

# A VERDICT FOR \$1600

## Result of the Suit of Hopkins vs. Gooderham et al.

### Decision Reached by the Jury at Yesterday's Sitting.

(From Friday's Daily.)

A verdict for \$1600 for plaintiff was the outcome of the action of Hopkins vs. Gooderham et al in the supreme court here yesterday. The hearing commenced on Monday and concluded yesterday afternoon, when the jury returned its verdict. Throughout the case considerable interest has been manifested in the proceedings.

Yesterday morning saw the examination of the plaintiff concluded and further testimony introduced in rebuttal. Counsel for plaintiff and defendants addressed the jury, the court's summing-up of the case followed, and the jury retired to deliberate for a couple of hours. Their verdict was that the charges brought against the plaintiff (incompetence and disobedience) had not been proven, and awarded him \$1600.

The jury also drafted a protest for presentation to the court complaining of the very uncomfortable seats provided for the jurymen and expressing their hope that this would be remedied. The jury included Alfred McMillan, foreman, R. A. Hobbes, J. P. Harper, M. W. Simpson, R. A. Allen, N. F. Townsend, D. Mackenzie and R. T. Evans. Addressing the jury, Mr. Justice Martin said in part:

"This has been a long case, and from its nature and circumstances it is somewhat difficult. I do not think it has proved to be to you a tedious one, as there is a good deal of interest quite apart from the persons themselves concerned, and I am glad to be able to say that, with one or two exceptions, it has been conducted in a manner satisfactory to you as to me. In view of the fact that this case relates to occurrences which are particularly within your powers of observation as residents of a mining district, I shall curtail my remarks largely, because I feel that about matters such as the operation of a mill and mill work and mining work generally you know so much more than I do that it would be quite unnecessary for me to dwell at length upon them: I shall give, therefore, a few general directions for your assistance.

"What is the issue in this matter? Simply this: "1. Was the agent of the defendants justified in discharging the plaintiff? He says he was justified in this course. First, for general misconduct in regard to disobedience of orders and continued neglect of his employer's business; secondly, for general incompetence—which is somewhat different from misconduct because capable of somewhat different construction.

Now, what is the general obligation of a skilled servant to his employer? It is laid down in the law as (reads) "that an employer is to be held responsible for an applied ability and skill." Quite apart from any particular circumstances that is the foundation of this case—the duty cast upon the plaintiff. Now you will inquire just how he has discharged that duty cast upon him. Of course the nature of the appointment must be taken into consideration: To put a case—the skilled artisan whom you employ to grind a knife is in a very different position to that of the chief engineer of a railway company who has great responsibilities cast upon him. The same rule applies to this case.

within a week. It all depends on whose view you take in this matter—if on the one hand the plaintiff is correct, that he was to go down there just as in an ordinary undertaking when a man is put in charge of property—without regard to any reason for facilitating matters—then that would have a great bearing on the case; but if, as Mr. Kirby contends, he did require these assurances and those assurances were given by this man that he had practical knowledge about this matter and was in a position to give it and would not otherwise have been engaged, as he had been in charge for several years and was agent for the people who were trying to sell—that is another view.

There are these two contentions, and if you adopt that of Mr. Kirby as correct under those conditions Mr. Kirby was entitled to expect something more than that which the plaintiff thinks was all the obligation which he undertook. Mr. Galt supported this view and drew attention to two facts particularly as showing that the plaintiff was not quite frank about them—first as regards construction—that whereas the plaintiff, who was then the agent for these parties, wished to insert a clause that that mill should be worked within a month—now, either he knew that that could be done, or else he was trying to entrap Mr. Kirby and was not acting in a proper manner; secondly, there is a lack of frankness in this matter. I feel almost ashamed to have to allude to the subject. So long as people in this country conduct themselves as reputable citizens it does not make any difference where they come from. It is immaterial whether some Englishmen speak with a drawl or whether some of our friends from the United States speak through their noses, or Canadians adopt the middle course and do neither the one nor the other—we will dismiss the matter from our minds.

You may retire, gentlemen. After three-quarters of an hour the jury returned and rendered the following verdict: "We, the jury, find that the charges brought against the plaintiff Hopkins have not been proved, and we award the sum of \$1600."

Mr. Hamilton contends that it is not reasonable that such an assurance should have been exacted, because Mr. Kirby was a mining engineer and had just as much opportunity as the plaintiff to acquaint himself with the condition of the mill and machinery, having gone down to the mill shortly before with the plaintiff.

