

JUDGMENT HAS BEEN RESERVED

CONCLUSION OF THE CITY'S WATER CASE

Application For Injunction Against the Victoria Power Company Will Likely be Proceeded With.

(From Tuesday's Daily.)

A. P. Luxton, K. C., continued his argument yesterday afternoon on behalf of the Esquimalt Waterworks Company in the Goldstream water case now being heard by Mr. Justice Duff.

In meeting the argument of the other side Mr. Luxton held there could be no property in water. He cited cases in support of this view to the effect that water flowing in an artificial stream might become the property of a person.

His Lordship pointed out that there was a principle of law known as conservation of property. If a person chose to divert water from a stream, he was so that it was difficult to ascertain just what part of the property belonged to each, the person was obliged to take the consequences. The onus could not be put on any other party to separate the values.

Mr. Luxton agreed with this principle, yet in this instance there was no conservation of property. He contended for the right of the company to build the dams and collect the water in the dams according to common law rights.

The question of appropriation and vested rights as applied to water was then gone into. Mr. Luxton contended that appropriation as defined in the American cases cited by Mr. Bodwell was not the proper interpretation of the term under the Water Clauses Act and our statutes.

His Lordship said that he did not think the American cases the best means of arriving at the meaning of the word "appropriate."

Mr. Luxton thought that in the very best way possible the fullest appropriation had been made by his company in building the dams. The water so collected became the company's property. This was the sense of appropriation under the common law.

His Lordship again raised the question whether or not the provision of water by the company was not limited to property along the pipe line, and that therefore a pipe line would have to be laid from Goldstream to the Esquimalt peninsula before water could be legally taken at the power house.

It was pointed out that the act provided for the distribution of water along the pipe line and elsewhere.

Mr. Luxton further contended that the company was given power to regulate the distribution of water to all places and for all purposes. This he contended applied to the use of water for power purposes.

On the point of diverting and appropriating the water according to the sum named in the Water Clauses Act, Mr. Luxton held that by diversion it was intended that appropriation might be made possible. The company took the means of diverting the construction of drains to provide a supply.

He pointed out that the Victoria Waterworks Act of 1873 provided for the raising of money for providing the city of Victoria with a water supply. That having been done, the water was provided the city he contended under this act had no power to proceed further.

His Lordship thought this was outside the scope of the case. He did not think by the rates he could in any way decide the question on this action as to whether the city had a right under its act to undertake fresh works for water supply.

Mr. Luxton did not think it was necessary even to go that far. He depended upon the riparian rights of the company which was not affected by the Water Clauses Act. The grant to the E. & N. company would include everything.

His Lordship said it would include everything included in the name land. The riparian rights and all rights unless specifically exempted. The common law rights would be conserved to the company unless it were specifically excluded. This would include the riparian rights and would be independent of the Water Clauses Act.

The water sought to be recorded by the city was not water open to record under the Water Clauses Act of 1873. This water was not water of the natural course. It was water collected and conveyed to the power house. This water was collected in an artificial stream, namely, reservoirs, and was not pursuing its natural course. If there were no water in the course before, the water turned into it could not be regarded as pursuing its natural course.

It was not open to record if it were obtained by the draining and collecting of the water and sent down the stream artificially. In this case the company did not have to return the water to the bed of the stream; a flume could be put in to carry the water after it left the power house to the sea, keeping it from the bed of the stream. No one could complain of this if it were done.

His Lordship thought this would soon be an attempt made by the Attorney-General to disincorporate the company if it were done.

Mr. Luxton thought the authorities would uphold this contention. His Lordship said that he had no doubt that the company could collect the water in an artificial place and discharge the water wherever it saw fit.

Mr. Luxton could see no reason why the same rule would not apply in such a case as this of the Goldstream water. The authorities, he thought, went to show that water artificially collected could not be recorded.

Incidentally His Lordship said that unfortunately on the statutes of British Columbia there had been language introduced from the understanding of terms in the Pacific states. These were often very repugnant to common law.

Further on His Lordship said that in arriving at a conclusion he went to any source even to the United States. He sought assistance in the statutes of the United States and in the decisions of the United States courts.

Mr. Peters said he did not suggest anything like this. His Lordship said that likely he did not, but that he had heard this put forth both at the bar and on the bench, and took occasion to express his own opinion on the subject.

Mr. Peters said that the company was given a vested right to use all the water of Goldstream to supply Esquimalt and Victoria.

His Lordship wanted to know if this applied only to the water appropriated for the purpose, and whether it would exclude the water running to waste.

Mr. Peters said that the company had vested rights in all these waters flowing out of the power house for ever. These waters were subject to the purposes of the company's act to supply Esquimalt peninsula and Victoria.

