principle to apply if that were the proper construction. But the architect forgets that the contract was made with the contractor, who, as far as supplies are concerned, still retaining in their hands 25 per cent. of the work unpaid for, and the material, too, (they) have their own and have taken it, too, and have under the contract, according to the evidence, quod hoc, taken the place of the contractor. This 25 per cent. (if I read the contract right) would have had to be paid over to the contractor if he had only continued the work to completion, and is still, I think, an open sum; subject, of course, to any duly registered lien; the 75 per cent. being considered a payment on account.

But then comes the question raised by defendant's counsel—was it a duly registered lien?

Under the decision in Hagarly v. Grant, 2 B. C. reports, part 1, which, notwithstanding the contention of the learned counsel for the defendants, I consider is a case in point. The point here in dispute must be decided upon the lines of the lien act of 1888, not the act of 1891, which as counsel rightly contended does not make "material" the subject of a lien.

I consider also that the materials included in the act of 1888 are not confined as he seemed to think to materials on which the person claiming a lien has himself worked, but extending to materials such as those here supplied which were indispensable to the construction of the building.

The affidavit makes the lien. It is that substantially complies with the intention of the act (the other requirements as to this case having been duly complied with and not contented) the lien will be good.

I say substantially, for the act of 1891, section 29, line 12, calls for an affidavit "stating in substance," etc.

The requirements as to such an affidavit under the act as set forth in section 28 and

sub-sections are as follows, "stating in substance."

(a). The name and residence of the contractor. The affidavit gives the name—the residence of a man who had left the country presumably to avoid his creditors' claims not to be given—and the law does not compel the impossible or the useless.

(b). The particulars of the materials or machinery furnished. These the affidavit furnishes in more than ample detail.

(c). The time when the work was finished or discontinued or (in the alternative) the last article of the materials or machinery delivered.

This also the affidavit gives with sufficient particularity. It states the goods detailed were "delivered" and gives the last date of delivery to anyone who looks at the list and reads it in the ordinary common sense, by which all such writings are to be construed, as the "24th of August, 1894."

(d) If the lien is for materials or machinery, that the same were purchased for the work, or improvements in question, and were delivered on the ground for that purpose.

That all these requirements were fulfilled is clearly to be gathered from the affidavit itself, to which my immediate observations are confined. The iron work supplied, in character and quantity, was suitable for exactly that building on which Beam was employed as contractor.

They were supplied to him as such contractor, and until delivered on the ground could not be charged against him as such contractor. These and other portions of the affidavit the irrefragable inferences from the affidavit alone to me, as a jury, is this provision has been substantially complied with.

The next sub-section, that the affidavit must show "the sum claimed to be owing and when due."

This information is specifically given in paragraph 5 of the affidavit as \$28,639 due on the 25th August, 1894. Lastly, the description of the property and interest or estate to be charged.

That is given very particularly in paragraph 1) and 2) of the affidavit which define the lot as city lot 389, of which the defendants are therein described as the "owners," which, of course, in that connection are to be taken under the general interpretation of statutes—in the ordinary sense of the word as owners in fee.

But that is not material for supposing the kind and degree of ownership set down too large or too small, the last four lines of section 4 protect the owner by making only his actual interest in the property responsible.

And here I must remark that in all forms attached to acts, even tax acts and others, which are to be construed strictly—if the fact is to be gathered from them as a whole is in accordance with the meaning and intention of the act—the purpose of the act is not intended to be iron-bound, and still less is it the intention of the legislature that they should become traps to catch the unwary, or in fact any persons for whose benefit an act is expressly intended. For the reasons given I consider the affidavit in this case has been found to be effectual for the purpose for which it is intended, viz: to create the lien, and that the lien is now valid and subsisting; and is effectual against the building, and the lot 389, on which it is created, so far as the estate or interest of the defendants as owners extends therein.

And I give judgment for the plaintiffs accordingly for the full amount with costs.

Henry P. Farwell, Counsel for J. M. Coell, Ward for plaintiffs; Mr. George J. Powell for defendants.

## MONTREAL MATTERS.

MONTREAL, Jan. 16.—(Special.)—Lord and Lady Aberdeen gave a State concert at the Windsor hall last night. It is the first function of its kind ever given in Canada by the Governor-General. Over a thousand persons accepted invitations. The function was mainly intended as a recognition of those who have signed the register at the "violet" residences.

