Weekly Colonist

FRIDAY, JULY 1st, 1887.

NEW WARD SCHOOL.

The government having selected a site for the new ward school, the work of building will, we understand, be commenced without delay. The site comprises three lots, forming a square, on the corner of Chambers and Stelly streets, and is admirably situated for the purpose. This will constitute the fourth ward school in our city.

GRATIFYING IMPROVEMENT.

We understand that the Minister of Finance has succeeded in realizing what is equivalent to par for the $1,000,000 loan, bearing interest at the rate of four and a half per cent. This result would certainly indicate a gratifying improvement in the credit of the province. Ten years ago the three-quarters of a million loan did not bring par, notwithstanding that it bore six per cent. interest.

HURRAH FOR CARIBOO!

Old Cariboo is unmistakably and most decidedly looking up. Writing under date of June 16th, the gold commissioner gives a very encouraging account. On the Island Mountain active work is going on, fifty men being employed. The B.C. M.&M. company have struck the "Bonanza Lode" in their tunnel, on the "American" location. A splendid lode, from which gold can be pounded, has just been found in the old "Black Jack" claim, about five feet in width. Recording is going on briskly and locations are being taken up every day. The season is favorable for hydraulic mining and every person is now busy. There is more life to be seen in old Cariboo now than for many years.

HUDSON'S BAY COMPANY.

The annual meeting of the Hudson's Bay company was held in London on Tuesday last, when the governor and committee submitted the usual report to the proprietors, together with the accounts for the year ending May 31st, 1886. In his report the governor states that the fur trade and general trade profits for the year in question amounted to £609,800, of which the sum of $155,500 is payable to the officers of the company under the terms of the deed poll. The net profits for the year amount to $428,875, to which has to be added $160,615 brought forward from the previous year, making a total undivided balance of $589,490, out of which a dividend of $4.25 per share is recommended, leaving the sum of $164,490 to be carried forward to the next account. The company's claims on the Dominion government for losses sustained during the recent rebellion in the Northwest are expected to be fully settled at an early date. The governor adds that satisfactory progress is being made in improving the mode of conducting the company's trade under the altered circumstances of the country, and that the prospects of the gradual realization of the company's landed property are regarded as encouraging.

UNFAIR TREATMENT.

It cannot be denied that British Columbia has been scurvily treated by the Dominion government during the past session of the house. In the hour of their need we sent them a solid delegation of six members pledged to lend the administration a general support. In one of the divisions in the commons the government had only a majority of 19, so that it must be conceded the support of our representatives is an important factor in their retention in power, the more especially since Manitoba is fighting the bitter question of disallowance which threatens to become a burning one. Our young province is just entering upon the threshold of a vigorous manhood which, however, needs adventitious aids to make it successful. The country must, through the medium of railroads, be opened up for settlement, easy access must be had to our mines and a disposition shown on the part of the federal parliament to advance in so far as it can, the interests of this promising province. We bolstered ourselves up with the fond hope that in recognition, at least, of our loyalty to Sir John Macdonald and the party of which he is the head, some scant measure of justice, hitherto denied, would be meted out to us. What do we find? Our great provincial demand was a subsidy for the Shuswap & Okanagon railway, a road only some fifty miles in length which would, if built, open up our vast interior resources of agriculture and lumbering and mining, and have done incalculable service to the entire province. This road has been most favorably reported on and promises to be a great feeder to the Canadian Pacific railway—this latter the strongest argument one would suppose, judging from recent results, to open the purse strings of the government. There is not a cent in the estimates in aid of this much needed work, notwithstanding the entreaties of our representatives and the efforts of our citizens who have a stake in the future of the province; nothing for British Columbia railways but $569,600 for Ontario; $1,150,800 for disaffected Quebec; $273,200 for New Brunswick and $195,200 for the province of repeal, Nova Scotia. A pretty showing truly! Here is a province which has always proved loyal to the government and which cannot secure a paltry subsidy for an urgently needed railroad! What is there on the estimates for British Columbia this year? Absolutely nothing. The work of improving Victoria Harbor has gone over for another year, when Sir Hector will "bob up serenely" with another excuse as patent as that which he, a few days ago, was pleased to deliver. It is all very well for writers in the press to talk about us "helping ourselves"—we have been doing that too long. We find the little Island of Prince Edward, which we could stow away in one of our back yards receiving an additional subsidy of $20,000 a year, presumably because she sent six men to *oppose* the government; we find that Quebec has to be kept in the traces by being well fed with pap, while this province which has never failed in its allegiance to Sir John goes empty-handed. And this is gratitude! We have no fault to find with our representatives; they have done all that men could, and we have no doubt they will return home disgusted at the apathy displayed by the administration in its dealings with this province. A fog horn at Plumper's Pass, the pulling of several snags out of our rivers, the expenditure of a few thousand dollars, will not blind us to the fact that we have received shabby treatment. A subsidy should have been granted to the Shuswap & Okanagon railway; an appropriation should have been placed on the estimates for Victoria Harbor, and many necessary improvements should have been made on the island, on the mainland and in the interior. The government shows a great lack of wisdom, not to say of common gratitude, in its dealings with this long-neglected province, and may wake up some day to find that it has reaped where it has sown.

