

DECISION WAS RENDERED

By Justice Dugas in Case Involving Large Sum

Being That of Canadian Bank of Commerce vs The Syndicate Lyonnais Du Klondike.

Yesterday afternoon Mr. Justice Dugas rendered judgment in the case of the Canadian Bank of Commerce vs. the Syndicate Lyonnais du Klondike and Joseph Barrette, the decision being given on a motion for summary judgment argued at great length Monday week ago. The action arose out of a sale made by the Syndicate Lyonnais by Barrette last summer of some mining claims, the amount involved aggregating \$107,500. Of the sum \$45,000 was paid in cash and it is the deferred payment of \$62,500 that is now sued upon. In resisting the motion the defendant company filed a number of affidavits containing some rather startling allegations as to misrepresentations said to have been made by Barrette to the company's agent in effecting the sale. By the decision of his lordship the defendant company is permitted to enter its defense upon certain conditions within a specified time or judgment will be entered against it. The judgment in full is as follows:

"The defendants are sued upon a promissory note, signed by the defendant company, (represented by its agent, Mr. Louis Paillard, under a power of attorney filed,) to the amount of \$62,500, payable to the order of the other defendant, Joseph Barrette, and endorsed, before maturity, in favor of the plaintiff, which now bears interest at the rate of six per cent. per annum. The defendant company having appeared, the plaintiff now moves to have the appearance struck out and judgment entered for the amount of the note with interest. This motion was heard at the special instance of the parties and being resisted, the affidavits of both parties, with the cross-examination of Mr. Paillard and Mr. Tarut, disclose the following facts:

"On the 19th day of January, 1901, the defendant Joseph Barrette mortgaged to Henry T. Wills, bank manager, certain mining properties to secure several advances in money previously made. On the 31st day of June, 1901, the same defendant, Joseph Barrette, having sold, according to the affidavits (though this bill of sale is not produced) to the defendant company, represented by its agent, under power of attorney, Mr. Louis Paillard, amongst other things, the same mining properties for the sum of \$167,500, on account of which \$75,000 was paid in cash, such defendant company on the same day by a separate deed, mortgaged the same properties to the said Joseph Barrette for the amount of \$92,500, alleged to be so much then paid by him to the mortgagor. This amount was to be paid on the first day of October, less \$150, should the mortgage be unable to obtain a good title to an undivided one-half interest in creek placer mining claim No. 1 of Caribou creek—\$1,000 should the mortgage be unable to obtain a renewal of the upper half, left limit, No. 28 Eldorado creek, and \$35,000 should it be found that there is still an equity in one J. R. Currey and one E. Willett, to creek placer mining claim No. 9 above lower discovery on Dominion creek.

"The note in question is alleged to have been given at the time of the passing of this last mortgage, on the 21st of June, though it is dated the 22nd of June. It contains the declaration that it is collateral to mining and chattel mortgages for the same amount bearing the same date with interest at the rate of six per cent. per annum. How this discrepancy happened as to the dates is not established, but, as neither party referred to it, I take it for granted, for the present, that it is only a clerical error.

"On the 27th of the same month, June, the defendant, Joseph Barrette, assigned and made over by indenture, the above last mortgage to Henry T. Wills, trustee of the plaintiff company, the consideration being \$12,500, alleged to be paid by the assignee to the assignor, but which was, in fact, a balance due by Mr. Barrette on the mortgage of the 19th of January to Henry T. Wills, bank manager. I do not see that Mr. Wills, acting then in his own name, ever made any declaration that he was then acting only as trustee for the plaintiff. Yet, I do not believe that, for the purposes of this motion, (as no reference has been made to the same) it is necessary more than to refer to it so as to show exactly the transactions as they took place. On the same day (the 27th of June) the defendant Joseph Barrette also endorsed to the plaintiff the note sued upon this case. The affidavit of Mr. Wills discloses that since, further advances were made to the said Joseph Barrette by the plaintiff, and that he is now indebted to them in the sum of \$67,514.92, for which they hold, as security, the mortgage in question as well as the said promissory note. The plaintiff being holder of that note must, therefore, in the event of recovering the full amount thereof from the defendant company, be held trustee for the other defendant, Joseph

Barrette, as to the difference between the amount actually due them and the amount of the note.

