

THE SEMI-WEEKLY TELEGRAPH, ST. JOHN, N. B., WEDNESDAY, AUGUST 14, 1907

## SAYS STEEL COMPANY WANTED COAL MEN TO EXCEED THE CONTRACT

### Defence in the Big Battle at Sydney Has Been Begun

### Effort First Made to Have Court Rule That Right of Suit Lay With Trust Company and Not Steel Company, But This Fails—Counsel Claims Contract Did Not Guarantee Coal Suitable for Metallurgical Purposes.

Sydney, C. B., Aug. 9.—As was expected, the crowd in the court house this afternoon was the largest so far that has been in attendance at the Steel-Coal case trial. Every available seat was taken and a large number of people were obliged to stand. Judge Longley was not a moment behind time, but took his place on the bench precisely as the clock was striking the half hour.

H. A. Lovitt, K. C., made the opening move on behalf of the coal company, which was in the nature of a motion to enter judgment against the steel company, on the grounds that as the contract between the Steel and Coal companies has been assigned to the National Trust Company, and notice has been given of such assignment, that therefore the Steel company has no rights in the matter of bringing suit against the defendants, that the only obligation upon the coal company was under the terms of the contract; if the contract was assigned to a third party, then, of course, the Steel company would have authority to bring the action, but if the contract was assigned to a third party and notice be given of such assignment, then no one but that third party had any rights under the contract.

"For example," he said, "if A. B. makes a contract with some person and then assigns the contract to C. D., then A. B. has no authority to bring action. The contract is not the property of A. B. under the contract." Upon these grounds he moved that his lordship order judgment to be entered against the Steel company. His lordship said he could not see any reason for doing as the counsel desired. He thought that it would be a clear case of non-judgment if the Steel company was not joined as plaintiffs in the case.

Mr. Lovitt then said that he would make a motion that judgment be entered against the plaintiffs, the National Trust Company, on the same grounds as he had already urged.

His lordship thought that, while there might be something more in the last contention of counsel than in the former, still he would not at the present stage do anything in the matter.

### Coal Company Case Opened.

E. M. MacDonald then delivered the opening address on behalf of the Dominion Coal Company. He said in part: We consider that we have a perfect answer to any claim made by the National Trust Company. The Steel company have alleged that an assignment of the contract was made to the trust company, of which notice has been given. All rights of the plaintiff Steel company have been transferred to the plaintiff trust company. The assignment was made in the contract, and the rights of the Steel company cannot also be assigned to the trust company.

"The plaintiffs claim two grounds for their bringing the present suit—first, that the Coal company is in default in the amount of coal to be supplied, due to the amount which had been given the Coal company; and the Steel company also claim that the Coal company is in default in the amount of coal to be supplied, due to the amount which had been given the Coal company. We are asked to open up and develop new areas sufficient to supply that vast increase.

### Main Issue Quality of Coal.

The main issue, however, is in the quality of coal. The Coal company say that although this is not written in the bond, there is to read into the bond a guarantee of quality and suitability of the coal for the work of the Steel company. They say it is to be implied that coal suitable for metallurgical purposes was intended. By reading this into the agreement we should have been called upon to fulfil an entirely different contract than the one which had been given by the officers of both companies.

His lordship asked: "Was it not practically laid down in Jones vs. Best that when a party agreed to supply certain goods to be suitable for the purposes for which they were bought by the purchasers?"

Mr. MacDonald said he agreed entirely with the general principle laid down in that case, but when, as in this instance, the goods consisted of something that each party to the contract was equally well informed, he thought the old law maxim of "caveat emptor" applied.

The third party plea, continued the counsel, was that the Coal company said that the coal was suitable for steel making or not; we never agreed to guarantee the coal in any way excepting as laid down under the terms of the contract.

"It was a different contract altogether that the Steel people were asking us to live up to. We had to refuse to do that as we never understood that we were to guarantee the coal we supplied to be suitable for metallurgical purposes. The plaintiff company's executive officers never understood it that way. The Steel company

at the making of the contract tried to get us to give a guarantee that the coal would be suitable for metallurgical purposes, but we would not consent."