COLONIAL SECURITIES.

The latest of a series of articles published in the London *Economist*, on the subject of the growth of the British colonies, deals with British investments in colonial securities. It is impossible, of course, to give anything but an approximate estimate of the amount of such investments, but the *Economist* has in the present instance extended its elaborate calculations made in 1883. At that time it estimated the total investments of British capital in colonial securities at £620,000,000, upon which the mother country drew £30,600,000 in interest, or nearly five per cent. upon the entire amount. Of the total thus invested about £262,000,000 was estimated to be owing by colonial governments to the mother country, which figure is now extended to £331,000,000. Of the increase no less than £45,000,000 has been borrowed by Australasia.

From a table classifying the investments according to their character, and dividing them among the colonies in which they have been made, we take the following interesting figures: British investments on government loans amount in Australasia to £150,000,000, drawing £6,311,000 interest, and in Canada to £35,000,000, drawing £1,400,000 interest. Investments on railway, provincial, city, harbor, gas securities, etc., amount in Australasia to £11,000,000, drawing £566,000 interest, and in Canada to £65,000,000, drawing £2,275,000 interest. Investments on banking, mortgage and agency companies amount in Australasia to £60,000,000, drawing £4,200,000 interest, and in Canada to £10,000,000, drawing £600,000 interest. Other investments in Australasia are estimated at £90,000,000, drawing £2,850,000 interest, and in Canada at £25,000,000, drawing £1,000,000 interest. The total for Australasia, therefore, is £281,000,000, drawing £13,927,000 interest, and for Canada £135,000,000, drawing £5,275,000 interest. The grand total for all the colonies is £744,000,000, drawing £34,709,000 interest. Of the increase since 1883 Australasia has taken nearly two-thirds. In India the annual payment of interest to home investors is only about 6d. per head; in Canada it is calculated to be £1 2s. 6d. per head; in New South Wales about £3 14s., and in New Zealand about £5 per head. The grand total given above is enormous, and according to the *Economist*, exceeds the mother country's foreign investments. At the same time it is not complete, for it does not show the entire amount of joint stock capital embarked in colonial enterprise. It would not be surprising, we are told, to learn that the aggregate of such securities raised in, or for, the colonies, reached £1,000,000,000. The total given above, however, is the main external liability of the colonies. There are in addition large amounts of home capital sunk in private colonial investments of which no estimate is attempted. While the amount has largely increased since 1883, the annual rate of interest has sunk from 4¾ to 4 per cent. This reduction is due in part to improved credit, and in part to depression of trade. In another article the *Economist* proposes to contrast these liabilities with the assets of the colonies.

DOMINION DAY.

Canada is growing to be a big girl now. Next year she will have reached womanhood. On the 1st of July, 1888, she will have completed her twenty-first year as a Dominion. This is the heyday of life—maidenhood lies on one side of the great stream and middle age on the other. It is the very prime of life when only pleasant things have been left behind and the brightest hopes are before. Canada, our country, is now passing through this *dolce far niente* existence and we, who are actors on the scene, would not have it otherwise. She will be a woman soon and how has she spent her youth? Has she been sowing her wild oats or has she been a demure and model maiden? Well, she has seen sunshine and clouds, the bitter and the sweet, and is moving steadily forward to the goal of a national existence. Canada has, since Confederation became an accomplished fact on the first day of July, 1867, made rapid progress. Her public works are on a scale commensurate with her greatness. No country in the world can show a more gigantic enterprise than the great transcontinental railway which binds the scattered provinces into one Dominion. We can show as a result of our youth the inception and completion in each of the provinces of the Dominion of gigantic works which would do credit to a great nation rather than to an isolated dependency of the Crown. The material progress has been very rapid and in the pursuits of agriculture, of manufacturing, of shipping, in short all that goes to make up a country, we stand comparatively peerless. Intellectually we have made vast strides. Learning and refinement have cast their influence over our lives, blessed by the ever present spirit of an enlightened and tolerant Christianity. While that holiest of things—the bright form of religion—is causing rage and bloodshed among the nations across the sea, here we live side by side in peace and concord, content each to walk in his own way. Peace and plenty are the portion of most of the people, and that it cannot be said of all is in a large measure due to themselves. No *effete* dynasties crush out homely joys and cheerful hearths with the iron heel of tyranny, but here free speech holds sway and public opinion is a power in the land, untrammelled by any exactions. Throughout the Dominion to-day the sun has risen upon countless happy homes where the natal day of confederated Canada will be worthily celebrated. Only of late years have the illimitable resources of this Canada of ours been fully realized. The magnificent country to our immediate west has been the creation, so to speak, of a few years. Manitoba and the Northwest Territories contain homes in abundance for the downtrodden sons of toil who eke out a miserable existence in the great cities of the old country. There on the rolling plains where the hand of God has left its imprint upon flower and blade, where the air is free and sweet, where all Nature smiles a welcome to the earnest seeker, will there be in time the resting place of many peoples, whose duty it will be to assist in developing the treasures which lie within their easy reach. The youngest born of the five sisters, British Columbia, is not the least buxom and rosy and luxuriant. She has within a few years made vast strides and affords, perhaps, the most inviting field in Canada to-day for honest and well-directed effort. Her beauty, her resources, her wonderful climate, have been too often delightfully expatiated on to make a repetition necessary; suffice it to say, that she is the baby of the flock, clings tenderly to the Mother's knee, and in conjunction with her sisters glories in the land we call our own. That they may go down the years in the same loving companionship, each striving to do her part in laying sound and sure the foundations of good government, of public weal and disinterested patriotism is the aspiration of all who boast themselves her sons.

