MC2289

POOR DOCUMENT

SUPREME COURT JUDGMENTS

Winding Up Order Stands in Cushing Case---Judge Barker's Judgment in Favor of Geo. S. Cushing Also Stands---Col. Blaine Lost His Case.

Fredericton, Nov. 24.—(Special)—The supreme court met at two thirty o'clock this afternoon with all the members in attendance and delivered judgments in a number of cases.

Judgment was delivered in three of the appeals in the matter of the Cushing Sulphite Co. by the full court. In the original equity suit brought by the Cushing Sulphite Fibre Company, Limited, against George S. Cushing, the judgment given by Mr. Justice Barker, the judge in equity, was sustained on the judgment of the chief justice and Justices Barker, McLeod and Gregory. Justices Hanington and Landry dissented.

Judges Gregory and McLeod thought that the judge in equity very properly punished the plaintiff company for having placed unfounded and unwarranted charges against Mr. Cushing upon the record, by refusing them any costs and condemning them to pay to Mr. Cushing the costs in respect of all the charges.

Judge Barker said he had nothing to add to the judgment given by him in the court below.

The chief justice read a judgment reviewing all the evidence and expressing his view that Mr. Cushing had acted bona fide in the best interests of the company. He thought if the mill did not turn out successful it was Capt. Partington's fault and due to causes beyond Mr. Cushing's control and largely to machinery sent out by Captain Partington giving constant trouble. The use of mill wood for pulp and fuel was in the contemplation of all parties at the commencement of the building and was not an experiment. Competent men were of the opinion that it was not an experiment. Mr. Cushing was not managing director with nothing to manage; he was not a mere automaton to act when somebody pulled the string, but was given certain liberty of action and therefore he did nothing improper in building the fuel house complained of. He acted in good faith and meant to advance the best interests of the company in all that he did and he seemed to have been careful in every way in the management and he was also careful to state that the invoices for slab wood were subject to revision on the basis of its value relatively to round wood and coal. Having carefully reviewed all the facts he was of opinion that the judgment of Mr. Justice Barker was proper and should therefore be sustained upon all points.

In closing, his honor particularly referred to the part of the judgment of Mr. Justice Barker depriving the pulp company of any costs and ordering them to pay to Mr. Cushing all costs arising by reason of the unwarranted charges which the pulp company had made against Mr. Cushing and he cited with approval as applicable to this case from the judgment of Lord Justice James in a celebrated English case to the effect that it is not because a defendant has rendered himself liable to proceedings at law or in equity that the adverse litigant is entitled to indulge in unfounded aspersions upon his character or make the court the place or the proceedings of the court the medium of such aspersions.

In his opinion that had been done here. Unfounded aspersions had been wantonly and recklessly made and it was therefore the duty of the court to do what it had been so often said it would do, namely, to make persons so dealing with the process of the court pay and pay fully no costs for it and therefore he considered the order of Mr. Justice Barker ordering the company to pay Mr. Cushing's costs in respect of all such charges properly made.

It was therefore the judgment of the court that the appeal taken by the pulp company from the judgment of Judge Barker must be dismissed with costs and the judgment sustained and also the cross-appeal made by the defendant must also be dismissed with costs—the costs in the one case to be offset against the costs in the other.

Judges Hanington and Landry dissented, the latter stating he would file a written judgment. He was of the opinion that the appeal should be allowed and the amount of the company's claim largely increased.

In the winding up case the appeal of the company from the winding up order made by Mr. Justice McLeod was also dismissed with costs, Judge Barker delivering the judgment of the court. It was agreed that the judgments delivered by the several judges at the last term of the court when the matter was before them by way of reference should be considered as read as their judgments on this hearing, with the addition of the judgment of the court now delivered by Judge Barker. The latter judgment dealt with the new points raised on the argument at the present term. The preliminary objections taken to the appeal were overruled as was also the objection to the form of the winding up order.

Under this decision the order for the winding up of the company stands.

The judges were unanimous in overruling the preliminary objections and sustaining the form of the winding up order, but on the question as to whether the order to wind up the company was properly made or not the court remains as before, evenly divided, the chief justice and Judges Hanington and Landry sustaining the pulp mill company's contention and Judges Barker, McLeod and Gregory sustaining the winding up order.

