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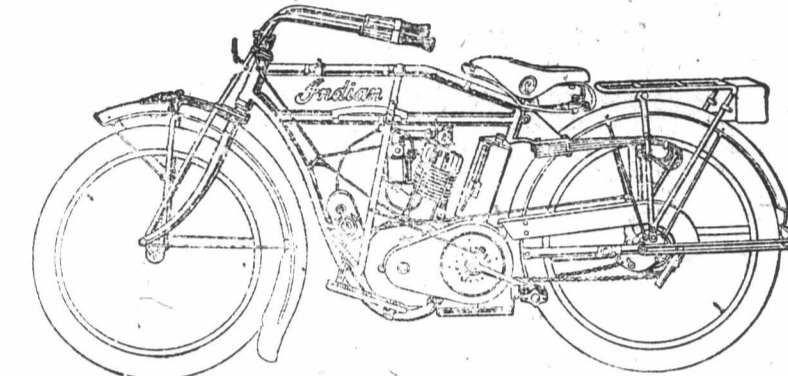
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The Finnegan Carriage & Wagon Co.

BELLEVILLE

LOCAL ICE CASE BECOMES PRECEDENT

"The Ontario Weekly Notes" published by the Law Society of Upper Canada of date Jan. 2nd, 1915, contain the full judgment in the appeal of Little vs. Smith. This case is that dealing with the protection of ice routes on the Bay of Quinte and the judgment in this case will be quoted as precedent in future cases.

The case was an appeal by the defendants from the judgment of the Senior Judge of the County Court of the County of Hastings in favor of the plaintiff, upon the verdict of a jury in an action brought to recover damages for the loss of the plaintiff's horse. The appeal was heard by Meredith, C.J.O., MacLaren & Hodgins, J.A. and Clute, J. W. B. Northrup, K.C., for the appellants; E. G. Porter, K.C., for the plaintiff, respondent.

JUDGMENT

Meredith, C.J.O.—The female appellant conducts an ice business, which is managed by her husband, the other appellant, and for the purpose of the business they cut ice in the Bay of Quinte. There is a conflict of testimony as to the area of the opening made in the ice for cutting; but it was at least 150 feet long and 8 or 9 feet wide; and the appellants failed to provide the protection around it required by sec. 287 of the Criminal Code. A horse of the respondent which was driven by him, attached to a sleigh in which there were a number of empty milk-cans, ran away and in the course of his flight broke through the thin ice which had formed over the hole and was drowned. The bay when frozen over is used as a means of travelling from Belleville to the county of Prince Edward; and the respondent was driving across the bay for the purpose of getting a supply of milk from farmers in that county. There was a beaten track which was used in crossing the bay, and the respondent was driving on it when his horse ran away and fell into the hole in the ice, which was distant about 150 feet from the travelled way.

The respondent brings his action to recover damages for the loss of his horse, and claims to recover on two grounds: (1) that the hole in the ice, insufficiently guarded as it was, constituted a nuisance in the highway which he was lawfully using, and that the loss of the horse was due to the existence of the nuisance; (2) that the appellants were guilty of a contravention of sec. 287 in not protecting the hole as that section requires and that the loss of his horse was due to the failure so to protect it.

The contention of the appellants is that the hole in the ice did not constitute a nuisance, because the distance from the hole to the travelled way; that no action lies for the failure to provide the protection which sec. 287 requires; and that the proximate cause of the drowning of the horse was his running away and being no longer under the control of his driver or of any one else; and the appellants also contend that the learned County Court Judge misdirected the jury as to the effect of sec. 287, and that the running away of the horse was occasioned by the negligence of the respondent, who, it was contended, was under the influence of liquor and unfit to drive the horse.

The question of contributory negligence was fairly left to the jury, and their verdict against the respondent of it, and there was evidence which warrants the jury's finding.

The main question is as to the liability of the appellants for injury done to a runaway horse, in driving it, it was the duty of the appellants, both at common law and under the provisions of the Code, to guard the hole that had been made, in my opinion, and that such a duty exists was decided by a Divisional Court in Pennock v. Mitchell (1908), 12 O.W.R. 767.

It may be that sec. 287 imposes a greater duty as to the nature of the guard than is imposed by the common law; but it is unnecessary, in the view I take, to consider that question.

The learned Chief Justice quoted sec. 287. While the purpose of this enactment was the safeguarding of human life, I have no doubt that a hole guarded, in the protection of it, in a public highway, as the Bay of Quinte is, is a nuisance; and, if it be a nuisance, the respondent, having suffered damage directly resulting from that which was suffered by the public at large, is entitled to maintain an action for the recovery of the damages which he has sustained.

