THE WAR EAGLE WINS

Justice Walkem Gives Judgment For It in the Pender Case.

DISAGREED WITH THE JURY

The Decision of Unusual Interest, Since It Affects the Liability of Mine Owners to Their Employes—The Judgment in Full.

In the Pender-War Eagle case Thursday, Mr. Justice Walkem gave judgment with costs for the War Eagle company. The case was brought by Pender, to recover $5,000 damages alleged to have been sustained in an accident at the War Eagle mine. The decision is one of unusual interest, as it affects the liability of mining companies towards their employes. The jury in the case awarded Pender $3,000, but in his judgment Mr. Justice Walkem refused to allow Pender anything, and gave a decision in favor of the company.

The case has dragged along for the past year and a half. At its first hearing in the county court here, Pender was awarded $500 damages by the jury. The War Eagle, the defendant company, secured an order from the supreme court granting a new trial. The case was removed from the county court to the supreme court sitting at Nelson. There the jury disagreed. The suit was then transferred back to Rossland, and was heard before a jury by Mr. Justice Walkem. The jury allowed $3,000 damages, but the justice was unable to agree with that finding, and gave his decision as follows:

In the supreme court of British Columbia; Pender vs. War Eagle company.

Judgment of Mr. Justice Walkem:

"This is a case arising out of the Employers' Liability act, which, as is well known, is almost a transcript of the English act on the same subject.

"I am unable to agree with the verdict of the jury, which I think was influenced by sympathy for the unfortunate man who was injured. With this aspect of the case I have nothing to do beyond observing that, in my opinion, the plaintiff took the risk of the defect, which he seemed to have known of, without having communicated it to his employers; for the evidence shows that in passing the chute when the drills were being thrown down, he used the words, "To hell with them." In taking this risk he was injured and now sues his employers.

"Under section 7 of the Employers' Liability act "A workmen shall not be entitled under this act to any right of compensation or remedy against an employer where (see sub section 3) the workman knew of the defect or negligence which caused his injury and failed without reasonable excuse, to give, or cause to be given, within a reasonable time, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior person already knew of such defect or negligence." In section Lord Watson says, in the well known case of Smith vs. Baker (1891, A. C., 356): 'I think the object and effect of the enactment is to relieve the employer of liability where injuries occasioned by defects which were neither known to him nor to his delegates down to the time when the injury was done. At common law, his ignorance would not have barred the workman's claim, as he is bound to see that his machinery and works were free from defect, and so far the provision operates in favor of the employer; but, as was forcibly pointed out by Lord Esher in Thomas vs. Quatermain (18 Q. B. D., 688), 'in cases where the employer and his deputies were personally ignorant of the defect, it is made a condition precedent to the workman's right to recover that he shall have given them information of it before he was injured.'

"This disposes of Mr. McLeod's contention that the plaintiff is entitled to recover independently of the statute, for, as pointed out in the above judgments, which Mr. McLeod has perhaps overlooked, the common law doctrines as to negligence between employer and employe, have been materially modified by the legislature.

"Now, in this case, there was not a shred of evidence to show that the defendant company, or their employes, had been informed of, or had known of, the alleged defect which caused the injury to the plaintiff. On the contrary, the effort of the plaintiff's counsel was to prove that the detect which caused the injury to his client consisted in the want of:—

"(a) A bucket and windlass;

"(b) What is known to miners as a 'go-devil;'

"(c) A properly constructed bulkhead at the foot of the chute as a lodgment for the drills throw down;

"(d) A drill-chute, which was described by a witness as similar to a timber chute;

"(e) A man at the bottom of the chute to give warning.

"It will thus be apparent that the alleged defect which for the first time was brought out in the plaintiff's evidence, was sprung upon the defendant company who were consequently unprepared to meet that evidence. Mr. Galt, for the defendant company, objected to the evidence as the plaintiff's pleadings were silent as to it and therefore did not warrant its admission. I allowed it, however, to go in, subject to its being ruled out when I knew something more of the case. The evidence was clearly inadmissible.