The tickets receipts of the C. P. R. for the week ending January 7, were \$322,000. For the same week last year they were \$371,000. Vice-President Shaugnessy in an interview said that the retrenchment of the Canadian Pacific railway was owing to hard times.

Adding: "That is one of the exigencies which a great railway company has to face. We do not expect this depression to be permanent, and when it comes the only way to provide against it is by reducing expenses. The greatest care has been taken to keep those men who could worst stand dismissed. I by no means say that there have been and will be no hardships. Even men who can ill afford it will have to be laid off. For instance, we have some men doing statistical work. These men will be dispensed with even if they are married, because the work is not pressing, and it is imperative that we should reduce expenses. On the other hand we could not dispense with men engaged in the revenue accounts, because the company is bound to know how these accounts stand. We are taking care to make the reductions as light as possible. Only about four hundred men are now employed in the locomotive shops, where fifteen hundred men were employed a couple of years ago. As a result of the dismissals there is considerable misery and much complaint."

## TRAINMEN'S OUT.

SAN FRANCISCO, Jan. 10.—Some of the members of the grievance committee of the Brotherhood of Engineers, which is to meet in this city on the 13th have arrived. There is a rumor that the orders of trainmen and telegraphers will also send committees here to interview the authorities with a view to getting a compromise in the cut recently made in engineers' wages. Those on the inside do not think that the engineers' committee will demand the modification of the cut. The engineers are still trying to place the American Railway Union men and have already removed much of the opposition that the Union men manifested when the cut first went into effect.

For Charles Herbert, Charles Infante, George D. Diercks, Dysanet and Henry Complain, Dr. Fowler's Extract of Wild Strawberry is a prompt, safe and sure cure that has been popular favorite for over 40 years.

## CAPITAL NOTES.

Dr. G. M. Dawson Director of the Geological Survey—Newspaper Postage Regulation.

Trent Valley Canal Contract Signed—Contractor Toms on His Way to Victoria.

(From Our Own Correspondent.) OTTAWA, Jan. 10.—An Order-in-Council has been passed superannuating Dr. Selwyn and appointing Dr. G. M. Dawson his successor as director of the geological surveys of Canada. This important change was fore-shadowed by your correspondent two months ago.

Postmasters are notified that only newspapers sent direct from the office of publication to regular subscribers or news agents are entitled to free transmission, and that sample copies may be forwarded prepaid at the rate of one cent per pound, but subject to the requirement that each copy sent shall be distinctly marked or stamped "sample copy." Whenever newspapers showing no sign of prepayment and not marked "sample copy" are received at the office addressed to persons who are not, and do not claim to be, subscribers, the postmaster, and until delivered, will call the attention of the department to the matter, mentioning the name and place of publication of the paper.

Andrew Onderdonk to-day signed the contract for the Trent canal with the stipulation that only British subjects shall be employed on the works.

J. Castell Hopkins, of Toronto, is here to gather material for the life of the late Sir John Thompson.

Dr. McCreary has arrived in the city to attend the session of the Cabinet.

Fred Toms and his foreman, George Wilson, left for Victoria last night to commence work on the new public buildings. Mr. Toms is being confined by a severe attack of illness during the past four weeks, which accounts for his delay in leaving for Victoria.

The attention of Major-General Herbert to-day was directed to a paragraph in yesterday's Toronto Globe, stating that he had resigned his position as commandant of the Canadian militia, the General authorizes the statement that the report is absolutely untrue.

Treasurer McMillan and Attorney-General Sifton, of the Manitoba government, arrived here yesterday afternoon from Winnipeg and will have an interview to-morrow with the Premier and Hon. Mr. Foster, when they will present the demands for an increased subsidy to the amount of \$40,000 per annum. Some authorities estimate that Manitoba will have to wait until the first of January, 1896, before a re-adjustment can be made under the subsidy act.

Sir Mackenzie Bowell is rapidly improving.

Hon. Donald Ferguson, the Prince Edward Island minister without portfolio, has arrived in the city.

The Royal Humane Society has awarded its testimonial in vellum to John C. Danes, W. H. Danes and Henry Wyburn, all of Warton, for their gallant rescue of three persons who were drowning in Colpers bay on July 27, 1882.

