FOREIGN JUDGMENTS

And Their Operation as to Land Here

Held That to be Operative in This Territory They Must Become Judgments Here.

In the case of C. McDaniels vs. John and Mary Huntingdon, Mr. Justice Craig today rendered judgment which is of considerable consequence affecting as it does the standing of a judgment brought from the United States and the extent to which such operates against land in this territory. His worship's decision is that a foreign judgment has no operat on against land in this territory until it becomes a judgment in this territory. The question of the section having been barred by the statute of limitations, which was brought up by the defense, is likewise disposed of, it being held that the action is not barred because the defendant came into the territory for the first time within six years next before the commencement of the action. The opinion of the learned jurist in full is as follows :

"The action herein is brought upon a judgment recovered by the plaintiff in the state of Washington, United States of America, on the 12th day of September, 1894, the writ herein being issued in this territory on the 1st day of November, 1901. The case comes before me as a stated case and it is admitted that the defendant John Huntingdon first came into the Yukon territory less than six years next before the commencement of this action. The defence to the action is that it is barred by the statute of limitations, and chapter 31 of the northwest ordinances is cited and relied upon as the statute which affects the bar of the action. That act provides that all actions for the recovery of merchants' accounts, bills, notes and all actions of debt grounded upon any lending or other contract without specialty, shall be commenced within six years after the cause of such action arose. The second section of the same act provides that the real property limitation act 1874, being chapter 51 of the imperial statutes passed in the 37th and 38th years of Her Majesty's reign, be in force in this territory. It is contended that the cause of action having arisen six years before the commencement of this suit, therefore the right to recovery in this territory of the claim and the debt is barred by that act. Several questions arise for discussion, the first being whether a foreign judgment is a specialty debt or a simple contract debt in this territory. Upon that question I have no hesitation in saying, upon the authorities, that a foreign judgment is a simple contract debt in this territory. * * *

"Another question which arose was whether payment under a compulsion of legal process was sufficient to take the case out of the statute. I do not think that any authority should be required upon this proposition because a payment must be such as would imply acknowledgement and promise and certainly a payment by compulsion of legal process would not be such a payment, and the authorities are clear on that question also. * * *

"It was contended strongly that our own ordinance not having provided for disability, therefore the legislature did not intend to provide for disability, and that the authorities cited by Mr. Gwillim from Ontario and Manitoba and England had no force or place in this territory because our legislature had not seen fit to enact any disability clause which would limit the operation of the statute under section 1. Upon this question I received very little assistance from the counsel and the question being one of such great importance I gave the matter considerable thought and research. The general principle is very well set out in Maxwell on statutes that before adopting any proposed construction of a statute it is important to consider the effects or consequences which would result from it. One presumption is that the legislature does not intend to make any alteration in the law beyond what it implicitly declares either by express words or by implication, or, in other words, beyond the immediate scope and object of the statute and in all general matters beyond the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights or depart from the general system of law without expressing its intention with irresistible clearness.

"While it might seem at first sight that the legislature of the northwest territories intended by this enactment to create an absolute bar in six years, yet as Mr. Gwillim very well points out, if that construction is to be adopted then all the law regarding disability as well as acknowledgement of debt and partial payment to take the case out of the statute, goes by the board along with the disability clause; and one must hesitate a long time before giving that interpretation to the statute or conceiving that the legislature intended to adopt that law in its enactment. I take it that this ordinance which by its head note limits itself to the limitation of actions in certain cases, means merely to enact a statute running along with and alongside of the English law on the same subject, because by the northwest territories act it is enacted that the laws of England relating to civil and criminal matters as the same existed on the 15th of July, 1870, shall be in force in this territory so far as the same are applicable to the territory and in so far as the same have not been or are not hereafter repealed, altered, varied, modified or affected by any subsequent act. Can I say that the legislature intended to effect anything more than the bare words in the act covered, or can I say that this enactment was intended to affect and repeal the whole body of English law upon this question of the limitation of actions? Fortunately I do not need to decide that question because this chapter 31 which makes the English real property limitation act law here solves the matter, because the English real property act enacts by section 8 that all the provisions of the act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, are in force and continued in force. Therefore, if the English real property limitation act is in force here that provision is also in force, and that provision maintains in full effect the disability clauses. It has been held in cases cited that the real property limitation act affects all judgments whether secured against land or not, but which might affect land. I do not think, however, that these cases are in point here because this is a foreign judgment and a foreign judgment has no operation against land in this territory until it becomes a judgment of this territory.

"My decision is based upon the fact that the English real property act continues in force the provisions of 3 and 4 William the Fourth. Therefore, I think that the action is not barred because the defendant came into this territory for the first time within six years next before the commencement of the action."