Canada the Star and Dominion,
That shines in the beautiful West,
When the sun, in a robe of vermillion,
Sinks sweetly and softly to rest;
The land of a great federation,
Which time will never unties,
Till it swells to a glorious nation,
With a chatter that nothing can buy.

The gem in the crown of Britannia,
The fairest it ever shall be;
A cross in the glorious banner
That floats upon every sea.
The pride of our fathers we'l ever
Defend and claim as our own;
And we know that old England will never
Her Canadian daughter disown.

JUNE GRADUATES.

The month just ended was the graduates' month *par excellence*. The "leafy month of June," by general consent, has been adjudged the fitting time for young men and young women to stride out upon the stage of life and elect their avocation and begin their real education. The season is appropriate, for when does a pretty girl look prettier than in the light of a June day, when she airs all her little graces, enfolded in the touch of soft flowing white fabrics and the clasp of the most fragrant of flowers. She is even captivating when she, blushing, reads her last essay so full of school girl sentiment and delicious plagiarisms from Owen Meredith, Swinburne and George Eliot. The "sweet girl graduate" is not the type, for all girl graduates are neither sweet nor pretty. Neither are they all sentimental little things, fond of cherishing girlish delusions. There are girls with a purpose as there are boys with a purpose; but, the world over, these in every graduating class are in the minority. The majority of people don't have a purpose until they are driven by stress of circumstances to have one. That is the fault of their training. The boy or girl who came out of the glamor of commencement day, from high school or college, without a decidedly definite purpose in life is apt to drift about in a helpless and unsatisfactory manner for some years. Commencement day means the commencement of serious and purposeful living. The wreaths and garlands of the seductive occasion were but foreshadowings of the real victor's wreath, at the end of the stadium. They were symbols pregnant with meaning, and, nor boy nor girl, should be deluded into the belief that they act mechanically, after the *opus operatum* theory, upon one's destiny. Still, there were sweet triumphs on commencement day. "Gather ye rosebuds while ye may" was not sung in vain. The human race naturally runs after rosebuds, and a deal of valuable time is wasted in the gathering, and so the injunction is not altogether a sound or profitable one. Rather gather the rosebuds of your school days and commencement days; press them; label them; put them away as reminiscences. Life is a process of action, and, if the action be well directed, there is little time for further rosebud gathering. Nevertheless it was lawful to sip all the sweets of commencement day, and one would wish for a continuous glad commencement day throughout life.

THE islands of the Pacific ocean will never cease to be the source of wonder and amazement. No one can tell their number, and there is reason to believe that this number, whatever it may be, is constantly changing. A short time since two large islands were discovered in the South Pacific, and, according to the London *Times*, another has just been found less than a hundred miles from the northern coast of New Guinea. This island is described as three miles long and some two hundred feet above the sea level. It has been named Allison island. It is said to have an abundance of timber and the richest small vegetation. This locality has become famous for the discovery of new islands. Within a few years several considerable extents of fertile and inhabited land have been found not more three hundred miles from New Guinea, and as there is still plenty of room on the great ocean which has not been thoroughly explored, it is probable that many more will yet be discovered. To one who has not sailed upon its broad extent the best maps of the Pacific are very unsatisfactory. The extent of water surface is so vast that the largest map will make all the islands seem much nearer together than is really the case. In our geographies the Pacific appears to be fairly studded with islands. But in most of these regions a vessel might sail for days and weeks without once coming in sight of land. A gentleman who has recently done considerable cruising in the south seas believes that there are still many islands which have never been visited by white men. Captains of trading vessels often come across hitherto unknown islands, and establish a trade with the inhabitants without letting the matter become generally known. When the Woodlark islands were recently explored and mapped out, it became evident that a certain Australian firm knew all about them, and while driving a profitable trade with their people, had succeeded in keeping the discovery a profound secret.