These are the facts you have to determine. I don't say it will be comparatively easy now, but certainly not so difficult as before. Now, looking at what you would consider to be the duty of the plaintiff. He was general superintendent—answerable for every part of the mill. It is not denied that Mr. Kirby gave him carte blanche to run that mill as he thought fit. Under such circumstances of course a corresponding obligation arises for the man who was responsible, if competent for the work which he undertook to perform. You must decide whether or not that contract called for exceptional ability and power to direct and control generally.

He was called upon to display energy not misdirected, but a properly directed energy employed in a reasonable and sensible manner. That is your difficulty here in deciding what was properly done in the interests of the employer.

It was set up that the man was impeded by Mr. Kirby owing to not having been provided with a double shift, an assayer and other help. That he could not get his work started in proper time and in a proper way—that is something for you to say. I might explain the matter, but am not called upon to express my opinion—you have had more experience than I have in these matters. If you think, bearing all the conditions in mind, that Mr. Kirby was too exacting—did not make due allowance for this and for that, and that plaintiff directed his energies in a proper manner, then you will find in his favor. If, on the other hand, you find you cannot conscientiously say so and find that he has not shown himself worthy of the confidence placed in him by Mr. Kirby in the matter of important work, then you will find against him.

It does not seem necessary to enlarge upon that point—the weighing of the evidence is exclusively for you. I might weigh it one side or the other, but do not deem it necessary. If you think it important to reconcile the various evidence you put what weight you think best upon it. You are not obliged to rely upon the evidence of one man—you may believe any one, or two or three and disbelieve any other.

Now, what remains but the question of damages? Assuming now that you find that the plaintiff was not incompetent and did not misconduct himself, he then is entitled prima facie to the whole amount of the contract which he claims, subject to what will say hereafter. It is \$1628.50, which he claims on loss of salary; and \$200 for the month of December; but if you find that he has misconducted himself generally as distinguished from incompetence or being guilty of disobedience or willful neglect, you will find against him, justifying his dismissal and no damages whatsoever. But if you find his dismissal was on the ground of what I might call a gradual incompetence which culminated on December 23rd—that on that date the patience of his employer was exhausted—then you will give him the amount for the remainder of that month.

.....If you find there was not any particular act on that day, then you will be justified in saying we will give him that amount.....At the time of his dismissal the difference between them was that he refused to take that nine hundred dollars. The plaintiff says "I want it all and will not take the \$900." The defendant says "At the time I offered you the \$700, but since you refused to take it I will give you nothing now." Mr. Kirby says, though feeling under no obligation at all he was willing to pay him—in order to save his face (?)—up to the 4th of January and to give him \$700 to endeavor to avoid a lawsuit and save the plaintiff harmless being dismissed from his occupation and give him an opportunity to start again. The plaintiff says he had done his best and was not prepared to give way. He must justify his stand before you.....Look to the contract itself.

Now, assuming that prima facie he would be entitled to the full amount, something remains: If a man is discharged, "instead of remaining idle he is at liberty to seek service under another employer, which would go in mitigation of the damages.".....Mr. Galt contends that he went away and made no effort at all of obtaining employment—it is not necessary that it should be exactly the same kind of employment.....It is not suggested that simply because you discharge a man he is to wait five years and then ask you to pay for it. You are justified in looking for some desire to get back to work as a man possessing some energy would look for it.

There is also another matter in this case in regard to the contract, respecting that \$300. There is a clause in the contract which says that the defendant will not be liable to pay the additional \$100 in case the operation of the mill be discontinued. That is a circumstance you have to take into consideration..... There is a circumstance which is in one way a small one, but which might be magnified to something greater. It has been spoken of as an onslaught on the plaintiff. I have reference to the remark of one witness that he could not do justice to Mr. Hopkins' drawl; you were told that there were a large number of people who were prejudiced. That is something which you and I will dismiss from our consideration in this matter. I feel almost ashamed to have to allude to the subject. So long as people in this country conduct themselves as reputable citizens it does not make any difference where they come from. It is immaterial whether some Englishmen speak with a drawl or whether some of our friends from the United States speak through their noses, or Canadians adopt the middle course and do neither the one nor the other—we will dismiss the matter from our minds.

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On the conclusion of the foregoing case, the action of Simpson vs. Miner was taken up. The suit is to recover damages for libel, plaintiff being represented by J. A. Macdonald and defendant by A. C. Galt. Counsel addressed the jury outlining the matter, and plaintiff Simpson went on the stand. His testimony was as to the proceedings in February last when he was arrested on the charge of arson. He explained the presence of coal oil on the floor by declaring it was inadvertently spilled through the upsetting of a measure by his little child, and later by the upsetting of a bottle by his clerk and the overboiling of a torch while being filled by a lad in the store. The string and cork coming up in connection with the case had been, he stated, a plaything for his child.

