ST. CYR TALKS

About the Killing of Davis and Tells What Made Him Mad Before

HE WENT BACK TO GET HIS GUN.

Standing With Gun Under His Arm When It Exploded.

THOUGHT DAVIS SHAMMING

When He Threw Up His Arms and Fell to a Sitting Position on the Ground.

From Monday and Tuesday's Daily.

The St. Cyr murder trial was on again yesterday afternoon, and during the sitting a number of witnesses were examined and cross-examined, the crown not finishing its case in view of the fact that counsel for the defense stated that it was altogether improbable that the defense's case could be completed even if a night session were held, as there was much testimony to be heard.

Corporal Stewart, who was in charge of the Hootalinqua detachment at the time, and who afterwards brought the prisoner to Dawson, testified to having found the body. He told how a tree some 15 to 20 feet away from where the corpse lay, was cut half way through, and the chips and snow bespattered with blood, and an ax lay upon the opposite side. About ten feet away was a place two or three feet square which had been deeply trampled down, and the hard snow at the bottom was very bloody. A little way further down the hill lay the body of Davis in much more blood.

The shot had entered on the left side of the breast bone, about an inch and a half from the center of the body, and just below the collar bone, large arteries had been cut, and the flow of blood had been great. The bullet had ranged back and downward, coming out below the shoulder blade.

Constable Richardson who accompanied the corporal at the summons of Clitheroe, testified to substantially the same facts.

Between them they placed the body upon a horse and removed it to the cabin where it was stored in the cache till later when it was removed to the detachment.

Louis A. A. Johnstone was the next witness called, and said that he was a wood-chopper and had a tent on the right limit of the Hootalinqua.

About 12:30 o'clock on the 17th of November he was eating his dinner when St. Cyr made his appearance.

"Hello, George," he had said, "you're just in time for dinner."

"I haven't time," replied the prisoner.

"What's the matter?" was asked.

"I am going to give myself up to the police. I've killed Davis."

"The h—— you have!"

"Yes; I did it accidentally."

Then St. Cyr went on to say that he had overheard Davis and Clithero talking in a very insulting way about him, and when he could stand it no longer he went to his cabin and got his rifle intending to force an apology.

When he returned with the rifle—a 30-40 Winchester—Clitheroe had gone, and he stood looking at Davis for about ten minutes before the other looked up and saw him. He said: "How do you do, sir."

Then followed some talk between them concerning what he (St. Cyr) had heard, when his gun was discharged, and soon after Davis had cried out that he was hit. The prisoner had asked him where, but received no answer. He had fired his gun to attract the attention of Clitheroe, and also called to him. He told Davis that it was an accident, and that he was very sorry for what had happened.

After this he went to his cabin and put his rifle up, and was then on his way to the police detachment to give himself up.

Dr. Hurdman testified as to the probable result of a gunshot wound in the place described, and said that in all probability the left aorta, which intersects with the corroted artery and others near this point, had been ruptured, and that death had most likely taken place within half an hour after the wound was received.

Justice Dugas was very careful in instructing the jury to warn them against holding any communication with anyone outside the officers in charge, and against receiving and reading any communication or book or paper.

The officers in charge were carefully instructed in the matter also and court adjourned till 10:30 this morning.

Constable Gardiner was recalled by the crown this morning as first witness in the St. Cyr murder case, and testified that he had sold to St. Cyr the 30-40 Winchester rifle with which Davis was shot to death.

Many questions were asked by attorneys as to whether a gun could be discharged by the hammer being caught and drawn back to a point a little short of half cock and then suddenly released, but the witness said he had never had any experience with guns in that respect. He would not like to take chances on standing before it during a series of such experiments.

Corporal Stewart was recalled on the same point which closed the case for the crown. The case was then interrupted to admit of the appearance of George L. Clark.

Clark took his place in the prisoner's box, and despite the frantic efforts of Attorney Smith, began addressing the court. His attorney finally stated that he wished to withdraw the plea of guilty entered yesterday and go on with the case. He was given until tomorrow to file affidavits showing that the prisoner had a case.

The original matter before the court was then taken up by the defense by calling John Leon Cote, D.L.S., who testified that he had known the prisoner in 1894 5, when he had been with him on a surveying trip.

St. Cyr bore a good reputation at that time, and had agreed very well with the other members of the party. Under cross examination he said that the prisoner was a nervous man, but not of a melancholy or brooding nature. He had been frank and jolly, and very talkative.

