The Toronto World

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TUESDAY MORNING, DEC. 2.

SAUCE FOR THE GOOSE.

It is very evident from the explanations given by Mr. Home Smith and Mr. Gourlay that no immediate remedy is to be expected from any portion of their new radial entrance scheme for the pressing problems presented by city traffic, which it is the object of Mayor Hocken's plan to settle.

The building of the lines would be the smallest portion of the work. The ground on which the lines on the waterfront are to be built has yet to be made. Where the lines are to run is at present bay water. Where the lines go thru the Exhibition grounds they are to be laid in a tunnel. A tunnel is not bored in a day. The only piece of the railway track ready for early construction is up the Humber Valley over Mr. Home Smith's right of way, and it is not nearly so pressing a section of the future transportation system of Toronto as the extra lines required in central city areas. The tube on Bay and Teraulay streets will be the last part of the proposal, probably, to be taken up, and six years or more will be the necessary period of patience for the citizens to wait before they get the luxury of paying double fares on it.

Mr. Gourlay saw the weakness of the double fare proposal, and stated yesterday at the Empire Club that "in my humble opinion we can operate the harbor scheme without loss at a three-cent fare from its first date of operation, tho in our report we mentioned a five-cent rate."

If it be possible for a railway on a $15,000,000 dollar investment to run on a three-cent fare without loss thru a territory absolutely bare of population thru almost all its length, surely it ought to be possible to operate a railway on a four-cent fare average thru a territory occupied by half a million people without fear of loss.

The man on the street can see that without a microscope.

There are several double plays of this kind in the arguments brought forward in support of the harbor scheme. If they are good for it, they are equally good for the purchase scheme. They cannot apply in one case and be thrown out of court in the other. If there be a revenue for one proposal, there certainly will be for the other. If the population will grow in one case, it certainly will in the other. The Globe, for example, should note the argument in favor of the harbor board scheme that the 85,000 people across the Don will quickly grow to 150,000 and to 200,000 by 1921. If this be true for the harbor board and The Telegram, why is it not true for Mayor Hocken and Mr. Arnold? An increase of 115,000 over the Don by 1921 is more than half Mr. Arnold's whole estimate of increase. If the trans-Don regions can produce 115,000 people for the harbor board by 1921, can the rest of the city not produce 85,000? The harbor commissioners denounce Mr. Arnold's estimates, but when their own estimates are examined they are found to support Mr. Arnold's. They cannot be both right and wrong at the same time.

We said last week that we saw good points in the harbor plan, but it is evidently going to be some years before we can have them realized. It is clear also that they would be ineffective in removing the present congestion in the city unless they could all be put into operation immediately, and even then double fares would be requisite. The purchase system is simple and requires no delay, if adopted, to secure the remedy required. The only question to be determined about the harbor plans is to what extent they should be co-ordinated with the general city system under purchase, and how soon should the features adopted be put under construction. It is absurd for The Telegram or anyone else to say that this is obstruction. We are grateful to the harbor commissioners, or anyone else, who will take a genuine interest in the affairs of the city, but surely we cannot ask the citizens to throw aside the opinions of the best street railway authority in America without some consideration, especially when he tells us that the $15,000,000 to be spent will not remedy our problem.

As a radial entrance plan, which is the description the harbor commissioners' own engineer gave it, we think it is a valuable contribution to the discussion, but the people who ride on cars today must surely be able to judge whether they should choose to abolish double fares, get improved service and be relieved of all franchise worries for the future at no more expense to themselves than what they pay for their car rides, and do it immediately; or choose a new system which cannot be built for some years, which will increase the double fare area, and will leave the franchise situation just where it is?

We think we know what the people of Toronto want, and we know that they want it quick. The counter suggestion of opponents to the purchase scheme, that it is not the car-riding people of Toronto that want the improvement and want it quick, is just about worthy of those who make it.

WHO IS THE CHATTERER?

The Telegram had rather a bad time with Mr. Arnold on Saturday, and looking around for someone to wreak vengeance upon it selected the proprietor of The World, whom it described as a "chatterer." The "chatter" fastened upon was the statement that "in 1921 we would have to pay what it would cost to reproduce the physical assets of the company in their then state."

