Hopper vs. Dunsmuir

(Continued from Page Three.)

statement with me that had already been agreed between the office and myself as the correct amount of the coal that I had received.

Q. I see; they had agreed to the amount?

A. Yes.

Q. Were you able to get the matter finally settled with them for the coal?

A. He directed them——

Q. They have settled the amount with you?

A. Yes, sir.

Q. Were they able to settle the matter entirely with you?

A. Not without him saying so; no.

Q. Exactly. And you say you had the statement there; did you give it to him?

A. Yes, sir.

Q. What did he do?

A. He said to give me credit for that amount.

Q. He said to whom?

A. I forget who he spoke to; he called someone down from upstairs.

Q. He gave directions?

A. Yes; he gave directions that they should send me a credit memorandum.

Q. And what was done?

A. That was done.

Purchase of Bark Oriole

Witness was present at the marriage; says Alexander was quite sober; that he was intelligent and comprehended what he was doing perfectly. In September, 1899, he bought the bark Oriole from Alexander, and after some negotiations paid $2,000 for her, Dunsmuir pointing out to him that it would facilitate their business if he took it.

After dinner on the day of the marriage, Alexander asked James for the paper, and requested Lowe and himself to witness his signature, which he identifies. Judging from their dealings, he thought Dunsmuir was a man of strong will, and was so in 1899. On cross-examination he says that he thinks Dunsmuir drank more in later years than in former years, and was laid up more frequently; that he got weaker year by year; that he stooped a little more, and did not walk about so much; says he cannot recollect any conversations with other business friends during 1899, unless there was something to recall them to him; also says that if Alexander had stopped drinking in 1899 he would have been willing to trust him with the management of a large business, and that he would consider it in very competent hands. This witness was further examined in San Francisco under the order of this court, and there stated that Lowe and himself were asked by the deceased to witness the will; that the deceased signed it in the presence of James, Lowe and himself, and that Lowe and himself then signed as witnesses in presence of deceased and each other, and that he knew at the time that he was witnessing a will. In cross-examination he says the deceased went first into the room where the will was signed, then either James or Lowe, and himself last.

The next witness is Lowe, former manager of the business at San Francisco, who was the other witness to the will. He testified both at the trial and in San Francisco, but his evidence was so shaken by cross-examination as to make it hardly worth while to take it into account.

W. A. Gompertz, employee of the R. Dunsmuir Sons Co. since its incorporation in 1896, and cashier and treasurer since the latter part of 1898, knew Dunsmuir from 1890 until December, 1899; says that exclusive of the times of illness, Alexander was at the office from three to five times a week between 1890 and April, 1899, when he took up his residence at San Leandro; and that after that time till he went East he was there almost every working day, and from the latter part of 1898 to December, 1899, every day except Sundays, Saturdays and holidays, and any days when he was ill. Witness produces telegrams sent to James by Alexander's instruction and signed by him, in November, 1899, relating to a transaction involving $186,000; also letters and telegrams typewritten by witness under Alexander's instructions, and signed by Alexander, relating to other transactions which took place in the latter half of 1899. He also produces the minute book of the meetings of the company, showing that Alexander was present on August 6, 1899, and December 19, 1899, which book also shows that there were more meetings of the company in that year than any other year. Referring to the pony incident, Gompertz says he was with Dunsmuir when he bought them, and that he drove them to the ranch by Dunsmuir's orders; that when he arrived Dunsmuir was not crying, as stated by the plaintiff. In the latter part of September he had a conversation with Dunsmuir, in which the latter stated that if he died before Mrs. Wallace she would be provided for by his brother, and that when she died the ranch was to go to his brother. As regards business, Dunsmuir would make the usual business inquiries; always understood what he was doing, and what he wanted to say; and had a good memory, although he was a man of few words. Witness never saw him under the influence of liquor. The books showed a number of payments made by Dunsmuir's instructions on his account, as, for instance, $250 for the ponies, $3,000 to Wharton, the contractor; $2,500 to a sister in London. While he was absent from San Francisco for weeks at a time, and on one occasion for a year, he always kept in touch with the business.

Stubbornness of Opinion

John L. Howard, president of the Western Fuel Company, which bought out the property of the New Vancouver Coal Mining & Land Company, at Nanaimo, B. C., knew deceased from the early eighties up to his last trip to New York; had business dealings with him over the whole of that time; purchased coal from his mines; bought 25,000 tons in the latter part of 1899 from him and his brother; we were sitting in my office and I made them an offer of $3 per ton for 25,000 tons, and Alexander looked at his brother and said, "We had better take it," and James consented. None of our contracts with them were ever put in writing; the last of the coal was shipped in the spring of 1900; last saw Alexander on the Oakland boat a few days before he left for New York. "I always found him capable of doing business with me, and to have a great stubborness of opinion." Cross-examined, he reiterates the statement that Alexander accepted his offer and James assented.