"In view of the judgment of the house of lords in Smith vs. Baker, as well as the case referred to in it, of Sword vs. Cameron, I must direct judgment to be entered for the defendant company, with costs.

"Before closing, I might observe that the second finding of the jury is that they 'believe that the platform is not constructed so as to prevent drill-steel from shooting out into tunnel.' There is no question in the pleadings about a platform, nor any allegation of a defect in platform. This platform was constructed at the bottom of the chute in question, to receive the drills on their being thrown down. Out of 14 drills that was thrown down when a view was had of the defendant's tunnel or car-level, only one bounded from the platform to the car-level a few feet below. I mention this merely because the jury have found what they were not asked to find, and what the pleadings did not require any finding upon.

GEO. A. WALKEM."

Rossland, B.C., Oct. 27, 1898.

INJUNCTION REFUSED.

Text of the Decision in Centre Star vs. Iron Mask.

Mr. Justice Walkem has filed with Registrar Schofield his decision in the application of the Centre Star company for a continuance of the injunction obtained by the Iron Mask company, restraining the Centre Star company from continuing work on a shaft within the former's ground. The justice's judgment is as follows:

"I had intended to give a written judgment in this matter, but owing to press of work I have been hitherto unable to do so. As all the counsel engaged in the case are now present I may as well state my views with regard to the motion before me. That motion is one on behalf of the Iron Mask company to continue an order granted by Mr. Justice McColl, restraining the Centre Star company from further working in a certain shaft which is acknowledged to be within the surface boundaries of the Iron Mask company's ground.

"The opinions of eminent judges of the American courts, in cases like the present one, are that the Centre Star company are prima facie trespassers, as they are working within the surface boundaries of their neighbor's ground.

"Twenty affidavits have been produced on behalf of the Iron Mask company and 16 on behalf of the Centre Star company. A critical examination of them would be of no service to either of the parties. It is incumbent on the Centre Star company to convince the court by overwhelming evidence that they are, especially as their extra-lateral rights are in derogation of the common law, in a vein of ore with a continuity upwards from the bottom of their shaft to the apex of the vein they claim, which apex is admittedly in their own ground. This overwhelming evidence has not been produced; hence I have only one course to pursue, and that is, to continue the injunction already granted until the hearing when, doubtless, further and much more satisfactory evidence on both sides will be forthcoming.

"This judgment is intended to settle the two adverse motions before me, that is to say, the motion of the Centre Star company to dismiss the injunction granted against them, and the present motion of the Iron Mask company for a continuance of the injunction granted in their favor by Mr. Justice McColl. The costs in each case will abide the event."

THE TENNIS CLUB.

It Gave Its Second Annual Ball Last Evening.

The Rossland lawn tennis club gave its second annual ball Thursday night in Miners' Union hall. It was as complete a social success as could be desired. About 75 couples were present and all the appointments were as complete as the taste of the club members could devise. The prizes awarded the successful contestants in the club's tennis tournaments were presented by the president of the association, Arthur Marsh. John M. Smith, who was victorious in the handicap tournament, received the trophy cup, presented by the Hon. C. H. Mackintosh. H. F. O. Hobbes, the winner of the men's singles, received a pair of cuff links, and John M. Smith, who took second place in the singles, was the recipient of a handsome racket, presented by the club. In the men's doubles, H. F. O. Hobbes and Alex. Miller were the successful players, and they were awarded a pipe each by the club. The mixed doubles resulted in victory for Mrs. J. L. G. Abbott and John M. Smith. Mrs. Abbott was the recipient of a handsome scarf pin, set with a pearl and two diamonds, which had been offered in that event by Mr. Smith. No prize was awarded the man playing in the mixed doubles.

CARIBOO (CAMP M'KINNEY).

A Meeting Was Held at Toronto and Officers Elected.