The Telegram quotes the act to show this not to be the case, and as it quotes the act in full it is only necessary for readers of The Telegram to peruse the whole of clauses 3 and 4 to see how very stupid The Telegram is. It underlines certain words in clause 3, which we are satisfied to rest our view upon:

In determining such value the rights and privileges granted by the said agreement and the revenue, profits and dividends being or likely to be derived from the enterprise are not to be taken into consideration, but the arbitrators are to consider only the actual value of the actual and tangible property, plant, equipments and works connected with and necessary to the operation of the railways, which is not to include any land, property or rights acquired or used in connection with the said street railway, and which do not actually form a part of the said street railway undertaking necessary to the carrying on of the same.

4. In arriving at such value the arbitrators are to consider and award only the value of the said several particulars to the city at the time of the arbitration, having regard to the requirements of a railway of the best kind and system then in operation and applicable to the said city.

It is necessary to note that certain things are excluded from the valuation, all rights and privileges, profits and dividends, and no land, property or rights acquired or used in connection with the railway, but "the actual and tangible plant, equipments and works connected with and necessary to the operation of the railways:" And in clause 4 this is established as the value of these particulars "having regard to the requirements of a railway of the best kind and system then in operation and applicable to the said city."

The tangible assets are to be valued having regard to their value as requirements of a railway of the best kind and system then in operation. If this be not value as a going concern, then the English language will have changed its meaning before 1921, which we don't think.

Mr. Arnold valued these tangible assets at a severe discount such as no board of arbitrators would ever arrive at. Ald. Burgess, who does not seem to be "quick in the uptake," quite failed to see this point in his few remarks yesterday in council. This probably comes of reading The Telegram.

THE MONTREAL STREET CAR SITUATION.

Press despatches from Montreal and Quebec indicate that the Montreal Tramways Company will not be successful for a time, if at all, in securing a forty year franchise. Sir Lomer Gouin, after convening the legislature presumably for the purpose of putting thru the franchise grab, announced that his government would not proceed until the City of Montreal had been consulted. The formal proposals of the Tramways Co. contained in the letter of President Robert to the board of control are to be submitted by that body to eminent experts and no action is likely to be taken in any event at the present session of the legislature, and possibly not until after the municipal elections in April.

The situation in Montreal differs in many respects from the situation in Toronto. The Tramways Company has a number of franchises from the various municipalities granted before annexation. Its main franchise, of course, is from the City of Montreal and expires in 1923, but its system is linked up with other lines upon which franchises run from 10 to 50 years. Immediate extensions and improvements are necessary, but the Tramways Company is so loaded down with water-logged securities, that it is unable to raise any money. The suggestion therefore is that all the franchises should be surrendered to the City of Montreal and united in a new blanket franchise to run forty years. The company's plan, had it been adopted, would have involved the opening of several new streets, the widening of several others and subways under St. James, Notre Dame and St. Catherine streets, as well as under the Lachine Canal. A considerable portion of this large expenditure was to be borne by the public, and the bonds of the Tramways Co. for subway construction were to be guaranteed by the City of Montreal.

The scheme was a gigantic one, and would have meant at least one hundred million dollars to the men behind. It was openly charged in many quarters that Sir Hugh Graham, the proprietor of The Montreal Star, was largely interested, and, for the purpose of chloroforming the public, had acquired The Montreal Telegraph and Witness, obtained control of La Patrie, and schemed to buy up, or to put out of business, The Montreal Herald. La Patrie, however, passed from under the control of Sir Hugh, and The Herald proved irreconcilable, publicity being given to the scheme by the action recently lodged in the courts of Montreal against Sir Hugh Graham and others, by Mr. Lorne McGibbon, proprietor of The Herald.

The experts will no doubt advise the city that the unification of the franchise is in the public interest, and that many of the extensions and improvements proposed by the Tramways Company, including subways and auto-bus service on Sherbrooke and other residential streets, are desirable. But no experts will be found to recommend that Montreal tie herself up for forty years, give the Tramways Company the use of her credit, and spend a large sum of money merely to get the same, or higher, fares and four per cent. of the gross receipts.

