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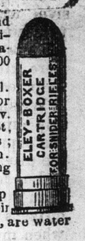

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THE WEEKLY BRITISH COLONIST
And Victoria Chronicle.

VOL 10. VICTORIA, VANCOUVER ISLAND, SATURDAY, JULY 10, 1869. NO. 36.

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In justice both to the judges and the public, a Court of Appeal should be created with the least possible delay. It is just possible that the existence of such a court might lead to vexatious litigation in some cases; but upon the whole, it would be the most satisfactory way of avoiding the feelings that have been strongly expressed from time to time on the subject of our judiciary. The anomalous character of the jurisdiction as defined for the Mainland and the Island has been also productive of the most unpleasant consequences, involving heavy expense and great trouble to suitors, who have no recourse from the judgments of either of the judges in the event of possible grievance. We are quite convinced that our present judges are most careful in weighing the evidence in every case that comes before them, but it occasionally happens that evidence only obtainable after a judgment has been rendered would do much to change the result of a case on appeal, which litigants are disinclined to attempt when the case has to come before the same judge a second time. The evil is becoming more glaringly palpable at every sitting of the Supreme Court, and we think a decided effort should be made, when Governor Musgrave arrives, to have the vexed question settled by the formation of a Court of Appeal.

THE Governor-General of Canada, on the 11th June, transmitted to the House of Commons a report made by the Canadian delegates to London, of correspondence had by them with Her Majesty's Secretary of State for the colonies on the following subjects: 1st. On the subject of the Island of San Juan. 2nd Respecting the losses sustained by the Canadian people and Government in repelling the attack of the so-called Fenians. 3rd The protection of the Fisheries. The Report proceeds to show that the Dominion of Canada had expended several millions of dollars in resisting the attacks of the so-called Fenians, for the most part citizens of the United States, who, since the beginning of 1866 were, in violation of the laws of the United States and of the laws of nations, allowed to organize and maintain themselves publicly as a military force in that country with the declared object of invading the Provinces comprised in the Dominion. That such did take place, and that several of Her Majesty's subjects lost their lives in repelling their murderous attacks, and a large amount of property was destroyed and heavy losses and damages were sustained by several of Her Majesty's subjects. That should any Commission or tribunal be constituted for the investigation of the claims of the United States arising out of the depredations of the Alabama they requested that an opportunity should be offered to the Government of Canada, and all parties who had suffered losses owing to the invasion by the so-called Fenians, to state their claims and adduce evidence in support of them. A reply was received from Earl Granville informing the delegates (Sir George E. Cartier, Bart, and W. McDougall, Esq., C. B.) that if the Commission was constituted they should be duly notified thereof.

WHAT has become of the Drawbacks' Bill, which was to do so much towards reviving trade here? We have not heard a word about it for months. Is it in the hands of the Imperial Government with the late Governor's indorsement; or has it found its way into the Government waste basket, which has proved the grave of many good and useful measures. Who can furnish information as to the whereabouts of the bill? All are looking for great benefits to follow Confederation—Free Port, Reciprocity, Overland Railway, and Low Taxation. But who can tell *when* Confederation will take place? It may occur within a twelvemonth; but suppose we are not admitted in twelve years? Does no one see the necessity of working, and working hard, to bring about retrenchment in Government to the end that the Colony may enjoy the benefits which, it was promised, would flow from the Drawbacks' Bill? In the general preparation for Union with Canada, let us not forget our present needs; and after Governor Musgraves arrival let steps be taken to point out to him the advantages that would result, even in our present isolated position, from unshackling trade.

Friday July 9

The Charge of Defrauding the Revenue.

Mr. F. J. Barnard appeared before the Police Magistrate yesterday, upon a charge of defrauding the revenue by carrying a letter, the amount of postage upon which had not been paid, from Yale to Victoria. This case, it will be remembered, was partly heard about eight days ago and remanded until yesterday.

