

natural water-courses, whether usually containing water or not, and all rivers, creeks, and gulches, and all water power, not being waters under the exclusive jurisdiction of the parliament of Canada."

If I am correct in my view that the property in question is property of the Dominion embraced within the meaning of section 10 of the British North America Act, this British Columbia legislation does not cover the water in question. It did, it would be so far ultra vires. On the other hand, if the contention of the defendants is correct that the Dominion has no higher rights than any other grantee so far as ownership of the lands and riparian rights are concerned and are subject to local legislation, then the legislature of British Columbia would be supreme, and unless the plaintiff can make a case on the other branch, namely, as interfering with navigation, the information must be dismissed.

It is conceded that the waters in question are wholly within the limits of the railway belt transferred to the Dominion and consequently the ownership of the lands would carry with it the bed of the river and of the river and of the waters in any event where it is non-tidal. (See Fisheries Case, Attorney-General of Canada v. Attorney-General of Ontario et al., 1898, App. Cas. 700, Corporation of Kenora v. Keewatin, 18 O. L. R. 184.)

A question not passed before me is the defence raised by the 11th paragraph of the defence that the proper works Co. v. Corp. of City of Victoria (1907), App. Cas. 499, page 510 of the report of which may be referred to as bearing on this defence.

#### Referee's Report.

I proceed now to deal with the appeal of the defendants. As I have stated, if my opinion on the main questions is correct, then the questions raised by the appeal are immaterial.

The first objection is to the finding of fact in the 5th paragraph of the report relating to the injury to the fishing rights of the property of the Dominion as owners of the lands, including the beds of the river and lakes.

The plaintiff does not have his claim on any interference with any general law relating to the protection of fish. The claim is made as owners of the lands and waters. If the legislature of British Columbia has the right to pass the enactments in question, then the question of injury is immaterial.

I agree with the finding of the referee. The case is not one which can be remedied as argued by Mr. Lafleur by a dam in the dam. This might be a remedy if the waters were dammed up and overflowing the dam into the natural channel of the river, but here it is proposed to divert the waters away from the channel, practically leaving the river below the dam with very little water.

The next ground of appeal is from the finding of fact in the 7th paragraph of the report to the effect that the Lillooet river is a navigable river. It is admitted that the river as far as the Town Line bridge, and possibly a mile or two beyond, is both tidal and navigable in fact.

Mr. Lafleur confines his contention to that part of the river above the point to which it is conceded to be a navigable river. I agree with the contention of the appellants. I do not think the river is navigable in fact in that portion of its course. Loose logs can be floated down during portions of the year, and small boats partially poled and lined up, but in my judgment this does not constitute that part of the river a navigable river. The fact of the province of Quebec applicable it could not be considered even a floatable river. Tanguay v. Canadian Electric Light Co. (40 S. C. R. L.).

In 1817 it was enacted that "the civil and criminal laws of England as the same existed on the 19th November, 1858, and so far as the same are not from local circumstances inapplicable, are and shall be in force in all parts of the colony of British Columbia."

In Attorney-General v. Harrison (12 Gr. 466), Chancellor Sprague deals fully with the fact that should be taken into account in applying the test of navigability. Queen v. Robertson (5 S. C. R. 129) is applicable; also Bell v. Corporation of Quebec (6 App. Cas. 84).

In the decision of Mr. Justice Anglin in the Corporation of Kenora v. Keewatin (11 O. L. R. 287) there is a full discussion of the authorities. See also Attorney-General of Quebec v. Fraser (37 S. C. R. 572), applicable to the province of Quebec.

Interference With Navigation. I do not discuss the question further for the reason that if the first point is decided in favor of the plaintiff it is immaterial whether the upper reaches are navigable or not. If the first question is decided adversely to the plaintiff, then if my view which I will discuss later as to the interference with navigation, is sustained, it is equally immaterial.