### No Going Behind the Contract.

Here the judge asked Mr. MacDonald if he intended to try to go behind the contract, and intimated to him that this could not be done, but that it would have to be interpreted just as it stood.

Mr. MacDonald said he did not intend to go behind the contract, but as the Steel company had introduced evidence to show under what circumstances the contract had been made, he was mentioning in passing matters that might show other things that had been done before the contract was signed.

Leaving out any question of implied guarantee as to the quality of the coal the counsel contended that the Coal Company had supplied coal up to the specifications laid down in the contract, which coal the Steel Company would not take. "We were not dealing," he said, "with a Steel Company that were proposing to start a plant in Wales or Pittsburgh; that all the coals are low in sulphur. The Steel Company here were dealing with coal mined in Nova Scotia, and they knew that coal from these mines had sulphur and ash in a higher percentage than Wales or Pittsburgh coal. It was not under conditions such as in England, as related by Mr. Foote, that the Steel Company were to be supplied. The Steel Company knew that the coal was of a higher grade or suitable for metallurgical purposes that they would have put this condition in writing and this contract when they knew that Nova Scotia coal might be high in sulphur.

### Quantity, He Claims, Not Quality.

"The plaintiffs seek to show," he said, "that the quality of the coal was to be suitable for their purposes, because it is stated in section 1 of the contract that the coal 'is to be used on the works of the Steel Company.' This section does not refer to the quality, but to the quantity of coal to be supplied. The Steel Company," he said, "knew that we did not guarantee the coal. Mr. Plummer knew that the Steel Company were to take all the risk and it was not until October and November 1906, that the versatile and ingenious Mr. Jones sought to add a new clause, or a new meaning to the contract. Expertise brought from England and America, have sought to attack more than half the product of the Nova Scotia mine, and it was not until the Steel Company, instead of being satisfied with that, wanted us to carry out a new contract."

Court then adjourned until 10 o'clock this morning.

### I. C. R. MACHINISTS GET THEIR INCREASES

### Matter of Passes Over the Road Still Remains Unsettled.

Moncton, N. B., Aug. 9.—Included in the monthly pay received by the I. C. R. machinists today was the increase of pay recently granted and which dates from April 1. The increase amounts to an average of three cents all round. The higher paid men received two cents an hour additional and the lower paid machinists were given four cents more. In a few cases an increase of five cents was granted.

The increase brings the highest paid machinists, outside of charge hands, up to twenty-six cents an hour, and the lowest paid men up to twenty-two and a half cents. Some of the men today drew more than \$100. The question now remaining to be settled between the machinists and the management is that of a guarantee of quality and suitability of the coal for the work of the Steel company. They say it is to be implied that coal suitable for metallurgical purposes was intended. By reading this into the agreement we should have been called upon to fulfil an entirely different contract than the one which had been given by the officers of both companies.

His lordship asked: "Was it not practically laid down in Jones vs. Best that when a party agreed to supply certain goods to be suitable for the purposes for which they were bought by the purchasers?"

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### U. S. CROPS NOT UP TO LAST YEAR'S

Washington, Aug. 9.—The crop reporting board of the bureau of statistics of the department of agriculture reports as follows:

The condition of corn on August 1, was 82.8 as compared with 80.2 last month, 83.0 August 1, 1906 and a ten year average of 83.2. Preliminary returns indicate a winter wheat crop of 409,500,000 bushels or an average of 14.6 bushels an acre as compared with 16.7 bushels last year. This preliminary estimate is subject to revision by the final estimates of the bureau next December.

The average quality of winter wheat is 80.5. The average condition of spring wheat on August 1, was 79.4, as compared with 87.2 last month, 86.9 on August 1, 1906, and a ten year average of 83.4. The average condition of the oat crop on August 1, was 75.6, as compared with 81.0 last month, 82.8 August 1, 1906, and a ten year average of 84.3.