Mr. Green appeared for the plaintiff, and Mr. A. R. Robertson for the defendant. The information of the complaining witness, Mr. McMillan, was again read and declared to be true.

Witness, cross-examined by Mr. Robertson.—Twelve days elapsed between the time of my receiving the letter and laying the complaint against Barnard; I had had a disagreement with him, because he seized my papers; I put them on board the Enterprise; the postage was not paid upon them; the disagreement with Barnard led to these proceedings; I wrote Barnard a letter telling him that unless he settled with me I would commence proceedings against him; I then contemplated a County Court suit; I intended to recover the value of my papers and told him that I would test his right to seize papers in transit through British Columbia; I have had a conversation with other parties with reference to these proceedings.

Mr. Robertson—Had you any conversation with Mr. Higgins?

Witness—I had.

Mr. Robertson—What did he say to you.

The Court thought the question irrelevant as dragging in matters that had no connection with the case.

Mr. Green hoped the question would be allowed.

Mr. Higgins here said that as a party interested in the question, he would respectfully beg the Court to admit it.

The Court allowed the question to be put.

Witness—I had a conversation with Mr. Higgins in this room after complaint had been laid; he advised me not to go on with the case, and everything he did or said with regard to this prosecution, from first to last, was to induce me to stop it; I do not recollect his saying, "you have got a good case, pitch in;" I don't think he ever said so; my only object in bringing this charge is to make Barnard discontinue the illegal practice of carrying letters and papers without postage having been paid upon them; the letter was received at the Express office by Mr. Glassey and by him handed to me: the letter was dated at Yale and signed F. J. Barnard, per Charles Evans. The prosecution here asked that the letter be read; but the Court said the contents of the letter had nothing to do with the case.

Henry Wootton, Post-Master, sworn—The envelope, produced in Court, did not pass through the Postoffice; had it passed through the post it would have required 12½ cents prepaid as postage.

The Court—This is the first case of the kind that has been instituted here, and it is usual to consult with the heads of the department most interested. The Post-Master-General should be seen with reference to it.

John Glassey, sworn—Am in the employ of Mr. McMillan; I got the letter from Mr. Carmichael, at the Express office; I paid no charges upon it; none were asked; Mr. Carmichael delivers the letters at the office.

Mr. Robertson submitted that the charge was not supported by the evidence. The charge was based upon the 16th section of the Postal Ordinance which reads as follows;

XVI. Any person or persons, corporation, firm or partnership whatsoever, that shall knowingly and with intent to defraud the Revenue, convey or be concerned in the conveyance of any letter or other Mail matter *liable to postage*, and on which the rate of postage by this Ordinance prescribed, shall not have been pre-paid, shall be liable upon conviction for each such offence, to a fine of not less than Twenty-five Dollars or exceeding Two Hundred [illegible] every such penalty may be recovered upon conviction before any Justice of the Peace or other Magistrate in the Colony, in a summary manner, and in each such case the informer shall be entitled to receive half the penalty recovered, the remainder shall be paid to the use of Her Majesty, her heirs and successors, and be accounted for as part of the Revenue. The learned gentleman submitted that it was necessary to show that the letter was written at Yale and had been carried to Victoria by such a person as that described in the Act, which had not been done. The letter may have been written at Victoria, or it may have been prepaid by the destruction of a stamp, and the Act did not prescribe any particular way in which payment was to be made. Mr. McMillan had not proved that the envelope produced enclosed the letter that he produced. Mr. Robertson then moved for the discharge of the complaint before going into the defence.

Mr. Green replied that the employee of the defendant had handed this letter to Mr. Glassey, and that Act in itself was sufficient to establish the charge.

Mr Pemberton said there was no proof that the letter was written at Yale, or that it had been carried from Yale to Victoria. It seemed to him that the objection of the defence was fatal; but he would look into the English Act, before deciding.