Adams vs. Alcroft—This is an action for wrongful dismissal and salary. The defendant in the suit is interested in a company which carried on the manufacture of veneering work in the County of Albert. The case was tried before Judge Landry without a jury, and he gave judgment in favor of plaintiff for $1,000. The case was appealed on the ground that there had been an improper admission of evidence and excessive damages. Judge Gregory, who delivered the judgment of the court, held that the plaintiff had not been able to perform the duties, which he had represented by letter that he was capable of doing, therefore his dismissal was justifiable. Judges McLeod and Barker concurred with Judge Gregory. Judge Landry adhered to his judgment delivered at the trial, the Chief Justice and Judge Hanington concurring. The court being equally divided the verdict stands and the appeal for a new trial is refused.

The King vs. Ritchie ex parte Blaine—This was an application for a rule nisi to quash a conviction made by the police magistrate of St. John against the defendant for issuing a liquor license to William J. Savage, contrary to law, the defendant being a member of the board of liquor license commissioners at the time. The chief justice in delivering judgment, said he had gone over the act very carefully and could not find that it gave the commissioners power to transfer a license. The evidence did not show any ground for the contention put forward by the commissioners that they were under special obligations to issue a license to Savage. The commissioners either knew or should have known that in issuing this license they were acting contrary to law. The judgment of the court was that the conviction must stand and the rule be discharged.

Frank E. Rose vs. the St. George Pulp and Paper Company—This case was tried before Judge Hanington at the Charlotte Circuit Court and resulted in a verdict for the plaintiff. The action arose over a dispute in regard to the scaling of pulp wood supplied by the plaintiff to the defendant company under contract. The plaintiff's contention was that he should be paid for the full amount of his contract, while the defendant contended that under an act of the legislature relating to the sale and export of pulp wood, he was only entitled to be allowed for even lengths. The judgment of the court delivered by Judge Gregory was that the verdict should stand, Judges Hanington, Barker and McLeod concurring. In dissenting from this judgment the chief justice said he claimed to know something about the scaling of lumber, in all his experience he had never heard of odd feet being allowed. That system was certainly not followed on the St. John and Miramichi rivers. On the question of reducing the verdict he thought there should be a new trial. Judge Landry concurred with the chief justice.

McKay, appellant, and Winslow, respondent—Appeal from decision of the judge in equity dismissed with costs.

Curless vs. Town of Grand Falls—This was an action brought to recover from the town damages to the plaintiff's property caused by a defective sewer. The case was tried in the Victoria County Court and the jury returned a verdict in favor of the plaintiff for the sum of $36. This verdict was afterwards set aside by the county court judge and judgment entered for the defendant. From this latter judgment the plaintiff appealed to the Supreme Court. Judge Gregory delivered the judgment of the court, allowing the appeal and directing that a verdict be entered for the plaintiff for $36. Judge Hanington dissenting.

Rogers vs. Porter—Appeal allowed with costs and verdict of $30 in favor of plaintiff is restored.

Mispec Sulphite Company vs. John White—Appeal from order of chief justice dismissed without order as to costs.

Daigle vs. Temiscouata Railway Company—This was an action to recover damages for the killing of a cow by one of the trains of the defendant company. The case was tried in the Madawaska County Court and the jury returned a verdict in favor of the plaintiff, allowing him $50 damages. This was afterwards set aside by Judge Carleton and a verdict entered for the defendant. The court allowed the appeal with costs on the ground that the defendant company had been guilty of negligence in not keeping their fences in repair as required by law.

Savage, appellant, and Breton, respondent. This was an action for false arrest and imprisonment tried in the Madawaska County Court. The case was undefended at the trial and the plaintiff was awarded $75 damages. The court held that the action was properly brought and the verdict should therefore stand. The appeal was allowed with costs, Judge Gregory and Barker no part.

Murphy, appellant, and Dundas, respondent—This was an action for assault tried at the Sunbury County Court. The jury found the defendant guilty but awarded the plaintiff no damages. Judge Gregory held that the finding was an error as the plaintiff should have been awarded nominal damages. He thought the appeal should be allowed, but the court could not grant a new trial for the sake of having nominal damages awarded. The court dismissed the appeal with costs. Judge McLeod no part.

The King vs. the Assessors of the Parish of Saumerez, Gloucester county ex parte J. B. Snowball Company, Limited—Rule nisi discharging in both cases.

The court adjourned until January 5th when judgment will be delivered in the remaining Cushing cases and also in the case of Miss Mabel French, the young lady who is seeking admission as an attorney.

