

BLYTH CONVICTION QUASHED

Full Court Decides by a Majority of One That the Court Had No Jurisdiction.

Judgments of the Hon. Mr. Justice Crease and Hon. Mr. Justice Walker.

The Full Court this morning by a majority of one decided that the conviction in the Blythe abduction must be quashed. Chief Justice Davis and Mr. Justice Crease delivered judgments concurring in the conviction, while Mr. Justice Walker and Mr. A. G. Smith on behalf of the crown...

The conviction in this case could have been supported if the persuasion used by the prisoner to induce the girl to leave her father's roof had taken place within this jurisdiction; that is to say, after the girl had arrived here. In Olliver's case (12 Cox C. C. 404) Baron Bramwell thus lays down the law, not as an obiter dictum as has been just stated to have been the case by the Chief Justice, but by the guidance of the jury...

(1) The taking which constituted the abduction took place in Victoria, and was not complete until the prisoner—a married man—took the girl from the warehouse to the restaurant and to the (2) That her abandonment of her father up to that time was conditional, and she was, until the taking, constructively in the possession of her father.

As to (1): Because the persuasion which was the motive power (her own consent and inclination by section 283 of the code count for nothing), which, though it commenced in Washington State, was continued and finally acted here, and, with the subsequent taking her out of such possession, constituted one complete offence, all of which occurred in British Columbia. The prisoner's conversation with her, on coming from the steamer, was, as I read it, transparently made to protect himself—making evidence against a British Columbia law, into which he had evidently to some extent been inquiring, when he fixed for her the marriageable age without consent 18, and must have done so with his own views and intentions in regard to her in his mind. If she had said "Well, I'll go back," can any one who read his letters doubt the persuasion he would then have used and the magnetic force of personal influence he would have exerted upon the young girl to carry out his purpose.

If he was in earnest in what he said (she certainly thought he was) that would show that there was still an alternative to taking her in the contemplation of both, of returning to her father's house and home; in other words, she was still constructively in her father's possession, not yet abandoned; and so she must necessarily have regarded it, when she answered "I would rather (meaning of the two) 'stay with you.'" All that had taken place between them, up to the actual taking, without the taking, would have been of no offence, and she would still have been constructively in her father's possession. It is to be remembered that, if the prisoner refused to, or had not met her, she would naturally and necessarily have returned. The prisoner's words "that it was not (then) too late," if he meant them to have any weight at all, were very strong, and went to what extent matters had gone between them, and indicate that it was from that point that he took the young girl to her ruin. I look upon the expression upon which the learned counsel for the prisoner laid so much stress: "this abominable place," as the subsequent context of the letter shows, merely as the hasty petulant utterance of a lovesick girl, whose lover had been obliged hastily to leave the neighborhood and consequently herself, in being accused of a "most horrible crime," of which she, of course, thought him innocent.

The same remark applies to her other extravagant utterances against individual members of her family, as temporary ebullitions of feeling on her account, not proofs of a settled intention of total abandonment. Had he not met her, or had he repented, or refused to carry out his engagement, it is but natural to infer that a total revulsion of feeling in her favor would have set in, and that "total abandonment" could not have been determined upon by her until the final interview at Victoria settled her fate. Her father by his own conduct showed that he did not consider "his possession and control severed," which, under R. v. (33pp. 4 Cox C. C. 408, the law gives to parents for the protection of females under 16, and that is an important element in the case. It must be remembered, too, throughout that the presumption, until rebutted, is that the same law, giving control to parents over their children, is, under Ostry vs. Fabricas, extant in Washington State, as in British Columbia.

I entirely concur in the chief justice's reasoning, and the construction he puts on the case of R. v. Mankletow, as reported in Dearsly's C. C., page 159, 22 L. J. M. C., 115, and 6 Cox C. C., page 143—and the conclusions of the judges in that case appear to me to apply exactly to the circumstances of this case. "Supposing (Baron Park's observation) the girl to have abandoned her father's possession, and the prisoner then to take her away, it would not come within the statute. But suppose she conditionally abandoned the possession of her father under the impression that the prisoner would be at a certain point to take her away, that would not be a determination of her father's possession." And so, if the prisoner had not met her, or refused to carry out the proposed purpose, she must have returned home. The letters show her disinclination (besides being in a foreign place) to enter service; her infatuation with the prisoner precluded the alternative of another lover, and the only, and easy alternative, was to return to a home only a day distant from Victoria. It has been suggested that the mere

inference that she had any such intention, and, hence, according to the decision last cited, she was not in her father's possession, at any rate, when the prisoner met her.