The withdrawal by Lord Aberdeen of his petition from the winter carnival is not going to prevent the Festival of the Ice. The suggestion is made that Lieutenant-Governor Kirkpatrick be invited to formally open the festival.

## THE POPE AND ITALY.

LONDON, Jan. 10.—The "Standard" hears from its correspondent in Rome: The Pope recently, in conversing with several Italian nobles in the Vatican, said: "Nothing would be so desirable as to see peace re-established between the Holy See and the government of Italy and we devoutly hope that the men who are at the head of public affairs may be inspired to understand what good this peace would produce both for Church and State. But false and erroneous reports of state are likely to prevent a realization of our wishes, since it is useless to speak of consolidation if the rights of the Holy See are not acknowledged and the Pope is not placed in a position to enjoy full liberty and independence, as a basis of any agreement. It is true, however, that there are men of good will in the government and they have seemed to be expressed to us the desire of finding means of living on terms of less hostility, although our hostility consists only in reclaiming our rights. Such good intentions must be taken into account and the Pope is not without our mission. The ill will be lamented would be greatly limited if there were more stability among the men in power. Under the present aspect our position becomes more difficult and dangerous. Let us hope that Providence will place us in the position which our pastoral ministry requires. The attentions with which governments and princes surround us are proof that all feel the necessity of our absolute autonomy."

## VANCOUVER'S ELECTIONS.

VANCOUVER, Jan. 10.—(Special.)—Nine hundred voters out of 4,800 braved the drizzling rain to-day to cast their votes for chief magistrate of the city. The citizens were so apathetic; hundreds had not paid their taxes and could not vote, while hundreds of others were indifferent, having no choice between the two candidates, Henry Collins, dry goods merchant, and Alderman McDowell, labor candidate. There was some little excitement over the school trustees election, as McDowell's strong personality made him many enemies and friends in public life, but the fight was with his friends. Out of the five first term aldermen elected, three were workmen.

For the majority—Henry Collins, 686; Alderman McDowell, 297.

Alderman—Ward 1—J. Coupland, retired grocer, acclamation.

School Trustees—W. E. Gallagher, builder and contractor.

Ward 2—H. P. McCraney.

Ward 3—G. W. Thomas, carpenter.

Ward 4—W. P. Brown, carpenter.

School Trustees—Messrs. McGowan, Murray and Bryden-Jack.

## THE PACIFIC CABLE.

Correspondence Submitted to Congress in Regard to the Lease of Necker Island.

Hawaiian Government Not Unfavorable—U. S. Approval Considered Necessary.

WASHINGTON, Jan. 10.—The Hawaiian correspondence made public yesterday was laid before the house to-day and referred to the committee on foreign affairs for report, upon the recommendation of the president that the request of the Hawaiian government to be permitted to lease Necker Island to a British submarine cable Co. be favorably acted upon by congress.

The correspondence between the Hawaiian and British negotiators negatives the existence on the part of Hawaii of any suspicion of British unfriendliness or fear of British aggression. The attention of congress is directed to the following statements contained in a communication addressed to the Hawaiian government by representatives of Great Britain: "We propose to inform the Hawaiian government of your enquiry whether they will accept the sovereignty of Necker Island, or some other uninhabited island on condition that no subsidy is required from you. As we explained, we have not felt at liberty to entertain this question ourselves, as we were definitely instructed not to ask for sovereignty of any island but only for a lease, simply for the purpose of the cable."

On December 3 the cable propositions seem to have taken full shape, for on that date U. S. Minister Willis writes concerning his former reference to the subject, and makes the statement that the Hawaiian government is of the opinion that it is stopped from considering the proposition of the British commissioners by article 4 of the reciprocity treaty between Hawaii and our government. He adds: "The matter is now, therefore, at the request of this government, submitted to the consideration of your government upon the question of its willingness to nullify the treaty of reciprocity by exempting Necker Island, French Frigate Shoals or Nihoa (Bird Island) from the operation of article 4 of the treaty. In this connection I have the honor to inform you that the minister of foreign affairs, and of correspondence between him and the commission."