A meeting was recently held in Toronto at which the Cariboo Consolidated Mining & Milling rompany, limited, was reorganized and the following officers elected: President, Robert Jaffray; vice-president, H. M. Pellatt; managing director, G. B. McAulay; treasurer, S. W. McMichael; secretary, Edgar A. Wills. James Monaghan and G. B. Smith were also elected directors. The capital of the company was increased to $1,250,000, and five new properties adjoining the Cariboo purchased out of the new capital. Seventy-five thousand shares were left in the treasury. The stock of the Cariboo is to be listed at once on the Toronto stock exchange and the Montreal stock exchange.

Bunker Hill Group Bonded.

Hon. C. H. Mackintosh has bonded the Bunker Hill group on Palmer mountain, in the Boundary country. The deal was completed a fortnight ago at Vancouver, where the owner of the group, James O'Connel, met Mr. Mackintosh and concluded negotiations. The terms of the bond are $40,000, with 10 per cent down, $6,000 in about 60 days, and the rest at regular intervals extending over a year. The Leadville group of six claims, adjoining the Bunker Hill, and owned by John Judge, has also been bonded by Mr. Mackintosh on the same terms. The two groups have been moderately developed and are classed among the best properties on Palmer mountain. Mr. Mackintosh in procuring the properties, is understood to have acted independently of the British America corporation.

RAYMER-GRANT.

A Quiet Wedding at the Residence of H. J. Raymer.

E. J. Grant, connected with the law firm of Daly & Hamilton, was Thursday night married to Miss Alice Norine Raymer, daughter of Horace J. Raymer of this city. The ceremony was performed by Rev. H. Irwin, rector of St. George's church, at the home of the bride's parents. The bride looked charming and was assisted by Miss Maud Bristow as bridesmaid. W. P. Dockerill acted as groomsman. It was a quiet and pretty wedding, there being only a few friends present. There were many pretty and costly gifts which fully attested the popularity of the young couple.

Gibson Got a Majority.

MOUNT FOREST, Ont., Oct. 27.—Complete returns give Gibson, liberal, a majority of 438 in East Wellington.

BROKE THE RECORD

The Le Roi Hoisted 725 Tons of Ore Yesterday.

A FORCE OF 300 AT WORK

The Main Shaft Has Now Reached a Depth of 810 Feet—Hon. C. H. Mackintosh Has Bonded the Bunker Hill Group in Boundary.

Superintendent Tregear of the Le Roi, assisted by his two shift bosses, Richard Hutchins and Antoine Sorenson, made a new record Thursday in the way of hoisting ore. During the 24 hours they hoisted and placed in ore bins 725 tons of ore, not counting the waste that was extracted during the same time. The shipments for the day amounted to 440 tons, and the output of the mine for the month of October promises to be in the neighborhood of 12,750 tons. Had it not been for the delay of the railway company in furnishing cars, the output of the mine for the month would have been 14,000 tons.

The mine is now employing 300 men, and more are being constantly added. The main shaft is down 810 feet, and the station at the 800-foot level has been commenced. The recent strike of $100 ore between the 500- and the 600-foot levels is proving to continue about eight feet in width. The same ore body has been met in the 500-foot level, and Superintendent Tregear is now working to uncover it at the 600-foot workings.

THE REPUBLIC VEINS.

The Are Like Rossland as They Will Bear Deep Development.

REPUBLIC, Wash., Oct. 26.—[Special.] It is learned here that Patrick Clark, president of the Republic company, yesterday purchased a one-half interest in the Dude fraction, which adjoins the Princess Maud on the north. The Maud and Jim Blaine ledges run through it. The Princess Maud company retains one-half of the fraction.

They are facing up the tunnel of the Butte & Boston, putting in timbers, and getting in shape to push the tunnel. A surface assay above the tunnel gave $9.60.

The Golden Harvest crosscut has reached the walls. There are now six feet of quartz between walls. Considerable surface work will be done to determine the width and trend of the vein.

Lying about three miles west and perhaps 1,000 feet higher than the Republic mine is Copper mountain. The name is, however, a misnomer, in that no copper has, so far as known, been discovered.