### AWARDED \$200 DAMAGES

Verdict For the Plaintiff in the Simpson Libel Case. Two Hundred Dollars Instead of Ten Thousand Asked.

The jury in the case of Simpson vs. Rossland Miner Printing & Publishing company and C. E. Race awarded the plaintiff \$200 in the supreme court yesterday. Plaintiff's action was for \$10,000, but the jury concluded that his feelings were not lacerated to this extent and assessed damages at the figure specified.

The finding was worded in the following manner: "The jury find a verdict for the plaintiff and assess the damages at \$200. (Signed) J. W. Bauer, foreman." The award carries the costs of the action.

Yesterday morning the case was resumed at 10 o'clock and the evidence was concluded. Testimony was introduced for the purpose of showing that the defendant took considerable pains to procure all the information available on the case before writing the article complained of and that the editor in person penned the report for the express purpose of eliminating sensation. It was contended that the purpose of the article was to draw attention to a point of public interest, and that only fair and bona fide comment was gone into. Testimony was also introduced as to the attitude of insurance companies toward risks in Rossland. An attempt was made to show that the defendants made no effort to procure a statement from the plaintiff after his release from custody on bail, but it was pointed out that the release was not effected until a late hour, at which the newspaper office was congested with work, making it difficult to look up plaintiff.

The chiefs of the police and fire departments were placed on the stand to give testimony as to conditions at plaintiff's place of business leading to his arrest on the charge on which he was ultimately acquitted.

In the addresses to the jury, Mr. Galt for the defence spoke at considerable length. He drew attention to the nature of the alleged misstatements, maintaining that they did not emanate from malice, and were written with a view to commenting on a matter of public interest, within the meaning of the Act, in a fair and bona fide manner. He also placed emphasis on the public duty which a newspaper was obliged to discharge. For the plaintiff, Mr. Macdonald went over the article complained of in detail, reciting the innuendoes which the plaintiff considered should be placed on the

### THE SUPREME COURT

SITTING HERE CAME TO A CONCLUSION LAST EVENING. VARIETY OF MATTERS DISPOSED OF ON CONCLUDING DAY.

(From Sunday's Daily.)

The sitting of the supreme court in Rossland came to a conclusion last night. Mr. Justice Martin leaves today for Nelson, where the assizes open on Tuesday.

In Harris vs. English Canadian Mining company, an action involving a number of well known South Belt mineral claims, a postponement was entered to the October sitting of the supreme court. J. A. Macdonald appeared for plaintiff, R. W. Armstrong for defendants.

In Dora Clark vs. Frank Watson, a verdict was entered for plaintiff in the full amount claimed. The action was to recover some \$280 on a promissory note. J. S. Clute for plaintiff. The plaintiffs in Boutbee et al vs. Pellant applied to the court for an assessment of damages in an action for which plaintiffs secured judgment several months ago. An award of \$3000 was entered for the plaintiffs.

Owens vs. Owens proved to be somewhat interesting, involving as it did valuable mineral claims which plaintiff, Owen Owens, asserted he conveyed to defendant Mary Owens, his wife, when seriously ill, on the understanding that they would be conveyed back upon his recovery. A verdict for the defendant was given, with the costs of the action. The award is subject to the stipulation that the defendant shall convey to the plaintiff upon the tendering of \$200 within thirty days the title to the U. P. mineral claim on Murphy creek. W. J. Nelson for plaintiff, J. A. Macdonald for defendant.

In the matter of the Land Registry Act with reference to deciding on the White Bear location, the question was adjourned for a fresh application with new affidavits.

Application was made to set aside the judgment for plaintiff in Blochberger vs. Young. The court decided against the applicant on two points, leaving the third to be referred to Chief Justice Hunter, who will also deal with the question of costs.

An argument on a point of law was brought up in Centre Star vs. Miners' Union, A. C. Galt appearing for plaintiffs, S. S. Taylor, K. C. of Nelson, for defendants. Plaintiffs contended that one of the contentions set up by the defendants disclosed no defence to the action. The ruling of the court was in favor of the plaintiffs on the point raised. Defendants were given leave to amend the statement of defence in some particulars. Costs of the day will be in the case.

### GREENWOOD BOARD OF TRADE

Local Matters Dealt With at the Recent Meeting.