Walter Young, retired assistant manager of the Bank of British Columbia in San Francisco, occupied that position for about 10 years ending December, 1900; met deceased the first day he came to San Francisco; bid him good-bye in the bank a few days before he left on that trip; saw him during the last few years, sometimes about three or four times a year; his firm kept an account with the bank; he would come in on business in connection with the account; never observed anything wrong with his mental faculties. The last time I saw him he appeared about the same as he usually did; never saw him drunk. Cross-examined: Never saw him in his rooms at the Grand or on 'change or at the club; "he always appeared to me to be perfectly keen and alive to the matter on which he came to the bank"; he had the reputation of being a hard drinker, but I did not notice any effect on his mind or his walk; am no longer connected with the bank; nobody knew what I was going to say on the stand.

R. D. Chandler, coal merchant, San Francisco, knew deceased since 1858; had the last business transaction with him about 1896 or 1897; saw him quite often for two or three years after that; then after that about once or twice a week. In 1899 saw him shortly before he went East, when he invited him over to San Leandro after his return; saw him many times during the year before his death, our offices being close together; would talk generally about business or about his folks; his mind was clear; never saw him drunk, but thought he drank more than he ought to; never saw anything unusual in his speech or actions; was very set in his ways; was a good business man; very firm and not easily influenced; knew James since he was a boy; "they are both stubborn as mules." Cross-examined: We were competitors in the coal business, "and there was always a little bit of feeling between us, that is, there was a little bit of feeling on his part; none on mine at all. He came down here young, and like young men, he was a little fresh sometimes; I sold out to them about 13 or 14 years ago." Never met him anywhere except at either his office or mine, or on the street; never saw him at night. He bore the evidence of drink; I was satisfied for a long time that he used to drink. I used to meet him on 'change, and I quit going there, as it was a rum hole of the worst description." Would not accept medical opinion that he was mentally unsound; he had the name of being a hard drinker; his father was addicted to the use of liquor.

Brusque and Overbearing

W. E. Mighell, president of the California Shipping Company, and managing owner of the largest fleet of sailing ships owned in the United States, vice-president of the San Francisco chamber of commerce, says that he made Alexander's acquaintance in 1882; met Alexander frequently in the Merchants' Exchange, and at his office respecting charter-parties; that their personal relations were so close that they addressed each other by their Christian names, and that they were intimate friends; that he found him a very thorough business man, rather sharp in his dealings; very brusque and somewhat overbearing. He details an interview in 1898 in which Alexander advised Fritch against having dealings with the Alaska & Yukon Company, also an interview between Alexander and himself in September, 1899; also an interview with Alexander in November, 1899, in which he asked Alexander to take $50,000 worth of stock in a company to be called the California Shipping Company, but which Alexander, after reflection declined, giving his reasons; that his last interview with him was on December 20, which was regarding the question of getting freight for the new company which Alexander had promised; that Alexander told him not to mind, that he would be back before the 1st March, and that ships for Alaska could not get into harbor before May or June. He also details another occurrence in the fall of 1899 in which Alexander snubbed a man who came between them and addressed him, and refused to hold any conversation with him, saying to the witness that he was not going to waste his time talking to him. He also says that he chartered the ships to him in 1899, and met him often in the end of that year; that his manner of doing business and conversation was the same as he had always known; that his memory was perfectly good; that he was just as strong-minded in 1899 as formerly, and very positive in his statements; that on the last occasion on which Dunsmuir chartered one of his ships he would not pay more than $3.75, although the N. P. Railway Company was paying $4 for practically the same distance. In cross-examination, he states that he did not know anything of his habits after business hours; that he never saw him intoxicated; that he never heard a business man say he was drinking to excess or becoming demented; that he always walked erect, strong, and active, but slow; that he observed no change in his appearance or voice, except that arising from increasing age, from the time he first knew him till he last saw him; that he has done no business with the Dunsmuirs since 1900; that he is not employed by James; that he does not sell his coal nor ask him any favors; that he has not carried any coal from his mines for about two years; that he knows James Dunsmuir very slightly.

Shrewd Business Man

E. M. Freeman, pilot, knew Alexander from 1878 until 1888; met him probably once a day, except Sundays, from that year until 1899, probably once or twice a week; their conversation was about social or personal matters, and not business matters; probably saw him two or three times a month in 1899; never saw anything out of the way in his conversation; he always talked coherently and intelligently; never saw any difference in his manner of walking; never observed him shuffle his feet or mumble; was with him about 20 minutes on the ferry on December 20, 1899; he then talked coherently and connectedly. In cross-examination he says the conversation on December 20 was between Mighell, Dunsmuir and himself, principally about the new house, and towards the end Mighell and Dunsmuir talked about chartering ships, but cannot recollect any particulars of any other conversation had in 1899. Saw him in 1898 on the average about once a month, and except during a period of three weeks' illness, he was apparently in good health, and there was nothing to show that he was drinking too much. Never heard that his health was injured by excessive drinking.

