

BARTON AND HAMILTON.

Full Text of the Judgment of Judge Anglin

In the Water and Sewer Cases Recently Tried

With Comments and Conclusions by Township Solicitor.

Herewith is printed the full text of the judgment in the recent action between the Township of Barton, Thomas Barnes and other residents of Barton as plaintiffs, and the City of Hamilton as defendant, over the right of the people of the township to use city water and the city sewer system, under the terms of the annexation proclamation of 1903. As will be seen it is published in the form of notice from Mr. W. A. H. Duff, solicitor for the township, who makes certain comments and draws certain conclusions which are found following the judgment proper:

NOTICE.

To Residents of Barton.

The following is a copy of Mr. Justice Anglin's judgment as settled by him and signed:

In the High Court of Justice.
Hon. Mr. Justice Anglin.

The seventeenth day of December, 1908. Between

The Corporation of the Township of Barton, Thomas Barnes, J. H. Somerville and Hannah Cowell, Plaintiffs,

and
The Corporation of the City of Hamilton, Defendants.

1. This action coming on for trial on the 30th day of November, 1908, before this court at the sittings held at Hamilton for trial of actions without a jury, in presence of counsel for all parties, upon hearing the pleadings, and after the evidence adduced, this Court was pleased to direct this action to stand over for the further hearing of evidence and counsel until the first day of December, 1908. And this action being on for the further hearing of evidence on the said 1st day of December, 1908, in presence of counsel aforesaid, this Court was pleased to direct this action to stand over until the 4th day of December, 1908, and this action coming on for trial on the said 4th day of December, 1908, in presence of counsel for all parties, upon hearing the evidence adduced and what was alleged by counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment in presence of counsel aforesaid,

2. This Court doth declare that the agreement bearing date the 6th day of March, 1903, made between the Corporation of the City of Hamilton of Barton, Corporation of the City of Hamilton, referred to in the fifth paragraph of the statement of claim herein, and proclaimed by the Lieutenant-Governor of the Province of Ontario in Council, by proclamation bearing date the 13th day of March, 1903, and referred to in the 10th paragraph of the statement of claim herein is in toto valid and binding on all parties and the terms and conditions as expressed in said proclamation and that those residents of Barton who are parties to the said agreement of the 6th March, 1903, although not parties to this action, have enforceable rights thereunder.

3. This Court doth further declare that at the present time the water supply of the City of Hamilton is inadequate for five purposes and that it cannot add to the present demands upon its present service without incurring serious danger and cannot now be compelled to supply residents of Barton aforesaid with water.

4. This Court doth further declare that the agreements of 6th October and 27th October, 1902, referred to in the 10th paragraph of the statement of claim herein should be read and construed as an agreement to the effect that the Corporation of the City of Hamilton, as defendants, should supply water to the plaintiffs and pay for the same.

5. This Court doth further declare that the defendants are not entitled to require residents of Barton as a condition of furnishing them with water, under the agreement of 6th March, 1903, and proclamation of 13th March, 1903, to execute agreements containing provisions as to not opposing annexation of territory with City of Hamilton, as to relinquishing ownership of pipes, etc., laid and paid for by them.

6. This Court doth further declare that the defendants are not entitled to require the plaintiffs and other signatories and subscribers to the agreements of 6th and 27th October, 1902, in the pleadings mentioned, to execute agreements containing provisions as to not opposing annexation of territory with City of Hamilton, as to relinquishing ownership of pipes, etc., laid and paid for by them.

7. This Court doth further declare that the plaintiff, Thomas Barnes, is entitled to have the houses erected on his property in Barton connected with the sewers of the City of Hamilton, as claimed in the statement of claim in this action under and upon the terms of said agreement of 6th March, 1903, and said proclamation of 13th March, 1903, and said Court doth order and direct the defendants to afford to the plaintiff, Thomas Barnes, such sewer connection accordingly and that the defendant do within a reasonable time restore the

connection of the said Barnes which they cut off.