The father's possession remains still. Her answer to the prisoner's suggestion that she should return to her father's home, his subsequent taking her away, though strongly to be condemned, is not an offence within the meaning of the section of the criminal code under which he has been convicted. For this and the foregoing reasons, the conviction should be quashed.

GEO. A. WALKER, J. This appeal came before this court under section 443 of the criminal code, upon a case stated by the chief justice, before whom the prisoner was tried under the speedy trials act, and sentenced to five years in the penitentiary, for having on the 10th day of July, 1895, at the city of Victoria, unlawfully caused to be taken a certain unmarried girl, to wit, one Belle Rockwood, being under the age of 16 years, out of the possession and against the will of her father, Eugene Rockwood, contrary to section 283 of the criminal code.

The facts of the case are fairly, but somewhat briefly, told in the case stated, as submitted to the court; but are more fully detailed in the opinion of the chief justice, which, as well as those of my brother judges in our several conferences hereon, I have had the privilege of hearing.

Since then I have carefully examined all the authorities which have been brought forward, in elucidation of the legal points with which the question submitted to us abounds, and have come definitely to the conclusion that— (1) The taking which constituted the abduction took place in Victoria, and was not complete until the prisoner—a married man—took the girl from the warehouse to the restaurant and to the (2) That her abandonment of her father up to that time was conditional, and she was, until the taking, constructively in the possession of her father.

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distance come is a proof of abandonment; but that, I think, has no more to do with it, than going on a journey in any other direction, whether in Washington or across the line. The father's possession remains still. Her answer to the prisoner's suggestion that she should return to her father's home, his subsequent taking her away, though strongly to be condemned, is not an offence within the meaning of the section of the criminal code under which he has been convicted. For this and the foregoing reasons, the conviction should be quashed.

inquiring if her son, Arthur H. Smith, had called at the postoffice for his mail, and asking if any information could be obtained as to him. His mail remains at the postoffice unclaimed, and any one knowing the name of the postmaster or by either calling on the postmaster or writing Mrs. Patterson.

—Robert Sargent, a stonecutter employed on the Parliament buildings, died this morning of consumption at 175 Superior street. Deceased was much respected by his fellow craftsmen all over the coast, and he was a man of more than ordinary intelligence. His fellow workmen, to the number of about 150, will attend the funeral to-morrow in a body. He was an Englishman by birth and about 38 years of age. He lately returned from California, where he went in search of health.

—J. H. Falconer arrived home from the interior and the Northwest last evening, after an absence of a month. He brought with him a quantity of fruit, placed a carload in Calgary and many other smaller lots. The orders will keep the plant going for two months. At Kamloops at a meeting of the directors of the new vegetable and fruit canning company, it was decided to commence the erection of the building in December. It is planned to have everything in readiness for the next season's crop.

—A meeting of the residents of Oaklands estate was held last evening at the residence of Mr. Sabin, to consider the matter of fire protection. The committee occupied the chair, and it was decided to send a deputation, consisting of Messrs. Clark, Sabin and W. Melburn, to urge upon the fire wardens to recommend to council to erect a small building and furnish a hose reel, hose and telephone for alarm purposes. Twenty signed the roll of a volunteer fire company, conditional upon the furnishing of the apparatus by the city. It was also decided to have a petition sent to the Alderman Bragg and Chief Deasy were present at the meeting.

—The residents of Cedar Hill are much pleased at the appointment of Mr. Jabez Russell as special constable and game protector. —The funeral of the late Robert Sargent took place this afternoon from the residence, 175 Superior street. A large delegation from the Stonecutters' Union, of which deceased was a member, attended the funeral in a body. The following were the pallbearers: John Burke, Ben Hastings, B. Keirnan, E. Woods, F. Smith, D. Henderson.