If it be held that the legislature of British Columbia have power to enact as they have done, and that there is no right in the plaintiff to have redress for interference with navigation, then it is equally immaterial.

I have dealt with the questions raised by the appeal of the defendants as entitled to have the findings as they should in my opinion be. The report should be varied in accordance with my finding. The contention of the plaintiff that the diversion of the waters of the Lillooet river will seriously interfere with the navigation of the river. The referee so finds, but whether as to the upper stretches, which I find to be navigable, or the whole river, is not quite clear.

Taking the evidence which is voluminous, there does not seem to be much doubt but that the river below is navigable even without the flow of the tide. I think it equally clear that if the proposed diversion takes place there will be a very serious interference with the navigability of the river below. Can it be that because at the point of diversion the river is non-navigable nearly all the water can be diverted and practically ruin the navigation below?

This is not basing the case upon any interference with riparian rights, but testing it solely in respect to an interference with navigation.

Most of the cases reported are cases in which the interference has occurred in the navigable portions of the river. Section 4 of Cap. 115 of the Revised Statutes of Canada is as follows: "4. No bridge, boom, dam or abutment shall be constructed so as to interfere

with navigation, unless the site thereof has been approved by the governor in council, nor unless such bridge, boom, dam or abutment is built and maintained in accordance with plans approved by the governor in council."

It is argued that this section only applies to dams erected in the navigable part of the river. This may be, but the section does not so read.

Section 19 of the same statute is as follows:

"19. No owner or tenant of any saw-mill, or any workman therein or other person shall throw or cause to be thrown, or suffer or permit to be thrown, or suffer or permit to be thrown any sawdust, edgings, slabs, bark or rubbish of any description whatsoever into any river, stream or other water, any part of which is navigable water."

This section is evidently to prevent the acts therein referred to being done on the unnavigable parts of a river so as to interfere with the navigable portion.

In any event in my opinion the navigability of a river cannot be destroyed by a diversion of the waters above.

At the opening of the reference counsel for the defendants the Burrard Power Company, Ltd., admitted the truth of the allegations made in the 4th paragraph of the information.

The referee also finds the facts proved with the addition of pointing out that the point of return "at or near lot 40" is not on the Lillooet river, but on Kanaka creek. There is no appeal from this finding.

I think the plaintiff is entitled to the declaration claimed in paragraphs (a), (b) and (c) of the information, also to an injunction if desired.

The defendants must pay the costs of the plaintiff, including the costs of the reference.

### WORKING IN CAUSE OF ARBITRATION

#### Business Men Speak at International Conference at Lake Monkon.

Lake Monkon, N. Y., May 21.—Last night a session of the Lake Monkon conference on international arbitration was given up entirely to business men. Chas. Richardson, of Philadelphia, presented a report of a special commission showing that nearly two hundred leading chambers of commerce and boards of trade in the larger cities were co-operating with the conference in promoting international arbitration. The committee urged upon business men that they should seize every opportunity to create public sentiment in favor of this method of settling international differences, and against further increase of armament.

Concluding, Mr. Richardson said: "It is within the power of business men to do more than any other class to create in our own and other great nations a public sentiment which no modern government could afford to ignore. It is a most propitious time for efforts of this kind. There is a growing tendency towards mental attitude which led Lord Salisbury, the English prime minister, to write to the representative of Great Britain in Egypt that if their military friends could have their way they would want to garrison the moon in order to prevent an invasion from Mars. The enormous recent and prospective increase in national armaments is probably the most effective of all possible agencies for arresting the attention of the world to the evils of war. It is the duty of business men to realize that ruinous outlays and rates of taxation that will paralyze the industries of the world will be the inevitable result if they fail to demand that their governments shall unite in establishing and forever maintaining better methods than those of war for securing justice and fairness in the settlement of all international differences."

Short speeches were made by several delegates representing business organizations in different parts of the country, represented by 50 or more delegates.