There is more difficulty as to the liability of the appellants in the circumstances of the case, the horse having run away, without, as the jury have found, any negligence on the part of the respondent, and in his having broken through the thin ice which had formed over the hole cut by the appellants.

The cases are certainly not satisfactory and are not easily reconcilable, but I am of opinion that the true rule is that laid down in the Sherwood case, and that the Atkinson case does not stand in the way of its being applied. In the case of a municipal corporation where the highway is out of repair owing to the corporation's neglect of the statutory duty to keep it in repair; but, if the rule is otherwise, and the corporation is not liable where horses are running away, that would not, in my opinion, help the appellants. The Bay of Quinte—the whole bay—is a highway, and open to the public, and open its waters when frozen any person may travel on foot or driving his horse or other animal. The public have the right to cut the ice, but this right is subordinate to the right of travel, as is clearly shown by the provision of the Code to which I have referred; and I am unable to find any ground upon which

ACTIVITY AT ARMOURIES

Recruits for Third Contingent Drilling in Belleville—Enlistment for Local Units

The armouries on Bridge street are again the scene of bustling activity these days for the tramp of Canadian troops enlisted for foreign service is heard within the walls of its drill hall. Thrice daily the recruits of the Third Canadian Contingent of the local regimental units, the 15th and 49th drill at the armouries 10 a.m., 2.30 p.m. and 8.00 p.m. There is no drill instructor here at present as recruiting has just begun and the men are only answering roll call and going through squad-drill.

The Fifteenth Regiment has 25 or 30 recruits some of whom are from the rural district. The 49th has a similar number. Officers from both regiments have applied for commissions in the new battalion which will be stationed here.

It is likely the 16th Regiment will send its recruits here shortly. Twenty-six recruits of the 14th of Kingston were out drilling yesterday at artillery park. Ottawa has secured 160 recruits; Peterboro 56; Lindsay 160; the 47th have recruited 15 and the 4th Hussars 9.

There is rumor in military circles that Capt. Bywater of the district staff is likely to go to the front with the Third Contingent. During the brief period he has been in his present position he has made a large circle of friends and he has the name of being a very obliging and capable officer.

There are about 30 accepted Kingston recruits for the new battalion.

WEDDING BELLS

FOX-BEARNS

The home of Mr. James H. Hearns was the scene of a very pretty wedding on Wednesday evening, Dec. 30th, when his younger daughter, Harriett Amanda, was united in marriage to Mr. Herbert R. Fox, of Oyen, Alta.

The bride was charmingly gowned in ivory striped marquisette over messaline silk, and was led to the altar leaning on the arm of her bridesmaid, and carrying a beautiful spray of white carnations tied with satin ribbon. The ceremony took place in the drawing room. Rev. Mr. Crook-shanks of Thomasburg officiating.

After congratulations had been repeated to the dining room where a sumptuous repast was partaken of. The remainder of the evening was spent in music and other pastimes. The groom's gift to the bride was a diamond set with pearls and amethysts. Many other beautiful gifts were received, including the wedding cake which was sent by her uncle, Mr. Gunyon of Sault Ste. Marie.

Much joy and prosperity is extended to the happy couple who will be leaving in the near future for Oyen where they will reside.

LETTERS TO THE EDITOR

Thanks Statements Lack Accuracy

Dear Sir: There were five statements made by Rev. Dr. Gordon, all of which I think are inaccurate. I would respectfully ask Dr. Gordon, where proof is to be found, for the following incidents he mentioned in his very eloquent address.

The first is that Robert Burns was a cripple. As an exciseman he rode two hundred miles each week. The second, that Burns overheard the lady of his love say, that she would never marry a cripple, and hearing that, in a great degree, wrecked his life.

The third, that Jane Welsh Carlyle, declared that she had married Thomas Carlyle because of his fame, and without love, and as a consequence was miserable.

The fourth, that Robert G. Ingersoll, the celebrated lawyer, was addicted to drinking to such a degree, that his wife and children, were leaving him, and their home, forever; and only remained, because he pledged himself to entirely abstain.

The fifth is, that any map was found of Belgium, upon which Wellington had inscribed at a certain undecided spot. The battle will be fought here. The publisher's letters, and of Jane Welsh Carlyle, are couched in the most tender love; and show that she loved Carlyle with all her very sensitive and affectionate heart, as anyone can learn by reading these letters as published.

Yours, Scrutator.

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WOMAN GOES MARCHING ON

Special to The Ontario.