Edward Boyce Chosen.

Denver, Aug. 22.—Edward Boyce, former president of the Western Federation of Miners, will be the candidate of the socialist party for governor of Colorado. The state convention which was held at Colorado Springs on July 4 nominated a full state ticket, including Edward Boyce of Denver, C. J. Provost of Victor, and P. E. Morris of Denver, as candidates for governor. Under the rules of the party the nominations were referred to the various local organizations of the party for a vote. The count of the votes has not been completed, but has proceeded far enough to show that Boyce has been chosen as head of the ticket.

Men Become Soldiers to Fight

President Roosevelt has come in for criticism recently for asserting in a speech made two or three weeks ago that a soldier ought to always want to fight. After all, there was nothing particularly startling about that statement, for the reason that the general public has supposed men join the army for that purpose, and if they did not want to fight they should not be soldiers, but would be better off as preachers.—Butte Miner.

Want Troops Removed

Tamaqua, Pa., Aug. 22.—Today the mine workers sent a petition to Gov. Stone asking that the troops be recalled.

It is rumored that the Lehigh Coal & Navigation Company is preparing to mine coal under the protection of the troops. The officials refuse to affirm or deny the report.

Likes Idaho.

Boise, Idaho, Aug. 22.—Stewart M. Brice, son of the late Senator Calvin S. Brice, who made a somewhat sensational advent into Idaho some two months ago, is again here, having just returned from Thunder mountain. He comes out of the mountains as a delegate to the Democratic state convention. Mr. Brice is pleased with Idaho, and intends to make this state his home.

At Auditorium—The Unknown.

DOINGS ON THE CREEKS

Progress of Events at Grand Forks

Bonanza and Eldorado Are Still Lively—Some Personal Mentions.

Miss During and Miss Langseth of Grand Forks left for Seattle last Saturday.

Mr. Elgnd Wood of 62 below Bonanza was in town on business Monday.

Mr. Geo. Ames, foreman on 17 Eldorado, was in Dawson Saturday in connection with business matters for the big claim.

Mr. Fred Johnson of 21 Eldorado has been on the sick list for the past few days.

Mrs. Del La Pole of 35 Eldorado visited with friends in Dawson the forepart of the week.

Mr. and Mrs. Heiseth have purchased the New Portland of Grand Forks from Mrs. Dunlap, and are making the necessary improvements for the coming winter.

Rev. Pringle of the Grand Forks Presbyterian church made a short trip up the Yukon last week.

A big lot of work is being done on French Hill this summer. Old worked out claims are being worked again from the grass roots down, and vast quantities of old posts can be seen piled up on bed rock all along the rim.

Miss Esther Anderson while out berry picking the other day came across a gunny sack containing about 200 pounds of black sand, gravel and gold dust, at the foot of the hill opposite 1 above Bonanza, right limit. On her return home Miss Anderson reported the find to her brother-in-law, Mr. R. M. Nelson, who, knowing of the sluice box robbery on Skookom Jim's claim, and thinking there must be more somewhere, searched about and found another sack containing about 100 pounds of the same material on top of the hill. The matter was at once reported to the authorities and is still in statue quo, as the parties who left the sacks do not seem to have any desire to claim their property.

The farewell dance given to Mr. and Mrs. Sam Stanley at 26 Eldorado last Friday night was largely attended by the many friends of the above couple. The Dewey orchestra furnished music for the occasion. Mr. Louis Z. Johnson was the moving spirit of the evening. The new and complicated calls for the various quadrilles by the genial manager were immensely enjoyed by all present. About 40 couple were in attendance, which comfortably filled the hall, and many were the hearty handshakes and farewells given to Mr. and Mrs. Stanley, who leave at once for Seattle, where they will remain for the winter.

Mr. W. O. Smith of 76 below Bonanza made the Bonanza carriers happy by inviting them all to a big dinner last Friday. Mr. Smith took the boys to one of the big restaurants on First avenue and gave them carte blanche. As this is an unusual occurrence it is not surprising that the table was not large enough to hold the good things ordered by the boys. As course after course was served little Freddy Wonderland, who is one of the most popular carriers on the creeks, wondered when it was all going to end. Here is hoping another such feast will come again some day.

The Fire Record.

London, Aug. 13.—The manufacturing plant of the Pond Mills Cheese Factory, owned by the Thames Cheese Company, was destroyed by fire between 2 and 3 o'clock this morning. The extent of loss is as yet unknown, but it is said that much of the contents was saved. Mr. T. B. Millar of Dufferin avenue, who is manager of the company, is holidaying, and it was impossible to obtain an authentic statement as to insurance, but it will probably cover the loss. Cause of fire not known.