WILL ATTEND CHURCH

St. Andrew's Society will attend divine service in St. Andrew's church Sunday at 4 p. m. The members will assemble in the Oddfellows hall at 3.30 and the president of St. George's Society will join them there. The members of the society will occupy seats in the centre of the church but ample provision has been made for the general public, who are cordially invited to attend. Rev. David Lang, the chaplain-elect, assisted by Rev. A. A. Graham, M. A., B. D., will conduct the services. The sermon will be preached by Rev. Mr. Lang.

No. 1 Scots Company held a meeting last night and about forty of the members decided to attend the service. St. Stephen's Company will also attend.

STEAMER TURBIN LOCATED IN SIXTEEN FATHOMS OF WATER

Yarmouth, N. S., Nov. 24—(Special.) Norwegian Consul Boyd went down to the steamer Turbin yesterday in a tugboat and found her lying as before reported, midway between Mud Island and Black Ledge. She lies in sixteen fathoms of water with the end of the mainmast broken off awash of the surface at low tide. The other masts and smokestack are gone and there was sufficient proof that the steamer is the Turbin. Nothing more has come ashore.

TO CURE A COLD IN ONE DAY

Take LAXATIVE BROMO Quinine Tablets. Druggists refund money if it fails to cure. E. W. GROVE'S signature is on each box. 25c.

W. E. Ennis, of Boston, a former St. John man, is at the Dufferin.

PROFESSIONAL.

G. G. CORBET, M. D.

X-Ray and Electro-Therapy.

159 Waterloo Street,

ST. JOHN, N. B.

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20 Per Cent Discount

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Twenty Days

COMMENCING

MONDAY THE 27th INST,

WE WILL HOLD A

MAMMOTH SUIT SALE

FOR TWENTY DAYS; AND WE WILL GIVE A DISCOUNT OF

20 PER CENT

ON ALL CASH SALES OF

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We offer our whole stock of Suits, ranging in prices from $3.00 to $25.00 at this BIG DISCOUNT, so if you want a NEW SUIT, now is your chance to get one at one-fifth less than regular prices.

$15 Suits for Only $12
12 Suits for Only 9.60
10 Suits for Only 8.00
8 Suits for Only 6.40
6 Suits for Only 4.80
5 Suits for Only 4.00

Remember, this sale commences on Monday, and continues for twenty days only.

Come in Early.

HENDERSON & HUNT,

40 and 42 King Street.

Opposite Royal Hotel.

AN IDYL OF THE DEEP WOODS

By FRANK H. SWEET.

A horseman was making his way slowly through the forest. There was no road, only an ill-defined trail, and even this was frequently lost among the dense masses of saw palmetto. Foxgrapes and bignonia vines wandered across the path, and occasionally a live oak barred the way with a swaying wall of grey moss. But it was the direction rather than the trail the man was depending on, and at length he paused at the edge of a small clearing. In front of him was a rough cabin, with smoke rising from the mud chimney. Near the door a mule was patiently nibbling tussock grass.

In the cabin a young girl was preparing "cabbage permeeter." This is made of the tender germinal bud of the cabbage palm, and although confined chiefly to the poorer class of south Florida, is a dish of considerable delicacy. When first taken from the tree the bud is as white and smooth as polished ivory, and very brittle.

On the stove was a pot of comptie. In one corner, and seated on a pile of "fire knots," was a small boy washing calamus roots. Near him several dogs were enjoying the delights of dream hunting.

As the horseman rode up, the girl left her occupation and went to the door.

"Liza."

"Tom."

Then, even as her face upraised and the love light warmed in her eyes, she recoiled. In reaching down to her the man's coat opened slightly and she had seen the glitter of metal. Her face grew hard.

"You are lookin' for dad?" she asked.

"Y-es, and for you."

"Never mind me," harshly. "I'm not countin' any more. And dad he's off. You can look in the cabin an' see."

Tom's face had grown pale.

"What's the matter, Liza?" he pleaded, "an' where is your father?"

"He's not——" the girl began, when the boy broke in with, "Dad's up to Scrouge Hill. He said he aimed to find a bee tree."

"Thank you." Tom turned again to Liza, but what he saw in her face made him whirl and dash away into the woods. The girl watched him until he was out of sight, then went into the cabin.

"Oh, Dave," she moaned, "what did you tell him for? I knew dad was to Scrouge Hill, but didn't want Tom to find out."