GREENWOOD, May 15.—At Wednesday's meeting of the Greenwood board of trade it was decided to meet on the second and fourth Wednesdays of each month instead of weekly, until otherwise decided upon, most of the matters requiring the attention of the board having been dealt with. The three months from the middle of February to date have constituted about the most active period of similar length in the history of the board, which was organized in the summer of 1899. Included in the business transacted at Wednesday's meeting was the appointment of a committee to discuss with owners of high grade mining properties around Greenwood the best means of advertising them, so as to bring benefit to the town; an instruction to the secretary to again take up with the proper department the question of stocking Long lake with fish, and that of putting fish ladders where necessary in Kettle river and Boundary creek; and the appointment of a committee of three to attend a public meeting called to endeavor to organize an athletic association, members of the board being of opinion that the leasing and improvement of suitable grounds for outdoor sports would be in the interests of the city. Incidentally the subject of a weekly half-holiday for those employed in the retail stores, so as to give them an opportunity to participate in sports on a week day, was discussed, as too was that of early closing of business places.

### THE KASLO TRIP.

Lacrosse Club Will Be Accompanied by City Band.

Arrangements are being made to have the city band accompany the lacrosse club to Kaslo on May 24. The Rossland musicians will help to make the holiday lively in the only Kootenay town that is celebrating Empire Day. The existing unpleasant weather is rather disappointing to the members of the lacrosse club, who were anxious to get in the maximum amount of practice for the game with Nelson at Kaslo on May 24. The club will endeavor, however, to put on a good team, and will undoubtedly succeed in making a pace for Nelson that will assure a fast game.

### TRAM SURVEY FOR KOOTENAY

Commences at the Mine and Terminates at Floyd's Siding. Another Indication of Rossland's Activity This Summer.

Yesterday the survey for the Kootenay mine's tramway from the workings to the Canadian Pacific railroad was completed, and the next step in this connection will be the commencement of construction. Work on the plans for the structure are being actively prosecuted, and will be finished at an early date. Tenders will then be invited for the construction of the tramway, and this will be finished in sixty days from the date of the commencement of building operations.

The Kootenay's tramway is another of the important construction works on the list for the present summer. In the aggregate the list represents more activity in the direction of construction than the Rossland camp has witnessed in the past three years, and constitutes a sign of the times that cannot fail to impress the most casual observer. That the Rossland camp has emerged from its period of temporary depression is evidenced in the most unmistakable manner by the remarkable purchase of machinery and preparations for buildings on the part of the numerous mines. Every mining camp has experienced periods when the industry seemed to come to a halt—this has been the case in Rossland, but it is apparent by indications that speak more loudly than words that an advance has been commenced that will have an important effect on the future of the camp.

The Kootenay tramway will commence at a point below the lower adit tunnel, from which the ore mined in all the levels can be delivered by gravity to the terminal ore bins. The tramway will be automatic in operation, and run by the force of gravity, a considerable fall being secured in the mile and a quarter or thereabouts between terminals. The lower terminal is at the milk ranch siding, where a spur has already been graded on the north side of the track. On the south side of the main line a siding is already in existence for the use of the milk ranch. One of the spans in the tramway will be almost 2500 feet in length, thereby avoiding some of the difficulties that have presented themselves in connection with the right of way, which has now been definitely arranged. The point on the railroad selected for the terminal offers several advantages. The grading is ready to hand and the location is sufficiently close to Trail to permit of ore cars being handled by the switch engine from the Trail yards, which precludes the necessity of the ordinary ore trains breaking bulk between Rossland and Smelter Junction.

The tramway is designed to handle 300 tons of ore daily, and it is probable that soon after its completion the output of the mine will be increased to this figure.

### A PAY DAY DANCE

DELIGHTFUL FUNCTION HELD AT MASONIC HALL LAST NIGHT.

A PLEASANT EVENING SPENT AMID PLEASANT SURROUNDINGS.

A delightful subscription dance took place at Masonic hall last night. The affair was described as a "Pay Day dance," and proved to be one of the most pleasant and successful of the season. The attendance was large, the music excellent and the surroundings charming. The refreshments served were recherche, and everything contributing to the pleasure of the guests was attended to handsomely.

A feature of the function was the dainty manner in which the hall and ante-rooms had been decorated and ornamented by the ladies instrumental in organizing the dance. Flowers, ornaments, handsome furniture and dainty table ornaments had been loaned liberally for the occasion, and in this respect the function establishes something of a record in the Golden City. The dance was by way of a farewell to Misses Kinneer and Martin, who leave the city shortly, after some years' residence here. Both have been prominent and popular in social circles and last night's function was a pleasant recognition of the esteem in which they are held.

Graham's orchestra furnished music and were liberally complimented on its excellence. Among those present were: Messrs. and Mesdames A. H. MacNeill, Carl E. Davis, Arthur S. Gooderham, W. Ray Wilson, Dr. Kenning, J. Stiwell, Clute, George H. Dickson, Dr. McKenzie, William Thompson, J. Binns Johnson, James Hunter, Roland A. Laird and Charles E. Simpson.