In the note to which Mr. Willis refers from Mr. Hatch, the latter explains that the British proposition involves the use of one of the uninhabited islands belonging to the republic, viz: Necker Island, French Frigate Shoals or Nihoa (Bird Island) as cable station, in consideration of such sum and on such terms as might be agreed upon and the connection of Honolulu to the main line by a branch from the island which might be selected.

The memorandum shows that the subsidy demanded is \$7,000 per annum for five years; that the island selected shall not be fortified or used as a naval station, or other than for cable purposes, and that the agreement shall terminate upon breach of its terms.

The correspondence reveals a notable difference of opinion between Admiral Walker and United States minister Willis regarding the necessity of keeping United States territory at Honolulu as long as the British government keeps men-of-war there.

LONDON, Jan. 10.—The Daily News says in a leader on Mr. Cleveland's recommendation that Hawaii be allowed to grant England a cable station: "Mr. Cleveland has probably a good feeling as to the expediency of American interests in the matter of the cable station in the Sandwich Islands. There seems to be no reason to doubt that Congress will take the same sensible and judicious view of the matter."

At a meeting of the Ontario Grand Board of Patrons of Industry a proposal to form a Central Dominion executive for the purpose of dealing with subjects of federal interest was approved. The proposal is to be dealt with at the next general conference of representatives of the Provincial board.

Police Inspector Archibald has issued a summons against the proprietor of the Toronto World charging him with violating the Lord's day act in publishing a special edition on Sunday containing the story of the fire which destroyed the Globe and other business buildings on Sunday morning.

Certain trestle work, 75 feet high, near Dundas, collapsed, injuring three men, one of whom will die.

James Gallup and Jennie Noble were drowned in the Grand river, Dunnville, while skating.

The name of Arthur Wilkins has been stricken off the solicitors' roll for Ontario for failure to refund his clients' money.

The following candidates were named by political conventions yesterday: Haldimand, Patrons; John Benn; North Middlesex, Patrons; Wm. Brock; South Greenville, Conservative; Dr. Reid; and a poem of five verses on the death of Sir John Thompson by Morris, the prospective Post Laureate of Great Britain, has been published.

Joe Wright of the Toronto Electric Light Co. created a sensation in the police court at the trial of the hoodlum alderman when he said the names Alderman Stewart had given as those who could likely be bought were Generallock, Murray, Balfour, Stewart and Howett. Ex-Alderman Stewart has been committed for trial for alleged municipal bribery.

Sir Oliver Mowat will speak in Kingston at Mr. Hart's meeting to-morrow evening. He is also under engagement to make a speech at Montreal on Tuesday evening next, at a meeting at which Hon. Mr. Laurier will be present.

The funeral of Mrs. Mowat, killed in the Globe fire on Sunday morning, was attended by his brother firemen and the Drangemen, as well as the Mayor and city council. The floral offerings were numerous.

Complete returns of the majority contest here during the six months ending December 31 were of superior quality, 50 per cent. of it grading extra Manitoba hard.

J. E. Tyrrell, the geological surveyor, who has just returned from the shores of Hudson's bay after a most adventurous trip, says, speaking of the new territory surveyed, that he had been able to locate several timber areas and note the existence of many "interesting rocks," but he would not say whether or not he had discovered the remains of the Kanab river he fell in with tribes of Esquimaux who had become separated from their brethren on the coast, to whom they originally belonged, and who have become inland tribes.

The Presbytery of Winnipeg has nominated Rev. Dr. Robertson as moderator for the next general assembly.

## TORONTO TOPICS.

TORONTO, Jan. 10.—(Special.)—Part of the wall of Nicholas Rooney's dry goods establishment collapsed to-day carrying with it three workmen. Two men escaped with slight bruises and the third, W. J. Hill, was not fatally hurt.

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## NEWS OF THE PROVINCE.

Vancouver to Have Free Post Office Delivery Next Month—C. P. R. Reductions.

Tram Line Between Nanaimo and Wellington—Football Match Impossible.

(Special to the Colonist.) VANCOUVER.

VANCOUVER, Jan. 10.—The police are inquiring for a missing man named John Spicer, of Prescott, Ontario. He left Vancouver island about four months ago in a boat and nothing has been heard of him since.

On February 1 the C.P.R. cement works will be ready for operation. Some of the machinery was made at the B. C. Iron works and the rest is being shipped from the East.