"The defendant company, in resisting the motion have produced the affidavits of Mr. Louis Paillard and Mr. Alfred Tarut, by which they disclose what will be the nature of their defense and which may be summed up as follows:

"1. That before making the sale and during the transactions which took place in the meantime, misrepresentations were made by the defendant, Joseph Barrette, inasmuch as he declared that he had taken \$1600 worth of gold from hillside claim No. 12, whilst he only got \$800.

"2. That he had worked out a certain place in creek claim No. 32 of only about 900 square feet of ground whilst he had actually covered 3900 square feet.

"3. That he represented that the pay on the same claim was even from rim to rim, whilst there is only a small pay streak thereon.

"4. That he represented that claim No. 9 produced \$20,000 worth of gold, whilst the output was only \$11,000.

"5. That he represented that the output of creek claim No. 32 had been \$120,000, whilst it had been only \$50,000.

"6. That he represented that in a but adjoining claim No. 13 pay had been found, whilst colors of gold only had been found.

"7. That he falsely represented that claim No. 32 would yield at least \$400,000; that in one shaft on the right limit of said claim he falsely represented that he had rocked and taken out in one hour and a half \$25,000.

"8. That he further represented that he owned all the tools upon claim No. 32, whilst all did not belong to him.

"9. It is further pretended that they objected to sign the note in question which was asked from them only after the indenture of mortgage had been signed by them to Barrette, and that it was only upon the representations, made by Mr. Clark, who they allege was acting for the plaintiff interested in the transaction above mentioned that the note was not to be negotiated nor acted upon.

"At the argument it was strongly urged on behalf of the company defendant that this transaction was not authorized under the power of attorney held by Mr. Louis Paillard, though, referring to the same I find that, although Mr. Paillard is not authorized to borrow over one hundred thousand francs without the special authorization of the company, its powers otherwise are unlimited, whether acting jointly with Mr. de Silans, (one of the directors named herein) or separately.

"The mortgage, it is true, declares that it is given for money paid by Barrette to the defendant company, but, in fact, it is for a balance of the purchase money.

"The cross examination further discloses that the directors of the company did not approve of the transaction, and even allege that Mr. Paillard went beyond his powers. I cannot say whether there is an entire repudiation of the same as it is contained in two letters received by Mr. Paillard, which, I regret to say, cannot be produced, they having been mislaid in the dealings between advocate and client. Secondary evidence was allowed, and from what I can infer there is a disapproval, though I cannot say whether or not it is an entire repudiation. Mr. Paillard, on the other hand, persists in believing that he was empowered to make the deal. At all events, the latest instructions were not to pay the \$35,000 unless good titles were produced to claim No. 9.

"The defendant company went immediately into possession, not only of the claims sold, but also, of chattels included in the sale, and which consisted of wood, tools, hay, cigars, machinery, horses, vehicles, etc., which they value at \$10,000, and which have been used in part since they have, besides, taken from the claims gold to the amount of \$45,000, at an expense, they allege, of \$30,000, leaving them a profit of \$15,000.

"There is no doubt that misrepresentations, such as those alleged by the defendant company, also the defects in the titles to some of the claims, could be made the basis of a good defense. As to the note itself, bearing on its face the fact that it was given as collateral security, there might be questions of law which it would be unfair to prevent the defendant company from raising before the court, for, although there are strong authorities which declare that a note which bears on its face that it is given as collateral security, may be or is negotiable, and that, according to Byles on Bills of Exchange, page 14, 'The principle is often followed in England as offering a more speedy remedy in cases of default of mortgages, bills of sale, etc.,' and that they may be valid and binding though the instruments which they accompany be not so.' Yet, there are others which seem to hold to the contrary, and it remains to be seen what interpretation should be given to sub-section 3, of section 32 of our Bills of Exchange act, which declares that 'a note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell and dispose thereof.'

"The question might also be raised as to how far the plaintiff, under the circumstances, had notice of the facts alleged against the defendant Barrette, should they be proven. But, whilst I feel it my duty to permit the defendant company to enter into its

defense, yet, I think I have to give to the plaintiff the protection which I believe they are entitled to under the circumstances, that is, to impose terms to the defense.

