

also an interesting summary of the proceedings in the Guibord case, now become a *cause célèbre*; and the number concludes with a chronicle of recent English, American and Canadian decisions. Altogether, the *Revue* promises extremely well, and the names of the conductors, and the contributors obtained thus far, are a guarantee that it will be worthy of its projectors. Arrangements are in progress to secure the co-operation of the best legal ability in Ontario and the Maritime Provinces. We are told that the April number will contain an article upon the powers and disabilities of the High Commission now sitting at Washington.

### Insurance.

#### GEO. W. WYLLIE *VERSUS* THE LONDON AND LIVERPOOL AND GLOBE INSURANCE COMPANY.

In June 1870 George G. Wyllie effected an insurance in the Liverpool and London and Globe Insurance Company, to the extent of \$4,000 on whiskey, 184 barrels in bond, and 63 barrels duty paid, all contained in a store house in the village of Fergus—the former in the basement and the latter in the first story. A fire occurred in the building early on Monday, the 22nd of August, which partially destroyed it, together with a portion of its contents. About 61 barrels were saved from the bonded store. The insured furnished the Company with a statement which he swore to—showing of the 63 barrels duty paid whiskey 19 only had been sold between the 23rd June and 28th July inclusive, and claiming for the value of the remainder, less the 61 barrels saved.

In an issue of 13th January last, in alluding to this case, we mentioned the fact, that a charge of perjury had been laid against Wyllie—that the charge had been examined into by Mr. George Elliott, J. P., and that Wyllie had been committed for trial at the next assizes. We are informed that Wyllie was admitted to bail in \$1,000.

The policy contained the following clause, "loss if any, payable to Wm. Robertson." Immediately after Wyllie's committal—the Company having declined to pay the claim, Robertson commenced a suit in Wyllie's name. The case was tried at the late assizes, at Guelph, before Mr. Justice Hagerty, and occupied nearly two days. Some fifty witnesses gave their evidence.

It is impossible to give a fair summary of the statements sworn to by the different witnesses in a limited space; but the Judges charge to the jury will pretty well indicate the facts in this very complicated case.

The following is Judge Hagerty's charge:

*Gentlemen of the Jury*.—As the counsel for the plaintiff in this case has told you very correctly, Mr. Robertson is not responsible for what the plaintiff, Wyllie, may have done in defrauding the Government of its revenue by swearing to false returns, nor is he morally responsible for any false swearing which Wyllie may have been guilty of in support of this claim against the Insurance Company; but, unfortunately for himself, Mr. Robertson is legally responsible, so far as the amount of this claim is concerned, for any false swearing which Wyllie may have been guilty of in support of the claim against the Company. Wyllie was acting, in some sense as Robertson's trustee, the whiskey having been insured for the latter's benefit, he having advanced money to Wyllie; and one of the conditions of the policy very properly is, that if an improper claim is rendered, the whole claim becomes vitiated. It does not matter who gave the evidence upon which the claim is founded, if the evidence is false; and if there is an attempt to defraud these

defendants the claim is vitiated. Now, the question to be decided is, Has there been an attempt to commit fraud? I need scarcely tell you that we have nothing to do with Wyllie's antecedents in this case, or with his false returns to the Government, as admitted by himself, except so far as these facts affect the credibility of his testimony. But I must also tell you that this Company had a perfect right to dispute this claim under the circumstances. The distillery was closed, no more liquor was being manufactured there, and yet the proprietor of the distillery was selling whiskey all about the country to different parties, and it was therefore no wonder that the Company became suspicious. I have known very few instances in which respectable companies have disputed claims upon frivolous pretexts, and I never knew a case where there were better grounds, in the first instance, for a thorough investigation than this. The time which we have spent here upon this case has been well spent; and taking Wyllie's very frank statement concerning his dishonest dealings with the Government—this frankness being the single commendable feature in his conduct—I must say that a more sickening detail of disgusting rascalities was never more unblushingly told in a witness box; and I hope, without any reference to this case, that some means of condignly punishing such conduct will be found. I do hope and believe the arm of the law is not so weak as to be unable to reach and punish such a man.