Joseph Primeau, a camp cook and wood chopper, testified that he had first met the accused in Vancouver in November, '99. He met St. Cyr next on the Hootaliqua on the 13th of August last, and lived with him for a time, and during that time the prisoner had borne a good reputation. He was very nervous and excitable at times, but he could say very little concerning the disposition of the mind of the accused towards his neighbors. He knew that he had failed to agree with Clitheroe and that they had dissolved partnership. Counsel asked some questions going to show the nervous mental condition of the prisoner which were objected to by the crown prosecutor. The defending council argued that he had a right, and Justice Dugas said: "Show me."

Then followed a dissertation upon what might constitute insanity, but the defense did not want to show insanity.

Commissioner Ogilvie was the next witness called and testified that he had met the prisoner during the spring of '94, when he was attached to a surveying party working on the international boundary line, under his (the commissioner) direction. St. Cyr then bore the reputation of being a crank. He was intensely disagreeable in camp, resenting things said to him, seeming to brood over them for days afterwards.

John P. Hale said that he had met the accused in Victoria some four or five years since where he had known him for about a year; his reputation had been good.

St. Cyr was then put on the stand in his own defense.

He is rather under the medium height, about 45 years of age, with gray hair and mustache, bald, and speaks with a slightly German accent. He appeared to be very nervous, and spoke rapidly in answer to questions.

He had lived at Hootalinqua for about a year, and had been a portion of the time, in partnership with Clitheroe, with whom he had quarrelled. The evidence of Clitheroe concerning the difficulties of that partnership he said was false.

"On the 17th of November, after having had my breakfast, I proceeded as usual to my land to cut a cord of wood," said the prisoner in answer to a question concerning the affair for which he is on trial. "Having been there a short time I heard the sound of chopping from the southeast, 20 or 25 minutes later. Thinking someone might be chopping on my land I laid my ax down and started for the place from where the sound seemed to come from. I went on till I reached the line, which I followed till I reached the southeast corner post, after which I went south till I came to a ravine, where I heard the sound of sawing as well as chopping. The sawing soon stopped and I heard Clitheroe saying: 'I wonder what St. Cyr, the old —— is doing?'

"Then I heard Davis say: 'Never mind, we will soon have him out of the country; never mind; we will make it too hot for him.'

"After this he either turned his back to me or the wind changed, and for a time I could not make out what was being said, till at last I heard Clitheroe laugh and say, 'His father must have been a ——, and his mother a ——.' I waited to hear no more but went to my cabin, got my gun and put three or four shells in it, looked at the clock and saw that it was 9:30. Then I returned to the place where I had heard the talk. There was a steep rise in the ground here, and on the other side I could hear chopping. As I got near the top I could see the top of a man's head.

"The ground was covered with snow and he did not hear me. I was within 25 or 30 feet of him and stood there for a few minutes before he saw me, then he gave a start, and said: 'How do you do,' very curtly. Then he walked to another tree where he began chopping left handed. When he had made his cut he went around to the other side of the tree, and I said to him: 'Davis, why do you persist in persecuting me?'

"He did not answer, and I said: 'Would you mind repeating what you had to say a while ago?' He made some answer which I did not understand, and the gun which I was carrying under my right arm went off—was discharged.

"Davis raised both his arms, and fell to a sitting position, seeming to have turned part way around as he fell.

"I asked him if he was hit, as I thought he was shamming. He did not answer me, and I went up to him then, when I saw the blood and knew that he had been wounded. I asked him where he was hit, and he did not answer me. He had his arms crossed and I believe he rocked himself.

"He spoke then, but not to me. He said: 'My God, my God,' two or three times.

"I turned my back to him and shouted to Clitheroe whom I could see standing near the south end of the house. He did not seem to hear me, and I fired a shot in the air to attract his attention if possible.

"I waited there a little while watching aimlessly for him to come.

"When I saw that he was not coming I turned again to Davis who had changed his position and was lying flat across a tree. I went to him and lifted his head with my hand. I had heard him groaning and moaning before this but he had quit before I turned.

"When I lifted his head it was limp, like a rag; I laid it down and turned to lift him up to find out if I could carry him. I laid him back and left him there to go back to my cabin, as it came to my mind that he was dead.

"I went back to my house about as I had come, taking a few tools I had lying about the wood yard back to the cabin where I unloaded my gun and put it in the rack and went to Hootaliqua where I gave myself up for having accidentally shot Davis."

