THE SEWER LIABILITIES.

Judgment of the Full Court in the Case of Coughlan & Mayo V. the City.

Decision of the Court Below Set Aside and the Claim Held Not Good.

From Friday's Daily.

The full court, consisting of Justices Crease, McCreight and Walkem, gave judgment this morning in Coughlan vs. the Corporation of Victoria, reversing the judgment of Mr. Justice Drake, which was in favor of the plaintiffs. Below is part of Mr. Justice Walkem's judgment:

"The plaintiffs, as contractors for the construction of certain sewerage work in the city, brought this action to compel Mr. Wilmot, the city engineer, to give them a certificate for $5,287.62, and to obtain a judgment for that amount against the corporation. The amount consists of the balance due on an alleged agreement for payment of $7,032, as a lump sum for the whole work, and of about $1,900 for extras. The defense, in effect, is that payment at schedule prices, and not a lump sum, was agreed upon; that the alleged extras were part of the contracted works; and that the engineer had given a final certificate for $22.28 which was all that was due to the plaintiffs.

At the trial, Mr. Justice Drake held that the contract was for the lump sum mentioned; that the plaintiffs were entitled to be paid $3,757 as a balance due thereon by the corporation subject to the right of the latter to retain ten per cent of it for the maintenance period of six months; and that they should be allowed for certain works as extras—the amount thereof and the question of costs being reserved for further consideration.

The corporation now appeals from the part of the decision relating to the lump sum and the extras.

The judgment, it will be observed, does not dispose of the case against Mr. Wilmot. The certificate that was pleaded was, as I understand it, given after the commencement of the action; but even had it not been given at all, the action would not lie against Mr. Wilmot; for an engineer or architect cannot be compelled by the contractor to give a certificate, as there is no privity of contract between them. He is only liable for damages to the contractor if he acts fraudulently, and there is no charge or even suggestion of that sort against Mr. Wilmot. (See Hudson's Building Contracts, page 63, and cases cited.) The action as against him should therefore have been dismissed with costs; hence, the order of this appeal must contain a direction to that effect. * * * * * * *

In ascertaining whether the above amount of $7,032 was meant to be a lump sum or not, all the documents referred to, and not the agreement alone, must be considered, and particular attention given to those portions of them which deal specifically with the question of price or payment, it being a cardinal rule, as observed by Mr. Justice Willes, in Roberts vs. Bury Impt. Com'rs (Law Reps. 4 c.P. p. 670) that the court should be guided more by the words of clauses relating to a particular subject which requires elucidation than by any general inference from the whole contract. * *

Now, it is impossible to reconcile the view thus taken by Mr. Coughlan of the schedule for earth, with the view which he takes of the schedule for rock, although both schedules are similarly framed. He considers, for instance, (Ev. Q. 139-144) that if his firm took out a body or column of earth, say, a foot in length by eleven feet in depth, and 27 inches in width, and then an underlying foot of rock, all should be charged for at $8.12, which is the price in the schedule for excavating a column of rock a foot long by 12 feet in depth and the width mentioned. In other words, if in sinking through 11 feet of earth, he came to rock, and had to take it out, he would charge for all as rock. Supposing, however, that the converse were the case, viz., 11 feet of rock and then an underlying foot of earth, is it at all likely that he would accept the price of earth for the rock? Such a mode of computation, of course, condemns itself. The plaintiffs' scale of prices for the rock as it deepens is not, I observe, a properly graduated scale, for in some places the same price is named for excavations of different depths, while in others, the prices are in inverse ratio to the increase of depth. But these mistakes, and they are evidently such, are the plaintiffs', and they are, therefore, bound by them.

There is no separate schedule of prices for mixed bodies, or alternate layers, of earth and rock—I understand there was no hard pan; and we have not sufficient evidence to show that the schedules before us would enable the engineer, in valuing such mixed materials, to calculate what might be due to the plaintiffs to their satisfaction, for they have the right to be satisfied of the correctness of such valuations, as his certificate, though a final one, is not made conclusive or binding upon them by the terms of the contract. The contract, moreover, gives him no power to make allowances in the nature of adjustments. Such a power is given to him and the sewerage commissioners jointly; but it was not, in any legal sense, exercised; for at the meeting which took place with respect to the matters now in dispute, it was stipulated by the commissioner that whatever decision was arrived at should be without prejudice to the corporation. This was equivalent, of course, to saying that no decision should be binding and the evidence, consequently, with respect to what was done, was properly ruled out by the learned judge at the trial as being inadmissible.