TORONTO, Jan. 7.—Some people said that the war would kill all such movements as votes for women. This opinion was based not on the assumption that women's suffrage would become less popular but that there would be no interest in the subject to the interest arising from the war. These predictions, however, as far as Ontario is concerned and as far as one specific branch of the Woman's Suffrage question is concerned, have been fulfilled. The votes taken in a number of Ontario towns this week favoring the extension of the Municipal Franchise to married women if they were otherwise qualified, is most significant. The plebiscites were carried in all the places they were submitted including Stratroy, Guelph, Thamesville, Orangeville, Clinton, Bracebridge and North Bay. These results simply confirm what the vote recorded in Toronto last year, on the same question, 26,238 votes were polled in favor, against only 12,575. Requests for this legislation, is most significant.

The Municipal Franchise for married women, otherwise qualified, is one of the planks in the Government and Mr. Rowell's view is expressed thus: "With the possible single exception of Tax Reform, we have not had in recent years, a greater demand presented to this House in favor of this proposal."

It is interesting to note in connection with the majorities in favor of this measure recorded this week, that it is only a few weeks ago that the Minister of the Interior, in a deputation of women who had come to see him asking for this reform, but who found that Mr. Hearst had suddenly left for Ottawa and was not there to receive them. It looks as if the new administration is going to be as hostile as the old to this reform, which, as repeated votes are showing, is one of the popular issues of the day.

Dispute in Hotel

Some trouble arose at a hotel last night two men being mixed up. The hotelman says it was the famous, "two bears" rolling on the floor.

It is said that some pepper was thrown about in a man's eyes and down his neck and that a spittoon figured in the dispute.

This morning Michael Callaghan charged B. McConnell with assault. The case will be tried tomorrow before Magistrate Mason.

Charged With Theft.

Oscar Spafford was arrested by County Constable Patrick Hayes on a charge of having broken into and entered the storeroom of the complainant, Edith Staples, in Tyndinaga, some time in December and stolen one brown cloth overcoat, one pea-jacket, one pair of white flanneling sheets and other articles at about the value of \$15. Spafford was remanded until Jan. 15th as the crown was not ready to proceed.

Belleville Rifle Association

The Belleville Rifle Association last evening held its regular shoot at the armouries. The scoring was excellent.

- J. Douch 100
- G. Anderson 99
- J. C. Wills 97
- A. Haggerty 97
- G. Ellis 96
- W. J. Andrews 95
- H. Raymond 95
- A. Symons 95
- H. Thompson 94
- Dr. Clarke 94
- C. C. Walker 93
- L. R. McMillan 91
- J. D. Gratton 91
- C. Symons 90
- P. Geen 88
- H. Weese 88
- G. Maxam 88
- M. Wright 88
- H. Hall 78

OPEN LETTER TO THE MAYOR

And the Members of the City Council

Belleville, Jan. 7th, 1915.
Your Worship,
Mayor Panter,
and members of the City Council,
Gentlemen!

I wish to bring before you what is, in my opinion, the most vital question in our city to-day, namely, the unemployment in our midst.

We are all aware that most of our manufacturing plants have been running on about time, some have been compelled to close entirely. This has been a great hardship, in fact the unemployment has fallen the heaviest upon those citizens who are really the mainstay of our city and this effect is felt wherever you go.

One means of immediate relief during this winter is the employment of a hundred or more men on the long proposed filtering basin on Zwicks Island. Plans have been prepared for this and a ten thousand dollar by-law was some years ago favorably voted upon, giving authority to do the work. Employment could be given at once by excavating the gravel for the basin and this gravel could be tested at the various parts of the city where it will be ready to be used on the streets during the coming summer.

There might be some difficulty the first few days in clearing away and getting below the frozen earth but the situation could assuredly be handled.

THE WORLD'S HUGEST CRIME

This article by Dr. William Waugh is found in Medical World, Philadelphia January issue, and very few medical journals have larger circulations, and in our Dominion it has been said that no journal medical of the U. S. has more Canadian doctors as subscribers. Probably, M.D. WORLD has in Canada more subscribers than any two of our best Medical Journals and its influence is very pronounced equally in the U. S. and in Canada.

Dr. Waugh's classical words are in a sense equalled by the illustration, denouncing German Militarism as one may notice on the front page of SAUTER'S EVENING POST, last issue, Jan. 2nd—which needs no words to describe the fine timely illustration.

In times like these, when men's passions are heated to the boiling point, the position of a neutral is not as peaceful as it seems. It is not for you, unqualifiedly, as it is against you. But in all the warring nations there are those who keep their heads and can look on things as they are dispassionately, disinterestedly, without partisanship.