—The mystery surrounding the disappearance of Richard Carter, the Comox blacksmith, in June last has been cleared up, the provincial police having received authentic news from the authorities in New Zealand. Carter was last seen in Nanaimo, where he bought a ticket for Victoria, but it is evident that instead of coming here he crossed to Vancouver and caught the Warrimoo.

—Arthur E. Fenimore, a young Englishman committed to the asylum in December last, but released after a few months, has been arrested again and will be re-examined. He has been acting suspiciously in the streets and was taken in charge by Constable Gilchrist last evening. He was quiet enough this morning, but it is feared that he will likely not be examined before Monday.

—The body of a Russian Finn named Stanislau was found on June 29th by Indian Agent Loring, of Hazelton, in a rough near the junction of Hognel-geet and Skeena rivers, Stannic Lake, in the Forks of the Quennele about the middle of June for Hazelton. He said before leaving on the journey that he intended to make his way to Alaska and then cross the Pacific to Siberia. He was evidently drowned.

—Word comes from Read Island and Kingcome Inlet that the grub worm and potato beetle have entirely ruined the vegetation that nothing is left, and the food will have to be brought in from the outside or these places abandoned until another season. It is said that as many as 50 of these worms were taken out of a single hill at Kingcome Inlet. McIvor's crop at Orster river has been eaten up by these pests.—Union News.

—Messrs. H. Carmichael, government assayer, and W. Pellew Harvey, of Vancouver, will early next month hold an examination for certificates for efficiency in assaying, in this city. The subjects for the ordinary provincial certificate are the practical assaying of gold, silver, copper, lead and iron. The honor certificate examination takes in inorganic analysis and a comprehensive written examination on the subjects as well. The certificates won by successful candidates shall be taken as prima facie evidence of efficiency in any court of law in the province.

—Among the passengers for Australia on the steamship Warrimoo yesterday, was a large number of immigrants, and quite a splurge in Victoria, a couple of years ago, finally landing in the provincial jail, where he spent some time for stealing a watch. During his incarceration his reminiscences continued to come regularly, being received by a firm in Vancouver, and consequently he had quite a "sack," as the sports would say, when his time was up. He confided to a friend in Victoria yesterday that he had decided to reform, in fact he was already respected in Vancouver, having paid all his bills, something he never thought of in Victoria.

—John Strong was convicted of being found drunk after a hearing in police court yesterday morning, but as it was the first offence he was let go. He went right out and got full again, and the police found him on View street in an advanced state of intoxication. He was fined \$5 in police court this morning and promptly paid it, probably figuring that he was getting two for one anyhow. Nellie Murray was convicted and discharged, as it was the first time she had been arrested. Katie, an Indian woman, arrested for drunkenness on Store street last evening, was convicted, but sentence will not be passed until Monday. In the meantime an effort will be made to find the person who furnished refreshments to Katie.

—The frost surprised many of our farmers last week, doing considerable damage in some sections of the district. Nob Hill and other places near the gulf coast, but generally up the Comox valley it nipped potatoes, beans, cucumbers, marrows, pumpkins, squashes, etc. The growth of the potatoes in many instances has been stopped, while the other vegetables mentioned have with many farmers been utterly ruined. The frost on the place of Mr. P. Davies registered on the 6th instant 1 1/2 degrees, on the following day 2 1/2 degrees, on the 8th 1 1/2 degrees. Frost at this time of the year in the valley is unusual, but is a more likely visitor on an exceedingly early year like this. The frost, we are told, did not affect Little River gardens, nor the farm of J. A. Halliday. The farms of Mr. George Grieve and Matt Piercy, Upper Prairie, were visited by the frost and potatoes badly injured. Milligan's potatoes have been ruined and S. F. Crawford's garden product terribly nipped.—Union News.

—There are still a number of bush fires along the line of the E. & N. railway although they are being pretty well kept down by the heavy dew at night. —Miss Susan Jeffrey died at 1 o'clock yesterday afternoon at her residence on Cormorant street, after a lingering illness. She had resided in Victoria from her childhood. The funeral will take place to-morrow at 2 o'clock.