George Fritch, wholesale coal merchant and shipper, says that he has resided in San Francisco since 1850; that he knew Alexander intimately; that he did business with him ever since he came to San Francisco, buying coal and consulting with him about chartering ships; that up to 1898 he met him part of the time every day, and part of time once or twice a month; that he always found him a very shrewd business man; that there was nothing peculiar in his speech; that, while he drank more or less, he never saw him intoxicated. In April, 1898, he had a consultation with him about sending a cargo to St. Michael, and lost a considerable sum of money by not taking Alexander's advice. He consulted him on business affairs even when he was ill; never found him hard to understand, or heard him talk childishly; saw him three to five times per month in San Francisco after he went to live at San Leandro, until he went on the last trip to New York. He seemed strong physically, and able to get around; his business capacity was just as clear as it had been formerly; nothing out of the ordinary in his mode of speech; met him about a week before he left for New York; his mode of speech and business capacity was as usual; in 1898 and 1899 found his memory very good. In cross-examination, he admits that he carried Dunsmuir coal to San Francisco in 1902; that for the last 15 years he got most of his coal from the Dunsmuirs, and is unable to particularize more than four of the times when he saw Alexander in 1899. In re-examination, he re-affirms his statement that he saw him on the average from three to five times every month in 1899.

H. Fritch, 49 years of age, coal merchant in business in San Francisco, with his father, George Fritch, the last witness, first knew deceased about 1874 or 1875; he came to San Francisco to take charge of the Dunsmuir business in 1877; about 1880 I began buying their coal; from 1883 till December, 1899, used to see him almost continuously, as my father and myself used to have business to transact with him; used to see him almost every day in 1899 that he was at his office; saw him frequently also in 1898; in March or April of that year we bought a cargo of coal of several thousand dollars from him to sell to an Alaska company; deceased advised us against the deal, and his judgment was right, as the company failed; we had business with the firm almost every day of the week; he used to make inquiries from me as to the sales of a rival coal company, called the Nanaimo Coal Company; this was during November and December, 1899; he made it his business to come to the office every day for almost two weeks to get posted as to what this company was doing; have met him in numerous places, including my own house; was one of his intimate acquaintances; was "one of the smartest men we had in the business," judging from my business relations with him and the way he handled his business; "he was a man of strong and determined mind; do not see how any man doing business with him could question his sanity for a moment." Recalls an incident showing that Dunsmuir's memory was good in 1899. Cross-examined: From the relations I had with both James and Alexander, I know that Alexander dictated the policy of the firm; cannot tell the number of times I saw him in 1899; it was innumerable times; have heard that he was a drinking man, but never saw him under the influence of liquor.

J. W. Harrison, commission merchant, in San Francisco, knew deceased over 20 years; up to the time he left for New York saw him on the average about five times a month, generally at the Exchange; most of the time talked coal and coke; sometimes on general topics; saw him for the last time about three or four months before he left, when he discussed matters of business in a rational way; "appeared in the best of health; when he came to a conclusion with one in business, you couldn't disturb him; I mean you couldn't warp him"; never saw him drunk, but have taken drinks with him. Cross-examined: He had the reputation of being an excessive drinker; we were at times competitors in the coal business; am on friendly terms with the defendant.

W. G. Harrison, general manager of a marine insurance company, first met deceased about 1876; for about 15 years met him every day in Merchants' Exchange, except Sundays, holidays, and when he was absent; during the last six or seven years of his life met him about twice a week, probably more frequently when I went to the club; often chatted with him in the street; saw him about the end of 1899; and two or three times in 1899. The only business transaction I had with him was in 1885; never observed anything special about his speech; never observed anything in his manner or speech which would suggest mental infirmity; about May or June, 1898, I had promised to get him some English revenue stamps; I did so, and the day before their arrival he asked me why I had not got them, checking off the date, i. e., the time he asked me and the number of days it took for the mail to go and come; "he was a drouthy soul and drank considerably, but I never saw him drunk"; talked with him quite frequently in the club on general topics; introduced him to Mrs. Wallace in 1875 or 1876. Cross-examined: Used to visit the club every Saturday night for eight or nine years, and generally saw him there at night when he was in town; never drank with him; never met him in any hotel; have seen him go in daily into the bar of the Merchants' Exchange, and have also seen him at dinner parties; I chatted with him in the early part of 1899 at the club, he was not drinking; there never was any estrangement between us at any time; never heard that he had delirium tremens.

James Dunsmuir, the defendant, says his brother came into the Victoria office in September, 1898, and said he was going to Mr. Pooley to get his will made out, and witness did not hear any more about it until Alexander told him to get it out of his pocket at the mother's house, which he did. Alexander then told him to read it, and then told him to put it in the safe. He then said to get a letter out of his pocket, which witness did, and Alexander then said to give it to him, which he did; and Alexander then tore it up and said, "Jim, I'll trust to you." The substance of it was as stated by Mr. Pooley, and witness informed his mother of the arrangement, but never discussed it afterwards with her, or the subsequent will of 1899. In October, 1899, Alexander informed him that he was going to marry Mrs. Wallace, and he told James when he came down to San Francisco in December to get a copy of his will from Mr. Pooley, and he would sign it. He brought the copy down to his brother and gave it to him on the train; his brother read it, returned it to him to keep until he was married, and after it was signed handed it back to him, telling him to keep it in the safe. Witness had frequent conversations with his brother as to the provision to be made for Alexander's wife, the first being in 1895, the effect being that he was to allow her $1,000 per month.