Mr Green urged that it was in the power of the Court to send for the writer of the letter. There were many other charges of a similar nature, the charge was one that did not involved the small sum of 12½ cents.

The Court said it would reserve the decision on the points taken, but in the meantime would hear anything that might be offered in the way of defence.

Mr Robertson said that without admitting that the letter was sent from Yale, Mr. Barnard wished the point decided by the Court whether he had a right to carry his own letters or not free of postage. A man was not prevented by law from carrying his own letters, nor would his servant be debarred from carrying one for him; it has been the custom of Express companies to carry their own letters without postage; Mr. Garesche was here to prove that such is the custom with Wells, Fargo & Co

F Garesche, sworn—Am agent for Wells, Fargo & Co; it has never been customary with us to pay postage on letters sent by one agent to another, or to pay postage on letters referring to office business; we are mail-carriers in California, and agents detailed by Government to watch the packages have never found any fault with us for carrying our own letters postage free.

Counsel for the defence addressed the Court on behalf of his client. The chief witness for the prosecution appeared here as a common informer.

The Court deprecated the use of remarks affecting the character of the witness

Mr Robertson did not intend to cast the east reflection on Mr McMillan's veracity; he knew him too well to suppose for a moment that he would perjure himself, but he (McMillan) came here actuated first, by a vindictive purpose, and second, by a desire of securing one-half the reward.

The learned counsel said that the charge against Barnard was a criminal one, and the presumption of the Criminal Law that a man is innocent until proved guilty, should operate in his favor to this extent—that upon nothing but the most satisfactory evidence should he be found guilty. The mere presumption that because the letter was written at Yale it was transmitted from that point, should not be allowed. Then the Act presented no particular mode of prepayment; and the fact therefore that no stamp was on the envelope should not lead to the inference that the letter was unpaid. It might have been prepaid by the destruction of a stamp. Assuming, however, that the Court thought that the evidence did prove that the letter was transmitted from Yale and was unpaid, still, inasmuch as it was written by an agent on Barnard's behalf and carried by Barnard's agent to Victoria and delivered to McMillan, it was no infraction of the law. The possession of an agent was the possession of Barnard himself; and a man certainly had a right to deliver his own letters—personally or by a servant. He then alluded to the inconvenience the public would suffer in the Upper Country where Postoffices are to be found only at intervals and stamps cannot always be had, if the Act was so construed as to require a stamp to be put on each letter previous to mailing it.

Mr Green replied in effect that the 16th section of the Postal Act rendered it illegal to carry a letter from one part of Victoria to another without postage being paid upon it.

Mr. Pemberton said the proof of the carriage of the letter in question was very slight, but he would refer to the English Act before pronouncing judgment. Judgment deferred for one week.

PIC NIC.—The officers of l'Astree have been invited by Capt. Pender and Mr and Mrs Spark to participate in a pic nic at Colwood to-day.

The French Ships of War.

As the public will be at a loss to understand what kind of vessels these Imperial visitors are, the accounts which have previously appeared being of the most uncertain character, we propose to give a correct description, and for that purpose we proceeded yesterday to Esquimalt and went on board

THE FRIGATE ASTREE.

This magnificent vessel is a steam frigate; She carries an armament of 20 cannons of large calibre, and is propelled by engines of 700 horse power; her crew is composed of 600 men. The officers are as follows:

Rear Admiral Clone, Rear Admiral commanding in chief the division in the Pacific; M, Miot, Captain of the Frigate and Chief of the staff, M. Lantoin, Principal Medical Officer of Division; M. Travers, Second Commissioner of Division. M. Duhil de Benaze, Second Engineer of Division; Lieutenant Le Clerc, Aide de Camp; Lieutenant Marechal, Ordnance Officer; and Lieutenant Cornut Gentille Secretary to the Admiral. M. Peyron Commander; M. Huart, Second Commander Lieutenants; Flandin, Feumolau, Bourbonne, Bienaime. Ensigns; Dussaud and Michel d'Annoville. M. Le Tendre, Principal Machinist. M. Callibote, Chaplain. M. Dounon, Surgeon of the Second Class; M, Rohmer Assistant Surgeon. Midshipmen; Dufayot de la Maisonneuve, Kerlero Ducrano, Lespinasse de Saune, Rihouet, Derette, Chevreuil, Castelin, Duval and Grandbesancon.