This closed the morning sitting and court adjourned till 2 p. m.

LENGTHY DECISION.

(Continued from page 3.)

that they have "without authority" erected certain buildings along the course of the pipes, and goes on to enact as follows: "The buidlings so erected and now standing shall be permitted to remain and be occupied and heated or otherwise handled or managed for the due and proper protection of the said outlets from the said water pipes for the public use until the commissioner in council shall see fit to order them to be removed from the streets and highways on which they stand, provided that the said company remains responsible for any damage for which it might be legally liable through the erection and maintenance of the said buildings."

It is difficult to intepret these acts in the face of so many irregularities. It is hard to understand how a company could go on and operate its works to any considerable extent without obtaining the consent which their incorporating ordinance provides for. The amending ordinance appears to have been hurriedly drawn, but in interpreting any act which interferes with private rights great care must be exercised. North, J., says in Wigram vs. Fryer, 36 Ch. D. 87: Express language in "statutes is absolutely indispensable in conferring or taking away legal rights, whether public or private," and further, "rights, whether public or private, are not to be taken away or even hampered by mere implication from the language of the statute." Queen vs. Strachan, L.R. 7, Q. B. 763. It was argued that these acts should receive a broad and liberal interpretation. Surely that cannot mean that words have to be embodied in the act which are not there, nor that I am permitted to imagine what the legislature intended. Does the amending ordinance give the assent required to the company to lay its pipes along the highways? It would be extraordinary if any legislature really should allow any company to override of its own motion an express provision of the act of incorporation and imposing certain terms before the uses of the highway could be taken or admit their right to do so. I think not. I do not think that can be read into the act. It provides that the buidlings now standing shall be allowed to remain for the due and proper protection of the outlets from the water pipes for the public use. That is all. For the purpose of determining this action it does not matter, it seems to me, how the water is brought to these outlets. The council has seen fit to allow a building for the protection of them and that is all. To properly deterimne this case one must consider how these buidlings have been used. The one in question is very much larger than the other referred to in the ordinance and about which evidence was given as to their size. It is not only to protect the outlet, but is used as a house to contain a stand pipe and water tank and a hydrant. The defendants attempt to set off the damage to the plaintiff's property by the benefit to be derived possibly from the fire hydrant. They cannot be permitted to impose a benefit upon the plaintiff and to say that that is a complete set off to annoyance and damage caused by the erection of the building. The building is used as a general depot or distributing point for the main part of the city. Teams block the highway at all hours of the day and part of the night. All kinds of vehicles are used, horses, dog teams and men with sleighs, standing, gathered about the place creating a nuisance, obstructing the highway and annoying the inhabitants of the plaintiff's house. I certainly do not think that the ordinance in its terms permits that kind of use to be made of the building. Again, the buidling is so managed that it is a greater nuisance to the plaintiff than it would be if properly managed. Smoke enters at the windows, and sparks have entered and burnt the bedding and bedclothes of the plaintiff. The approach to the premises is very seriously interfered with, the appearance of the buidling is injured and their enjoyment of the view from their windows is obstructed. The defendants' manager swears, and the ordinance apparently contemplates, that the erection shall only be of a temporary nature. The plaintiff has sworn that it will be removed at an early date in the spring. Evidence was given that it was of great public use, over two hundred actual customers coming to the building and a great portion of the city being supplied from it. It was also shown that any removal or alteration now would be disastrous to the entire works and would, in all probability, cause the freezing up of the system. From the evidence I am inclined to think that that would be the result. While I would be disposed to order the issue of an injunction if the building were a permanent structure and conducted as it is at present yet there is authority that where the niusance is of a temporary nature the court may refuse to grant an injunction—Harrison vs. Stonmark & Vauhall Water Co., 2 Ch., 1891, 409—and by a parity of reasoning it seems to me that the court might also refuse to grant an injunction for a limited time. Taking into account the great public convenience which this water depot is and the danger of a great loss to the system if now removed, I am disposed to allow it to remain until it is safe to remove it, but on terms that that pipe which carries the smoke shall be raised to a height of one foot above the eave of the plaintiff's house and made of the best iron procurable and protected by a sufficient spark arrester, that all the requirements of the fire ordinance of the city of Dawson shall be complied with in respect of the building, that no water shall be removed from the buidling after the hour of 9 o'clock in the evening, or before 7 o'clock in the morning, that the business shall be conducted with the least possible noise to the plaintiff and the least possible obstruction to the public highway. If the defendants accept these terms the injunction order shall not be issued until the 15th day of April. The claim that this work is of great public importance and of large value, has some weight with me, but I think the plaintiff is entitled to quite as much consideration when we consider the fact that the entire value of the water works plant as sworn by the assessors (of which the manager of the defendant company was one) is only $8000, while the value of the building of the plaintiff was $28,000, by the same valuators. I am influenced very largely in allowing the injunction to remain uninforced by the view that the public convenience would greatly suffer if this building were now removed and as well the almost certain great and unnecessary loss to the defendants. Considerable evidence was given as to the nature of the water delivered. The only evidence we have as to the water was the analysis of Dr. McArthur. No other analysis was put in and contradicted and while his evidence was somewhat shaken upon the question of whether percolation through sand would eliminate typhoid germs, yet I see no reason to doubt his evidence that the water is good table water and fit for public use. A great deal of evidence was given as to the quality of the water in the Yukon and Klondkie rivers, all agreeing that the Klondike at certain seasons of the year was unfit for use and also agreeing that the water from the Yukon at certain points was unfit for use, but that at some other points not clearly defined, the water would be good. I do not think that the public convenience would be at all served by a resort to either of these sources of supply and for that with the other reasons the injunction will not issue until the date mentioned.