### Col. Tolomy Nominated.

Toronto, Aug. 11.—(Special)—Stafford Murphy, teller in the Bank of Montreal at Mount Forest, was drowned while bathing at Alliston, Saturday afternoon.

## ARABS AGAIN SEEK ENTRANCE TO TOWN



LANDING PLACE AT CASABLANCA

### Situation at Casablanca Critical Yet

### Conditions as a Whole Somewhat Better—Raisuli Gives Up the Caid to Kmass Tribesmen, Who Are Negotiating With Sultan for His Release—Moorish Losses 2,000.

Tangier, Aug. 9.—The fighting at Casablanca is not at an end. Two concerted movements have been made on the French and Spanish forces, but in spite of this, the local situation would appear to be improving. The presence of a large detachment of French troops encamped in the outskirts of the town is serving to restore confidence, and a number of the European residents who sought refuge on the ships in the harbor and at the consulates are returning to their houses. Fears of a general uprising, however, have by no means subsided, and the situation is still critical.

General Druide's camp outside Casablanca was attacked twice Thursday afternoon by tribesmen, who were successfully repulsed, the warships aiding with their artillery. Thursday night the Arabs made another attempt to get into Casablanca, but were driven back. All the consulates are now heavily guarded. French and Spanish troops are now in complete possession of the town, a large portion of which is still under fire.

Both Spain and France are preparing to send more men and ships to Morocco. Germany is showing much interest in the proceedings, but there are no signs of European complications.

France and Spain are acting in complete harmony, and the powers are leaving them a free hand.

The Moorish losses in the first forty-eight hours of fighting are placed at 2,000 men. The French and Spanish forces had twelve or fifteen men killed or wounded. Eight hundred bodies of Moors and Jews, more or less decomposed, already have been removed from the native dwellings. More than twenty carloads of bodies have been picked up in the streets and carried outside the town for cremation. After the sacking of the Jewish quarter, the bodies of dead Jews were dragged around the town by natives with shouts of derision. The French commander has had many wealthy Moors arrested and placed in prison because stores of arms and ammunition were discovered in their houses.

### Moors Attack Casablanca Again.

Casablanca, Aug. 9.—The Moors last night renewed their attempt to invade Casablanca, but were repulsed with heavy loss by the fire of the warships. All the consulates here are now guarded by machine guns. The total of the Moorish losses here is estimated at 2,000.

Tangier, Aug. 9.—A dispatch received here from the Kmass tribe, with 400 armed followers presented himself last Monday at the camp of the French and Spanish forces. He had been taken prisoner by the French and Spanish forces, and was being held in a cage. He had been taken prisoner by the French and Spanish forces, and was being held in a cage. He had been taken prisoner by the French and Spanish forces, and was being held in a cage.

### SYDNEY MEN REFUSE TO BE STRIKE BREAKERS

Toronto, Aug. 9.—(Special)—Thirty-seven miners arrived at Cobalt this afternoon from Sydney (N. S.) and were met at the train by a large number of strikers besides employers. The men were surrounded by union men and soon said they would not work, which announcement was cheered.

The new arrivals said they were hired by a man who they saw the same statement in Sydney papers. They did not know the real situation till the train arrived at North Bay, where they were informed by union pickets.