L'Astree is very fast under sail; she sailed from Panama to San Francisco in 36 days, and from San Francisco to Victoria in 9 days. She spoke the American war vessel Mohegan, 8 hours from San Francisco, under steam, in direct course for this port; hence, as l'Astree came up under sail she expected to find the Mohegan here. The interior of the vessel is the very picture of neatness and order; everything about her spacious decks being nicely fitted in its place and burnished or varnished to the extremest brightness. The men appear to be fine stalwart fellows and generally young. His Honor P. J. Hankin, Administrator of the Government, with Messrs Trutch, Maunsell and Lowndes, visited the frigate yesterday, where he was received with the greatest courtesy by Rear-Admiral Cloue and his officers, the fine band of the frigate playing "God Save the Queen." On leaving the ship a salute of 13 guns were fired. Subsequently Major Francis, U. S. A., accompanied by his brother, Hon. Allan Francis American Consul at this port, visited l'Astree and were received with every courtesy, the band playing "Hail Columbia;" on leaving the ship a salute of 7 guns were fired in honor of the Consul and his brother. Messrs Leneveu, Beckingham and Suter accompanied the American representative on board, and were presented to Rear-Admiral Cloue.

L'AVISO LAMOTHE PIQUET.

The Gunboat Lamothe Piquet is barque rigged, and a little larger than the Forward. She carries four guns, two 36 pounders, and two 24 pounders; her engines are of 175 horse power, and she measures 207 feet over all. Her crew, when she has her full complement, is composed of 100 men; at present the number on board is about 80. The officers are as follow.—Captain Marcq St Hilaire; Lieutenants; Borgnis, Desbordes and Gadaud: Ensigns Herbeth and Granger. M. Baude, Surgeon. This vessel is a very symmetrical specimen of her class, her smooth graceful lines giving her a light, trim appearance on the water. Her armament and fittings are of the latest improvements, and are at the same time shapely and compact. We need hardly say that we found the officers most courteous, affording us all the information we required with the most kindly assiduity. Admiral Cloue contemplates a trip along the West Coast an among the archipelago of islands while the frigate is being coaled at Esquimalt.

FROM NANAIMO.—The steamer Sir James Douglas, Capt Clarke, arrived from Nanaimo last evening. A man named Hooker, while sailing at Departure Bay in a canoe with Mr Arthur Alport, on Wednesday evening, rose to adjust the sail, when he stumbled and fell foremost into the water and was drowned. He was not seen afterwards. The drowned man was a collier. The American war steamer Mohican arrived at Nanaimo on Wednesday evening, and will coal before sailing for Sitka. The Cowper was still loading there. The ship Shooting Star has not yet arrived Among the passengers by the Douglas were Mrs Lindsay and Miss Skinner, from Cowichan.

FOREST FIRES.—It is said the woods from Sooke to Goldstream are again on fire and that the trail to Leech river from the latter place is impassable. If this be true the fires may extend across the island the same as last summer.

THE "ROSALIA" CASE.—*Dussol vs the B.C. and V.I. Sawmill Co.*—On Wednesday Mr. McCreight and Mr Robertson, instructed by Messrs Pearkes & Davie, applied to the Chief Justice for a rule to set aside the verdict for the plaintiff in this case and to enter a verdict for defendants pursuant to leave received at the trial. The Chief Justice granted the rule, and made it returnable on Monday, the 12th inst.