Last night there was another attempted burglary. McConnell Bros.' store was broken into, but the police, who arrived too soon for the thieves to do any stealing, thought the door had been forced. Four suspects have been arrested and await trial. Their names are Dan Sullivan, Fred Wilson, S. Nicholls and John Scott alias Mc-Master. Wilson was recently arrested for carrying off a nickel-in-the-slot machine. Although it was known that he was guilty no one actually saw him do the stealing and he was acquitted. There is little doubt that the four men arrested are house-breakers.

Free post office delivery will commence on February 1 in this city. S. Cornwall, formerly assistant manager of the steam laundry, has been appointed head of the delivery men.

Another cut has been made by the C.P.R. in their local staff. Some six or eight junior clerks have been let out and the shops have been shut down between the departure and arrival of each trans-Pacific boat. It is believed to be a temporary measure for some time as opportunity warranted and will continue, it is said, for some time longer. The saving by the cut will probably be \$7,000 a month. The freight of the Pacific division has fallen off largely of late and promises to fall off still more.

The cargo of halibut going East have not been handled here to the satisfaction of all the parties interested. Two of them are negotiating with the Northern Pacific to ship over that line. They only want permission to attach their freight to passenger trains. As the freight amounts to about \$1,000 a car and the halibut laden steamer will be both by Vancouver and the C. P. R. Thieves were again rampant last night. Mr. Mason, auditor of the C. P. R., lost his valuable collection of fancy imported seals. G. A. Seaside lost his entire lot of "shikana" and a valuable dog. The chicken coop of J. Smith, Haro street, was also plundered.

Lang Tung, a Chinaman, was sent to prison to-day for soliciting a white man for a gambling house and dive.

There were 83 cases in the county court to-day; none of them important.

VANCOUVER, Jan. 11.—The police of Vancouver have run in five more toughs, suspected of being implicated in the recent burglaries, making nine in all since the New England Fish Company's offices were sacked of their contents and the Hudson Bay Company's liquor store was broken into last week. One of the gang pleaded guilty to harboring a thief, and the purpose of prostitution and will be sent to jail for a term at hard labor. Still another form of thieving has broken out in the West End. Citizens claim that their coal piles are being visited and depleted slowly but surely, a barrowfull at a time.

Mr. Braid has started in the wholesale grocery business here.

WESTMINSTER, Jan. 10.—Wilkinson, the would-be murderer of Hogan, was again remanded to await the result of Hogan's illness, which is serious.

Louis Victor, the murderer of Chess Peter, when notified that he will be hanged next Thursday took his quite coolly. The only answer he made was "all right."

NEW WESTMINSTER, Jan. 11.—The Groto hotel was sold out by the sheriff this morning.

The residence of J. W. Stein, Brownville, was destroyed by fire last night.

The Royal City mills will start up again next Thursday.

McGillivray's pipe works will start running on Wednesday. Orders are in for a large quantity of pipe for Cariboo.

NANAIMO.

NANAIMO, Jan. 10.—With the Oaledonian grounds three feet or so under water, the chances are that Saturday's football game, Nanaimo vs. the Victoria seconds, will be called off.

An Eastern syndicate has bonded the charter for a tram line between Wellington and Nanaimo. The city will be asked to guarantee 5 per cent. on \$50,000 for a term of years. Full particulars of the scheme are expected in the near future.

NEWFOUNDLAND'S DISTRESS.

ST. JOHN'S, Nfld., Jan. 11.—Private charity is doing much to help those who want for food. The government is instituting the preparatory step to provide work for the unemployed. Some American newspapers have telegraphed the American consul here offering assistance and asking in what shape he would prefer to send. The local relief committee expended \$2,500 last week and relieved 800 families. Fearful destitution prevails and hundreds will perish unless the situation is speedily grappled with. A bill passed this assembly last night to allow steamers to make a second trip to the coal fisheries this season. This will largely help to relieve the general distress.

BEGG'S HISTORY

WINNIPEG, Jan. 11.—(Special.)—Mr. A. Begg, who is here, suffered serious loss in the Barretto fire, the volume of his "History of the Northwest" is in course of printing, being burned with the Hunter, Ross & Co. building.

Dr. Price's Cream Baking Powder

World's Fair Highest Medal and Diploma