The aldermen of Montreal, some of them members of the legislature, have not by their records commended public ownership. But the city should certainly insist upon some arrangement by which a municipal commission should take part in the management of the tramways, and by which the city should obtain a large percentage of the net receipts and be authorized at any time to take over the plant and franchise of the company at a valuation to be determined in advance. This can be done if water is kept out of the securities of the company. Such securities should not be issued except upon the certificate of a commission, should be sold at auction and the proceeds disbursed for the benefit of the enterprise, under the direction and supervision of public officials.

So far as we can judge, there has been more public spirit exhibited by the people of Montreal in this matter than they were credited with possessing. The metropolis of late has developed a civic spirit of which the action by the board of control in refusing to be stampeded, gives evidence. Certainly Sir Lomer Gouin, the representative of Liberalism in the Province of Quebec, should not impose any franchise upon the City of Montreal which has not been approved by the majority of her ratepayers at the polls.

CHARLES REMINGTON DEAD

WATERTOWN, N.Y., Dec. 1.—(Can. Press)—Charles R. Remington, who, with his brother, A. D. Remington, was the pioneer manufacturer of news print paper in northern New York, and for many years connected with the "Remington group" of mills, died today, aged 80 years.

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Lincoln Road Methodist Church, Walkerville, Ont.	38.56
First Presbyterian Church, Walkerville, Ont.	13.95
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RATES AGREEMENT BEGINS THURSDAY

All Evidence in Long Drawn Out Case Before Railway Board.

HEAR BICKNELL FIRST

Summing Up to Be Completed by Saturday Night Next.

OTTAWA, Dec. 1.—(Can. Press.)—All the evidence in the western freight rates case has been put in. At 4 o'clock this afternoon Chief Commissioner H. L. Drayton, K.C., declared the case formally closed and called on the respective counsel to proceed with the argument, but on the plea of James Bicknell, counsel for the Dominion Government, and of F. H. Chrysler, K.C., counsel for the C.P.R., the board agreed to an adjournment until Thursday morning. From the time the arguments begin until they are definitely closed the board will hold evening sessions if necessary as it is planned to call a halt on the arguments not later than Saturday evening.

Mr. Bicknell will be the first to address the board. He will be followed by counsel for the western provinces interested in the case and Isaac Pitblado, K.C., for the Winnipeg Board of Trade. The legal representatives for the railways will follow.

Bicknell's First Inning.

The chief commissioner wanted to know who would argue the case first and Mr. Bicknell claimed the privilege. M. K. Cowan, K.C., counsel for Saskatchewan, opined that the position was rather peculiar. He and Mr. Pitblado might be in accord thruout, he said, but it might be, however, that on some points they would differ.

"You will all have a chance," said the chairman, "but," he added, "please do not all say the same thing."

It was then decided among the legal representatives that Mr. Bicknell should be heard first, then the provincial counsel and then the representatives of the railways.

The two days' adjournment is to enable counsel to prepare their arguments.

Exit Mr. Muller.

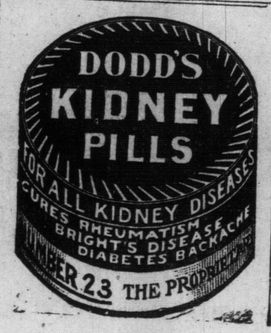
The last session of the case has been on since last Tuesday, and every day J. P. Muller, the American rate expert, engaged by the government, has been on the stand, either giving evidence or under fire of cross-examination from the counsel of the different railways. When he got up this afternoon at four o'clock he heaved a sigh of relief, then hurriedly packed his papers and 45 minutes later was on his way to his home in Washington.

This afternoon he submitted another stack of statistics, comparing figures per ton mile between the C.P.R. and the C.N.R. These figures, like practically all the others put in, were of a highly technical character.

It is not likely that it will be necessary to bring Mr. Muller into the case again. The arguments which will begin on Thursday promise to be the most interesting feature of the case, and the fact that some of the most able counsel in the Dominion will be pitted against one another should make it doubly interesting.

DR. ALEXANDER BELL HONORED

LONDON, Dec. 1.—(Can. Press)—The Royal Society today awarded the Hughes medal to Dr. Alexander Graham Bell of Washington for his investigations into technical electricity. The society elected Sir Wm. Crookes president for the ensuing year.