### WIRELESS BRINGS MUCH NEEDED RAIN

#### Frequent Downpours Since Apparatus Was Installed on Island at Curacao.

The Hague, May 21.—That the advent of the wireless in the wind swept arid island of Curacao, off the coast of Venezuela, brought rain and luxuriant vegetation is the word brought here by a steamer from the island.

Dry, dusty and shrivelled, the island has lain under a tropical sun bereft of all but the scantiest vegetation. Recently a wireless apparatus was installed. Rains have fallen frequently since that time, and the island is becoming a little emerald in the Caribbean. Its dusty roads have been sprinkled, and its scant crops are plenshed by downpours which in the belief of scientists have travelled with the aerial waves of the wireless.

### HARVARD'S PRESIDENT.

#### Dr. Lowell Declares Policy of University Will Be Maintained.

Cambridge, Mass., May 21.—Dr. Abbott Lawrence Lowell, the new president of Harvard, made a virtual declaration of his policy in response to an enthusiastic greeting by several hundred students, comprising his class known as "Government L." The president said that the present general policy of the university would be maintained, and that Harvard college would preserve the attitude towards the graduate department as formerly. "Few things stand before us presenting such serious problems as the American college," he said. "Educators are attacking it on all sides. Many of them are not in sympathy with it and say that under its present status it has outlived its usefulness. I believe in the college as the core of academic life, and as such it will continue at Harvard."

## BROTHER TOLD BROTHER

### One Suffered for Fifteen Years, the Other for Thirteen.

The convincing powers of a testimonial were never more clearly shown than in the case of Mr. Hugh Brown. A brother, Lemuel Brown, of Avon, N.B., read after supper about Hon. John Costigan being cured by "Fruit-a-tives." Knowing the Senator would only endorse a medicine which would cure him, Mr. Lemuel Brown tried "Fruit-a-tives." They cured him of Chronic Indigestion and Constipation, so he urged his brother to try them.



Hartland, N.B., Oct. 28th, 1907. "Three doctors told me that I had Liver Disease and serious Stomach Trouble. My stomach was very weak. I took their medicines for thirteen years and grew worse. My brother (who was cured of terrible indigestion by 'Fruit-a-tives') recommended me to try these wonderful tablets. I bought half a dozen boxes and have just finished the sixth. I eat all kinds of hearty foods without distress and am greatly improved in every way. 'Fruit-a-tives' also cured the Chronic Constipation which was so distressing in my case."

(Signed) HUGH BROWN.  
50c. a box, 6 boxes for \$2.50; a trial box, 25c. At dealers or from Fruit-a-tives, Limited, Ottawa.

### MORE CHANGES IN U. S. TARIFF

#### Committee Accepts Proposals Regarding White Lead and Cotton Seed Oil.

Washington, May 21.—The Senate yesterday distributed for consideration among the three amendments in the tariff bill providing for a duty on an extract of chestnut bark used in tanning and known as puebracho on cotton seed oil and white lead. On each of these articles the Senate was led by the committee on finance, although the committee was induced to change its original suggestions on both white lead and cotton seed oil.

The lead duty fixed by the committee was originally 2½ cents per pound, but Mr. Curtis, who is a member of the committee, suggested a reduction of ¼ of a cent per pound, bringing the figure down to 2½ cents, and Mr. Aldrich accepted the reduction.

Probably the most interesting contest of the day was that over the question as to whether there should be any duty on cotton seed oil. Senators "Tillman," Bacon," and "McKenna" made an intense fight against the Senate provision fixing a tariff of three cents a gallon, on the ground that it would injure the sale of cotton seed, and after the controversy had gone on for some time, Mr. Aldrich withdrew the provision.

Offering an amendment to further reduce the duty of quebracho, Senator LaFollette declared that the tanning industry was being ruined by the duty, where quebracho is admitted free of duty. He declared that oak and hemlock have been killed off, and now only the inferior chestnut is left which cannot be successfully made into extract to mix with the imported quebracho. By a viva voce vote the duty recommended by the committee of half of one cent a pound was agreed to.