The case depended largely on what was understood by the vesting of the waters for ever. He did not lay great stress on the proprietary rights to the waters in the reservoir, if it can be interpreted that any other person can come below the company's works and obtain these waters, what was the force of saying that the water under these circumstances was vested in the company?

His Lordship pointed out that obtaining a record for water by any party below the power house would be subject to the prior rights of the company. Any record would then be granted to any person subject to the right of the company to supply Esquimalt and Victoria.

Mr. Peters held that having appropriated the water it became vested in the company.

His Lordship wanted to know if any riparian owner's right to the water interfered with could the company refuse to satisfy him.

Mr. Peters said that if any riparian owner was deprived of water compensation was necessary from the company. The company showed this claim by buying out all the riparian owners below with one exception.

His Lordship wanted to know what was the fault with granting the company a record subject to the paramount right of the Esquimalt Company should the water be required by the company for Esquimalt and Victoria.

Mr. Peters held that the company should have no right to grant an inferior record to the city to any power company or municipality.

His Lordship said this was not an interim record.

Mr. Peters held that having appropriated the whole of the water of the watershed by taking all the steps that could be taken, the appropriation was therefore complete. The only record the commission could grant to a municipality under the Water Clauses Act was for ever. There could, therefore, be no grant of a record in this case.

The court adjourned at 4.30 until this morning.

On Tuesday's Proceedings.

Upon resuming the case this morning Mr. Peters continued his address. Reading from Mr. Lubbe's evidence he showed that it was contended that the Esquimalt Water Works Company's works gathered practically all the water.

Mr. Peters contended that if the Esquimalt company had such an interest in the water of Goldstream as to require compensation if the city interfered with that supply, then to allow the city to take in under the Water Clauses Act and get water amounted to a confiscation of the company's interest. The company by establishing reservoirs got a right not only to the water but the reservoirs, but the flow of the water, which was the only value which attached. The act treated an interest in the water to be also an interest in the reservoir.

The only course the city could pursue under the act to obtain that water and flow was by compensating the company for it. The demands of the Esquimalt peninsula might become sufficient to take all the water at Goldstream. If Esquimalt harbor became of commercial value, which was not beyond the range of possibility, there would be a greatly increased demand for water.

If the water were taken by the city the value of the stream would have to be paid for. The full value of the stream would have to be paid for. Given an interest in the waters at Goldstream, which would call for compensation if taken away, the Water Clauses Act could not take away the right unless the language were clear and explicit to that effect.

Even leaving the decision of whether this interest should be a third party, the gold commissioner, it was an interference with the company's rights in so far as a risk was entailed. The power given under the Water Clauses Act by which the Lieutenant-Governor-in-Council might reserve certain streams for water works purposes alone did not apply to a case like this where an absolute right was given the company in this water.

The company went to Goldstream for a definite purpose, to secure a water supply. This lake had a dam and a pump. For this reason the company went to Goldstream to get a water supply. At that time there was no contract with any power company. The

company had also in view supplying water for power purposes.

The Water Privileges Act of 1892 could not, he held, be construed as declaratory in vesting the interests in waters in the crown. There was nothing in the act to say that the riparian rights had not existed previous to the passing of the act. The act was to be regarded as changing the existing law and not to declare that the conditions created had always been in force.

It could not be said that the water at Goldstream was not being used for a beneficial purpose, because it was not piped away. By being held ready to carry out an obligation the water was being used for a beneficial purpose. The flow of water had been created. It was, therefore, not unrecorded water. The storing of water for water works purposes was different to other cases before the amount of water required could not be foretold. The supply was an ever increasing supply. By the provisions of the act a record of a water for water works purposes was not to be lost by non-use. This was a recognition of the fact that the demand was likely to be an ever increasing one. The same right was plainly in the Esquimalt Water Works Act.

Mr. Peters held that the city was not entitled to an interim record.

His Lordship pointed out that an application was made for an injunction. These were waters which gathered below Cabin pond, and which were not appropriated. If there was any right for going before the commission, who might have power to put restrictions on the record, subject to the company's rights, an injunction could not be granted.

Mr. Peters said that what was sought was a declaration of rights. The watershed below Cabin pond was, according to the evidence, incapable of lending itself to reservoir purposes. A part of the water from the watershed by seepage from the company's ditch.

E. V. Bodwell, K. C., replying, took exception to the scope of vested rights which Mr. Peters applied to the watershed. He thought also that the company was confined in supplying water to those living along the pipe line.

His Lordship said he somewhat impressed with the argument of Mr. Peters that the district about Goldstream might be served.

His Lordship, on the conclusion of the evidence, gave judgment, and adjourned court until 2.30.

Against the Victoria Power Company will likely be proceeded with.

CONVENTION CLOSED.

Local Council of Women Concluded Its Business Tuesday Afternoon.

