

DECISION RENDERED

Upon Motion Made to Vary Judgment

In Famous Case of Fleischman vs. Creese—One Favors, Two Dissent.

Before the court of appeal yesterday Mr. Justice Craig rendered his decision in the famous case of Fleischman vs. Creese, wherein a motion had been made to vary the judgment previously rendered, an error having been made in transcribing the same, which were it to stand as given would defeat the very object it was intended to accomplish. The decision of his lordship is as follows:

"I have already given my opinion on this matter so far as it affects the powers of the court to amend its own decrees so as to accord with the judgment actually given. The judgment was so plain in its terms and the issue so clearly defined that there could be no doubt in the minds of the parties to the action as to what the judgment of the court really was. If this decree is not amended the entire fruit of the litigation will be lost. If the request is not granted it will simply result in a fresh action at law and going over the entire case again when the defence of res adjudicata would be a very proper bar to the action, because the matter is res adjudicata. The matter was enlarged to enable the parties opposing the motion to produce the purchaser, Berry, or those acting for him, to determine the question of whether he had suffered any wrong or injury by reason of the decree and by want of notice of the judgment. Whether he had acquired such rights under that decree as should not now be disturbed by an amendment of it, I am fully convinced beyond any doubt that the parties to the negotiations were well aware of the effect of the judgment, and even if the words of the formal decree are open to an interpretation not warranted by the judgment, yet that the parties are bound by the judgment and by the decree read in the light of the judgment. The purchase was made while the action was pending on, as I have said before, a clear and well-defined issue. The judgment of the court is equally clear. No doubt or mistake could arise, and if the plaintiff is now to obtain any advantage owing to the wording of the decree it is an advantage which he obtains by a quirk or accident. The defendant did not acquiesce at any time in the interpretation which the plaintiff now seeks to put upon the formal decree. He, the plaintiff, allowed the gold in court to be divided upon the basis of the interpretation which the defendant sets up and acquiesced in that interpretation being well aware, as is quite evident, that he could not maintain any other contention. It would be unjust now to refuse to put the decree in a shape which would correctly conform with the judgment. I think the motion should be granted, but that all the costs incidental to the motion and rectification of the decree should be paid by the defendant, the party moving."

Mr. Justice Dugas dissents from the opinion of his colleague and finds as follows: "Upon a motion to have the order based upon our judgment altered so as to convey exactly the opinion of the court in a matter submitted to us, we have already declared in fact that the order did not go far enough and that we had the inherent right to have it changed. However, as it appeared to us that the rights of a third party, Mr. Clarence Berry, might be put in jeopardy by such a change we thought it just to order that the facts be put before us in such a way as to permit us to exactly understand the action of Mr. Berry in the matter and to shew us how far he was influenced in his action by what had happened between the parties."

"There is no doubt in my mind that the order was drawn as settled between Mr. Woodworth, representing Creese et al, and Mr. Congdon and Mr. Robertson, representing the other interested parties. Clarence Berry, through his brother, acting under power of attorney, had bought the interests of Creese in the claim for \$12,000; \$6,000 having already been paid, and \$6,000 which remained to be paid. This sum apparently was detained until the settlement of the case. Clarence Berry's attorney admits frankly that he knew what was the bearing of our judgment but, finding how the order was drawn, seeing that the other parties accepted it and acted under it, by proceedings before the gold commissioner and by taking advantage thereof to receive a certain amount of the gold which had been produced in court and retained until the rest of the parties had been settled by the court—a sum of about \$4,000 being paid to Mr. Woodworth for his costs and disbursements—and upon the advice of his own solicitor he says that he determined to conclude the deal by paying the balance due.

BONANZA AND ELDORADO.