In the debate that led to the withdrawal of the cotton seed oil provision, Mr. Aldrich said Germany and other countries believed that if the American market were not protected it would be overflooded with foreign products.

### COMMITTEE CONTINUES ITS INVESTIGATIONS

#### Turns Attention to Accounts in Office of Washington State Auditor.

Olympia, Wash., May 21.—Governor Hay is maintaining silence as to his intentions relative to calling a special session of the legislature. The governor held a conference with the members of the legislative investigating committee Wednesday night, at the conclusion of which the chief executive stated he might make a statement for publication. Yesterday, however, the governor refused to discuss the question of an extraordinary session. The investigating committee is examining the accounts of State Auditor Clausen's office. No statement as to when the committee's report on the investigation of State Insurance Commissioner Schively's office would be submitted to the governor could be obtained yesterday.

### EARL GREY IS PATRON.

Winnipeg, May 21.—Word was received in this city yesterday that Earl Grey will accept the patronship of the Winnipeg Aero club.

## SLOW WORK ON MILL BAY ROAD

### LITTLE ACTIVITY IS SHOWN BY CONTRACTORS

#### Government Work is Not Likely to Be Completed for Years.

Those interested in the construction of the Mill Stream road which when completed is to overcome the difficult climb at Goldstream, on the Island trunk road, are becoming somewhat discouraged. The road which the McBride government promised some time ago is going forward at a very slow rate. At one time it was expected that the road would have been completed this year. That hope has long ago faded away. It is now a question whether the work will be done next year. Unless a very decided change is brought about it will not be completed until some time in 1911 or 1912, perhaps later.

With the assumption of office of Hon. Thos. Taylor it was reported that there would be a general awakening, and the hopes of all those interested ran high. As the summer wears on, however, they are awakening to the fact that little change is noticeable under the new regime. J. Haggerty has two miles under construction. There is six miles at the other end surveyed, but the central part of the sixteen or eighteen miles of road included in the whole distance is not yet located. It is proceeding slowly and there is not much activity shown. It is reported in the surveying operations.

The new road is regarded as one of special value to Victoria and residents would like to see a businesslike policy pursued with respect to it, as they might feel assured that by next summer the farthest they could be sure of having a highway on the island without grades.

### GEORGE WASHINGTON'S SWORD.

Washington, May 21.—The sword of George Washington is now the property of the Daughters of the American Revolution. It was presented to the board of regents of the organization by J. E. Morgan, through Miss Amy Townsend, vice regent for the state of New York.

The sword is the one worn by Washington when he resigned command of the army, December 23, 1783, and when he was inaugurated as first president of the United States. In his will he wrote of the sword:

"It is not to be unsheathed for the purpose of shedding blood, except it be for the defence of the country and its rights, and in the latter case, to keep it unsheathed and to prefer falling with it in their hands to the relinquishment thereof."

### MAURETANIA SETS NEW WESTWARD RECORD

New York, May 21.—New westbound records were established by the Cunard line steamer Mauretania, which arrived from Liverpool and Queenstown at 11:10 last night.

According to Capt. Pritchard, the Mauretania, out thirteen minutes from her last previous record, made an average hourly speed of 25.82 knots, as against her former record of 25.50.

The run from Southampton to New York was made in four days, sixteen hours and fifty-three minutes.

### WILL GO TO PRIVY COUNCIL.

Winnipeg, May 21.—At the sitting of the court of appeals yesterday J. C. O'Connor, acting for the plaintiffs in Cotter vs. Osborne, known as the plumbers' case, moved to dismiss the petition presented by the defendants for leave to appeal direct to the privy council. The motion was opposed by H. W. A. Knott for the defendants.

After some discussion the application was dismissed by the court unanimously. Chief Justice "Gibson" remarking that the case was one of very great importance to a large number of people interested, and that it was very desirable that the points arising in the case should be settled by the highest court of the Empire.