And this Court doth further declare that the sewer on Sherman Avenue in the City of Hamilton is not overcharged and that the sewer into which the Sherman Avenue sewer discharges is capable of carrying off any sewage and water which can be carried down by the Sherman Avenue sewer.

9. And this Court doth further order and adjudge that the defendants do pay to the plaintiffs their costs of this action forthwith after taxation.

Judgment signed the 9th day of February, 1909.

T. H. A. BEGUE, Deputy Clerk.

Settled—Sgd. F. A. J.

Ent'd in Judge's Book B, folio 280—9th February, 1909.

T. H. A. Begue, D. C.

On the trial of this action Mr. Felton, the expert witness called by the city, proved conclusively that the water supply of the City of Hamilton is totally inadequate for fire protection, and that if an extensive fire should break out at any time when the pumps were not keeping time full (which is of daily occurrence) or if one of the engines should break down or any other accident to water supply should occur the city would be absolutely without fire protection. That the Barton reservoir of 11 million gallons capacity is useless for fire protection. That the only reservoir of any avail for that purpose is the James street reservoir of capacity of 11.2 million gallons (and this is usually half empty in the afternoon).

Under these circumstances if the city should attempt to furnish water to residents of Barton lying east of the city and north of the mountain as an inducement to come into the city before establishing increased pumping capacity, the city would undoubtedly be restrained by injunction by some of the present ratepayers in Hamilton.

As soon as the city increases their pumping capacity so as to enable them with safety to furnish water to above mentioned residents of Barton under Mr. Justice Anglin's judgment are entitled to water, and can compel the city to furnish it under agreement of March, 1903.

Hamilton, 11th February, 1909.

W. A. H. DUFF, Solicitor for Township of Barton.

Earl Roberts and Lady Pole-Carew

An Incident of the Quebec Tercentenary.

It happened on the first Sunday morning of the celebration, and three days before the Prince of Wales arrived. The air was crisp and sunny, and the visitors, citizens, soldiers and sailors were bubbling with good humor that the first day had opened so auspiciously.

A regiment of Ontario infantry, in their blue uniforms, came marching down St. Jean street shortly after 10 o'clock. The mounted officers, the plumed and polished accoutrements, together with the playing band, instantly raised a tiny whirl of excitement among those on the streets. The men marched as far as the little English Church, and filed in, the windows, looking from the outside, were pyramids of blue helmets.

Around the vicinity of the doors a goodly bunch of newspaper men and camera fiends had gathered. There was evidently something more on the tapis, and the crowd that had gathered determined to learn what, and stayed on.

The crowds at Quebec were the best natured in the world, and patience was no virtue with them. On this morning, however, the wondering was all over in as many minutes for down the road came a trotting pair of boys, attached to a shining landau. Amidst a murmur of admiration from the onlookers, the carriage stopped at the curb, and the clanking chains were still.

Here, indeed, and almost his first appearance too, was little Bob, and the people began to close in. Beside him on the seat, and quite close to the Earl, was his daughter. Hats were waved immediately, and a few of the more exuberant spirits shouted, "It's Bob!"

The general bowed and smiled in the manner that so soon won the admiration of everyone in Quebec. He took off his hat going up the steps to the church, and with his graceful hand he looked at and brave. All the time the cameras were clicking merrily.

Before the black coat and gray head of Britain's field marshal had disappeared through the doorway another clanking and rattling pair came suddenly down the grade, and edged up to the walk. Some one behind said, "General Carew," and the crowd raised on the tip of excitement to see the doughty, slightly bald, and not very dignified pair.