Business Conferences

Towards the end of 1899, Alexander and James discussed the transfer of the business from the mother, and Alexander expressed himself as dissatisfied, and thought that the mother should not have required payment of the $400,000, and that in view of that the witness was not to give his sisters anything as the mother could pay them out of that sum. The mother had received from the sons out of the various properties over $3,000,000. Witness denies that he ever said Alexander was not fit to transact business, and says, referring to the Czar incident, that he always gave way to his brother as he knew more about business. Alexander was always able to talk properly and do business even when under the influence of liquor. Never saw him drunk in business hours. In cross-examination he says that neither he nor his brother drew any profits out of the San Francisco business, that his brother made the arrangement with the mother to turn it into a joint stock company, and that the shares should go equally to the brothers (and in the event of Alexander predeceasing his mother, his share would revert to her). In 1895 Alexander asked him to see the mother and try to get her to consent to his marrying Mrs. Wallace, with the result that the mother got angry and said she would sooner see Alexander in his grave. He himself was willing that Alexander should marry her thinking that he would not drink so much, and it was settled between them at that time that in the event of Alexander's death before hers he would pay her $1,000 a month, although they did not then own the property or business. This promise was repeated to Alexander after the property was transferred in presence of Mrs. Wallace in 1896 or 1897, and again to Alexander alone in October, 1899 at San Leandro. Witness said on the last occasion that he did not think it would be enough, but Alexander replied that it would as his wife ought to make $8,000 a year off the San Leandro property. Witness had frequent conversations with his brother about his brother's interest in the event of death, and his brother frequently said he wanted him to have it so as to keep the control of the stock, and keep the property in the Dunsmuir family. When Alexander came into the office he said he was going down to Pooley's and have his will drawn up, as he did not want to have it drawn in San Francisco, as wills were easily broken there. Witness did not know the terms of the will until he got it from Alexander, nor did he have any conversation with Mr. Pooley about it. Witness kept the will as he was told in the office safe, in a drawer in which a number of papers such as stock certificates belonging to himself and Alexander were placed, until December, 1899, when, pursuant to instructions from his brother, he gave it to Mr. Pooley to have a copy made of it. On his return from San Francisco he said to Mr. Pooley that he might as well tear the old will up. Three days after the will of 1899 was executed, Alexander, under pressure of the witness, who wished to break off his drinking, left for New York. At the time he got the will Alexander was in bed—about 2 or 3 o'clock in the afternoon. He had been drinking the night before (October 6), but was then sober. He told the witness to get the will out of his pocket and to read it, which the witness did, and then Alexander told him to keep it and put it in the safe. He also told him to look in his pocket for a letter and read it, which he did. The letter told the witness to give $50,000 to each of the sisters when he could, but not to embarrass himself, but said nothing about Mrs. Wallace, but Alexander said at the same time that Mrs. Wallace was to get $1,000 per month.

With regard to the management of the business, witness says that his brother managed the sale of the coal while he managed the mining part of the business. They had each other's general power of attorney. Witness accepted his brother's advice about a good many matters of business. In 1894, when Alexander was absent from San Francisco, witness raised the price of coal, but on his brother's return Alexander reduced it.

Widow's Allowance Doubled

After Alexander's death witness agreed to give his widow $2,000 a month, instead of the $1,000, as he had promised Alexander, and this was afterwards changed during the negotiations leading up to a written agreement to pay $25,000 a year and one-half of the profits of the San Francisco business, and witness denies that at the time when this arrangement was completed he knew that the widow was suffering from an incurable disease, and that he assented to the provision about the half profits because there were at that time no profits coming in from the business.

Discrepancies as to matters of detail between the evidence of the defendant as given in discovery and at the trial were elicited by the cross-examination, but the main facts as corroborated by other witnesses for the defence were not disturbed.

Rebuttal Testimony Considered

In rebuttal the plaintiff says that she and not Alexander suggested most of the changes that were made in the Wharton contract while she was staying at San Leandro, but after she had gone many of her suggestions were not carried out. She also denies that she had insulted Alexander on the occasion referred to by Alexander. She also stated that Dr. Thorne told her that Alexander ought not to have been allowed to go to New York in December, 1899, in his then condition of health, and that there ought to be no difficulty in proving his incapacity.

Alexander Heynemann, attorney-at-law, says he thinks that Dr. Thorne told him that excessive use of liquor had weakened Dunsmuir's mental power.

John Bryden, son-in-law of the intervener, contradicts some details in Bissett's log.

Miss Howe, in rebuttal, states that Mrs. Agnew stated that two words from her one way or the other would settle the suit.