Mr. Knott then applied to the court asking that his petition on behalf of the defendants for leave to appeal to the privy council stand until next term. This was granted.

### LEAVE FOR ROME.

New York, May 21.—Delegates from many Catholic churches of this city to the number of 3,400 gathered at the steamship pier to say goodbye to the Most Rev. Dr. Diomedé Falconio, the apostolic delegate to the United States. The Most Rev. Dr. John M. Farley, archbishop of the diocese of New York, and about a hundred dignitaries of the church, who sailed on the steamer Carpathia en route to Rome. Many of them will attend the golden jubilee of their alma mater, the North American college in Rome, and the apostolic delegate will make a report to the pope on the condition of the Roman Catholic church in America.

### BOSTON BROKERS FAIL.

Boston, May 21.—Withdrawal of accounts and the bull markets are said to have been the causes of the failure yesterday of the brokerage firms of Sederquest, Barry & Co., and Edward P. Crammond & Co., both of this city. Subsequently involuntary bankruptcy petitions were filed against Sederquest, Barry & Co., and Chas. Weed was appointed receiver for the firm.

Both firms were members of the Consolidated Stock Exchange of New York. The Sederquest firm has numerous branches throughout New England, and another place of business in New York. It was stated that the liabilities of Sederquest, Barry & Co. would be found to be comparatively small. The claims against them by the petitioners in the bankruptcy proceedings amount to \$13,740.

## SUNLIGHT SOAP



ALL OVER THE WORLD thousands of housewives use Sunlight Soap in preference to any other, because it cleanses the clothes more thoroughly, and at half the cost without injury to hands or fabric. Follow directions.

GEORGE H. DEANE  
MOVED TO VICTORIA

### He Will Be Resident Inspector of Schools in Educational Office.

Inspector George H. Deane, formerly principal of the Boys' Central school in this city, will take up his residence here again. He has had his headquarters in Nelson since his appointment, but has now been named resident inspector of schools at Victoria and assistant in the education office. Mr. Deane has many friends in Victoria, who will be glad to welcome him back.

Other appointments appearing in this week's Provincial Gazette are as follows:

Francis Mithorp Whitlow, of Kitale, to be a justice of the peace in and for the province of British Columbia.

William Avery, of Golden, to be a deputy game warden for the East Kootenay district.

Julius Wolf, of New Denver, to be acting mining recorder for the Slocan mining division from the 23rd day of May, 1909, during the absence on leave of Angus McInnes, mining recorder.

H. L. Beresford, of Lockport, Queen Charlotte Islands, to be deputy mining recorder for the Queen Charlotte mining division, with sub-recording office at Lockport.

Albert Sullivan, of Nelson, to be an inspector of public schools from the 17th day of May, 1909.

William Silversides, of Skidegate, Queen Charlotte Islands, to be a deputy mining recorder for the Queen Charlotte mining division, with sub-recording office at Skidegate, in the place of John Mathers, resigned.

Richard Trinder, of Kamloops, to be an assistant timber inspector.

Newton R. Brown, to be chief clerk in the office of the assessor for the New Westminster assessment district, from the 26th day of October, 1908.

To be notaries public for the province of British Columbia:

Henry Newton Boss and Charles Dawson Newton, of Prince Rupert; Joseph Dood Allan, of the city of Vancouver; and Charles Harrison, S. M., of Masset, Graham Island.

Alfred S. Hood, to be a registrar for the purposes of the Marriage Act, at Phoenix.

Richard Polly, of Vancouver, and C. E. Pittendrigh, of New Westminster, to be fishery overseers for the Fraser river district and provincial constables from the 26th day of May, 1909.