The well known partners, Potter & Murray, of No. 33 above Bonanza, have dissolved partnership. Mr. Murray will continue running the road house and Mr. Potter will go down the river. Byrne Bros. on No. 35 above Bonanza will be ready to work their claim in a few days. At present they are setting up a large boiler. The last building to be moved back at the Forks was that of Cuckney Joe. The Main street is in fine shape now, having been graveled nearly the whole length. At last Cuckney is in line with the rest. Mr. Fred Madsen of Gold Hill is in town today and will leave for San Francisco tomorrow. A few days ago Mrs. Gardner of No. 10 Quartz creek, while riding on one of Mr. Wilson's wagons, lost a one hundred dollar bill. Stopping a few minutes at the Occidental hotel at No. 25 below Bonanza, Mrs. Gardner was telling Mrs. Fitzpatrick about her loss. In she meantime Mr. Fitzpatrick, owner of the Occidental, stepped outside and saw something between a couple of polls on the wagon which looked like a bill. He went to investigate and great was his surprise to find the one hundred dollar bill. It would be impossible to tell who was the happier, Mrs. Gardner at recovering the lost treasure or Mr. Fitzpatrick in being able to return it. It is very fortunate for Mrs. Gardner that the bill was found by an honest man.

HOTEL ARRIVALS.

Rochester Hotel.—T. Welch, wife and child; P. King; A. T. Peterson. A. H. Larson, Louis Larson, Gold Hill; John A. Moe, Bonanza; Jessie Carroll, Hunker; A. Simpson, O. C. Nelson, Dominion. FOR SALE.—High grade, new piano, cheap. Apply Nugget office. etc.

TO BE TRIED NEXT WEEK

Clarke Libel Case Set for Wednesday

Did Not Appear in Court Today—His Lordship States Some Plain Facts.

The case of the King vs. J. A. Clarke, being the Monroe libel case, was again before Mr. Justice Craig this morning for the purpose of finally settling the pleadings and arrange a date for the trial. Mr. Hagle, K. C., represented the prosecution and Clarke failed to appear though an affidavit of service of notice to that effect was produced and filed. His lordship stated that the defendant having filed a plea of justification some days ago as the proposed amended plea, he considered it defective in not giving sufficient particulars of the acts relied upon as having warranted the comments as to the connection or acts relied upon as warranting the comments in the article complained of connecting Monroe with the alleged infraction of the criminal code respecting gambling. The direction was given that these particulars be incorporated in the plea and that notice to that effect be given Clarke. His lordship further stated that no attempt had been made to justify the connection of Monroe with the statement respecting "the Kingdom of Soapy," and that, therefore, would be a matter as to the innuendo correctly expressing its meaning. His lordship also said that he had noticed in the other trial lately held that Clarke not being defended by counsel had seemed to take advantage of that circumstance to obtain the sympathy of the jury on the ground that he was at a disadvantage, not being versed in the law, and he wished, therefore, to have him so placed that he would have every opportunity and that no ground should be allowed to him to complain that he was not treated with the utmost fairness. The court approved of the suggestion of the prosecution that defendant be served with a notice embodying the foregoing observations. The date of the trial was fixed for Wednesday next, June 11.

Pleasure and Comfort.

That "captain of industry," George Butler of the Pioneer, ever devising means for the pleasure and comfort of his hundreds of patrons, has at last hit upon a most happy arrangement and one which will be appreciated more than any one improvement ever made in his line in Dawson.

Water Front Notes.

The steamer Rock Island left last night shortly after 8 o'clock for Bettles and Bergman. She carried 10 tons of freight, mostly for consignees in the Koyukuk, and the following passengers:—For Bettles—Mr. and Mrs. G. M. Goheen, Mrs. E. P. McClay, Mrs. F. M. Wright, Mrs. T. D. Rockwell, Mrs. W. E. Fairchild, J. W. Goheen, J. M. Goheen, Mrs. L. F. Gerrish, A. R. Joy, John Opiasser, Fred Kroll, Jack Kroll, Joseph Perry, W. H. Rush, J. R. Gandolfo, Bergman—Thomas Chereceta, Jos. Haraslit, A. Hartman Jos. Gatt, J. Von Pellach.

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In the Fancy Patterned Suits

The trend is now largely towards undressed Worsteds, Cheviots and Tweed effects in modest toned colorings of stripes and checks and mixture. These are the sort of stuffs that the high-class merchant tailors outside are making to order at from \$60.00 to \$75.00.

OUR PRICES RANGE FROM \$15.00 TO \$40.00.

However, it will be well worth your while to call at our store and see the examples of high-class tailoring in the ready-to-wear suits.

We give you entirely different goods from what you see in other places about town. THEY MAY COST A LITTLE MORE but are the cheapest for you.