AT OSGOODE HALL

ANNOUNCEMENTS.

December 1, 1913.

Judges' chambers will be held on Tuesday, 2nd inst. at 11 a.m.

Peremptory list for appellate division for Tuesday, 2nd inst, at 11 a.m.

1. Stewart v. Henderson (to be continued.)
2. Empire v. Carroll.
3. Loftus v. Harris.
4. Lange v. Toronto and York Radial Ry. Co.
5. Perron v. Hurd.
6. Ferguson v. O'Neill.

Master's Chambers.

Before Geo. S. Holmested, K.C. Registrar.

Munns v. Young.—M. Wilkins, for plaintiff, moved for order striking out statement of defence. M. L. Gordon, for defendant. Reserved.

Bankes v. C. P. Ry. Co.—C. Swabey, for defendant, moved for directions as to trial of case between defendant and third party. W. B. Kingsmill, for third party. B. N. Davis, for plaintiff. Usual directions made giving third party leave to attend trial etc. Costs in third party proceedings except plaintiff's which are in cause.

Stavert v. Holdcroft.—J. F. Boland, for plaintiff, moved for order for further examination of defendant as a debtor. J. G. Smith, for defendant. Order made. Costs added to plaintiff's claim.

Wolfe v. Eastern Rubber Co.—Parry, for plaintiff, obtained order on consent, allowing bond for security for costs. Costs in cause.

Standard Reliance v. Bateman.—G. C. Campbell, for plaintiff, moved to vacate praecipe judgment for foreclosure with reference as to encumbrancers on ground that there are no encumbrancers. Judgment vacated without prejudice to application for judgment without a reference. No costs.

Judges' Chambers.

Before Falconbridge, C.J.

Boyd v. Day.—H. Gutherie, K.C., for plaintiff. J. G. Smith, for defendant. Motion by plaintiff for judgment for administration of estate of John Davenport, deceased. Judgment: The defendants, Elizabeth Elliott and Ellen Day, undertaking to enter into an agreement with plaintiff, that in the event of any of the three dying before the property is sold, his or her share shall be treated as having absolutely vested on the death of the life tenant, this motion stands dismissed without costs. Of course the executors will have their costs as between solicitor and client out of the estate.

Before Meredith, C.J.

Re Pasquale Bovior—R. L. McKinnon (Guelph) for defendant, moved for order quashing conviction of defendant for keeping liquor for sale and selling it without a license. Judgment: The plain provisions of the act of 1909 regarding the manner of taking evidence were quite disregarded, and no direct evidence seems to have been given that the liquor in question was intoxicating and no attempt seems to have been made to prove directly any delivery to the accused or at her house of the greater part of the liquor in respect of which she was convicted. I give effect directly to the contention made on behalf of the applicant that there is no reasonable evidence to support the conviction. No one shall be convicted upon suspicion alone, no matter how strong it may be; only those who are duly proved to be guilty, in accordance with the provisions of the law, shall be punished. The conviction must be quashed.

Single Court.

Before Latchford, J.

Baycroft v. Morshead—R. H. Greer, for the plaintiff, moved for judgment on default. No one contra. Motion adjourned until 4th inst. to enable personal service on defendant.

Re Laidlaw and Campbellford L. O. and W. Railway Co.—C. W. Livingston, for the railway company, on motion to set aside award. E. G. Long for Laidlaw. At parties' request motion enlarged until 4th inst.

National Advertograph Co. v. Welch—G. G. Plaxton, for plaintiff, on motion for injunction. R. Honeyford for defendant. At request of plaintiff enlarged one week to enable plaintiff to get copy of examination, the undertaking to continue.

Toronto Developments, Limited, v. Kennedy—W. M. Douglas, K.C., for plaintiff on motion to commit. L. V. McBrady, K.C., for defendant, asked enlargement. Enlargement until 4th inst.

Ocean Accident and Guarantee Corporation v. Gilmour—G. H. Sedgewick, for plaintiff, on motion for order continuing injunction. J. M. Godfrey for defendant. Enlarged one week. Injunction continued meantime.