—Mr. W. J. Geopel is at present engaged in auditing the books of J. C. Prevost, registrar of the supreme court. Mr. Prevost is the administrator of a number of estates that are or have been before the courts. Hon. D. M. Eberts, when asked about the affair this afternoon said that all he knew was that an auditor had been appointed to examine the books. —V. Sori, an Italian, will answer in police court probably on Thursday morning to a charge of assault. He and a Chinese fish peddler were both trying to buy the same lot of fish from some Indians yesterday morning and during a dispute which arose it is charged that the Chinese man struck the Chinese man was not badly hurt, but was careful not to wash off the few drops of blood drawn and this morning displayed them to Clerk Page when the information was sworn to and the summonses issued.

—The steamer City of Kingston has been laid up for repairs and the Sehome will fill her place. The latter did not come in Sunday morning and the morning made her last trip yesterday. The Sehome will come in to-morrow afternoon and will, while she is on the run, leave here at 7 o'clock every evening instead of 8:30. Her time for laying up is about the same as she may have had in schedule. The Kingston will be docked at Quartermaster Harbor and will be off the run at least a week.

—The police have received an inquiry from the police department of San Francisco as to the whereabouts of Henry W. Eagles, who resided in the Bay City in 1873. Eagles is described as a native of New York, aged about 40 years, and a bricklayer and stone-cutter by trade. He was last heard of in Victoria. Sergeant Walker, who has the matter in hand, has been inquiring among the stone-cutters, some of whom appear to be a recollects and may be able to do not know where he is now.

—Superintendent Hussey, of the provincial police, this afternoon issued an information charging Robert Blythe with having seduced Belle Rockwood. It was decided to take this course in view of the fact that the full court had reversed the decision of the chief justice on the abduction charge. When Blythe had seduced her, but it is understood that since that time she has admitted it. The preliminary examination will commence to-morrow but will have to be adjourned to secure the evidence of the girl.

—Frank Porter was arrested on Saturday for supplying liquor to Katie, an Indian woman convicted at the session of the police court that morning. Part of the evidence was heard on Saturday afternoon and the remainder this morning. Porter was convicted, and an examination of the records showed that he had been up on different charges twice before, in view of which facts Magistrate Macrae fined him \$50 and \$5 costs or three months in jail. The fine will very likely be paid. Katie was fined \$6 or 12 days in jail. She will very likely serve the 12 days instead of paying.

—R. E. Fenimore, arrested that his sanity might be inquired into by a medical board, is still at the city prison and the doctors have not yet determined what to do with him. He has been examined by Drs. George Duncan and Lang several times and they incline to the belief that he is shamming a little. When he was sent to the asylum last December, he was suffering from acute dementia and the doctors think he was released a trifle too soon. Dr. Lang told the police he would like to see Fenimore put to work and he may be that he will be sent to the provincial jail on a charge of vagrancy.

—The Sisters of the Good Shepherd of New Westminster are engaged, personally, soliciting aid from the charitable disposed towards their institution, which supports nearly 60 orphan children of all nationalities and creeds. All of these are dependent for support upon the good sisters, who by their own exertions have provided a home for them, free of charge, and they now have to beg for them. Hitherto this worthy institution, which has been in existence for many years, has been carried on without occasion for asking public subscriptions, but the orphanage has recently been visited by a pestilence, as many as 24 of the little folk being prostrated by the malady. There have been no casualties to report.

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and all are again enjoying good health. The outbreak was, however, occasioned much expense. It must be remembered that were it not for the sisters taking charge of these little waifs, the public would have to bear the burden by supporting additional asylums to those now supported by public charity. It is only when necessity impels that the orphans are so much as heard of. A generous public will be sure to willingly respond to the appeal.

—By mutual arrangement the place of meeting for the travelling dairy has been changed from St. Luke's hall, Cedar Hill, to Colquitz Hall, Lake. It is considered on all sides that the change is a judicious one inasmuch as Colquitz Hall is more centrally located as regards Victoria, Esquimalt, Highland and Lake districts besides being better adapted for meetings of this description, being provided with conveniences for meals so that those attending will not be under the necessity of returning home during the day. Since the matter has been mutually arranged Mr. J. R. Anderson, deputy minister of agriculture, gladly sanctions the change, believing it to be desirable from every point of view.