I am neither German, English, French, Russian, Montenegro, Austro-Hungarian, Belgian, Japanese or Serbian, but simply American, if an unbroken lineage of American ancestry for 200 years make me such, by age and disposition I am judicial and conservative, I have neither interests nor connections that could sway me to one side or the other. I claim the right to my opinion; and in answer to German critics who object to my previous article I would suggest that they might more profitably ask themselves why under these conditions I and the vast body of my countrymen feel as I do. For after allowing full values for the German greatness of qualities and achievement, the truth is that Germany has not won the confidence or the liking of any country or people beyond her own limits.

Let us look at the matter broadly. For it is evident that each of the contending parties is in deadly fear of the other, and sees safety to herself only in establishing her own military supremacy over them; as to England, in providing such a naval force as will surely counterpoise the immense military machines of the Continent. Europe's motto is—"Do the other man before he can do you."

Survey the field of Europe, and note France, with the subdivision of her arable and pushed to the ultimate possibility, and a population scarcely sustaining its numbers. True, Africa has opened to her an outlet for her surplusage of men, money and energy; and it may be that a vivifying circulation there may be established whereby the home stagnation shall be relieved. To this and to democracy may be attributed the difference between France in the present conflict and the showing she made in 1870. Comes Germany, whose prolific womb sends forth her yearly swarm of youth, as in Caesar's days; and as pressing insistently in their need of breathing room. That these should seek new homes is mathematically certain and so every new land welcomes the German immigrant, every virgin soil is turned by the German plow.

But Germany's rulers prefer to keep their surplus under their own control, to add it to their own power. Hence the cry of Germany for more European and colonial space, for expansion under her own flag.

But of Germany stand the thorough multitudes of the Slavs. Even more prolific than the Teutons, their masses grow yearly more portentous, as a menace to their neighbors. They threaten all their boundaries, not by military tendencies or disposition, but by the sheer force of numbers. Eastward they have room to expand in

Siberia, but the impulse of the Aryan has ever been westward. Besides, to the east of the Slav he comes in contact with a race still more numerous, still more densely packed, still more ready to be handled in mass, still more formidable—the Mongol. Forty millions of Germans, who themselves feel the pressure of two hundred millions of Slavs, over whom impinge the combined forces of five hundred millions of Chinese.

That Germany should exert pressure toward the south is inevitable; but a German claim for domination must appear in opposition every particle of blood in the Latin race. Drop this tendency and substitute a peaceful invasion; that three hundred thousand Teutons were domiciled in and about Paris when the war broke out, shows that the infiltration of these people is natural, and would be welcomed were they not distrusted and feared. Remove this sentiment, and the commingling should go on as peacefully as it does here.

Most of the difficulty comes from the assumption that the land owns its inhabitants, instead of the man owning the land. The German residents of Alsace, Schleswig-Holstein and East Prussia, must choose if they shall side with the government under which they live; or with their own people. The same is true of the Italians of the Trentino and other Adriatic districts of the dual empire. If only these people were permitted to decide for themselves which government they prefer. Here we have the principle that has made America great—the will of the people as to their government. Our foreign-born citizens find no difficulty in retaining their love and pride in and for their native countries, and yet becoming good and loyal citizens of the United States. To their children, the European origin quickly subsides into a tradition.

Europe is characterized by separatism, as America is by fusion. Saxons were transported to Pennsylvania in the fourteenth century, and their descendants remain Saxons to-day—more Saxon than their cousin of Saxony proper; a separate, race, isolated among Magyars, Roumans, Serbs, Tzigany, Slovaks, Slovenians, and other subdivisions of the Slav stock, each of which preserves its identity, as little prone to mix as oil with water. Twenty-three races comprise the dual empire each struggling among the others while here they and many others freely unite, and contribute their racial strains to the formation of the coming race that will overtop all its constituents, the future American.

Europe and the world stand in need of the Franco-Latin race, and their industry for which she stands. She needs the sea power of England, to police the seas and hold them open for the free commerce of all. She needs Germany, powerful in arms, and leading the world in all the lines of human development a bulwark against the Slav, backed by the power and the sympathy of the south. She needs Russia and her developing masses, easily directed and not aggressive, as a rampart against Asia. When China really develops industrially, we are to find that no power of the white race can be spared.

The germ of hope lies in Socialism. The German socialists declared that they would not be led to murder their brethren of other countries in a war that meant to them nothing desirable. True, they forgot it when the trumpet called; but the day will come when this thought will return—when the early warlike enthusiasm subsides when taxes climb and the land swarms with the aged and the orphan grows loud, and the cry for food insistent, the question of personal interest in the fight must return.

Meanwhile, we end by expressing our appreciation of the sage who said "My son, you will learn with how little sense the world is governed."

William F. Waugh, M.D.

Verandah Blown Down

The verandah in front of Mr. H. Day's residence, Bridge street, west, was blown down at an early hour this morning by the wind. No other damage of consequence was reported through the city by the heavy wind storm.