BUILDING railroads in China is an old theme. Circumstantial details have appeared from time to time with accounts of concessions obtained and with predictions as to the time when that country would be covered with a network of rails. The latest account is given in the London *Colliery Guardian*, based on news from Pekin which declares positively that China is at last to have railways. The report is that the Chinese court has advised the empress to order the construction of a railroad from Kaiping to Takoo, the port of Tientsin, and a line from Takoo to Tientsin. It is considered probable that the coal mines in the vicinity of Pekin will be connected with the city by rail, thus permitting the cost of coal to be cheapened. The building of these roads, and possibly others, is looked upon by British iron and steel manufacturers as likely to open a large field for British goods of this character.

SOME facts in regard to a telephone which is being tried in Europe are given in the London *Times*. The description shows the new telephone to have some advantages over those generally used. It is of very small size and in appearance resembles as nearly as can be described a shield covering the button of an electric bell. Merely touching it summons some one on the other end of the wire. In order to converse, the shield, which forms the receiver and is attached to the instrument by a wire of any desired length, is removed from the wall and applied to the ear. The part exposed is a disc of carbon, and any sound uttered at or near it is plainly conveyed to the receiver. The persons conversing may each be one yard away from the instrument and yet make their voices plainly heard, while the battery power needed is no greater than that used in working electric bells. The cost is small, and application universal. This telephone was used in transmitting messages from Brussels to Paris last March. It is said that the forts about Paris are connected with each other by this telephone.

JUBILEE year is to be marked by a new coinage with the effigy o fthe Queen, not as she was when she sat at Winterhalter, nor as she is represented in the present Royal Academy, receiving the news at early dawn of her accession, but as she is to-day in her sixty-seventh year, with the marks that time have stamped on the royal face. There is a new double sovereign preserving the capital St. George and the Dragon of Pistrucci. There is a double florin or dollar, a weighty piece and rival to the old "Crown." On this coin is the Queen's head, by the sculptor, Mr. Boehm. The Queen wears a veil, edged in front with a conspicuous bordering, a jewel circlet on her throat, and she is decorated with the Ribband and Star of the Garter. On the very top of her head is placed the crown, which simply rests upon the head, and Mr. Boehm has presented the symbol of authority in such an unlucky fashion that if the wearer moves it must inevitably fall. The reverse of this four shilling piece resembles with some differences that of the florin. The sixpence, the shilling, and the half-crown bear a family likeness to those now current, except that the usual wreath is replaced by a more elaborate design.

In addition to the general one of aversion to being mixed up in the party rivalries, there were particular reasons for General Saussier's refusal to take office in the Rouvier government. It is explained on behalf of the military governor of Paris that he is very far from approving of the whole of General Boulanger's military law, and, therefore, had he been minister of war, the chamber would have to adjourn the discussion of that law. Otherwise, a rupture would have straightway followed, because Saussier is not an opportunist and cannot accommodate himself to proposals which he believes to be bad for the army and, therefore, for the country. The governor is also reported to be very much against the mobilization scheme. M. Barbe, the new minister of agriculture in France, is altogether an exception to the rule. First, because of his speedy elevation to office, it being less than two years since he first entered the chamber. Second, he has never once spoken in parliament; nor has there ever been a political man of fewer words out of it. Third, though a silent man, he has won fame by manufacturing a commodity that makes as much noise in the world as most things—that is dynamite. M. Barbe's business is that of a manufacturer of dynamite.

WALKEM VS. HIGGINS.

(Before Str M. B. Begbie, C. J.)

This was a case of alleged libel by the defendant through publishing and commenting on certain evidence said to have been given in the case of McKenna vs. McNamee at the Carleton county court, held at Ottawa in November, 1885.

Mr. Drake, Q. C., and Mr. Helmcken, appeared for the plaintiff; Mr. Theo. Davie, Q. C., and Mr. Bodwell, for the defendant.

After seven had been challenged the following jury was alloted to try the case: Rout Harvey, foreman; Jas. A. Lawson, James C. Mann, Wm. Bullen, Francis Page, Robt. Lettice and John Teague.

Mr. Drake in opening the case for the plaintiff read the statement of claim, which is substantially as follows:

The statement of claim as generalized sets forth that the plaintiff was premier, chief commissioner of lands and works, attorney-general and a member of the executive council, from June 26, 1878, to June 12th, 1882, being sworn to fulfil faithfully the duties pertaining to those offices; that since June 12th, 1882, he has been a judge of the supreme court; that as chief commissioner he contracted on February 24th, 1880, with McNamee & Co., to construct the graving dock at Esquimalt in consideration of $350,997.20, or such other sum as might be due them, under specifications referred to in the indenture made at the time; that in June, 1880, plaintiff directed the contractors to commence the work, but McNamee said to allow the work to be deferred until the following spring, which was refused; that thereupon McNamee arranged with Robertson, Huntington & Nicholson for the immediate prosecution of the work by them as additional partners of the firm of McNamee & Co., but plaintiff declined to recognize such additional partners though not objecting to this arrangement as between the parties themselves; that subsequently for greater security and with a view to placing the construction of the dock within the terms of the Dominion and provincial legislation which had taken place, a further contract dated October 4th, 1880, was entered into with McNamee & Co., by which the former contract was cancelled and that subject to certain conditions the dock should be constructed for the before mentioned sum, etc., and besides other security for the fulfilment of the contract $10,000 was deposited with the government; that before the execution of this last contract tenders were submitted and that of McNamee & Co. accepted, being much the lowest; that no other contracts were subsequently made by the plaintiff; that the last contract remained in force until August, 1883, when the dock was handed over to the Dominion for completion; that under the contract of October 4, 1880, large sums of money were paid the contractors for work done with the plaintiff's official sanction; that the defendant was at the time the action was brought and for six years before proprietor of the "DAILY EVENING COLONIST," that he published on November 20th, 1885, the following libellous and defamatory words: "In the sworn evidence of Mr. McNamee, defendant in the suit of McKenna vs. McNamee, lately tried at Ottawa, the following passage occurs: 'Six of them were in partnership in the drydock contract out in British Columbia, one of whom was the premier of the province.' The premier of the province at the time referred to was Hon. Mr. Walkem, now a judge of the supreme court. Mr. Walkem's career on the bench has been above reproach. His course has been such as to win for him the admiration of many of his old political enemies. But he owes it to himself to refute this charge. We feel sure that Mr. McNamee must be laboring under a mistake. If that the statement been made off the stand it would have been scouted as untrue; but having been made under the sanctity of an oath, it cannot be treated lightly nor allowed to pass unheeded;" that these words are a false, unfair, garbled, and incomplete report of the proceedings at the McKenna vs. McNamee trial; that by reason of the premises the personal, as well as judicial character and reputation of the plaintiff have been exposed to contempt and odium and greatly injured, that his character and reputation have been exposed to contempt and odium and greatly injured, and he claims $10,000 damages.

The first point counsel would call their attention to was the law relating to libel, which consisted in anything which would be disparaging to the character of another. The printing of any evidence given in court was privileged. But this had not been contended in the case. It might also be contended that the charge was true, but this was not done. It was contended that the matter was copied from another paper, but this was not the case. The libel consisted in the publication of an article in THE COLONIST newspaper, in which no other paper was mentioned. Counsel read the article in question and his lordship's remarks prejudicial to the defendant in this case, he could not see how a judge of the Supreme court should be treated different from any other man when he brought a case in court, that he considered his lordship's intimation that defendant was getting favors on account of his adversary being a judge of the supreme court which otherwise he would not get, was so prejudicial to the case as to be of itself a cause of moving against the trial.

His Lordship—My remarks are in the interest of justice, and I consider it no disgrace to differ with you.

Mr. Davie offered as evidence a summons which had been offered to a judge in chambers to amend the pleadings so as to make any reasonable statement favorable to the plaintiff.

Mr. Walkem—I saw this summons and on advice of Mr. Drake, my counsel, I concluded that it came before the chief justice simply to throw dirt at me. It was to put in a statement made against me by McNamee, which is false. It was a summons to place this language in the pleadings. I could not consent to such a set of libellous statements.

Mr. Davie—"Two things are offered in this summons, either to publish the evidence, or to make any statement of facts you might wish."

His Lordship—What's the use of introducing it now? It was no apology.

Mr. Davie—I desire to show that there was an offer to publish a satisfactory statement of McNamee's evidence which had been produced in the *Evening Post* and afterward reproduced by the defendant.

Mr. Walkem—It bears no such construction.

Mr. Davie (to Mr. Walkem)—Will you read it; it bears no other construction; he offered to publish anything that was satisfactory to you.

Mr. Walkem—He did not publish it.

Mr. Davie (to the judge)—The document speaks for itself; I offer this, your lordship, to counteract the statement of counsel for the plaintiff that no retraction had been offered.

His lordship ruled that the summons was inadmissable. Mr. Davie took exception to the ruling.

Mr. Walkem—The statement about a political bargain I deny. McNamee came to me and wanted to change the stone used on the graving dock, as he was not satisfied with the Newcastle stones. He said that a scratch of the pen would fix it. Afterward he came to me and asked me how I stood with my constituents in the Esquimalt district, adding that he could secure my election, immediately following with a request to change that stone. I said no I would not, as the engineer had condemned it; besides, from my knowledge of his experience with stones, the only stones he was familiar with were paving stones at elections. To Mr. Davie—I wrote a letter on the 29th of May to McNamee, warning him against Mitchell's evidence. I recognize the letter now produced. I was given to understand that the man R. P. Mitchell, who was out here was prepared to sweat to what McNamee had stated. I was presiding judge of the Lytton assizes in 1884 and 1885. [Mr. Davie submitted a copy of THE COLONIST of Oct. 26th containing a complimentary address to plaintiff from the grand jury, also THE COLONIST of Nov. 8th, 1885, twelve days before the alleged libel, containing a complimentary notice of the sessional papers, or by telegraphing to Mr. McNamee, as to whether there was any truth in the published evidence, and negligence to make any retraction or reparation was surely an aggravation to the libel. The mere fact that he had copied it from another did not at all free him from the libel. Counsel quoted several authorities in libel, showing what field was open to journalistic criticism.