At the annual convention of the Local Council of Women Tuesday afternoon Dr. Fagan delivered an address upon the subject of the prevention of the spread of tuberculosis. He pressed for assistance from the council for the Anti-Tuberculosis Society.

The report of the treasurer of the Victoria Order of Nurses was presented, showing that \$1,227.90 had been collected.

Miss Spofford presented the annual report of the National Council of Women of Canada, which was received and read and a vote of thanks tendered to Mrs. Spofford.

Miss Crease read a very interesting paper on Industrial and Fine Arts.

Another paper of additional interest was read by Mrs. Burch on Agriculture.

There was a continued discussion on proposed amendments to the constitution.

Addresses were delivered during the afternoon by Rev. Dr. Campbell, Rev. C. E. Cooper, Rev. F. Tapscott and Rev. H. Carson.

F. Eaton forwarded a cheque, thus making the first gentleman patron of the society.

The convention closed with votes of thanks to the mayor and council for the use of the city hall and to the ladies who decorated the hall.

ANNUAL GATHERING

Of Sons and Daughters of England at A. O. U. W. Hall Tuesday Night.

Tuesday night the thirteenth annual gathering of the Sons and Daughters of England at the A. O. U. W. hall. A large number of ladies and gentlemen sat down to an excellent dinner, prepared by the proprietor of the German hotel, Mr. Critchley, past master and decorated and the lands were all that could be desired.

After the good things had been enjoyed, the chairman, Arthur Lee, who was flanked by the past master, the grand representative, and Bro. W. P. Allen, president of Alexandra lodge, expressed pleasure at seeing so many present on this important occasion.

He commended themselves to all true Englishmen. It had been formed in order to bring together natives of the old land into a society, and also for the purpose of working for the good of those directly identified with the organization and humanity in general.

Continuing, he said: "We have about twenty thousand belonging to our order in Canada and Newfoundland. We have long ago accomplished in our society what was contemplated by the British North America Act."

"We have disbursed over a million dollars in sick and funeral benefits since organization, and our membership is increasing very rapidly. And, above all, we believe in true, intelligent loyalty."

"There are many citizens who never trouble themselves about the character or capacity of the reigning monarch. They are always ready and generally the loudest to shout, 'Long live the King.' They have sworn allegiance to the crown and constitution, but would have considerable difficulty in explaining either term."

"The laws may be good or bad. Such persons, however, are not to be classed as patriots, and among patriots the true patriot is the man who gives himself to the study of his country, its institutions and enactments, improving in every way what may be regarded as defective, and suffering himself to be so in order to promote the general welfare. As in the state, so in the lodge."

Bro. T. Oliver contributed a song and Bro. Oliver read a paper on the subject of the "Lodge as a social center."

A song by Bro. Thompson, a concertina selection by Bro. T. Oliver, and a vocal selection by Mrs. Thompson brought the programme to a conclusion.

THE PRECIPITATION WAS VERY LIGHT

ANNUAL REPORT OF J. B. HOBSON'S MINE

Necessity For Increased Water Supply Has Induced the Introduction of Further Capital.

The manager's annual report of the Consolidated Cariboo Hydraulic Mining Company for the past season is now made public. It proves the necessity for what the manager, John B. Hobson, has been advising for the past few years—an improved water supply. The total run last season was only 14 days 18 hours, cutting down the production to 1,368 4-10 ounces, or \$21,733.47.

Mr. Hobson contends that according to the record of the run and the production from year to year that the gold product is shown to be dependent mainly upon copious precipitation and a supply of water sufficient to keep the operation in progress for about six months a year in the Cariboo.

The short run last year emphasized the need of a new water supply. It is quite evident that the introduction of new capital by the sale of the controlling interest in the company to New York capitalists was brought about in order to provide for the putting in of the new water system for which Mr. Hobson has prepared the plans. This work will now be pushed forward with all expedition. Mr. Hobson will have to visit the east on some business connected with the new water supply, and that will come west and be ready to begin work early in the spring for bringing what is regarded as an unfailing water supply from Spanish lake, a distance of seventeen miles. The surveys for the canal and the heavy digging have all been made.

John Hays Hammond, who now becomes associated in the Cariboo mine and John B. Hobson are old-time friends. As mining engineers they each stood at the head of the profession in California. When the South African fields attracted attention some years ago both were offered inducements to take important positions with companies operating there. Mr. Hammond declined, however, to come to British Columbia instead with the result that will come west and be ready to begin work early in the spring for bringing what is regarded as an unfailing water supply from Spanish lake, a distance of seventeen miles. The surveys for the canal and the heavy digging have all been made.

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THE Tyee Copper Co., Ltd.

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Head Office—Duncan's Station, Vancouver Island, B. C. General Manager, Clermont Livingstone.

and May 25th, 1905, .75 inches, did it prove sufficient to contribute any water to the reservoir lakes.