—John C. Spooner, ex-United States Senator from Wisconsin, is a guest at the Diarid, Boston, being prominent in political circles, ex-Senator Spooner is a well known lawyer. He came west to take part in the case just closed before the United States circuit court at Seattle to oust the receivers of the N. P. railway, Thomas P. Oakes, Henry C. Rouse and Henry G. Payne. The application for the removal of the receivers was made by Mr. Spooner on behalf of Clayton Ives, president of the Northern Pacific. Mr. Spooner is accompanied by his wife and son. They leave in the morning for the east.

—Vice-President Stevenson and family left for the east on Sunday in the private car of Sir William Van Horne. They came out from the east over the C. P. E. in the car, which was very kindly placed at their disposal by the president of the road, but will not remain here, they are the wonderful scenery and the excellent service that they decided to go back the same way. They will go through to Montreal and go south from there. The vice-president and all his family enjoyed the trip but were much impressed by the beauties of Alaska, and British Columbia excited their wonder and admiration, and what pleases them all the more, Miss Stevenson, for whose health they were travelling, goes home much improved.

LAW INTELLIGENCE. Yorkshire Guarantee Association Assessment Appeal Case. The Full Court this morning delivered their judgment in re the Yorkshire Guarantee Company's assessment appeal from the judgment of the Court of Revision at Vancouver, confirming the assessment on personal property comprised in mortgages owned by the company. The appeal was based on two grounds, one of which was that the tax is unconstitutional, inasmuch as it was indirect as it was imposed on the mortgage, but in reality paid by the mortgagor. The court was of the unanimous opinion that it was direct taxation and constitutional—the fact that it was paid by the mortgagor did not affect the case. The second ground was that the mortgages held in the name of the company do not correctly represent the personal property of the company, because all the property is their paid up capital, which only amounts to one-eighth of the money which they invest—the remaining seven-eighths is got up on the security of the one-eighth of the mortgages in which the one-eighth is invested. The court, composed of Crease, McCreight, and Drake, J. A. Halliday (Drake J. dissenting) that only one-eighth is to be taxed, and that the company is entitled to deduct the amount the company owes in England on account of the mortgages. E. P. Davis, Q. C., argued the company's case and Attorney General Eberts, assisted by Deputy Attorney Smith that of the province. It is likely that the province will carry the case to the Privy Council.

HOW THE RIOTS HAPPENED. A Chinese Paper Describes Some Methods of Making Converts. Chicago, Aug. 26.—Sam Moy, a prominent merchant of this city, has received a copy of a Chinese newspaper, published by Ewo Chew, which gives four columns of space to an account of an attack upon the English and American missionaries in June. The article shows that the attack upon the mission houses arose in the first instance from motives of robbery, and secondly by a revelation of corrupt practices on the part of some of the hangers on of the mission stations. There are only two ways of getting converts in China. One is to hire them and the other is to teach them. Good missionaries, while good people themselves, don't know how bad their native staff is. An interpreter sees a child say 10 or 12 years old, finds out that her parents are poor and careless people, who are not likely to make much fuss at her disappearance. He coaxes the child to visit the mission, and force is often used. The missionary is told that the child wishes to become a Christian, that she wants to live in the mission and be instructed, or some other invention which seems plausible to the ignorance and zeal of the missionary, and something is added to show the importance of guarding the new converts from recapture by heathen relatives who, the missionary is assured would prevent the perversion of the child's faith. As the missionary cannot talk to the child, he trusts to his interpreter. The latter practically gets the girl, she is a slave for the time being and induces the missionary to keep her safely until he can sell her and get money for her. The burning of the missions freed some girls who told stories of their kidnappings and the confinement and indignities to which they were subjected. The stories spread and aroused the ferocity of the Chinese. This started the great riot, and the mob attacked missionaries and interpreters indiscriminately. Governor Du Kien sent 1,000 soldiers up to Min river to quell the riot and restore order, but the band joined the rabble and whipped the soldiers. The latter lost half their number and were treated. At the time the paper was printed, it was said the whole section was in control of the mob.

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