### N. B. Militia Changes.

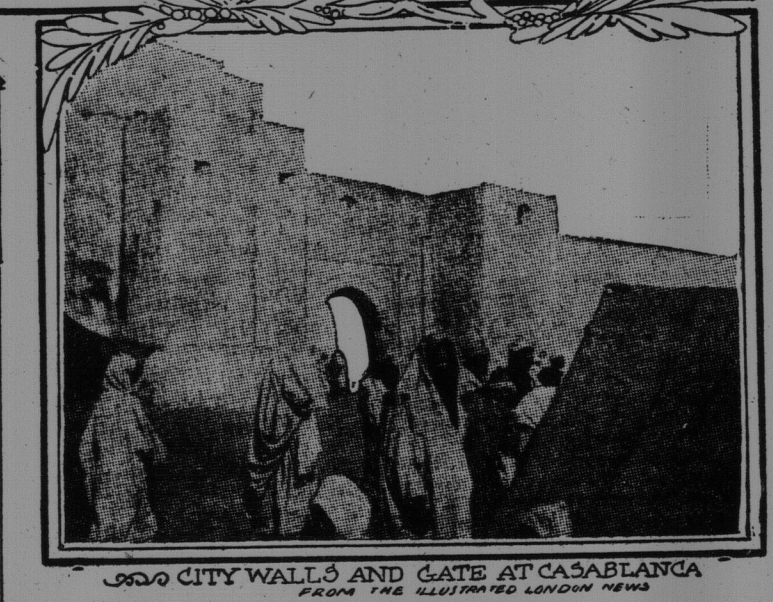
Ottawa, Ont., Aug. 9.—(Special)—Militia officers issued this morning announcing the following appointments:

1st York Regiment, Lieut. R. S. Douglas is permitted to resign his commission; to be provisional lieutenant, Richard Charles Ocho Ringman, vice E. R. Golding, retired.

4th Regiment, The Brunswick Rangers, Capt. F. Morrison is granted the brevet rank of major.

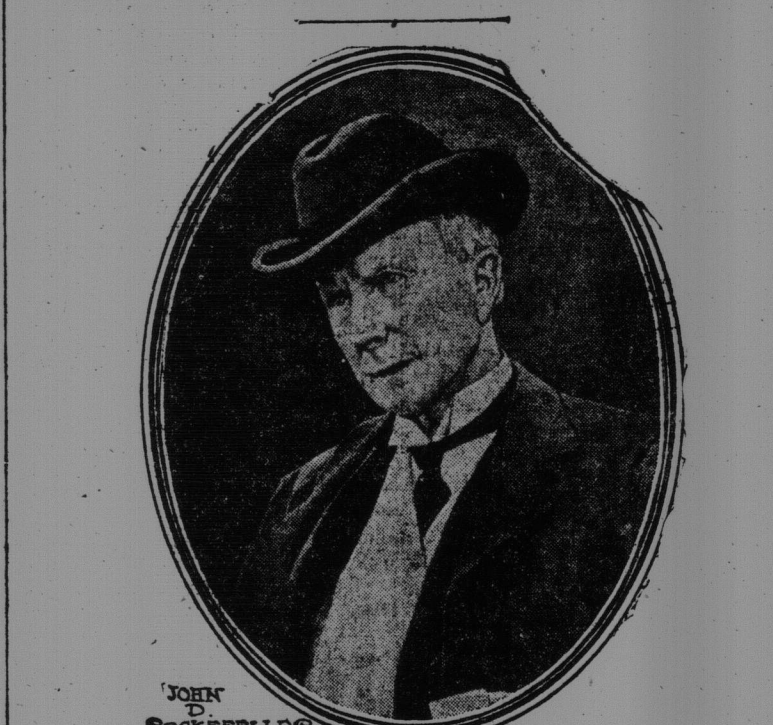
### Bank Teller Drowned.

Toronto, Aug. 11.—(Special)—Stafford Murphy, teller in the Bank of Montreal at Mount Forest, was drowned while bathing at Alliston, Saturday afternoon.



## ROCKEFELLER, LIKE ATLAS, HAS THE WORLD AS HIS BURDEN

### Discusses Wealth and Its Relation to All—"Harnessed to Cart in Which the People Ride"—Dull Times in No Kind of Business Which Does Not Cause Him Loss.



Cleveland, Ohio, Aug. 9.—John D. Rockefeller, in discussing a recent speech of Judge Grosvenor, in which the latter declared that the wealth of the country was so widely distributed that it was really in the hands of the moderately well-to-do class today, said:

"They can hardly accuse Judge Grosvenor of partiality to corporations or railroads. He has shown very well indeed how widespread is the damage resulting from the persecution, through prejudice, of the country's transportation lines. The same applies to thoughtless attacks on other lines of industry. It is worse than thoughtless. It is to say off-hand that the wealth and the industries of the country are in the hands of a few rich men, who alone will suffer."