The Effect of the Evidence

The above is in brief the evidence of the eye-witnesses (about 80 in number) adduced by all parties to this controversy, and it is at once to be observed that, with the exception of the plaintiff herself, all the witnesses brought forward to impeach the will speak only from a short acquaintance with the deceased, or only as to isolated occasions when he was intoxicated, and none of them testify to having any dealings with him when sober by which his business capacity should be judged. On the other hand, if we eliminate the evidence of all parties in interest and their employees, relatives and solicitors, there remains at least a score of fair-minded and credible witnesses whose business, social and personal acquaintance with the deceased extended in the majority of cases over long periods of time, and most of them testify to having business dealings with him during the last two years of his life. I refer to the evidence of Mighell, Taylor, Wharton, Gillespie, E. J. Palmer, Howard, Chandler, Young, Burns, Prather, George Fritch, J. H. Fritch, Fink, the Bullens and the Freemans, and especially to the first two. Nor do I consider that because some of these witnesses in the hands of a skilled cross-examiner failed to detail more than one or two specific interviews the probative force of their testimony is seriously weakened, as it is evident that it was their settled conviction that the deceased was quite competent to manage his own affairs when not intoxicated, that he had good business capacity, was of obstinate and dictatorial nature, and less likely than the average man to be influenced by others. This being so, it is unnecessary to consider the speculations of the alienists who were called in to dispute and support the sanity of the deceased. Had any credible evidence been given that when not intoxicated he mumbled or was incoherent in his speech, or dragged his feet, or had to be amused as a child, then it would have been necessary to consider the evidence of these experts. Even then I should say that the opinions of such learned persons would come with far greater weight to the ears fo the court if given as indifferent assessors sitting with the court than when given under retainer for the parties, and I take this opportunity to express the hope that in future when the occasion calls for it their opinions will be obtainable in that way.

Documents were also put in which give silent but cogent testimony as to the business capacity of the deceased, notably the telegrams under date of November 13th, 15th 1899, (i. e., two months and a half before his death), which were sent to James under Alexander's instructions urging the purchase of the property in San Francisco which was held on lease, and stating that there was $186,000 in the bank, also the sharp businesslike letters of June 9th and September 6th of the same year.

Then there is the will of the plaintiff's mother of August 16th, 1899, in which she commits the future of her daughter to the deaceased, and gives him the great bulk of her property. She also commits her own future into his hands by marrying him on the 21st December—a little more than a year before his death. Having regard to the fact that she had obtained a very large property, which, so far as we know, could not have been taken from her, is it not the natural inference that she she did not think he was demented? And who is there better able to judge than the woman who had lived with him for twenty years? And that he retained his stubborn nature, and was not liable to the undue influence of anyone, the circumstances surrounding the making of this will and the destruction of her former one fuly attest.

Then it was urged that the disposition of his property was not natural or reasonable. No doubt different temperaments would view the disposition in different lights. The mother was well off, the sisters all married, and provision made for them, and none required assistance. The only brother had a large family, and while no doubt also wel off, had devoted his whole time to the business. One man in the position of the deceased might have thought it was right to give more to his sisters, another that it was best to keep the bulk of the fortune together, another that all had enough and that his wife should have all that came to him. Can anyone say, in view of the provision which he had made for his wife, that any one of these dispositions would have been unnatural? A man of just as determined a nature as Alexander Dunsmuir might easily have vacillated between these various dispositions, and changed his will a score of times without being in danger of being adjudged a dement, or subject to the undue influence of any of the parties concerned.

In going through the evidence at length I have assumed that the onus was on the defendant to show that the will was not that of a demented man, or the result of undue influence. I am, however, not clear that the case comes within that class which requires affirmative proof by a person who procures the making of the will. There is no satisfactory evidence to show that the will of 1898 was suggested by James, but rather that it was the carrying out of Alexander's fixed intention, and I do not think the mere fact that James brought a copy of it for re-execution to Sas Francisco at Alexander's request is sufficient without more to bring it within that class, as he seems to have been not the author, but the messenger. However, even if the onus is on the defendant, I think it has been fully discharged, and that we must hold on the evidence before us that the will was that of a free and capable testator.

In this view it becomes unnecessary to consider the questions specially affecting the plaintiff's case, i. e., whether the agreement between her mother and James was the result of undue influence, or whether she has any status to maintain the action.

There remains to be considered the contention that the deceased had acquired a California domicil and that his will was not executed in accordance with California law.

The deceased, as already remarked, was born in British Columbia, and resided in British Columbia until he was about 24 years of age when he was sent by his father as his agent to San Francisco. Evidence as to whether or not he changed his domicil was, under order of this court, taken by a commissioner in San Francisco.

W. G. Harrison, a witness already mentioned, being examined on this point says that in 1892 or 1893 the deceased, upon being asked by him to take an interest in an exhibition which was being promoted, told him that "he did not care to take part in anything here as he did not consider himself a Californian; he did not consider he should take any part in local matters; that his home was in British Columbia; and all his interests were in British Columbia; that he alway spoke of Victoria as his home." Witness says that he often had conversations with him to the same effect, but could not place the time or occasion. Cross-examined, he says that the deceased frequently told him he was going home, meaning Victoria; that although he has lived in San Francisco for 32 years he is still British and regards Ireland as his domicil; that he did not mean to say that the deceased said all his interests were in British Columbia, but he indicated that all his personal interests were there.