Republican Convention

Whatcom, Aug. 22.—Candidates for the Forty-second senatorial district and the Fifty-fourth representative district were named in a convention held this afternoon in a convention presided over by J. R. Crites, who was named by acclamation. J. W. Romaine was nominated for senator by acclamation. C. I. Roth, of Whatcom, and L. N. Griffin of Fairhaven were also the unanimous choice of the convention for representatives.

IMPORTANT DECISION

Mr. Justice Craig Establishes a Precedent

Concerns the Question of Whether Dumps of Pay Gravel Are Chattels or Not.

Mr. Justice Craig by a decision handed down this morning has established a precedent that is of utmost importance not alone to the Yukon but all other territories where placer mining is carried on extensively. It refers to the status of a dump of pay gravel taken out of a drift and piled on the surface ready for sluicing—whether such should be considered a chattel or not. His lordship states in his decision that he had been unable to find any cases analogous to the one in hand and he was compelled to follow general principles in making his findings. The members of the bar commend the judgment as being founded on good reason, just and equitable. The case was entitled August Uphoff and Mattie Gordon vs. H. W. Giddings, William Gill, D. W. Davis and J. J. Rutledge. The decision in full is as follows :

"This matter was brought before me, by consent, last chamber day, and the question for my decision is this : Is a placer mining dump such a chattel as is intended to be covered by the bills of sale and chattel mortgage act, or is it a chattel interest at all, and does it come within the operation of that act ?

"It is said that this is a matter of considerable importance to the territory and has been undecided so far here. So far as my researches have gone it is also undecided in any other court that I can find. I have carefully searched the reports of decided cases in England and the United States, as well as reading up all the available law which I could find and reported authorities of cases decided in Australia. I thought that surely in those countries where placer mining is so largely followed, I could find some authority upon the question, but I failed to find any, and I am therefore thrown back on general principles and upon analogous cases. It will be admitted, I presume, that the statement which I now give of the modus operandi in placer mining is a correct one: Placer mines in this country are obtained by lease from the crown, this lease being renewable from year to year under the regulations. The placer miner finds his gold not in lodes or in place but in the gravel and it is got out of the gravel by following what is known as the pay-streak in the ground selected. The earth which is presumed to contain sufficient pay or gold to reimburse the miner for the labor of extracting and cleaning the pay dirt is removed from the body of the ground, carried up either by shafts or through tunnels to the surface of the ground and deposited upon the ground, and afterwards cleaned up in various ways and washings. Sometimes the earth is cleaned up in the tunnels and shafts by means of rockers and pans, but more generally the earth is removed to the outside and placed in a heap and cleaned up by what is known as sluicing. Here we have a selection of earth and a severance from the soil and the placing of the product by itself; that is, it is separated from the bulk of the earth and set apart so severed. I do not know whether I can call the product of this work 'fructus industrales' or 'fructus naturales.' I suppose partly both; for certainly the placer gold is a fruit of the ground but that fruit cannot be realized until certain work is done. If it remained in its natural state in the ground it could not be called a chattel; it would be an interest in the soil or an interest in land. I think that the cases governing the question of growing timber will be analogous. So long as the timber remains attached to the freehold it is considered part of the freehold but so soon as it is severed it becomes a chattel. It is also considered a chattel when it is under an agreement for an immediate severance and removal. It is said that a dump cannot be considered as coming under the bill of sales act because it is not capable of delivery and it would be impossible to deliver it. I do not think there is any impossibility about it. It might be very difficult to deliver and might not pay to deliver it. The same might be said of large timber when cut and fallen. It would be very difficult, it would not pay, and one might say almost impossible to deliver large trees not cut up into marketable timber. But I do not think that the hardness of delivery affects the question. I think the question depends entirely upon the matter of the severance from the soil. It might be unreasonable to ask for delivery, but both parties must be reasonable, and to avoid the appearance of fraud, there should be registration of the bill of sale. I think that all the elements which enter into a chattel are here, under the authorities, that is, selection of a certain part of the soil and a removal of it. If it were coal taken out and piled at the pit's mouth, it would certainly be a chattel. If it were ore containing pay I think it would also be a chattel. Why, therefore, should there be any distinction when it is sand, dirt and gravel containing gold? The English act in the description of goods includes things forming part of the land which are agreed to be severed, and this enactment follows upon former decided authorities to a very large extent. I, therefore, think that a pay dump taken from the ground in the manner which I have described is such a chattel as comes under the provisions of the chattel mortgage act and requires registration under that act."