The evidence taken in the commission of 28th July, 1886, showing Mr. McNamee's evidence taken in December of same year, was read. This was given at Ottawa, and consisted of Mr. McNamee's answers to questions concerning the publication of the evidence in THE COLONIST attributed to him, which he pronounced untruthful, and garbled also that in the *Evening Post*. Mr. McNamee also repeated the conversation he had had with Mr. Higgins at the Windsor Hotel in Montreal.

The interrogatories administered by the plaintiff and the defendants answers thereto were also read.

The first witness called for the prosecution was

W. S. Gore, sworn—Stated that he had charge of the documents in the lands and works department, and produced the contract of the 24th of February, 1880, between McNamee, McNish and others; also one of April 4th, which were the only McNamee contracts in the office.

D. M. Eberts, sworn—Produced the partnership agreement of the 23rd of August, 1880, between McNamee and others.

Mr. Justice Walkem, sworn, in answer to examination by Mr. Drake, said: I am justice of the supreme court of British Columbia. Prior to 1882 I held several offices under the government; I was president of the executive council, premier and chief commissioner of lands and works; on the 24th of February, 1880, I entered into a contract with McNamee, McNish and Jas. Wright, which was signed by myself as chief commissioner of lands and works; the contract was for the construction of the Esquimalt graving dock; I entered into the contract with them as they submitted the lowest tender, which was about $100,000 lower than any of the others. [Mr. Walkem here read the various tenders to the court to substantiate his statement.] He then continued: As chief commissioner of lands and works in June, 1880, I directed the contractors to proceed with the construction of the dock by formal notice. There followed some correspondence between the lands and works office and McNamee at the time, who after repeated remonstrances to the legislature, came from Montreal and made an application for delay. After Mr. McNamee had been here some time he arranged to take in the local partners, whom I refused to recognize, as it would discharge the bondsmen in Montreal. Mr. McNamee submitted the matter to Mr. Robson, who approved of it as executive of the Dominion Government for the purpose of bringing it under that legislation, I had no interest whatever in the contract, I saw the DAILY COLONIST of the 20th Nov. 1885, which I have before me. It is the identical copy as I happened to notice at the time a pencil mark in one corner, and so identify it. I sent a telegram to McNamee calling attention to the publication of his statements. A month afterward, the 10th of December, 1885, I received the following telegram, which he read in court, denying the statements and signed by McNamee.

Mr. Walkem then read a letter which he had written on the 24th of November to McNamee, denying all the allegations in the newspapers, which he wrote after he saw THE COLONIST. Continuing his evidence he said: "I received a letter from Mr. McNamee on the 16th of December denying that he made a statement that I had any pecuniary interest in the graving dock."

His lordship made the point that the quarrels between Mr. McNamee and Mr. Walkem were not relevant to the question at issue.

Mr. Walkem—"I was not on friendly terms with Mr. Higgins at the time and have not been since; regarding the matter of damages, I leave it entirely to the jury.

Cross examination by Mr. Davie—I sent another telegram to Mr. McNamee on the 11th of December after I saw a copy of the Ottawa *Free Press* of 9th Nov. The copy of the Ottawa *Free Press* I received from Mr. Higgins' office. (The paper was submitted as evidence, objected to by Mr. Drake, but allowed by his lordship).

Mr. Walkem—"I did not know on the 16th of Dec. 1885, that Mr. McNamee had corrected the statement made in the Ottawa *Free Press*. I was not aware that Mr. McNamee had made any retraction."

Mr. Davie submitted a copy of the *Free Press* as evidence. Mr. Drake objected, and his lordship stated that he had given Mr. Davie every chance, because he did not wish it to be said that he had ruled favorably toward Mr. Walkem because he was a justice of the Supreme court. Mr. Davie said that he considered his lordship's remarks prejudicial to the defence in this case, he could not see how a judge of the Supreme court should be treated different from any other man when he brought a case in court, that he considered his lordship's intimation that defendant was getting favors on account of his adversary being a judge of the supreme court which otherwise he would not get, was so prejudicial to the case as to be of itself a cause of moving against the trial.

His Lordship—My remarks are in the interest of justice, and I consider it no disgrace to differ with you.

Mr. Davie offered as evidence a summons which had been offered to a judge in chambers to amend the pleadings so as to make any reasonable statement favorable to the plaintiff.

Mr. Walkem—I saw this summons and on advice of Mr. Drake, my counsel, I concluded that it came before the chief justice simply to throw dirt at me. It was to put in a statemeut made against me by McNamee, which is false. It was a summons to place this language in the pleadings. I could not consent to such a set of libellous statements.

Mr. Davie—"Two things are offered in this summons, either to publish the evidence, or to make any statement of facts you might wish."

His Lordship—What's the use of introducing it now? It was no apology.

Mr. Davie—I desire to show that there was an offer to publish a satisfactory statement of McNamee's evidence which had been produced in the *Evening Post* and afterward reproduced by the defendant.

Mr. Walkem—It bears no such construction.