"Why not?" wonderingly. "Ain't he your beau?"

"Dave!" sharply; "don't you ever hint that again. Tom Betts is an officer, though I—I never once s'pected it before; an' now he's gone after dad."

"Dad ain't done nothin'."

"I know he ain't. But folks said that Jim Brown didn't low to do nothin', except in fun, an' he ain't never come back any more. An' there's Jed Wilson, who got chased by officers. He never dared come round afterward."

"Won't dad ever come back any more?" asked the boy, his tone of confidence quickly changing to one of terror.

"I don't know." Then suddenly, "I'll go an' warn him. It's only ten miles to Scrouge Hill, an' I low I can fetch it before the officer gets round. He'll naturally take the path, an' I can save two miles by goin' through Snake Run. His horse can't go where our mule can."

"But dad said for us to keep clear of the mule. He 'lows old Bob rears an' tears so he's going to get rid of him."

"I can't help it. You look out for the cabbage an' comptie."

Before he could offer further expostulation she was out of the cabin and on the mule!

But old Bob acted nobly. Either the sudden start made him forget his usual plans of mischief, or he was tired of nibbling bunch grass. Whatever the reason, he went into the woods like an arrow. And with shrill cries the girl urged him on. These flew past, and their branches left marks on face and clothing; muddy water splashed up to her from dark pools, but she heeded not. All her energies were bent on reaching Scrouge Hill in advance of the officer.

For an hour they rushed on, and at last the bold knob of the hill rose before them. But now the mule seemed weary of good behavior, and suddenly planted his feet in the loose soil and lowered his head. As the girl went sprawling into the palmetto he uttered a bray of defiance and whirling about started for home.

For some moments she lay stunned; then she rose slowly to her feet. As she did so she gave a sharp cry of pain; one of her ankles was badly sprained. She must reach the hill, however, and she tried to hobble along. But the pain increased, and after a few steps she was obliged to lean against a tree for support. Then she tried to shout, but her voice this morning, whe nthe day shift will go seemed hoarse and unnatural. Would no one hear?

At length she found a crooked stick, and, using this as a crutch, managed to make some progress. But it was slow, and the pain increased with each step. At last she sank down, exhausted. Then she tried to creep.

Her mind was beginning to wander a little. She fancied the hill was receding instead of coming nearer, and that she must creep on and on, forever.

But at last she heard the hoof-beats of an approaching horse. Perhaps it was a neighbor. She would send him to warn her father. The treacherous Tom Betts would be outwitted, after all.

As she drew near she called out, and a moment later felt herself lifted gently to the saddle. With a sigh of thankfulness she opened her eyes and saw Tom Betts.

"How did you get here" he asked.

She struggled to free herself, but was held firmly.

"I—wanted to warn dad," she gasped, her face growing white with pain and horror; "but now it's too late. Oh, Tom! how could you?"

For a moment he looked puzzled, then a smile broke over his face.

"So you 'lowed I was an officer hunting your father," he said, drawing her close. "So I am, little girl. But 't isn't for any offence. Your father's wanted to sit on a jury down to the court house, and I'm to summon him. And besides, I want to talk with him about our wedding. You said I must go and ask him, you remember. Your father knows all about my being an officer, Liza, and we've only kept it hid on account of some criminals hiding up this way that I want to catch. Now shall we go on together and ask him?"

The girl was not resisting now. Her head had fallen back upon his shoulder.

"Yes," if you want to, Tom," she said happily.

MISERABLE NIGHTS.

Nothing so demoralizes an infant and enslaves a parent as to take a cross or wakeful baby from the bed and walk him up and down the floor during the night. The baby cries because it is not well — generally because its stomach is sour, its little bowels congested, and its skin hot and feverish. Relieve this and baby will sleep soundly all night, growing stronger and better every day. Just what mothers need to keep baby healthy and make him sleep soundly is Baby's Own Tablets, which cure all stomach, bowel and teething troubles and thus promote natural health-giving sleep. Mrs. William Holmes, Dunville, Ont., says: "My baby was troubled with sour stomach and was constipated most of the time, and was always cross and restless. I gave him Baby's Own Tablets and found them a complete success and would not now be without them." You can get Baby's Own Tablets from any druggist, or by mail at 25 cents a box by writing the Dr. Williams' Medicine Co., Brockville, Ont.