Re Armstrong and McAsy—A. W. Hunter, for vendor, moved for order declaring restriction not binding on vendor and that purchaser's objection is not a valid one. W. B. Milliken for purchaser. Order declaring that vendor can make good title on registering releases obtained, and that purchaser's objection is not a valid one.

Re Doyle Estate—G. C. Campbell, for executors, moved for order construing will of Michael P. Doyle. J. A. Mowat (Guelph) for residuary legatees. P. Kerwin (Guelph) for trustees of fund. Reserved.

Walkerville v. Walkerville Light and Power Co.—E. F. B. Johnston, K. C., and J. Sale (Windsor), for plaintiff, moved for order continuing injunction. A. W. Anglin, K.C., for defendant. Reserved.

Before Lennox, J.

Smith v. Wilson—J. E. Caldwell (Ottawa) for purchaser. W. C. McCarthy (Ottawa) for creditors. C. L. Bray (Ottawa) for vendor. Appeal from report of local master at Ottawa. Judgment: I am satisfied that the finding of the local master that the deed in question from the vendor to the purchaser has not been delivered is correct. I do not, however, agree with the local master that the vendor and purchaser are entitled in equal shares in the equity of redemption in the lands in question, if that is what is meant by the finding that they are tenants in common. They are joint tenants, but manifestly not in equal proportions. The several executions are encumbrances, are encumbrances upon the interest or share of the vendor. Considerations arise, however, which have not been specifically dealt with by the master or argued which will cause trouble and great expense if not disposed of now. I will, therefore, enlarge the motion until Saturday, 13th inst.

Trial.

Before the Chancellor.

Cairns v. The Canada Refining and Smelting Co.—A. E. H. Creswicke, K. C., for plaintiff. M. B. Tudhope (Orillia) for defendant. Action to recover $1,000 damages alleged to have been sustained by plaintiff from noxious, offensive and poisonous vapors, fumes and gases from defendants' smelter, which spread and diffused themselves over and about the lands of plaintiff, greatly corrupting the air and injuring the health and comfort of plaintiff and occupants of plaintiff's said lands, and an injunction. Judgment: A public nuisance is distinguished from a private only in this that the latter is an injury to the property of an individual, while a public nuisance is an injury to the property of all persons who come within the sphere of its operation; tho it may be injurious to a greater or lesser degree as to different people within the area affected. The evidence proved that there has been an excessive discharge of vapor from the defendants' works in 1912 and more or less deposit of arsenical dust upon the plaintiff's premises, and his vegetables, such as corn and the like, and these being fed to the cow, occasioned her death from arsenical poisoning. The evidence leads to the conclusion that the discharge from the vents of the smelter has been so greatly minimized by the introduction of improved modern methods as to do away with any substantial ground of complaint. The plaintiff should recover damages to extent of $80 for the cow with costs of action on the lower scale and no set off, but as to the injunction no order be made. Without prejudice to further litigation should circumstances justify it.

Before Britton, J.

Lambertus v. Lambertus—M. G. Cameron, K.C., for plaintiff. C. Garrow (Goderich) for defendant. Action by Mrs. Lambertus for payment of $1,000 under a policy on the life of her late husband, who had the policy made in favor of his first wife, who predeceased him. The money had been paid into court. Judgment: The judgment will be for a declaration that the proceeds of the certificate or policy now in court belong to plaintiff and payment should be made of the same to her. The case may be without cost if the case goes no further.

Before Middleton, J.

Fritz v. Jelfs—L. E. Awrey (Hamilton), for plaintiff; F. R. Waddell, K.C., for Green; S. F. Washington, K.C., for Jelfs. Action to recover $2000 damages for injuries alleged to have resulted from the wrongful eviction of plaintiff from his home, whereby he and his family were compelled to walk the streets during night of June 27, 1912. Judgment: On the answers of the jury I dismissed the action as to Green with costs. As to Jelfs, had the action been based upon an abuse by him of his official position, other questions would have arisen. The plaintiff has thruout disclaimed this possible line of attack. The action fails, but to mark the disapproval of the defendant's conduct, costs should not be given.

Appellate Division.

Before Meredith, C.J.O.; Garrow, J.A.; Maclaren, J.A.; Magee, J.A.; Hodgins, J.A.