Mesdames Jenkins and Burke, Misses Martin, Kinneer, Billing, Webster, Gee, Elder, Boutbee, Shrapnell, Palding, Lockhart, Townsend and Smith.

### NEWS OF THE COAST

Colonel Hayes, the American mining man, was sentenced at Victoria by Mr. Justice Drake, to two years' imprisonment for obtaining money under false pretences from Captain John Irving, in connection with the Nahmint mine. The colonel is, however, to be allowed out on bail pending a decision of the full court as to the validity of the indictment by the grand jury. The amount of bail is fixed at \$10,000.

Caesar Bueonotti, a well known member of the Italian colony of Nanaimo and who has resided there for the last twenty-two years, has fallen heir to a fortune of three million francs. The news came to Nanaimo in some Italian papers which contain the account of the death of the Bishop of Constantinople, who was a brother of Bueonotti's. The bishop's death occurred a month ago and now the terms of his will have been made public. Bueonotti was for many years employed in the mines and also acted as interpreter in the courts for the members of the Italian colony. He left town recently and is understood to be on a trip to San Francisco.

The Union Steamship company of New Zealand have secured the government subsidies for the transportation of the British mails. This company operates the Canadian-Australian line. If the subsidies had been secured by the rival line, the Oceanic Steamship company of San Francisco, it is almost certain the Canadian line would have been discontinued. As it is likely that a new modern steamer will be placed on the Sydney-Victoria run.

Ten thousand tons of steam coal from Japan will be landed in Vancouver within 30 days for the use of the steamships operated by the Canadian Pacific railway. The importation of this coal is rendered necessary by the strike of the Inland miners. The coal will last three months. All coal used on this side by C. P. R. steamers will continue to come across the Pacific for the present.

The Yreka Copper company on Vancouver Island, intends to raise the necessary funds for the opening of the Superior group of claims which border on the Comstock, the property which is now being operated. It is pointed out that the Superior group, while somewhat more inaccessible than the Comstock, has always been considered the richer and once opened up is expected to give better returns. An aerial tramway will be put in and the property put on a shipping basis as soon as possible.

Classes from the Victoria schools have begun their visits in charge of teachers, to the various factories of the city. They have, amongst other places, visited biscuit and ice factories, bedstead, furniture and stove works and clothing establishments. The girls take many notes, with a view to the subsequent essays required; the boys, as a rule, though fairly observant, do not usually make such records in refreshment of memories.

At a meeting of the Vancouver board of the Provincial Mining Association, the following resolution carried: "This association regrets the action of the mining committee of the legislature in resolving not to recommend the amendment of the mining acts this year. Yet it cannot but believe that the government will do all in its power to accomplish the objects of the mining convention, which met in Victoria last February, and that, notwithstanding the action of the committee, it will yet favorably consider the proposed amendments."

There is likely to be a hard fight put up for the possession of the Capilano river. J. G. Woods has secured a lease of the river under the Rivers and Streams Act from the provincial government for purposes connected with his eight-mile flume. The protest from the North Vancouver council against the concession came too late. Now the owners of property on both sides of the river claim ownership of the river.

The first break in the ranks of the strikers occurred on Tuesday at Cumberland. Five men signed an agreement to work two years at \$4 per day. Nine miners officials and company men from Ladysmith were taken up by a special trip of the steamer City of Nanaimo to take the places of the strikers.

On board the R. M. S. Aorangi, which was due to arrive at Victoria on Thursday, are 268 passengers for British Columbia and overland passengers. From Brisbane she carried 83 first class, 75 second class and 80 steerage passengers, the remainder having been picked up at Suva and Honolulu.

### BUYS A HOIST.

Parnagian Mine Places an Order for New Winding Machinery.

The Parnagian mine, in the Wilmer district, placed an order here yesterday for a new and more powerful hoist than the one now in use. The new winding plant will expedite the development of the lower workings of the mine, which are understood to be showing up well. The manager of the Parnagian, has criticised the statements credited to Charles Estmere in respect to the property and the district generally.

### TO CURE A COOLD IN ONE DAY.

Take Laxative Bromo Quinine Tablets. All druggists refund the money if it fails to cure. E. W. Grove's signature is on each box. 25 cents.

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hard coal can be de-  
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### FROM THE POLE.

(Chicago Chronicle.)  
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olar region that he does  
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of generous giving."

### SPORT IN MATFAIR.

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blank and over a minia-  
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a season.

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vertises in The Rossland