At the northwestern base of this mountain several lodes are situated, while the Copper Mountain, Mountain King and other claims belonging to the Copper Mountain Mining company, straddle the backbone and the principal ridge or spur tracing northward down towards Granite creek. The Copper King claim enjoys the distinction of having the shortest adit tunnel site in Republic camp. Topographically this mountain has many similar earmarks to the Republic.

A chain of three small lakes of live spring water skirt the western, while Granite creek sweeps around the northern base of the mountain. From these lakes the Republic mill draws its reserve supply.

The principal vein thus far exploited is that of the Copper Mountain company on which between 600 and 700 feet of workings, consisting of crosscuts and drifts, have been driven, besides considerable surface work. At almost every point, either on the surface or in the tunnels, where the ledge has been exposed, a soft oxidized gangue, separated from the walls by a liberal selvedge of talcous matter, has been found. Generally the vein is eight to 12 feet wide. From the lowest present tunnel, however, a winze, recently started, has cut through the discouraging gangue and has revealed live silicious quartz, similar in appearance to the San Poil quartz. The persistent development of the company has rewarded it and has likewise forged another link to the increasing chains of evidence that in Republic camp, as in Rossland, the veins will bear deep development.

An interesting feature of the formations adjacent to the Copper Mountain lode is that throughout the diorite and porphyry graduations the rock is highly mineralized with pyrites and arsenical iron, and in spots, taken at random, values in gold as high as $100 have been extracted. The quartz in the winze referred to gives no visible indication towards baseness. The strike is practically parallel to the more widely known veins lying to the east. The vein is persistent and strong, cleaving the mountain almost due north and south, along the highest ridge and exposing itself at various points for a distance of about three miles southward. The claims are reached easily in 45 minutes' buggy ride from Republic.

SHERIDAN CAMP.

A Strike Has Been Made on the American Flag.

REPUBLIC, Wash., Oct. 25.—[Special.]—Parties arriving recently from Sheridan camp brought samples and news of a new strike in the American Flag mine. The new strike is one foot in width, and scattered here and there through it are pieces of quartz about the size of a walnut, that run 87 per cent silver and 13 per cent sulphur. The old chute is in the east side of the shaft and assays $150 per ton, the chute being 12 inches wide. They now have five feet of copper stained rock. Dr. Manley and Rossland parties own the claim.

D. M. Linnard and family of Rossland, are here. Mr. Linnard has considerable mining interests in this district and also in Sheridan, which camp he will visit shortly.

The Empire camp in the Curlew mining district, lies ten miles north of the town of Republic. Like Rossland, it is an iron-capped district, but the rock is not as hard, it being a sort of diorite. The camp and surrounding country consist of rolling bunch-grass hills and smooth plateaux. It was forging well to the front when Republic was discovered, and the cry of Republic's free milling ores left the iron-capped district undeveloped. The surrounding country like all new camps, is staked wherever the slightest sign of mineral appears. Among the prominent mines is the Crown Point, owned by W. H. Curry and associates of Portland. The ore resembles that of the Le Roi. The development is an open cut across a four-foot ledge. The other ledges are white quartz with fair assays. A 16-foot shaft has been sunk on another ledge of the group, which assays between $30 and $40 in gold, copper and silver.

The Red Jacket group consists of the Red Jacket, Iron Crown and Keystone. The work consists of a 19-foot shaft and a 20-foot crosscut. Assays run as high as $20 in gold. Adjoining these is the Summit, which has some development work done on it. Considerable work is being done on the Silver Tip, which is a very promising property. There are numerous other claims, but as yet the principal work done is assessment work; but with proper development the Empire camp is a promising one.

W. A. Nicolls has made arrangements to sink 50 feet on the Liberty, a very promising property lying a short distance north of the Republic. There is quite a stir in the entire district, and development and arrangements to develop are daily increasing; as depth develops the values of the mines, it gives other owners confidence.

W. S. Norman of Spokane, treasurer of the Princess Maud company, leaves for home today. During his trip he has inspected the majority of the mines from the Golden Harvest on the south, to the Mountain Lion on the north.