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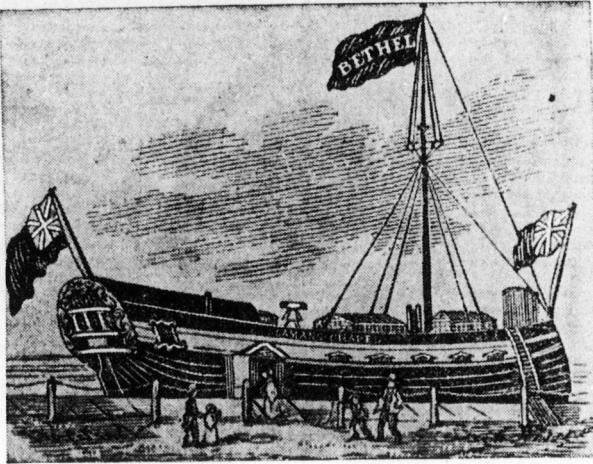
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THE FLOATING CHAPEL.

Where a Times Valued Contributor to "Quiet Hour" Preached For Many Years.



THE FLOATING CHAPEL.

The Times has much pleasure in submitting to its readers the following brief sketch by Mr. H. T. Miller, of Vineland, of the work among the marines of England. Mr. Miller is a regular and valued contributor to the Times "Quiet Hour".

The date of this issue brings to me the sixtieth anniversary of my appointment by the Port of Hull Society for the Religious Instruction of Seamen to the position of sailor's missionary. My father and grandfather were both master mariners out of the port of Great Yarmouth. My father died in the port of Rotterdam, when I was six years old, and, like many a poor boy, the sea was the only outlet for youthful energies.

I was apprenticed to a new vessel which traded up the Mediterranean, and spent six years in the vessel in various capacities, the last two voyages serving as chief officer, and the responsibilities of this position were felt to be early enough.

In the year 1848 I went to Hull, seeking employment, and a good mistress paid me some attention, and after a brief acquaintance told me that he was secretary to the Seamen's Society, and his health, and an opportunity, and these he thought possibly I could fill. After two trips up the Baltic, I coiled up my ropes and received my appointment on the day mentioned. My equipment was slender, but I had the grace of God, good health, and an opportunity, and these he thought possibly I could fill.

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At length the dock authorities ordered that the old ship be repaired, and my opinion was that she would never come back to her berth, so I held a valedictory service, and preached from the words "Of Zion it shall be said, this and that man was born in her," on the 15th Sept., 1850.

After six years of happy service I was promoted to the office of Deputation Secretary for the Shipwrecked Mariners' Society, which embraced the coast line of the British Isles.

In 1860 I was appointed minister to the new South Bethel, Liverpool, a large building, built by one benevolent man at a cost of \$40,000. Here I spent a term of eleven years, in touch with the thousands of seamen in the largest seaport in the world. But I felt a great want in my large church, I had no father's children in uniform on a Sabbath, and yet sailors' fatherless children by the hundred were in the port. I pleaded with my Bethel Committee, time and again, but with no avail. Some old sailors' fatherless children by the hundred were in the port. I pleaded with my Bethel Committee, time and again, but with no avail.

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YEAR AT THE SANATORIUM.

Numerous Cures Reported at the Mountain Institution.

Annual Meeting of the Health Association.

Addition of Free Dispensary in City Fully Justified.

If we had through the misfortune of war, or the sudden rise of pestilence, or through some awful calamity, the destruction of life that annually takes place on account of the spread of tuberculosis, we should be appalled, and mass meetings would be held in every community, and demand would be made that the most urgent measures should be adopted. It is only because we are accustomed to this waste of life, and are prone to think it is one of the dispensations of Providence, that we go about our business, little thinking of the preventive measures that are possible.

Charles E. Hughes.

The annual meeting of the Hamilton Health Association was held in the board room yesterday afternoon. After the reports, which were of a very encouraging character, had been read the officers for the ensuing year were elected. Mr. J. J. Egan, president, and in his remarks spoke of the many improvements that had been made at the Sanatorium during the past year, all of which have gone towards making it one of the most complete institutions of its kind in America