SUBURBAN BURGLARIES

Summer Cottages Broken Into and Clothes and Bedding Stolen.

Within the past few weeks several summer cottages along the I. C. R. between here and Hampton have been visited by burglars. Goods were stolen from Harvey Hayward's cottage at Quispamsis and other places occupying the attention of the intruders belong to Col. A. J. Armstrong, Mrs. S. Hayward, Geo. Chamberlain at Quispamsis; Rev. Lindsay Parker at Gondola Point; E. R. Chapman, at the Chalet.

Mr. Hayward a few days ago placed the matter in the hands of the Kings county authorities. An arrest was made but the prisoner escaped. Another young man was believed to be implicated in the robbery but he disappeared. Some of the property was finally located in a camp which was used by the two suspected, and in fact nearly all of what was missing was recovered. The goods included wearing apparel and bed clothing.

It was also reported that Walter Fleming's cottage at Gondola Point had been visited but last evening Mr. Fleming said this report as far as he knew was incorrect.

How's This?

We offer One Hundred Dollars Reward for any case of Catarrh that cannot be cured by Hall's Catarrh Cure.

F. J. CHENEY & CO., Toledo, O.

We, the undersigned, have known F. J. Cheney for the last 15 years, and believe him perfectly honorable in all business transactions and financially able to carry out any obligations made by his firm.

WALDING, KINNAN & MARVIN, Wholesale Druggists, Toledo, O.

Hall's Catarrh Cure is taken internally, acting directly upon the blood and mucous surfaces of the system. Testimonials sent free. Price 75 cents per bottle. Sold by all druggists.

Take Hall's Family Pills for constipation.

Copies of the resolution of the board of works urging arbitration of the ship laborers' wages matter were forwarded by the mayor yesterday to Hugh A. Allan, Wm. Thomson & Co. and Schofield & Co., as representing the steamship companies, and to the Longshoremen's Association.

FLORISTS.

Bulbs! Bulbs!

Just arrived from Holland: Hyacinths, Daffodils, Tulips, Narcissus, Jonquils, &c. We have also good earth for bulbs and repotting plants.

Floral Emblems of all kinds a specialty.

H. S. CRUIKSHANK,
195 Union Street.

Phone 698 A store; 698B residence.

NEW STEAMER FOR DOM. COAL

Company Arranges for Large Colliers and Passenger Steamers

GLACE BAY, Nov. 24—It is announced that in addition to the large new steamer of the Chr. Knudsen type which is to be built in England this winter by Gunnar Knudsen, owner of the Chr. Knudsen and which, like the latter vessel, is to be chartered for a period of years to the Dominion Coal Co., there is also to be constructed to the order of Brusgaard, Kjostevd & Co., of Drammen, Norway, owners of the Harald, Hermod, and other steamers well known in this port, 2 fine new steamers of seven thousand tons capacity which will be specially adapted for the carrying of coals between Cape Breton and St. Lawrence river ponts.

Both of these steamers will be launched early next spring and will be ready to sail for this port on the opening of navigation, when they will engage at once in the Dominion Coal Co.'s St. Lawrence trade, for which they will be specialy constructed.

It is learned also that the new steamer of the Chr. Knudsen type is to be somewhat larger than the latter vessel, her bows being raised five feet higher out of the water so that the heavy seas will not board her so readily, a defect noticed in the plan of the Knudsen, and the elimination of which will enable her to carry several hundred tons more of cargo without increased beam or draught.

Rumor also has it that the Dominion Coal Co. are contemplating the putting on of a new passenger steamer between Montreal and St. John's for next summer's trade in place of the Bonavista. The traffic during the past season was so great tha tthe Bonavista was altogether too small and too inconvenient, so the company has decided to place one larger and more modern in her place. The new boat will be a 14-knotter, while the passenger accommodation will compare favorably with the saloons and staterooms of ocean liners. She will be considerably larger than the Bonavista and superior in every particular.

Stott & Jury, Bowmanville, Ont., have a painless constitutional remedy for cancer and tumors, that has cured many very critical cases. Send 6 cents (stamps) for booklet if you are troubled with CANCER.

The committee of the board of trade appointed to inquire into new industries for this city has already had one meeting and will soon have another. It is understood that they are considering two or three projects, but nothing definite has been done.

A meeting of the creditors of Webber Bros. was held yesterday afternoon in the office of J. King Kelley. Nothing definite was done and the meeting was adjourned till Monday afternoon.