Ridley, a former witness, says that in 1896 he had a conversation with the deceased about some electric installation, when deceased told him that he was going home to Victoria when he would consult his brother on the subject. Cross-examined, says he did not speak about this subject to him after his marriage.

J. E. Freeman, a former witness, says that between June and December, 1899, he had a conversation with the deceased about British subjects becoming citizens of the United States, when deceased stated that he was a British subject and that his home and residence were in Victoria; a statement which was not shaken by the cross-examination.

R. Van Schaick, United States assistant weigher in the Dunsmuir office at San Francisco, says that he knew deceased 27 or 28 years; that he often used to say to the deceased "Why don't you come and be one among us, be an American citizen and live with us here?" "Oh" he would say, "What do I want to be a citizen for. It will take me five years to be a citizen here. Then when I go back to Victoria again I will have to put up my hand and swear over again there," and that he would say "all of my interest is up there." In cross-examination he says that these conversastions took place between 1879 and 1885.

J. H. Fritch, a former witness, says that on one occasion when asking the deceased for a special price for coal, that he replied "My people at home won't stand for it"; that he often used the expression "my people at home." In 1898 he spoke of "going up home for a vacation, fishing and hunting," meaning Victoria. Cross-examined, he says, that the deceased gave him to understand that his home was his mother's house in Victoria.

Thomas Whitelaw, a witness already referred to, testified that the deceased considered Victoria as his home; that he always retained his rooms in the Driard hotel there; that he would frequently speak of "going up home to Victoria" or "going up home," or "going back home": that when in Victoria he would say "I am going down to San Francisco; and in cross-examination, that he knew deceased was away a great deal from San Francisco.

J. P. Taylor, the witness already referred to, testified before the commission in San Francisco that the deceased within a short period of his death stated that his home was in Victoria, and that the San Leandro place was Mrs. Wallace's place. And in cross-examination, that he understood that deceased intended living with his wife, and that her home was in San Leandro.

Positive evidence is thus before us that the deceased never had any intention, until at any rate when he bought the San Leandro estate, of changing his domicil or origin, nor was any evidence adduced to the contrary. He had never changed his allegiance, nor intended to do so; had never taken any part in political or municipal affairs in California, nor had he owned any real estate. There is nothing to show that at any time after he bought this estate he expressed himself any differently on the subject than before. But it is suggested that the purchase of this estate, coupled with his marriage to Mrs. Wallace and his evident intention to live there with his wife, were overt acts sufficient to evidence a change of intention. I think not. Had the estate been of small value, or had he not built any residence, but simply rented a house for the use of himself and his wife, I do not think anyone would have any difficulty in arriving at the conclusion that he had done nothing to indicate that a change of domicil, especially as the business no doubt still required his oversight, and because to have established his wife in Victoria, at all events in the lifetime of his mother, would have unquestionably caused family jars. It may of course be suggested that his mother's opposition to the marriage drove him to change his domicil, and that the purchase of this large estate, which was the equivalent of a large portion of his worldly substance, is the outward and visible sign of the change. But it may easily be that he considered it a good investment, and that it could be sold or leased to advantage whenever the time would seem ripe for his return to Victoria. At any rate, there is a strong counteracting circumstances in the fact that he constructed the procuring of the copy of the British Columbia will. No business man, who had permanently changed his domicil, would be likely to dispose of large interests by a document prepared in a foreign country when he could resort to his local attorneys. Assuming, however, that the matter is not free from doubt, it cannot be denied that the change of domicil has not been clearly established. That being so, a long line of cases ending with the recent decisions of the House of Lords in Winans vs. The Attorney-General (1904) A. C., p. 287; and The Marchioness of Huntley vs. Gaskell, Times Newspaper, December 15 ,1905, settles this branch of the case in favor of the defendant, as the rule is finally laid down that the question is not whether there is evidence of an intention to retain the domicil of origin, but whether it is proved that there was an intention to acquire another domicil, or, as put in the last case, exuere patriam. Hence there is no need to inquire whether or not the will was executed in accordance with the California law.

In my opinion the learned trail Judge's decision was right, and should be affirmed.

Licensed Vintners' Plans Explained

Lloyd A. Manly, Vice-President of the Association Arrives in Town.

Organization Will Seek Legislation In Its Interests at Coming Session.