The question as to what is due to the plaintiffs is yet an open one, and can only be determined by a new trial, unless the parties agree to refer it to some competent person to determine—a course which I suggest they should adopt as being the least expensive, and perhaps, most satisfactory one. We have no power to direct such a reference. The stipulation in the contract that all differences as to its meaning, or as to measurements or variations, should be referred to the commissioner and engineer jointly for their decision, should have been taken advantage of at the proper time. Even had that been done, the jurisdiction of the court would not have been ousted, as there is no provision in the contract to the effect, as in Scott vs. Avery, 5 H. L. Cases 811, that a reference to, and determination by, them should be a condition precedent to the plaintiff's right to sue.

The judgment of the court below must be set aside, and the costs of the trial that has taken place, paid by the plaintiffs. Their pleadings will need amendment, hence the costs occasioned thereby to the defendants should be the defendant's costs in the cause in any event. The action as against Mr. Wilmot, should, as I have said, be dismissed with costs. As the judgment has not been reversed, but merely set aside, the parties to this appeal should bear their own costs.

Mr. W. J. Taylor for the city and Mr. E. V. Bodwell for the plaintiffs, the contractors.

IN MEMORY OF THE DEAD.

A Convalescent Home to be Built at Yale as a Memorial to Bishop Sillitoe.

A memorial is to be built to the late Bishop Sillitoe, of Westminster, and a committee of the Mainland Anglican clergy has been appointed to direct the work. The memorial is to take the form of a convalescent home and house of rest to be built at Yale. The adoption of this form of memorial is the result of the late bishop's hope often expressed that such a home be established, and of a desire on the part of Mrs. Sillitoe to take charge of and carry on the work of such a home without expense on her part to the diocese. It is intended to be open to all who need to seek convalescence and rest. The estimated cost is $3000 and donations towards this most worthy object, in memory of one who gave his life work of Christianity, may be sent marked "Bishop Sillitoe Memorial Fund," to the Bank of Montreal, New Westminster, or the Revs. H. G. F. Clinton, Vancouver; H. Edwardes, Lytton, or G. Ditcham, New Westminster.

SCHOOL DISTRICTS CHANGED.

Goldstream District Created and Lines of Adjoining Districts Re-Defined.

The education department has created Goldstream school district, and has altered the boundaries of Colwood and Metchosin districts. The districts as they now exist, are defined below:

Goldstream district is as follows: Commencing at the northwest corner of section 84, Metchosin district; thence east to the northeast corner of section 75 of said district; thence southerly to the southeast corner of section 67a; thence due northwest to the eastern boundary line of Goldstream district; thence in a direct line northwest to the western boundary line of said Goldstream district; thence north, following the western, northern, and eastern boundary lines of said district to the point of commencement.

Colwood district is defined thus: Commencing at the northern end of Parson's Bridge, Esquimalt district; thence following Rowe stream to the boundary line between section 97 and 98; thence in a northerly direction along the eastern boundary line of section 98 to the southern boundary line of Highland district; thence westerly along said boundary line to its termination; thence southerly following the eastern boundary line of Goldstream district to the northwest corner of section 87, Metchosin district; thence easterly following the southern boundary lines of sections 90, 84 and 78 to the southeast corner of section 78, Esquimalt district; thence southerly along the western boundary line of Esquimalt district to the southwest corner of section 59; thence easterly following the southern boundary lines of sections 59 and 42 to the southeast corner of section 42; thence northerly to the southwest corner of section 52; thence easterly along the southern boundary of said section to the sea shore; thence northerly following the shore line to the point of commencement.

The lines of Metchosin district re-defined are as follows: Commencing at the southeast corner of section 52, Esquimalt district, being a point on the sea shore; thence westerly to the southwest corner of said section; thence southerly to the southeast corner of section 42; thence westerly following the southern boundary lines of sections 42 and 59 to the western boundary line of Esquimalt district; thence south to the southeast corner of section 67a, Metchosin district; thence due northwest to the eastern boundary line of Goldstream district; thence southerly following the eastern boundary lines of Goldstream and Sooke districts to the northeast corner of section 76, Sooke district; thence easterly to the northeast corner of section 43, Metchosin district; thence northeasterly to the northwest corner of section 27; thence easterly following the southern boundary lines of section 25, 24 and 33 to the sea shore; thence northeasterly following the shore line to the point of commencement.

Nervous People

An those who are all tired out and have that tired feeling and sick headache can be relieved of all these symptoms by taking Hood's Sarsaparilla, which gives nerve, mental and bodily strength and thoroughly purifies the blood. It also creates a good appetite, cures indigestion, heartburn and dyspepsia.

HOOD'S PILLS are easy to take, easy in action and sure in effect. 25c.

DEATH OF W. J. MEAKIN.

The Popular and Well Known Restaurant Man Died Tuesday at Vernon.