THE SAN POIL.

Considerable Activity Is Being Shown Around That Property.

REPUBLIC, Wash., Oct. 28.—[Special.]—Superintendent Cromer's return has given new activity in and around the San Poil property. A wagon road has been graded from the mouth of the tunnel to the wagon road in the gulch, and other improvements have been made around the mine. The south drift is now in 40 feet, with over five feet of fine looking quartz, which carries the average values heretofore reported. The north drift is in 18 feet, and this morning had over five inches of quartz in the face. Mr. Cromer feels confident that it will soon open out to at least the width of the south drift. A compressor and other machinery has been ordered and will be shipped to the mine when it can be hauled over the snow. In about two months, it is estimated, the machinery will be in place.

Adjoining the San Poil on the north is the San Poil fraction, 315x600 feet. Test pits have been sunk upon the ledge from six to 15 feet deep, exposing a strong ledge of white ribbon quartz 10 feet wide. A permanent working shaft, 5x6 inside, well timbered, has been sunk to a depth of 15 feet, showing the white quartz standing nearly perpendicular between well defined, smooth porphyry walls. A mill test sample from the bottom of the shaft gave $12 gold per ton.

Adjoining the San Poil fraction on the north is the Ben Hur. The vein crops out 10 feet wide the full length of the claim, and has been exposed by numerous test pits the entire length. Mill test samples from these pits gave from $5 to $12. Near the north end a crosscut tunnel was run westerly about 130 feet, which cut two veins, six and seven feet wide and 12 feet apart. Drifting was started south on the vein mentioned continued about 150 feet, at which point the two veins have come nearly together.

Adjoining the Ben Hur on the north is the Trade Dollar. A crosscut tunnel has been run about 100 feet westerly and struck the vein and cut into it 10 feet, but they are not yet through the vein. It is the same strong looking white ribbon quartz vein which crops the full length of the San Poil, San Poil fraction and Ber Hur claims. A mill test from the 10-foot crossut of the Trade Dollar gave $13 in gold. If this ledge continues 1,400 feet in its course past the Trade Dollar northerly end line, it would strike the Mountain Lion, whose developments and values are familar to the public. The strike at the north end, taken in connection with the Eureka strike, far to the south, proves that the ledges running through that section are strong, long-lived and valuable.

After driving the tunnel a distance of 270 feet, the ledge in the Eureka Queen has been cut. They have gone through five feet of ledge matter, with from two and a half to three feet of good looking quartz. The manager claims that it is the San Poil vein, and that both walls are perfect. As yet no values have been given out. The strike is a very important one, as the Queen corners the San Poil on the south. Much interest is manifested here by mining men, and developments will be keenly watched, as depth gives all that section good values.

The south drift on the Black Tail is now in 75 feet. Considerable quartz is being encountered. They are running eight-hour shifts.

Judge J. C. Kerley was yesterday appointed superintendent of the Liberty mine, and started for the mine this morning with a crew to begin sinking a 50-foot shaft. The judge is fully equipped for the position, and the appointment gives satisfaction.

Grand Forks Notes.

GRAND FORKS, Oct. 26.—[Special.]—Dr. Foster, who has been practicing his profession throughout the Boundary country for the last few monts, has been appointed physician for the Canadian Pacific railway with headquarters at Cascade City.

A mining man from Camp McKinney is authority for the statement that another rich strike was made last Wednesday in the 25-foot shaft on the Waterloo property in that camp, consisting of a four-foot paystreak of ore which was heavily streaked with free gold.

Bank for Grand Forks.

GRAND FORKS, Oct. 27.—[Special.]—A. M. Knee, a banker from the Slocan country, arrived in this city yesterday from Greenwood, having gone to that town with a view of starting there. He is, however, of the opinion that Grand Forks will make the best business center, and has accordingly purchased a lot on Bridge street and will open a bank at once.