Lloyd A. Manly, vice-president of the Provincial Licensed Vintners' association of B. C. and a prominent business man of Grand Forks is here from the interior and is registered at the Hotel Driard. He is one of a committee of three appointed by the association to look after its interests during the coming session of the legislature. The other members are Henry F. W. Behnsen of Victoria, and William Von Rhein of Vancouver. The Vintners' association is composed of over 800 members, and seeks to have certain legislation enacted to limit the number of licenses in future to be issued in proportion to population by a measure they will ask to have introduced to amend the Municipal Clauses act, and for the passing of an act that was introduced and read before the prorogation of the last parliament, entitled

"An Act Respecting Liquor Licenses"

"The idea of the association is to purify and better the prevailing conditions of the liquor business," said Mr. Manly last night, in discussing the features of the proposed amendments and bill. "While we want a limit to the number of licenses according to population we are also asking that future hotel premises be provided with more accommodation for the public. Both bills seek this. The proposed act respecting liquor licenses does not apply to incorporated towns but is for the better regulation of country hotels. In general the interests the committee represents want an improvement in regulations in both city and country over what at present attains."

Asked with regard to the recent license troubles in his own city, which has thrown Grand Forks into a tempest, Mr. Manly stated that a bylaw passed by the city council cut down the number of licenses from fifteen to eight, leaving seven hotels and saloons out in the cold. "Personally I consider the action of the council an extremely harsh one and it is a grave question whether the council was acting within its legal rights. Before the board of license commissioners had dealt with the matter the city passed the bylaw resulting in a direct loss to proprietors and owners of buildings of fully $35,000, for it is easy to see that for the most part the premises so closed down, makes them valueless for any other purpose.

"The Dominion Permanent Loan Co. and other interested individuals are now moving to set the bylaw aside, through M. D. White, ex-mayor and an owner of one of the licensed premises closed out. A largely signed petition requesting the aldermen to rescind the bylaw was denied and so legal action has been taken. It simply means a practical confiscation without redress, and is regarded in Grand Forks as a high-handed proceeding, especially when one man was granted two licenses out of the eight. I can say positively it was not brought about by the temperance element, but by a clique of hotelmen anxious apparently to freeze the others out. If the act that the Vintners' association wish to have made law were in force, limiting the number of licenses to population, such a proceeding as that taken in Grand Forks could never have happened," explained Mr. Manly.

Attorney General Reaches Home

Hon. Chas. Wilson Returns After Representing Province Before Privy Council.

Says Agent-General Turner Is Doing Excellent Work for B. C.

Honorable Charles E. Wilson, K. C., attorney general, has returned to Victoria after several weeks' absence in England, whither he went to represent the province on an appeal to the privy council in the litigation initiated by the city of Vancouver against the Canadian Pacific railway, in which after being reversed on appeal by the supreme court, the city of Vancouver abandoned the position of relator, and owing to the very serious interests involved, the action was carried on to the highest tribunal in the empire by the attorney general.

On behalf of the province, Mr. Wilson was assisted before the privy council by Mr. C. A. Russell, K. C., and Mr. Simon, counsel for the Canadian Pacific Railway, being Mr. E. P. Davis, K. C., of Vancouver, assisted by Sir Robert Finlay, ex-attorney general of England.

At his office yesterday, the attorney general in reply to a request from the Colonist for particulars of the celebrated case, said:

"A decision has not yet been handed down. When in Winnipeg, I was approached by a correspondent representing coast papers who apparently misunderstood me when he sent out the wire saying that the province had lost its case. That is altogether a premature announcement. On certain points it appeared to me that the lords of the privy council were inclined towards holding a position similar to the chief justice. In this I may be mistaken. The litigation involved several points. The main question to be determined is whether a railway company incorporated by the Dominion parliament is by virtue of that act clothed with authority to expropriate provincial crown lands. The contention of the province is that we have absolute control over our lands. Another question involved was whether a by-law passed by the city of Vancouver in 1898 to exempt the Canadian Pacific Railway from payment of taxes for eighteen years in consideration of the company constructing its terminal buildings at that city was intended to close up the streets, when at the same time the Canadian Pacific was under bond to the province in the sum of $250,000 to construct their terminals at Vancouver."

Reverting to the Deadman's Island case, Mr. Wilson said that the minister of justice had not entered an appeal, and therefor the case cannot be heard before June next.

Touching upon other matters affecting the province and the work being carried on at the office of the agent general to secure for British Columbia a suitable class of immigrants, he continued:

"Excellent work is being done by Mr. Turner in placing before the people of Great Britain the vast natural resources of Canada's most westerly province, both in person and by literature, as also through the medium of the press. His office is a very busy place and is invariably thronged with persons seeking information and advice. Our fruit display created a most favorable impression, and the newspapers were not slow to recognize the possibilities of a section of the empire that could produce such fruit. The exhibit opened the eyes of the people in a practical way to our fruit-growing possibilities, and coupled with our resources of mineral, coal and timber which they have some knowledge of, you can see that British Columbia is becoming well advertised in the right direction. The resulting good in my opinion, will be the advent of a fine class of practical settlers, the class we want to develop our agricultural and fruit growing lands, beside influencing capital to seek investment here."

BODY RECOVERED.

Corpse of Missing Young Englishman Found in the Fraser.