"A feature which adds very heavy weight to the reasons of the determination to which I come in imposing terms with a leave to defend, is that the defendant company (which is a foreign company, though duly registered at Ottawa and authorized to transact business in the Yukon territory) did, through its manager and agent, Mr. Paillard, at or about the time due, withdraw from its bank in Dawson the amount of \$50,000, which Mr. Paillard sent to France, in order—as he very openly admits—to avoid garnishment of the same. This is an action, which, in the minds of the company defendant and Mr. Paillard might be considered perfectly legitimate, but which raises a suspicion before a court of justice.

"Taking, therefore, into account what has just been said, that is, the fact that the defendant company is a foreign company, that it has made away with whatever funds tangible it has in the territory, with the avowed purpose of avoiding the execution of our laws; that it is in possession of all the mining property sold, as well as of the chattels, a good portion of which have been disposed of, that it has continued, until lately, working some of the claims sold, taking gold therefrom to a large amount, thereby wasting and diminishing the value of the properties purchased, that it still remains in possession of the whole notwithstanding the fact that the authority of its representative here is questioned; that further waste may happen, and, lastly, that all the misrepresentations alleged, with but a very limited exception, are based solely upon hearsay evidence, I believe that I am in duty bound to permit such defense only upon the defendant company within fifteen days paying into court the whole balance of the purchase money, less \$55,000 and \$150, which represents the value of the parties for claim No. 3 and claim No. 1 on Caribou, this to abide the result of this case. Otherwise judgment will be entered in the meantime for the same amount with costs.

"Reserve is made in favor of the plaintiff to make a further application as to these two last named amounts and to adjudge thereunder should the plaintiff think fit, according to the future events of the case. It may be said that apparently no more objection is made about the Eldorado property. This is why I take no notice of the objection to pay the \$1,000 fixed as the value thereof.

"I feel the more safe in coming to this conclusion by the fact that up to a few days before this action was taken, and at about the same time the money was due, the defendant company, by its agent, Mr. Paillard, declared itself ready to pay the sum due if the plaintiff and Mr. Barrette would consent to give them a quit claim for the whole. I am, besides, very strongly supported in these views by many judgments under similar circumstances."

Highwaymen Again at Work.

Seattle, Oct. 24.—Highwaymen were at work again last night in the lower part of the city, and within the brief space of thirty minutes held up and robbed a Japanese restaurant on First ave. south and a pedestrian on Grant street bridge. From the former \$11 in small change was secured, while the latter delivered up some small change, managing to conceal a \$10 bill in a pocket of his trousers.

The first hold-up was reported at the police station by the proprietor of a Japanese restaurant at the corner of First avenue south and Weller street. While the proprietor was engaged in the rear of the room the robber entered by the front door and began to rifle the money till. As its owner advanced the robber leveled a revolver in the proprietors face until the operation was completed. He then disappeared.

Thirty minutes later Policeman Hovan reported by telephone at the police station that H. Donnelly, a null hand residing at Ballard, encountered two footpads on the Grant street bridge, a few rods south of the Bay View brewery. Neither wore a mask, and one was armed with a large club, which he used to intimidate the victim. The robbers made a search of Donnelly's pockets, occupying fully three minutes at the task. They secured 85 cents, overlooking a \$10 bill.

His Conscience Was Clear.

"My friends," said the condemned as he stepped forward for a last word before the noose was adjusted, "I ain't no speechmaker, and I ain't got much to say. I've stole horses and drunk whiskey and played cards and bin a tuff man, and if I'd lived a year longer I should probably be bin sent to the legislature. Thank the Lord that I've escaped such a fate and kin still look you all in the face, and now, Jim, you kin go on with the hangin and be durned to you."

Effects of Travel.

"He's getting awful sporty, isn't he?"

"Yes, since that hand organ tour he's always talking about clothes and society, and he comes home in the middle of the night and wakes up the whole jungle with his college yell."—Chicago News.

Shoff, the Dawson dog doctor, Pioneer drug store.