W. H. Corbould, general manager of the Canadian Pacific Exploration, limited, after a short stay in the city, left Thursday for the southwestern States on a business trip. Mr. Corbould has been at the Porto Rico mine for the last four weeks, and expresses himself as very well satisfied with the property. He will not return to England before the end of the year.

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Made from **pure wool**, 32 oz. to the yard Frieze. Five pockets.— Deep flaps.—Six inch collar, with throat tab.—Double stitched edges—Raised seams. Length 54 inches. Nine colors. Black, Blue, Mid Brown, Drab, Claret, Heather, Oxford, Blue mixture and Olive mixture.

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IN THE SUPREME COURT, IN THE MATTER OF

O. K. GOLD MINING COMPANY

Limited Liability, (Foreign). In Liquidation.

The Undersigned Official Liquidator Will Sell by Private Treaty Subject to Ratification by the Court

IN ONE LOT

The property known as the O. K. Mine and the buildings belonging to the said company. Also the entire mining and milling plant of said company, the whole situated on the south slope of O. K. mountain, in the Trail Creek Mining Division of West Kootenay, Province of British Columbia. The claim is surveyed and crown granted and known as the O. K. mineral claim, official number 678. The property is about two and one-half miles west of the City of Rossland and close to the main wagon road and Red Mountain railroad, both leading from the City of Rossland to Northport, in the State of Washington.

BUILDINGS.—The principal buildings include the following: The new mill building containing 10-stamp mill, but designed and built to accommodate 25 stamps; engine and boiler house, office building, mess room, cook house, store room and manager's residence.

The development consists of three main tunnels, with one winze and numerous drifts, together aggregating over 1,500 feet of work.

The property is open to inspection, but an order for that purpose must be obtained at the office of the liquidator, 3 Imperial block Rossland, B. C., where price, terms and further information can be obtained.

Under an order of the court heretofore issued the undersigned is authorized to give a short option or working bond on the mine

Telgraphic and cable address, Plewman Rossland

Bedford McNeill's Code.

RICHARD PLEWMAN
Official Liquidator

Charles Dangerfield

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A. C. SHELDON, General Agent, 250 Washington St., PORTLAND, ORE.

Baptist Evangelist.

Rev. Dr. Spencer, the Anglo-American-Canadian evangelist, is in the city as superintendent of the British Columbia Baptist missions, and is spending three months touring the province by the request of the provincial board. So far Dr. Spencer has visited the coast cities and stations on Vancouver island, Kamloops, Nelson, Trail and Kaslo. At present there are about a thousand Baptist ministers in the Dominion, 1,500 churches and missions, and about $200,000 given for mission work at home and abroad. Several new missionaries are coming into the province within the next two weeks, locating at Saanich, V. I., Nelson, Trail and Kaslo. The Baptists have two strong universities in the Dominion — McMaster and Acadia—and several colleges. Dr. Spencer is projecting a college for British Columbia in the near future.

A Diamond Mine

Worked for the Benefit of All Economical Homes.

A diamond mine! Where? Right here in our own Canada and worked for the benefit of all economical homes.

The variety of diamonds in this mine is wonderful, and the supply is practically inexhaustible. All the latest colors are represented in these diamonds; they are of the first water, and under the most severe tests are always found reliable, true and genuine.

These Diamonds are known as Diamond Dyes, celebrated all the world over for their brilliancy, purity and durability. These Diamond Dyes possess marvellous and astonishing powers. When used according to directions that accompany each one they give new life and beauty to all faded, dingy and dead-looking garments. Each of these Diamond Dyes gives a return to the user in money value of from ten to twenty times their cost.

Have you tried any of these Diamonds—Diamond Dyes? If not, then look up some old faded dress that you have laid aside, or some jacket, blouse, ribbons or hose and give these wonderful Diamonds a trial. They will surprise you with the magnificence of their work.

Now just a word of warning if you are a novice in the work of dyeing. Beware of adulterated package and soap grease dyes that bring only trouble, disappointment and vexation of spirit, as well as complete ruin to your materials.

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