William Joseph Meakin, of Vernon, is dead at that city. His death took place on Tuesday afternoon after a long illness. Mr. Meakin was an Englishman by birth but, for several years prior to 1887, he had resided in Montreal. In that year he came to Vancouver and had charge of the wine room at the Hotel Vancouver. He then went into business for himself in the Power block and afterwards in the Lefevre block, and then acquired the ownership of the Hotel Kalemalka at Vernon. Mr. Meakin's restaurants soon became well known by the excellence of his cuisine and the polite attention of himself and wife to customers. His friends, and there were many, called his place "the Delmonico of the West." But his health was gradually growing worse and last year he went to California and for a while appeared to have benefited by the trip. He again became worse and went to the mountains to live, the dry climate suiting him. The news of his death was not unexpected. He leaves behind him several grown up children.

M. COQUELIN.

The Great French Comedian.

These are the features of the Prince of French Comedians, whose "Tartuffe," which he may be said to have made his own, convulses every audience which has the delight of seeing the master portray the arch hypocrite. Respecting "Vin Mariani," he says: "Strange to say that 'Vin Mariani,' so exquisite a wine, should also be a remedy, and a delicious one at that, so pleasant to the taste and so beneficial to the entire system." And Coquelin merely states a truth which is attested by the most famous men and women of the age, by the foremost medical men, and the managers of all the great hospitals. "Vin Mariani" is indeed beneficial to the system. The weakest can digest it; the most debilitated are benefited by it; the most hopeless are revivified by it; and as has been often said regarding it, "It gives new life and hope." "Vin Mariani" is the great tonic-stimulant of the age, used by the great brain-workers of the world, who find that, exhausted by overwork, it refreshes, strengthens, and builds up the whole system. An album of portraits of many celebrities who have spoken highly of "Vin Mariani" will be sent to those who send their address to Lawrence A. Wilson & Co., Montreal, the Canadian Agents.

ATHLETIC CLUB BALL.

Pleasant Evening Spent in A. O. U. W. Hall Last Evening.

A. O. U. W. hall was just comfortably filled last evening for the annual ball of the James Bay Athletic Association, showing that the committee of management had acted advisedly in securing the hall, instead of using the club gymnasium, as has been done in past years. There was a very jolly party of young people present, and the evening was very pleasantly spent. A great deal of time had been spent in preparing the hall for the event, and the members of the committee were well rewarded for their trouble. The hall never looked better, the decorations having been very tastefully arranged by the members of the club, who have quite a reputation as ball room decorators. Flags, bunting and evergreens had been used in profusion, but those who had this department in charge had been successful in securing some entirely new effects. Spring flowers had also been cut to advantage, the band stand being almost entirely hidden behind calla lillies and other potted plants.

The floor had also received attention and could not have been in better order for dancing. The music, too, was good, Finn's orchestra winning fresh laurels and commendation from those who had the pleasure of being present.

There was no need for anyone to be told that the ladies had taken charge of the supper room. The tables were arranged as only ladies can arrange them, and the delicacies—well the chef of the swellest cafe would not be so foolish as to attempt to exceed them. Accommodation had been provided for everyone present, so that no one had to wait for supper, all being seated at the same time. It was these and hundreds of other well-arranged details that made the ball the most successful that the club has held.

The committee did not stop working when the doors were opened, but continued until the last minute and thereby succeeded in making their guests feel thoroughly at home.

The floor committee consisted of Mr. A. J. Dallain, secretary, and Messrs. W. A. Cornwall, J. E. Wilson, J. H. Henderson, W. H. Wilkinson, J. S. Yates, W. R. Higgins, H. D. Helmcken, Ven. Archdeacon Scriven, A. C. Flumerfelt, T. N. Hibben, E. O. Finlaison, H. F. Langton, F. J. Macfarlane, G. E. Jorgenson, W. H. Langley, F. A. Gowan F. A. Jacob.

Will Mrs. Vanderbilt Marry?

Paris, April 19.—Mrs. Vanderbilt, divorced wife of W. K. Vanderbilt, expressed no surprise when she was asked if she was about to marry Belmont and declined to answer.

Rebellion Spreading.

Madrid, April 19.—Havana dispatches say that the Cuban rebellion is spreading but the insurgents are badly armed. If the uprising spreads further General Campos will ask for reinforcements.

ALL OVER THE PROVINCE.

New Theory Regarding the Death of Roy, the Clover Valley Farm Hand.

Every Prospect of a Good Marketing Season for the Interior Cattle Men.

VERNON.

Vernon News.

Mr. A. B. Knox of Kelowna, shipped another car of beef cattle to New Westminster on Saturday. There is quite a perceptible move in the cattle trade this spring, and stockmen are confident that prices will be higher before the close of the season than has been the case for several years. Mr. Graves, of Douglas lake, purchased upwards of $30,000 worth of cattle of all ages during his recent trip, and his men are expected to arrive in a few days to round them up and drive them to Nicola. This will have the much desired effect of circulating a considerable amount of cash in the district at a time of year when it is badly needed.