City of Ottawa, v. Y.M.C.A. (two cases)—W. N. Tilley and J. T. White for the city; J. F. Orde, K.C., for Y. M.C.A. Appeal by the city in the first case from judgment of Clute, J., of Dec. 7, 1908, and of divisional court of March 9, 1910, and in second case from order of Ontario Railway and Municipal Board of March 5, 1912. The question is as to the liability or non-liability of the Young Men's Christian Association to pay taxes. Judgment: Both appeals dismissed with costs.

City of Ottawa v. Gray Nuns—W. N. Tilley and J. T. White for the city; H. M. Mowat, K.C., and D. J. McDougall (Ottawa) for Gray Nuns. Appeal by the city from order of the Ontario Railway and Municipal Board of March 5, 1912. Judgment: Appeal dismissed with costs.

Before Meredith, C.J.O.; Maclaren, J. A.; Magee, J.A.; Hodgins, J.A.

Richards v. Lambert—I. F. Hellmuth, K.C., and A. R. Bartlett (Windsor), for defendants; J. H. Rodd (Windsor), for plaintiff. Appeal by defendants from judgment of Latchford, J., of Jan. 13, 1913. The order complained of was made on appeal from report of local master at Windsor by defendants, and on motion for judgment on report made by plaintiffs, and after varying report by deducting $496.52 from the amount found due the Regal Motor Car Co., gave judgment in favor of the Regal Motor Car Co. of Canada for amount as varied. Judgment: The judgment appealed from and the report of the local master set aside. Declaration that neither company is indebted to the other in respect of matters in question in the action, and each party to bear his own costs of the litigation thruout.

Re National Husker and Winding-up Act—W. E. Raney, K.C., for E. P. Worthington; J. M. Ferguson for liquidator, and J. J. McGaffigan. Appeal by E. P. Worthington from order of the chief justice of the common pleas of April 8, 1913, affirming the report of the master in ordinary putting him on the list of contributories for 50 shares having $3760 still to be paid thereon. Judgment: Appeal dismissed without prejudice to defendants to move to vacate or set aside the winding-up order. No costs of the appeal.

Carlyle v. Oxford—W. M. Douglas, K.C., for plaintiff. A. McG. Macdonell, K.C., for defendant. The appeal was spoken to on notice from the court.

Moore Modern Skirt Co.—M. L. Gordon for defendants. C. A. Moss for plaintiff. Appeal by defendants from judgment of the county court of York of July 2, 1913. Action to recover $213.22, alleged to be balance due for goods sold by plaintiff to defendants. At the trial judgment was given plaintiff for the amount claimed with costs. Appeal argued and dismissed with costs.

Stewart v. Henderson—N. W. Rowell, K.C., and J. M. Langstaff for defendant. G. H. Watson, K.C., and E. Coyne for plaintiff. Appeal by defendant from the judgment of Latchford, J., of May 22, 1913. Action by Toronto broker to recover $500,000, being a commission of 10 per cent. on $5,000,000, the selling price of secret process for converting iron into steel and for the manufacture of steel, known as the Henderson Process. The trial judgment declared plaintiff entitled to a commission on the amount of $3000, paid by Sir William Mackenzie to defendant and to 10 per cent. of any stock which has been issued, or which may be issued, to defendant, or any money paid hereafter under the agrement of May 26 and May 27, 1912, with costs. Appeal partly argued, but not concluded.

Before Meredith, C.J.O.; Maclaren, J. A.; Magee J.A.; Leitch, J.

Canadian Lake Transportation Co. v. Brown—J. Bicknell, K.C., and T. Hobson, K.C., for plaintiffs. E. F. B. Johnston, K.C., and J. G. Gauld, K.C., for defendant. Appeal by plaintiffs from the judgment of Falconbridge, C.J., of Feb. 25, 1913. The action was brought to recover from defendants, plaintiff's agents, at Hamilton, $1447.72, claimed to be balance of amounts due plaintiffs for freights alleged to have been collected by defendant for plaintiffs. Judgment was awarded plaintiffs for amount claimed, but was also awarded defendant on his counterclaim, and it is from the latter judgment plaintiffs appeal. Judgment: Appeal dismissed with costs.

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