Mr. Davie (to Mr. Walkem)—Will you read it; it bears no other construction; he offered to publish anything that was satisfactory to you.

Mr. Walkem—He did not publish it.

Mr. Davie (to the judge)—The document speaks for itself; I offer this, your lordship, to counteract the statement of counsel for the plaintiff that no retraction had been offered.

His lordship ruled that the summons was inadmissable. Mr. Davie took exception to the ruling.

Mr. Walkem—The statement about a political bargain I deny. McNamee came to me and wanted to change the stone used on the graving dock, as he was not satisfied with the Newcastle stones. He said that a scratch of the pen would fix it. Afterward he came to me and asked me how I stood with my constituents in the Esquimalt district, adding that he could secure my election, immediately following with a request to change that stone. I said no I would not, as the engineer had condemned it; besides, from my knowledge of his experience with stones, the only stones he was familiar with were paving stones at elections. To Mr. Davie—I wrote a letter on the 29th of May to McNamee, warning him against Mitchell's evidence. I recognize the letter now produced. I was given to understand that the man R. P. Mitchell, who was out here was prepared to sweat to what McNamee had stated. I was presiding judge of the Lytton assizes in 1884 and 1885. [Mr. Davie submitted a copy of THE COLONIST of Oct. 26th containing a complimentary address to plaintiff from the grand jury, also THE COLONIST of Nov. 8th, 1885, twelve days before the alleged libel, containing a complimentary notice of the plaintiff; also a copy of THE COLONIST of Oct. 18th, 1885.] His lordship ruled that the evidence was not admissable and it was rejected.

RECESS UNTIL 3 P. M.

After recess Mr. Davie again tendered THE COLONIST of October 18th, 1885, and November 8th, 1885, containing complimentary paragraphs to plaintiff, also the summons to amend the pleadings. He asked his lordship to rule whether the language in the article was capable of the insendoes ascribed by the plaintiff. He stated his position, briefly submitting that the insuendo was unwarranted and not justified by the language used. His lordship held that it contained no meaning other than a derogatory one. Mr. Davie then proceeded to address the jury, and during his remarks he referred to the unusual case of a judge appearing as a plaintiff in a libel case. He denied that Mr. Higgins had forced him there—on the contrary it had been shewn—although he was sorry that the documentary evidence had been ruled out—that Mr. Higgins, so soon as he had discovered the error had offered to publish any reasonable explanation—and had all through been anxious that Mr. Walkem should be placed in a proper light. Whatever previous political antagonism there might have been—the defendant had since Mr. Walkem's elevation spoken of him only in the most complimentary terms. There was no double intention in what had been written. Mr. Higgins had seen, as coming from eastern Canadian papers, a highly defamatory statement, which he knew must be going the rounds in Ottawa and elsewhere, where Mr. W. would be deeply affected. Calling attention to it, in the way defendant had done, enabled Mr. W. to obtain a refutation—which, if the article had passed unnoticed, never would have been done and the libel might have been cast at plaintiff in future years, as being uncontradicted. It was not every erroneous report which was libellous. It is not competent for a plaintiff to pick out isolated passages and show them untrue, the whole writing must be taken together, the bane with the antidote—and so with this article, if the comment acted as an antidote against the defamatory statements of the eastern press the libel was destroyed. Counsel dwelt on the liberty of the press—which consists of the "right to publish with impunity truth with good motives and for justifiable ends, whether it respects governments, magistracy or individuals," as distinguished from its licentiousness, which had been described as "Pandorabox," the source of every evil. In the endeavor to convey truth for justifiable ends errors will sometimes innocently creep in, but in such cases the all-important question of malice and injury are those which decide whether a libel has been perpetrated. For instance, in case a newspaper printed a libel which had appeared in another, but added at the end the word "fudge" and the jury, under the sanction of the court, found that the word neutralized the libel. In another case, as in this one passage in an article contained a gross libel, but the remainder explained it away, and the court directing the jury to take bane and antidote together, gave judgment for the defendant. It was entirely erroneous to say that Mr. Walkem was on his trial. No justification was pleaded and whatever the result of the case it will be neither a vindication nor a confirmation of the attack upon him. An entirely false issue had been placed before the jury. The actual evidence given by McNamee wherein he stated that Mr. Walkem was a partner, but that he had nominated his partners and forced them upon him, was scarcely less libellous that the intimation that Mr. Walkem was a partner, and as that gentleman assumes be equally false, yet we find Mr. Walkem taking no offence at McNamee's actual statement, but on the contrary writing to him in quite a friendly tone on the 29th May, discussing the evidence which McNamee should give regarding an expected Westminster election petition. If Higgins had published exactly what McNamee had said, it would have been far more offensive to Mr. Walkem than the comment upon what he did publish. Mr. Davie then referred to the evidence which he should offer, which would completely displace all suggestions of malice and which would show how Mr. Higgins' attention was first drawn to the publication, and how the effect of what he wrote had been discussed and agreed to by Mr. Dunsmuir and Mr. Tuck. In Ontario or Manitoba such an action as this could not be maintained unless the plaintiff could show actual malice, and in the absence of such evidence such an action should not be encouraged here.