"There is a direct loss to thousands of frugal people who have invested small savings in these enterprises and the direct effect reaches still other thousands who depend, in one way or another, upon the success of every industry. The business of the country is interwoven until it is something like the circulation of the blood in the body. An injury or an operation at one point shocks and weakens the whole."

### His Eggs All in One Basket.

Referring to the financial situation, Mr. Rockefeller remarked:

"Who is more interested in the material prosperity of this country than I am? My eggs are not all in one basket, by any means."

"A good deal of nonsense is printed every now and then about my having captured all the railroads of the country or having monopolized this or that. The truth is that I figure as an investor and stockholder rather than as a proprietor. But any depression is likely to mean a loss of values to me. It is a fact that I have lost money in the past, and I should be plain, then, that I have the best right to be anxious for good times all round. I permit, then, any harm to come to any line of business if I could help it."

"I am harnessed to a cart in which the people ride," continued Mr. Rockefeller. "Whether I like it or not, I must work for the rest. I cannot evade this responsibility if I would. But I do not complain of this. I am willing to drive my share of the load as long as I am able."

"The first step I took," he said, "meant obligating myself to working men who henceforth looked to me for employment, and investors who put in their money looked to me for results. At every step forward the load was heavier. The work-

## ST. JOHN GIRL HELD ON CHARGE OF ATTEMPTING TO MURDER HER BABE

### Police of Nahant, Mass., Arrest Girl Who Says She Is Ida Bursey

### Infant Found Wedged Between Rocks Where it Had Been Carried by the Tide—Chafed and Bruised, But Alive—Accused Girl Says She Left Little One on Beach.

Nahant, Mass., Aug. 9.—Ida Bursey, aged nineteen, of St. John (N. B.), is under arrest here charged with attempting murder of her three months' old babe here and is held without bail for the September term of the grand jury.

The child was found on Nahant beach yesterday wedged in between two rocks, where it had been borne on the tide. It showed signs of having been washed about in the surf, its body being chafed and bruised.

Otherwise it was in good condition and is apparently suffering no ill effects from its long immersion. Miss Bursey admitted to the police that she had left the child on the beach but, becoming hysterical, could give no other details.

Nahant, Aug. 9.—The finding of a baby boy about four months old on Pond beach, where it had evidently been thrown by the waves, has caused Chief of Police Larkin to make every effort to find the parents or the persons who, in the opinion of the police, sought the death of the infant.

Later tonight a partial identification was established. A negro, giving his name as George Jackson and his address as of Lynn, called at the house of Chief Larkin and said the child was one which up to last night had been at his house.

He said that about a month ago a colored woman brought the baby to be boarded. She had paid regularly since that time. About 6 o'clock last evening she called at his house, showed up the bill, and took the child away with her. He did not know either the name or address of the woman, he said, but he thought she lived in Lynn.

He volunteered to help the police find the woman, and said he would have no difficulty in identifying her.

### Wedged Between Rocks.

The child was found this morning wedged between rocks on shore off Willow road, and is now at the home of the chief, where Mrs. Larkin and a nurse are attending it. Physicians say that unless pneumonia has been contracted the child will live.

That the child is of foreign parentage the police and doctors say there is little doubt. It is of dark complexion, with blue eyes and dark hair. There was not the slightest clue on the clothing to the identity of the child or its mother.

The remarkable find was made this morning by E. E. Bates, a guest at the Tri-Mountain House, who went clamping at about 7 o'clock. He was walking along the beach when he heard faint cries, and peering between two rocks, saw a bundle which appeared to be moving. He found a baby wrapped in cloths and notified Chief Larkin.

The chief discovered that the baby was alive, and he ran all the way, fully a mile, with it to his home, where the infant was turned over to the tender care of Mrs. Larkin. Then it was found that the clothes were soaked through and the infant chilled, though its eyes moved, and after being given a warm bath and a rubbing revived and soon rewarded the woman with smiles.