COUNTY COURT.—Hon. A. F. Pemberton, presiding. William Lippine vs. R. Lewis. This was an action brought by the plaintiff for the sum of $[illegible] for the hire of a [illegible] for defendant. The defence set up was that he had paid $30 to plaintiff, which he never received credit for. Judgment for $44 25. R. Bishop for plaintiff; Pearkes & Davie for defendant.

WELCOME RAIN.—Yesterday morning a little rain fell here, and the thirsty plants "lifted up their heads and were glad." The fall, so far as this vicinity is concerned, was too light to be productive of any good; but there is room for the indulgence of hop that it extended to the interior and soaked the parched land there and filled the miners' ditches with water.

THE ACTIVE.—A telegram was received by Mr Garesche from San rancisco, requesting that gentleman to secure the services of a competent pilot to take the steamship Active to Sitka. The inference, therefor, is that the Active will sail in a day or two from San Francisco for Sitka *via* Victoria.

THE fireman's pic-nic will be held at Ogden Point.

THE steamer G. S. Wright sailed for Victoria yesterday.

ANOTHER FRENCH man-of-war is expected to arrive on this station in a short time.

Andrew Johnson on Grant and Washington.

Ex-President Johnson, in his speech at Clarkeville, Tenn., instituted the following parallel after the manner of Plutarch, between Grant and Washington:—

They call Grant a second Washington: Let us see how he merits this name. In his first inaugural Washington said: "The magnitude and difficulty of the trust to which the voice of my countrymen has called me, bring sufficient cares to awaken in the wisest and most experienced citizen a distrust of his powers to carry on its great and responsible duties, and to doubt his qualifications for so great and grand a trust." In his first inaugural, Grant said: "The responsibilities of my position are very great, but I assume them without fear." There is the first contrast—the diffidence and the dignity of the one, and the arrogant self sufficiency of the other. Washington did not enter the Executive mansion as into a grand gift establishment, but how is it with the second Washington? He was approached by one man, whom he afterwards made Secretary of the Treasury, with a $65,000 cheque; by his future Secretary of the Navy with a deed to a furnished house in Philadelphia: by his Attorney-General that was to be, with an expensive library, and so on, *ad infinitum*, each one that hoped for office coming with an expensive gift to purchase it. Here is a second comparison. The real Father of his Country was for the maintenance of the principles and the good of his country, while the second Washington was shrewdly looking out for himself. He concluded by saying: "I think the Republican party is disintegrating and crumbling away. I am opposed to making a soft bed for them to recline on in death. The offices are not enough for all; money is getting scarce, and things lying around loose have all been picked up. Now they are filled with dissensions and dissatisfactions, and are fighting for the little residuum of plunder. Our duty is to give it to them now, to press home upon them, and hasten their death by adherence, by bold manly, courageous adherence to the principles of true Republican government.

Five Dollars for a Quart of Cherries.

The New York *Sun* tells the following story:—

A very common looking fruit wagon was seen slowly driving along one of the quiet streets of New York. On it, as driver, sat a sallow-hued individual with keen gray eyes. Every few moments the houses re-echoed with his infernal war-whoop, bringing the inmates in crowds to the doors. One lady liked the appearance of the fruit for sale, and sent a girl to ask the price. The price too she thought fair; so when the vehicle stopped before her door, she bought a quantity of new cherries, and proffered a $5 bill in payment. The man looked at the note a moment with a meaning twinkle in his eye, and said:

"Very sorry ma'am; but haven't got the change. Shall I send my boy around to have it broken?" The lady had no objections, and a bullet-headed young rascal, who sat in the wagon, was sent in quest of change. Time passed, and the boy returned not. The lady grew impatient and so did the man. "Wait a moment, ma'am," he said, "till I go and get him," and he drove off slowly and deliberately. The lady waited and waited, but he returned not. The sun set and the shades of night grew deeper and darker but still he did not return. The lady has now waited thirty five hours and he has not returned.