As to the question of damages, I find myself in greater difficulties, the plaintiffs allege that their matting was injured, that they were prevented from driving to their door, that cord wood was sawed on the street opposite to them, that the building was used as a general water depot to their great annoyance, that their view was obstructed and their entrance obstructed, their insurance increased, that smoke and sparks fly into their windows. They also claim that several of their tenants had left them and I agree that they certainly have proved their case as to the obstruction and the nuisance arising from the use of the water depot, as to the tenants the question is different. It is alleged that Dr. Thompson left the premises on account of his sign being obstructed by this building, but no definite evidence is given on that point. Dr. Thompson himself is not called. It is alleged that the occupants of the shooting gallery left for the same reason. A letter from him of notice to quit was put in but whether that letter is evidence by itself that it contains the true reason for his leaving, I allowed it to go in simply as evidence to be afterwards, if possible, substantiated by the tenant's evidence. I cannot, therefore, find that this tenant left for the reasons set up and it will not, thereffoer, be necessary for me to decide the question as to whether that would be a proper element in the estimation of damages. Reinhart, the furrier, claims damages from the obstruction and threatens to leave. No damage so far has arisen on that account. I, therefore, cannot assess damages for that. Positive evidence has been given that the business of the hotel has dropped off very considerably, as much as $19 per night being estimated as the damage. One boarder, a Mr. Dolan, left on account of the annoyance and smoke and his rental was $70 per month. A caretaker had to be appointed which I think was a necessary and wise precaution on the part of the plaintiffs after the fire, at $75 per month. Then there is the question of the general annoyance which I find it very hard to estimate. As to the matting, I do not think that it is very clearly made out that the injury to it was caused entirely by the earth thrown up by the defendants, and it may very properly go into the general element of annoyance. The only definite item which is clearly proven was the Dolan leaving and the caretaker which was fixed in any ascertained amount. What to place the general annoyance at is hard for me to say. The building is a valuable one situated upon one of the best business corners of Dawson, has a growing concern at $60,000 a year; its own value is $28,000. It seems to me that this is not a business to be lightly interfered with. That the defendants were rash and inconsiderate in taking the position which they did without any authority from the council but going ahead of their own pure motion moving this building across the street from where it formerly was and setting it up directly opposite to the main entrance to a valuable hotel, not using proper forethought at the proper time because the manager swears that a month's forethought would have avoided all this trouble. Believing as I do that the defendants were extremely careless and precipitate in their work, surely acting without proper authority, advise or instruction, they cannot complain if they are called upon to pay reasonable damages for the injury done to the plaintiffs. I cannot, of course, assess damages for the deterioration in the value of the property, the nuisance being only a temporary one and to be removed. I can, however, endeavor to fix some compensation for the nuisance caused to the plaintiffs. I, therefore, fix the total damages at $500 to date of trial, together with full costs of the action, including the costs of the motions for injunction and dissolution of injunction

(Signed) JAMES CRAIG,
Judge.