RAILROAD TRAIN HELD UP

On Southern Pacific Road Near Eugene, Oregon

The Express Messenger Successfully Defended Car Against Dynamite—Engineer More Pliable.

Portland, Or., Oct. 23.—The north-bound overland express train on the Southern Pacific was held up by two masked men 15 miles south of Eugene at 3 o'clock this morning. The robbers blew open the express car with dynamite, but secured no booty, having been driven off by the express messenger.

The only booty secured was one registered mail pouch.

Two men boarded the train at Cottage Grove, and a short distance this side, near Saginaw, put off the train and his helper, uncoupled the express car and made the engineer pull ahead a short distance. Their first act was to blow open the express car, which they did with dynamite, tearing the door to pieces and badly damaging the car.

Express Messenger C. R. Charles was in the car, and had made up his mind to stay there. The robbers ordered the messenger out of the car, but he determinedly refused to come, and held a position where he could easily bring down any person who should attempt to enter through the opening in the side made by the dynamite.

"Come out of there, or we will blow you and the car to pieces," commanded the robbers.

The messenger said nothing. Then the desperadoes compelled the engineer to throw into the car a stick of dynamite, with a lighted fuse. The messenger grabbed it and put out the fuse.

They next attempted to enter the car by compelling the engineer, who was in the hands of the robbers, to crawl in through the door, the robbers hoping to gain admittance by using him as a protector. But Charles seized his shotgun to advantage, and kept up a good fire directly over the engineer's head, knowing well that the robbers would attempt to follow him into the car.

Finally the robbers turned their attention to getting away with what little they could from the mail car. They obtained the registered mail and then one of them, taking the engineer, boarded the engine which they cut loose from the train and ran to within half mile of Eugene, where he left the engine and started toward the Willamette river in a northerly direction.

The passengers were not molested. Engineer Bert Lucas told an interesting story of the robbery. He said: "I first heard the command to throw up hands to the fireman, and he did not at first comply I urged him to give in, at the same time throwing up my own hands, as I saw the weapon in the hands of the robber leveled at me. I was commanded to turn the engine loose and not stop until I was given the word. We ran out some distance from Walker, when I was directed to slow up, and the man was ordered to leave the engine. We then proceeded further. At the next command to stop I ran it up to the track and then return with the robber to the detached train.

"The robber wore a long mask that completely covered his face and extended well down to his chest. He wore a sort of a white apron, in the pockets of which he carried sticks of dynamite. A Winchester rifle, was strapped over his back while in each hand he carried a large, black-barreled revolver, about 45 calibre, I should judge. These revolvers were strapped to his wrists.

"The robber gave me a cigar, commanding me to light it and keep on puffing, as he desired to use me in coupling off the dynamite. I took it of my own. I lighted it as directed and kept on puffing.

"Upon reaching the express car the robber commanded the messenger to open up. No response came to his demand. I was then given a charge of dynamite, directed to light and blow in the door. I did as directed. The robber kept at my elbows, covering me with the gun all the time. I was compelled to shoot off the dynamite, and as this had no effect on the express messenger, the robber forced me to crawl into the car through one of the holes blown into the door. As I did so I shouted to the express messenger not to shoot, as I was between him and the robber and the shot would hit me. I had no sooner entered the car when I was digested by the express messenger to get out. A shot accompanied the command. I did as directed and then told the robber there was no use to try further, as the express messenger was heavily armed and well able to resist a forcible entrance of his car. At the same time I called his attention to the fact that the freight was soon due, and that he had better get through."

"With an oath the robber ceased the attack on the express car and turned his attention to the baggage car. I was compelled to enter the baggage car and command the baggage man to give up. Assuring the robber that there was nothing of

value in this car, it was also abandoned and the mail car was taken in hand.

"The mail clerk was covered by the robber while I was compelled to open the mail sacks. After the mail was dumped out the robber sorted some of it and had the messenger hold the sack, while he took what he wanted. But one sack of registered mail was taken. The robber also helped himself to the messenger's lunch. This ended the work of the robber.

"I was then taken back with him to the engine and commanded to take him to a point about a mile from Eugene. He told me to stop as soon as the lights of the city could be seen when he jumped off and disappeared in the darkness in the direction of the river. When leaving he told me to go in any direction I desired, except toward Eugene."