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

kind of cold lunch that may be desired; the lunch department being in charge of two able and experienced chefs. In the Pioneer a patron seated at the table can take all the time he desires to enjoy the cooling beverage without having his elbow jostled, spilling foam all over him, by some fellow who is in a hurry to ground-slurp his throat. The success of the Pioneer's draught beer innovation is already assured and Geo. Butler's reputation as a provider for the comfort of his patrons has advanced several points on the notch stick of fame.

An Old Fraud

When that son of the east, and professional mendicant Jeha was arrested for vagrancy and sent up for insanity it was generally believed that he had wealth cached somewhere and the surmise now proves to have been correct. This morning Public Administrator Newlands received from Sergeant Smith five sight drafts that have been discovered hidden in the cabin at South Dawson that was occupied by Jeha. These drafts are for \$31, \$10, \$10, \$10, \$136.70, and \$20. The discovery was made by the owner of the cabin, who also turned over to the police a number of other papers which may prove to be of value, and two begging cards, one worn and one in good repair, beseeching the wayfarer to pity a poor old man whose family is dying from starvation.

Time Wanted

Rufus Buck and F. G. Holden were at the police court this morning, charged with permitting a defective stovepipe in the Yukon bakery, Second avenue. Buck demanded a copy of the information as seriously as if the charge was murder in the first degree, and said that he would not be ready to proceed for trial before Monday.

"What, will it take you all that time to get up a defence?" asked Magistrate Starnes. "I'll give you until this afternoon."

WATER FRONT NOTES.

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City Drayage and Express. DAWSON TRANSFER CO. Day and Night Service. CHANGE OF TIME TABLE—On and After May 20, 1902. STAGES. Leave Dawson... 8:30 a. m. and 6 p. m. Leave Forks... 8:30 a. m. and 6 p. m. Freighting to all the Creeks. OFFICE, N. C. BUILDING.

Auditorium Theatre BEGINNING MONDAY, JUNE 9 "Ten Thousand Miles Away" Prices as Usual No Smoking Monday, Thursday, Friday.

STEAMER CLIFFORD SIFTON. WILL SAIL FOR WHITEHORSE ON OR ABOUT JUNE 12th. FOR TICKETS, RATES, ETC., APPLY FRANK MORTIMER, Agent, - Aurora Dock

Robins Belt Conveyor Stacking Washed Placer Gravel. They also convey and elevate dirt and ore cheaply and successfully. B. A. HOWES. Office, HOTEL METROPOLE, Dawson.

500 Gent's Nobby SPECIAL! Straw Hats \$1.00 SEE OUR WINDOW

REMEMBER THAT UP-TO-DATE LINE OF CLOTHING WE CARRY \$15.00 - \$18.00 - \$20.00 - \$22.00. N. A. T. & T. COMPANY

A SAFE CONDUCTOR Is WROUGHT IRON PIPE We Have All Sizes from 3-8 inch up to 6 inch. Dawson Hardware Co., Ltd.

CASEY AG ON THE

Dr. Macarthur S Two Compl

Which Sun People D in Revenge for Handed.

After being detained by at the town station yesterday noon for four hours C. The Sun reporter who onvious had held long rations with the quarantine ants of Dog Island, was by order of Major Wood. This morning, however Health Officer Macarthur Magistrate Starnes and two complaints against being that on the 5th day did expose himself to in smallpox at the quarantine occupied by the passenger steamer Whitehorse, chapter 19 of the consularances of the Northwest, while the second ch having left quarantine without the consent of health officer.

At three o'clock this a summons had not been Casey, who sleeps during his work keeping him the night. The Sun people asse medical health officer is that paper having scored treatment of the people line. They also claim the peer has violated the posting proper dead-line. Fy-s said this evening

The Ladue

Quartz M

IS NOW IN OPE

We have made number of tests a ready to make other

We have the best money will buy an antee all our work mill and also in the

Assay Off

EMPIRE HO HAS. F. MACDONALD BAX. LANDREVELL Everlasting New. Elegantly Well Heated. Bar Att SECOND STREET. Near S

Shoff's Dent

It's perfection for and breath

PIONEER DRUG

Fire Proof

Fuel Savers

McLenna