His lordship in remarks he submitted the written evidence of Samuel P. Tuck, taken on the 27th of May, with the affidavit of Mr. Higgins, showing that the witness was absent from the city. The evidence was mainly to prove the first time the article came to the notice of Mr. Higgins and the conversation relative to it which passed in THE COLONIST editorial room, and that no malice was intended in the publication of the statement which appeared in THE COLONIST on the following morning, and did not differ materially from the evidence of Mr. Dunsmuir.

His lordship overruled the evidence of Mr. Tuck as it occurred prior to the publication in THE COLONIST of the alleged libel. He also made the same objection to the evidence of Mr. Robson and Cornelius Booth.

Robert Dunsmuir, sworn—I have heard the evidence of S. Parker Tuck read and remember being in the editorial room on the occasion referred to by Mr. Tuck. On that occasion Mr. Higgins, Mr. Tuck and myself were present; I am not sure whether there was one of the reporters present or not; Mr. Higgins was writing at his desk; Mr. Tuck was reading; I don't know whether I was reading or not; all at once Mr. Higgins said "listen to this;" I did not see what paper he was reading from, but saw afterwards that it was the *Evening Post*. Nothing was said for a little while, when I said, "You are not going to publish that, are you?" He replied, "I don't see why I should not, because otherwise Mr. Walkem could not get a chance to refute it." Mr. Higgins was writing all this time. I remember saying "You seem to think THE COLONIST is read more than any other paper." Mr. Higgins, Mr. Tuck and myself said we did not believe one word of it. What Mr. Higgins wrote concerning the matter he read to me and I said the article was not libellous and would do no harm, and I did not dissent in the publication of the article as I did not see anything improper in it.

Cross-examination by Mr. Drake—I recollect telling Mr. Walkem about the meeting in THE COLONIST office, but I do not recollect telling him that I told Mr. Higgins that the paragraph would hurt Mr. Walkem unnecessarily. I could not have told him so, for I did not think so. I remember meeting Mr. Walkem in the government grounds, but our conversation was on an entirely different matter. Would you like to hear it; I not likely to tell it to you?

Mr. Drake—No; it is not relevant to the case.

Mr. Dunsmuir—It is decidedly relevant to this case.

Mr. Drake—Never mind. Did you say the words quoted to Mr. Walkem?

I won't say whether I said the words or did not. I could not have said that I thought the article would injure Mr. Walkem, because I never thought so.

The evidence of Charles Wm. Mitchell taken on commission at Ottawa, was then read. Mr. Drake successfully objected to most of the evidence in chief. The cross-examination by Mr. Gormully, Mr. Walkem's counsel, was received, stating that at McNamee's request a refutation was published on the 16th of December. McNamee told witness that he had not said that Walkem was his partner, but he (McNamee) said to him: "I said he forced partners on to me and then damned Walkem up and down." This was jocularly said.

Mr. Davie then said that the evidence of Messrs. Booth and Robson as to the facts and circumstances which led Mr. Higgins to write and publish the article complained of being excluded, it was useless to call Mr. Higgins, who could merely reiterate the excluded evidence and that of Tuck and Dunsmuir negativing malice, and that he would therefore close his case.

Mr. Davie then summed up the case for the defendant, claiming that malice had been entirely disproved. A reasonable man similarly circumstanced to Mr. Walkem, not led away with the erroneous impression of the learned judge that the defendant was his uncompromising enemy, would have felt that the article was a friendly one, would have reminded Higgins of his refutation published on the dock committee in 1882, who upon the slightest intimation would have warmly defended the attack. It was not to be expected that Mr. Higgins could remember the evidence given before the dock committee. Every person in the room who was here when that investigation took place had probably read Mr. Walkem's evidence upon that occasion, but was there one who could say that he remembered the particular evidence given by Mr. Walkem in denial of the insinuation of a partnership, or that such an insinuation had been made until now reminded of it. He (Mr. D.) had closely followed that enquiry at the time, but he was sure that, like Mr. Higgins, the recollection of it had entirely escaped his mind. The questions which the chief justice had stated were at issue in this case did not comprehend the points to be decided. The two most essential points were malice and injury. If the defendant's publication were neither malicious nor injurious to Mr. Walkem there must be a verdict for defendant. If injurious, but not malicious then the erroneous evidence having been copied from another paper, there could only be nominal damages. But the article was not injurious, the jury must take it as a whole—not pick out isolated passages, and if taking it altogether the jury should find it not injurious, Mr. Dunsmuir, had sworn that he did not conceive it to be so, then there was abundant legal authority for the position that a verdict must pass for the defendant, and this he, Mr. Davie, asked the jury to return.

Mr. Drake, for plaintiff, in presenting his case to the jury made an able argument, his chief points being the failure of defendant to appear in the witness box, that the case did not recur upon what took place in Mr. Higgins' office