There appears to have been two separate lots of whiskey stored in these premises which were destroyed by fire. They were under one roof; that in the upper story, which is called the storehouse, being duty paid, and that in the lower or cellar part of the building, called the bonded warehouse, being in bond, owing duty to the Government, and being under the charge of Government officers. There is no proof of abstraction from the warehouse, the question being about the whiskey stored above. There were sixty-three barrels of whiskey upstairs in the storehouse, duty paid, and Robertson, being a large creditor of Wyllie's, the whiskey was insured for his benefit. The Company do not dispute the quantity in the place upon the 14th of June, when the policy was effected; that is granted; but the real pinch of the case is, that the defendants allege that between the 14th of June and the time of the fire there were more barrels of whiskey removed than the nineteen which the plaintiff accounted for to them. If Wyllie's affidavit in support of his claim against the Company has so far differed from many of his previous oaths as to be true, then the verdict must be for the plaintiff; but if his affidavit is like his affidavits to the returns to Government, false, then the verdict must be for the defendants. Robertson testifies that he visited the premises on the Friday before the fire, and found, by actual count, that the full number of barrels, minus the nineteen accounted for, were there. If this is true, it disposes of the previous evidence, and narrows the case down to the question as to whether there were any barrels taken away during the time which elapsed between his visit on Friday and the occurrence of the fire, early on Monday morning. If Robertson's testimony is to be accepted, it clears away a good deal of the previous points, and narrows the case down to this issue. Now, I will first endeavor to bring out, for your benefit, the leading facts of the testimony. Simpson swears that he and his teamster, Wilkie, took away six barrels, and that, according to his judgment, there could not have been more than nineteen or twenty barrels remaining. This was on the 2nd of August. If Simpson took these six barrels, Wyllie's testimony is false; for he sticks most emphatically to the statement that the last sale which he made was on the 28th of July. A great deal has been said about Simpson by the counsel on both sides, Hon. J. H. Cameron producing his letter to Forbes, and contending that the man who wrote that letter was unworthy of credence. It has also been said that

Simpson had an interest in sustaining the case of the defendants, as he thereby hoped to escape from his responsibility to the Government as Wyllie's security. On the other hand, the Hon. M. C. Cameron has told you that Simpson wrote what he believed to be the truth. I consider it, at least, to have been a very reckless way of talking. But does Simpson stand unsupported in his testimony? Wilkie was in Simpson's employment, and corroborates the latter's statement as to having removed the six barrels on the 1st or 2nd of August. Watt admits having received whiskey upon that date, but there is a discrepancy as to the hour. In this case it is most singular that the witnesses differ about almost everything. Wilkie says that he delivered the whiskey to Watt after six o'clock in the evening, and Watt says he received it in the afternoon just after dinner. But the question is as to the main fact, which is the date. The testimony of these witnesses does not conflict upon this point, and if that testimony is true, it is evident that there was liquor sold out of that storehouse after the 28th of July. Dalzell told us yesterday that shortly before the fire, he drew five barrels of whiskey from the storehouse; but this morning he came back to correct himself, by saying that he had made a mistake, as he had drawn it from the distillery. Unless he is an excessively stupid man, his correction is open to suspicion. This I will, of course, leave you to consider. Golland tells us of different lots of whiskey which he drew to different parties, and the plaintiff's theory is that these were part of the nineteen barrels sold and accounted for up to the 28th of July. Golland also says that Simpson offered him, or promised, \$2,000 to testify against the plaintiff; but Simpson says this is a lie. Murdoch Smith says that on the Friday before the fire he saw Donald Smith's team backed up against the storehouse, with barrels in the waggon. This was the occasion upon which Donald Smith's team was borrowed; but the boy McQuarry, who saw the team borrowed, says it was Saturday night. Anderson saw whiskey loaded at the storehouse on the 17th August, and Armstrong saw a team at the storehouse, with barrels, the Saturday night before the fire. Against all this we have Wyllie's testimony that nothing was taken away after the 28th July, and Robertson's statement of having counted the barrels on Friday, though if any were removed on Friday or Saturday night, it would, of course, be subsequent to the counting by Robertson. Wyllie's conversation with Mr. Gordon, as reported by the latter, concerning the proposed removal of the whiskey, is denied by Wyllie; his reply to detective Smith, whom he knew to be a detective, to the effect that he had made away with the whiskey, is such an improbable-looking affair, that it must be regarded only as a jest. Now the case is narrowed down to this: The defendants allege that after the 14th of June, there was removed a quantity of whiskey not accounted for in the return of nineteen barrels, while, according to Wyllie and Robertson, no liquor, except those nineteen barrels, was sold up to the 28th July, after which none was sold or removed. Other witnesses swear that liquor was removed previous to the fire, during the month of August. The case turns upon the question of fraud or false swearing in the affidavit made by Wyllie in support of the claim against the Insurance Company. Altogether, the revelations in regard to this business are most deplorable. Whiskey is doing great evil all over the country, occasioning all sorts of crime; but in this instance it appears to have degraded men very low, making them perjure themselves in order to gain advantage over the Government. The Government takes every precaution to prevent these frauds, and yet this case reveals a frightful tissue of frauds. The attempt was made elsewhere to put down the liquor traffic altogether, but it was a question if even that did not produce more perjury and fraud than the taxing of it for revenue purposes. One of the strange features of this case is that the defendants endeavor to make