"The snowfall, which averaged 67.05 inches on the watershed tributary to the reservoir lakes, went too slowly under the influence of moderately warm days accompanied by northerly winds and temperatures falling under freezing point at night—had weather conditions for a water supply and accounting for the unusually small percentage of the snow precipitation that was contributed to the reservoir lakes."

The report continues as follows: Careful gaugings of the water supply flowing from Spanish lake, from November 15th, 1904, to date, indicate that the watershed tributary to that lake is capable, even with the light precipitation recorded for the past season, of affording ample water to keep the mine in continuous operation throughout the open season, and the company's water system should be extended with all possible haste to that source of abundant and permanent water supply.

The 70 ft. x 30 ft. sluice tunnel was advanced 476 feet at a cost of \$18.34 per foot, making the total length to face 980 feet, and leaving 980 feet of tunnel and 60 feet of upper to complete the opening into the hydraulic excavation, the floor of which is now about 16 feet above the bedrock of the channel. During the month of May and June, slides of extremely hard rock were encountered, which interfered with the progress of the work and added materially to the cost. This tunnel and the upper sluice should be completed without delay so as to facilitate the working of the high grade deposits included in the lower sluice and on the bedrock, and the cutting out of about 4,000 feet of sluice, which is very expensive to maintain.

The large amount of necessary repairs and development work done during the progress of the past two seasons' work leaves the water supply system and the mine in as good condition as possible for the continuous use of an abundant water supply, but the men will not be in first-class condition until the sluice tunnel is opened and the bank can be worked in one bench from surface to bedrock.

The upper gravels washed during the season showed a marked increase in grade, indicating that the low-grade zone encountered in the current-crossing has been passed.

A bank blast of about 5,000 kegs of black powder, to cost about \$7,000, is strongly recommended. Such a blast would disintegrate and break up ready economic washing of the heavy crushing of indurated volcanic mud at a cost not exceeding one cent per cubic yard, as against a cost of about 12 cents per cubic yard to break it up with dynamite and hand labor. The proper disintegration of indurated alluvial deposits tends to increase the washing duty of the water, thereby increasing the gold output, being working material reduction in the cost of mining.

UNITED IN WEDLOCK.

Miss Stanton Macintosh and Mr. E. W. Jones Married at St. James' Church.

A quiet wedding was celebrated at St. James' church Tuesday afternoon when Miss Isabel Stanton, fourth daughter of the Hon. and Mrs. Charles H. Macintosh, 185 Michigan street, and Mr. Edgar Watson Jones, barrister-in-law, of Brookville, Ont., were united in the holy bonds of matrimony.

Rev. J. H. S. Sweet, the rector, performed the ceremony in the presence of only a few relatives and intimate friends. The bride was given away by her father and wore a smart traveling dress of brown. Her two sisters, Miss Hazel and Miss Violet, acted as bridesmaids. Mr. Harold Maxine Day and Mr. Frank Springer, of Vancouver, supported the groom. Afterwards a wedding dinner was served at the bride's home, and the happy couple left for a brief honeymoon tour of the Sound before returning to take up their residence in the East. Among the visiting guests were Mr. and Mrs. Jones of New Westminster; Mr. and Mrs. William Ritchie, Mr. H. M. Daly, Mr. Frank Springer, Miss Bernice McClure and Miss Chase, of Vancouver.

ARRESTED IN PANAMA.

Colon, Dec. 13.—On board the Panama steamship Havana, which sailed yesterday for New York, were Mr. Price, a special agent of the Santa Fe railroad, and Mathew Kennedy, a detective of Kansas City, having in charge a man named Funn, who for the past eight months has been station agent and postmaster at Pedro Miguel, in the canal zone, but who it is now alleged is a well known criminal.

It is alleged that the man among other aliases is known as Armstrong, Ledts and McGee, but his right name is Letts. It is alleged that he has been convicted of larceny, burglary and other crimes, and that he has been in prison three times. It is further alleged that he has been accused of attempted murder. Many arrests in 1905, and then arrested his third wife, Anna Lassen, of St. Louis at Cristobal, a month ago.

A dispatch from Kansas City, December 13th, reports the arrest of M. Letts, former station agent for the Atchison, Topeka & Santa Fe railway at Princeton, Kansas. Letts is charged with stealing \$70,000 worth of railroad tickets in 1905, and then absconding with the money. He was arrested at Ottawa, Kansas, in a sensational manner some time ago after being convicted of arson and robbery.

SECOND-HAND PIANO FOR SALE—\$150. This instrument has been used by a teacher and is thoroughly well made. Will be delivered free to the purchaser by railway station in B. C. Shown at 122 Hastings street, Vancouver, 122 Hastings street, Vancouver. We have others. Write us for catalogue.

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