Postal Inspector Ball, who was on the train on his way home from San Francisco, secured a list of the pouches which were rifled by the two men.

There were four through registered pouches taken by the robbers which, after being slit open and the contents taken, were thrown down. These pouches were all from San Francisco and were being sent to Spokane, Seattle, Tacoma and Victoria, B. C. One other through pouch, which was partially hid behind a box, was not taken.

Nearly everything in the four pouches which were rifled was taken away by the men, only a few articles being left behind.

The postal inspector has a description of two men who may be the ones implicated in the hold-up. It is known that last night two men beat their way on the south-bound overland, No. 15, by blind baggage and left the train at Cottage Grove.

The Southern Pacific train, which was held up near Eugene this morning, arrived here this afternoon at 1 o'clock. The express car is badly shattered, but it was brought in with the train.

"The first intimation I had of anything wrong," said C. P. Charles, the express messenger, "was when the train began to slow up near Walker's station. It was about 3 o'clock, as near as I can remember. Shortly after the train came to a standstill I was ordered to open the door. I refused to move. I was threatened with all sorts of things. 'Open up this car or we will blow you up,' commanded one of the robbers. As I made no response I was given a salute with dynamite. The first charge blew open one of the doors and knocked me down. My overalls were blown into shreds and my legs were scratched some, but otherwise I was unhurt. Further commands to open up and threats followed, but to no avail. I made no reply knowing that the object of the robber was to locate me in the car, and then try to put me out of the way, either with dynamite or bullets. I changed my station to the other end of the car. The third shot failed to go off, as I had removed my shoes and had quietly walked over to the buach of dynamite and detached the fuse. Two more shots exploded, one of them blowing a hole in the floor of the car. All told four shots went off in the car, two failed to explode, and one prevented from exploding by removing the fuse. All efforts to compel me to open up or leave the car failing, the engineer was sent into the opening blown into the side. I ordered him to get out and fired a shot over his head with my shot gun. The entire ceremony lasted about 40 minutes. The engineer retired after I fired the shot and ordered him to leave, and I was not molested further."

C. P. Charles, who exhibited phenomenal courage while this car was being dynamited, is a native of San Francisco, where he was born 36 years ago. He has been in the express messenger service 16 years, most of the time running south from San Francisco. He has been on his present run for two years.

Fire in Packing Plant.

Chicago, Oct. 23.—Fire attacked the packing house of the G. H. Hammond Company at Hammond, Ind., tonight, and within an hour gained such headway that the destruction of the plant was feared. The Hammond fire department and the private fire department of the packing company were unable to cope with the flames, and an emergency call was sent to Chicago and South Chicago. Fire engines from the Chicago department were loaded upon a special train on the Port Wayne road and hurried to the burning district. Aid was also sent from South Chicago.

The fire began at the south end of the plant, in an old frame house used for the beef killing department. In an hour the car shops, oiling rooms, beef-killing department and blacksmith shops were destroyed. It then seemed that the fire had burned itself out, but in a few minutes the four-story brick building containing the cooling rooms, one of the company's largest buildings of the plant, was burning.

The fire was gotten under control at 11:30 o'clock, after four departments of the plant had been destroyed. Loss, \$500,000.

The packing company's plant covers fifteen acres. Eighteen hundred men are employed in the cooling department. The company has branches in South Omaha, St. Joseph, Mo., and Kansas City.

Send a copy of Gutzman's Souvenir to outside friends. A complete historical history of Klondike. For sale at all news stands. Price \$2.50.

PEOPLE WE MEET.



COL. DONALD MACGREGOR.

The subject of our today's sketch scarcely requires an introduction from us, as he is well known to many of our readers. He was born at the historic town of Williamstown, Ontario, and came to the Klondike with

the "rush" of 1898. He has been prominently before the people of the Yukon territory in one public capacity or another for over the past three years, taking a leading part as he did in nearly every movement for reform. On the most important State

concerned, notably the bill of the people's territory discharged his office with credit and

THE MODEST BLUE TICKET

Speaks a Language That Can Not Be Misunderstood.