It was wrapped in warm clothing and the physician says the child will probably live, although it has gone through a terrible experience and such a one as would not run away from the bus and cry that he was being killed.

### FOUND BOY ON HIS FOURTH DIVE

Boston, Aug. 9.—John F. Conroy, a swimming instructor in the boys' department of the L street baths in South Boston, after diving four times in the channel yesterday, saved Alfred Bernard, the thirteen-year-old son of Alfred H. Bernard, of 154 Third street, South Boston, when the boy was given up as drowned.

Young Bernard, with some boy friends, swam far out into the channel. The boys were performing stunts, but after a somewhat young Bernard failed to come to the surface. The boys shouted for help, and Conroy went to the rescue. He told the boys to go in, and commenced to dive. After the fourth attempt he found the unconscious boy, and the life-saving boat took them both ashore.

It took an hour and a half's steady work to revive young Bernard, and he was taken home in a very weak condition. Conroy received many congratulations and was lustily cheered by the crowd at the baths.

### CANADIANS CLAIM CUP RULES BROKEN

Rochester, N. Y., Aug. 9.—A serious disagreement has taken place between the Rochester Yacht Club and the Royal Canadian Yacht Club, whose yachts, the Seneca and Adele, respectively, were to have raced tomorrow in the first of a series of five races for the possession of the Canadian cup.

The Canadian club has made a demand for the forfeiture of the cup on the ground that the defender, the Seneca, is over her measurement and that the Rochester Yacht Club has not fulfilled the terms of the agreement in furnishing the Canadians with the plans of the Seneca. At a late hour tonight a decision was reached which will probably result in the sailing of the races.

### TENNIS TOURNAMENT AT SACKVILLE ENDS

List of the Prize Winners in the Matches.

Sackville, Aug. 9.—The last match in the New Brunswick tennis tournament here was played this afternoon when Miss Thomson and T. McEa Stewart won the mixed doubles from Mrs. J. R. Thomson and T. Malcolm McAvity, 7-5, 6-3.

The winners in the tournament are as follows:

Men's singles—T. Malcolm McAvity.

Ladies' singles—Miss Thomson.

Men's doubles—T. McEa Stewart and W. S. Allison.

Ladies' doubles—Mrs. J. R. Thomson and Miss Babette Allison.

Mixed doubles—Mrs. Thomson and T. McEa Stewart.

In the finals of the men's doubles T. Malcolm McAvity and C. F. Inches by three sets to two, and by two straight sets, as previously reported. The sets were 6-1, 6-2, 1-6, 6-2, 7-5.

A feature of the tournament was the playing of the new singles champion, T. Malcolm McAvity. Mr. McAvity was runner up last year, having been defeated in the finals only after a hard fought contest. This year his play throughout the tournament showed marked improvement and it is to his brilliant driving and smashing that his victory is chiefly due. This is the first time that a representative of the St. John Tennis Club has won the championship, and the club showed its appreciation by making him the recipient of several telegrams of congratulation.

The players express themselves as delighted at their treatment by the Sackville club, under whose auspices the tournament was held. Tea was served on the grounds every afternoon by Mrs. H. M. Wood, assisted by other ladies, and in the evenings the visitors were entertained in various ways. Mrs. H. M. Wood and Mrs. Josiah Wood gave parties in their home. At the close of the play yesterday afternoon the prizes were presented by Senator Wood.

T. McEa Stewart replied on behalf of the players and after cheers for the Sackville club the visitors left for home. Altogether the tournament, both in play of play and in management was most successful.

Second prizes went to the following:

Ladies' singles—Miss Robertson.

Ladies' doubles—Miss M. Thomson and Mrs. Clinch.

Mixed doubles—Mrs. J. Roy Thomson and Mrs. McAvity.

Gentlemen's doubles—M. McAvity and C. F. Inches.

Gentlemen's singles—T. McEa Stewart.