### STRIKE OF JAPANESE IN HAWAII SPREADS

#### Trouble Expected When the Plantation Owners Evict Laborers.

Honolulu, May 21.—Japanese laborers on the Kahala plantation joined the strikers of Honolulu and Oahu plantations, yesterday, and it is feared that the trouble will spread rapidly within the next few days. The Ewa strikers have been induced to return to work, but there is a strong sentiment among them to walk out a second time.

The Kahala laborers struck because of the management's refusal to discharge four men whom the employees thought were spies.

A crisis is expected Saturday, when the planters attempt to evict the strikers from the lodgings which they have occupied free of charge. Notices of eviction have been torn up by the Japanese, who are dangerously defiant.

The management's refusal to discharge four men whom the employees thought were spies.

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## MAYOR CLASHES WITH ALDERMAN

### RESENTS INSINUATION OF TRAMWAY MOTIVES

#### Agreement With Silver Spring Brewery is Passed in Form of By-law.

(From Friday's Daily.) The agreement reached with the Silver Spring Brewery Company, with reference to granting them a thirty-foot strip on Lime street in lieu of the equivalent space which the old Fairall brewery buildings encroached on Esquimalt road, was endorsed by the city council last night in the form of a by-law.

During the course of the discussion there was a sharp passage between Ald. Henderson and Mayor Hall, the latter being passed.

A by-law for the establishment and expropriation of Esquimalt road, between the western boundary of the Songhees reserve and the western side of Russell street, was introduced on Monday night and passed last night.

The fifth clause of this conveys to the brewery company the Lime street strip, and to it was added in committee a rider that the company agreed to erect no permanent buildings, and no buildings except of wood, on the strip, and that if the city required the land for street purposes it should get it back on payment of the then value of the buildings, with no compensation whatever for the land or for disturbance of business.

City Solicitor Mann explained how the road had originally been laid out as 66 feet wide, like all government roads, although the actual roadway in use in early days was probably not over 30 feet. The solicitor stated that he and the city engineer had drawn the by-law up very carefully.

Ald. Henderson declared himself emphatically as entirely opposed to the deal being made with the brewery company. The city proposed to ruin a street which was proposed city street in every sense in order to make an irregular road, which was not a city street, straight. This was a ridiculous position to place themselves in. There was no need to widen Esquimalt road at the point in question, as it was quite wide enough for all traffic and there had never been any trouble or congestion. The result would be a big lawsuit, and all for no purpose he could see, unless it was to give the tramway company more room. The brewery should be allowed to rebuild on the old site and Lime street be left intact.

In reply to Ald. Henderson the Mayor said, the plan proposed would give a street of 50 feet wide instead of 33 feet, and would give room for a sidewalk on the south side if the tramway line was put over Lime street was only 200 feet long anyway, and the local improvements the people wanted could not be placed on it.

The by-law was passed, one of the aldermen remarking jocularly to the Mayor and the Ward One alderman that now their heads would fall in the basket.

Secretary of the United States Navy to Inspect Navy Yards in Fall.

Washington, May 21.—Secretary of the Navy Meyer will visit the Pacific coast next fall and inspect all the navy yards. The inspection will be continued with a view to determining whether the reorganization plan put into effect by secretary Newberry obtained.

GOVERNORSHIP OF ALASKA.

Washington, D.C., May 21.—The Senate yesterday confirmed the nomination of Walter E. Clarke for governor of Alaska.

"According to a well known American actress, it costs more to produce a play in London than in New York."

WM. F. GIBSON, Albert B. C. builder and general contractor. Contracts taken anywhere.

WANTED—Persons to grow mushrooms. Air as home. Waste space in cellar, garden or farm can be made to yield \$15 to \$25 per week. Send for illustrated booklet with particulars. Montreal Supply Co., Montreal.

D. C. DOBSON, 1100 West 1st St., Vancouver, B.C.

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BANJO, MA, taught by W. 1100 West 1st St., Vancouver, B.C.

MISS E. H., 1100 West 1st St., Vancouver, B.C.

STENOGR, 1100 West 1st St., Vancouver, B.C.

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