For a man to be handed a blue ticket in these piping times of turmoil and suspicion means that the recipient of it is officially invited to move on to some other place. Ordinarily and on the outside a blue ticket is treated as a sort of joke, for at the worst it means a trip of only a few miles to the next town, which is easily covered either on foot or by stowing away on a steamer, a brakebeam or in a box car. But here a blue ticket conveys considerable meaning, especially at this season of the year and when its recipient is not possessed of sufficient clothes to keep him warm on a cloudy August day. It is under such conditions that the man named is apt to ask himself the question propounded by the Georgia statesman: "Where am I?"

Three years ago Skagway had a number of very undesirable characters and in getting rid of them a system similar to that now employed here was used, although to tickets were passed around. When it was desired to rid the town of a particular individual a deputy U. S. marshal would approach him and say, "I have no authority to order you to leave town, but I can give you some information. If you are here after the next steamer sails you will be arrested as a suspicious character or as a vagrant."

This usually had the desired effect and Mr. "Vag" would travel on the next steamer generally in its hold as a stowaway, but anyway, he would travel.

Booker Washington Dined. New York, Oct. 23.—Booker T. Washington, who is attending the Yale bi-centennial celebration, was a guest of Morris F. Tyler, treasurer of the university, at a dinner at Mr. Tyler's residence on Monday evening. Former Postmaster General Bissell also accepted an invitation to dine with Mr. Tyler that evening and met Mr. Washington. Mr. Tyler said today that the invitations were sent accepted about ten days before Mr. Washington dined with the president at Washington.

WANTED—Journeyman, tailor. Apply at once—BREWITT, Second avenue.

LENGTHY CRUISE

Made by Whaling Schooner Geo. W. Preston.

Seattle, October 24th.—One of the longest cruises without communication with the civilized world has just been completed by the whaling schooner George W. Preston, which reached port yesterday from the far North. For four years the Preston sought whales in Arctic waters with varying success. During her absence her owner, John Smith, of Whatcom, died. The vessel was commanded by Capt. Angus Douglas, and the master is now searching for the owner's heirs. It was in 1898, that the Preston sailed from San Francisco for the whale fisheries of the Arctic. During that period she had many narrow escapes from wrecks with the elements. Each winter she was ice-locked for weeks and sometimes months. Her captain, when each year would be taken to either Alaska or Siberian ports and there sold her barter and trade. On one occasion she went as far south as the Japan coast, the most northerly point of her cruise during her search for whale using Cape Horn.

At one time the Preston was imprisoned for eight weeks, during which time a number of the crew were reduced to hardtack biscuits and a small portion of fish from a stray seal, the long period of half starvation being broken by the arrival of the United States revenue cutter.

The winter of 1900-01 was passed at Teller. With the opening of spring the Preston's crew was ordered, all of the sailors having stamped to the Nome, Kourak and Bluestone gold fields. However, Capt. Douglas, her master, secured a new crew and returned to the Arctic for the summer's cruise.

The Preston, because of her many battles with Northern elements, is more or less damaged. Between now and spring she is to be repaired and thoroughly overhauled for another Northern voyage.

Hotel Fire.

French Lick, Ind., Oct. 23.—Fire broke out in the bath department of the French Lick Springs hotel this morning and caused a panic among 300 guests. The fire was put under control by the hotel fire department and two hours after the fire broke out the guests were back in their rooms. Loss about \$12,000.

TROUBLE OVER

Irish Uncles Want More Dead Klondikers.

Seattle, Oct. 24.—A three day trial in the superior court today has resulted in a verdict in favor of the Irish Uncles who want more dead Klondikers. The case was brought by the estate of Elias Thomas, who was drowned in the Klondike two years ago. The estate of Mrs. Sarah Thomas, who was also drowned in the Klondike, is now in the hands of the court, asking that the property of the deceased be turned over to the estate of the deceased, who was drowned in the Klondike. The case was brought by the estate of Elias Thomas, who was drowned in the Klondike two years ago. The estate of Mrs. Sarah Thomas, who was also drowned in the Klondike, is now in the hands of the court, asking that the property of the deceased be turned over to the estate of the deceased, who was drowned in the Klondike.

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