New Westminster, Jan. 8.—(Special.)—The body of Frank Owen was found yesterday in the Fraser river at the point where he was last seen alive. The deceased who was a young Englishman was living in Vancouver and came over here on New Year's day to see his brother who was working at Ewen's cannery. When no news was received of his arrival at the cannery and he did not return home the matter was reported to the police who traced his steps upon his arrival here to the bank of the river opposite the cannery. On Saturday they received word that young Mr. Frank Trapps had seen him on the river bank on New Year's day and had taken him across to the cannery landing in his launch. He had landed him on the scow, which formed the cannery landing, about 5 p. m., it being almost dark at that hour. On Sunday the provincial police and the young man's brother examined the scow and found that it was moored a few feet from the bank leaving ample space for anyone to fall in the river if they did not know the landing, they accordingly moved the scow and dragged at the spot with the result that the body was brought to the surface. The coroner was notified but decided that no inquest was necessary. The case is, however, a particularly sad one as the brother and sister of the deceased had only recently arrived to visit him, the former from the Yukon and the latter from England.

ENGINEER FORGOT ORDERS.

Cause of Wreck in Which Three Men Were Killed.

Corey, Pa., Jan. 9.—To an engineman's failure to remember orders is attributed the wreck on the Philadelphia & Erie railroad last night when 3 men were killed and 20 persons injured. Engineer Kavanaugh of the locomotive that crashed into the passenger train, when asked today how he happened to be on the main track, he is alleged to have exclaimed:

"My God, I forgot all about the passenger train."

It is believed all the injured will recover.

A NEW YORK STRIKE.

New York, Jan. 9.—A national strike against employers in the allied buildnig trades will be ordered Thursday. It will affect 12,000 structural iron workers and indirectly throw more than two hundred thousand workers out of employment.

Dominion News Not

Latest Returns of Traffi Intercolonial Show Usu Deficit.

President of the Defunct County Loan Compan Arrested.

Proposal to Organize Cl Canadian Mountain Climbers.

OTTAWA, Jan. 9.—The exc court has condemned John cer and Samuel Spencer, r of Milk river county, Alb pay $6,000 to the customs depa in settlement of the latter's clai 567 head of cattle that Messrs. cer are charged with having sm into Canada from Montana. was made after a round-up of c 1902. Spencer's have ranches o sides of the boundary.

The cabinet today commuted imprisonment the death sentence on a Finlander named Lahtine evidence not being conclusive. en was to have been hanged Johns Friday.

The working expenses of the colonial for the five months endi vember 30th are $81,130 ahead revenue for the same period.

Three of Wedding Party Kil

Montreal, Jan. 9.—A despatch Roxton, Que., says that yes morning Aime Pinsonneault, t of that place, was married in t lage church to Miss Lavalle o same place. It had been decide the wedding party take supper residence of the groom's fath Upton. In the afternoon the sion of sleighs started for that About 5 o'clock the party reach Grand Trunk Railway crossing. first five sleighs crossed the tr safety, but as the sixth, con Mr. Lavalle Sr., his wife and son Ernest, reached the cross was struck by the westbound P and Montreal express. The occupants were instantly killed.

Winding Up Power Compa

Toronto, Jan. 9.—Upon applica the Dominion Portland Cement pany today an order was gran wind up the Southern Light & Company. The assets are pla $197,000 but are of uncertain 000 is owing to the York Count is owing to the York County Company.

Mr. Phillips Arrested

Joseph Phillips, president York Loan Company, was arres night on a charge of fraud a peared in the police court this ing and was remanded for a we

French-Canadian Centenari

Letelier, Man., Jan. 9.—Georg vance, an old settler near h cently received a letter from his who is living at St. Cesaire, Q who is 108 years old. He s father, who is still older, c shave himself without glasses

Duck Shooting Good

Winnipeg, Jan. 9.—The wea so mild along the Rainy Riv no ice has appeared in it a ducks have been seen during t few days near Fort Frances.

Fisheries of the Northwe

"The far Northwest has a resource which, even now, in fancy, distributes $150,000 in w settlers, Indians and halfbreeds Edmonton district during the when they have no other me cash revenue. I refer to the industry, which is carried on famous lakes north of Ed where the finest whitefish in th is caught." This was the st made by Norman C. Butterfield monton, who is probably one best posted men in the inland industry in the West.

Radcliffe's Latest Adventu

Radcliffe, the Dominion h passed through to the Ea hanging "Wild Aleck," the In Kamloops. At Swift Current against a car door, injuring hi badly that he will likely lose t of it.

Liberal Candidate Nomina

Prince Albert, Jan. 9.—G. Cranley was nominated as c by Saskatchewan Liberals as s to Hon. J. H. Lamont.

Canadian Alpine Club

Calgary, Jan. 9.—Residents berta interested in the explor the Canadian Rockies are inau a movement to secure the form a Canadian Alpine Club along of the American Alpine Club, o in Philadelphia some years ago possible that an affiliation of bodies might be effected sho Canadian organization be effe it no doubt will be. The C. cordially encouraging the pro will give cheap rates to all a The magnificent beauties of th dian Rockies should render the lization of the club an undertak will be welcomed.