Mr. Louis Christien, road foreman, is engaged in mapping out the summer's work on the public roads. Last week he staked out a new route from the Mission road through the commonage to Mr. A. Carr's ranche on Okanagan lake. He is now working up White Valley placing the new road to Trinity valley, which will be built this summer. It is not probable that any large gang will be put to work until June.

Mr. H. Lapointe, a cattle buyer from the coast, was in town this week. He secured some beef cattle in Spallumcheen but was not very successful in this neighborhood as the great bulk of fat cattle have already been disposed of.

A considerable number of men are mining and prospecting this spring on Siwash creek, but so far the results have not been very encouraging. Since the strike made last fall by Messrs. Kirkpatrick and Atier, nothing exceeding small wages has been taken from any of the claims.

A very pretty marriage ceremony took place on Tuesday afternoon in the town hall at Lansdowne, in the presence of a number of interested spectators, when Mr. J. E. Matheson was united to Miss Agnes Wright in the bonds of matrimony.

The stables and outbuildings on Mr. Victor Guillaume's ranch, Grand Prairie, were burned to the ground last week. The fire originated from some rubbish which was being burned near the buildings. The loss is estimated at $2000.

MIDWAY.

Midway Advance.

Captain R. C. Adams, of Montreal, is sending out his son, Walter C. Adams, B. A. Sc., to Midway, to attend to his mining interests at Boundary and Osoyoos. He desires to let a contract to sink a shaft on the Cordick claim in Summit camp, and he proposed to have the claim surveyed and patented. Mr. Walter Adams is a graduate of McGill college, Montreal, in both the departments of chemistry and mining engineering, and may be available during the summer to make reports on mining properties.

A few days since Mr. W. T. Smith came down from Summit camp and brought a sample of ore that those conversant with the ores of the two districts claim was identical in appearance to that found at Trail creek. Whether it assays the same remains to be proven.

Briar creek is the name given to the new camp, situated between the Providence and Summit camps, by the discoverers of the Big Windy mineral claim, Messrs. Thomet, Bennerman and Peterson, who recorded the Big Windy on April 5. There is a three and a half foot vein, which shows quite an amount of native copper.

Seeding is well advanced. Messrs. Cartmel & Shuster, who have for some time past being putting in Mr. McDonnell's crop, completed their work a few days ago. They have the honor of being the first to get through with seeding on Kettle river this spring. Yet it may be considered none too early for this part of the country.

Mr. J. McNicol recorded the Hecla, an eastern extension of the Great Hesper, on April 6. There is a four foot vein, and the quartz is well mineralized.

NEW WESTMINSTER.

New Westminster, April 19.—The Roy inquest was continued yesterday in the Cloverdale hotel and Mr. and Mrs. Jones and their son and Mr. James Brown were all examined. The facts as now ascertained do not appear to support the theory of murder, but the inquest is not yet concluded. It is to be continued today. The body was discovered about a mile away from the house and a short distance off the road. What remained of it was not so decomposed as it would have been if he had been killed in January as at first suggested. It has been greatly torn by wild beasts, and the impression is now held by some that Roy had either being killed in conflict with a bear, or that he had taken ill in the bush and unable to get out had died there. There is no appearance of the body having been dragged in any way. The head had undoubtedly been carried by some animal from where the body was found to the cabin.

The run of oolachans continues to be very plentiful and those engaged in fishing the little beauties are having a good time of it. Large boxes of them are being shipped to different places and they are finding a ready market.

VANCOUVER.

Vancouver, April 19.—The Hastings mill company are establishing a new logging camp on Bear river, 150 miles up the coast. A number of men are already hard at work erecting sheds and getting ready to commence active operations. A locomotive engine, which is being put into shape near the mill, will be taken up on a scow shortly.

Boring operations over at North Vancouver have been suspended for the past week, owing to the need of a diamond drill. A first class article arrived from Chicago yesterday and work will be resumed without further delay. The promoters of the work have every reason to believe that their efforts will be rewarded by the discovery of coal in paying quantities.

The International Ice & Storage Company's cold storage warehouse on Gore avenue is now in running order. The cold storage rooms are already supplied with beef and pork, and the manufacture of ice began this week.

The British bark Glenivor, 1084 tons, Captain Williams, is expected to be ready for sea Saturday. She is lumber laden from Hastings mill for Cork.

The families of the Rev. Saugstad's Bella Coola colony will leave Crookston on the 26th of April, in charge of Agent R. Farrell of the C. P. R. A special steamer from this city will convey them direct to the Bella Coola valley.

The Blangowrie, 1564 tons, Captain Manson, went on the berth at Hastings mill this morning to load lumber for South Africa.

Arrangements are in progress for a chess match between this city and Victoria, to be played on May 24th.

CLEAN BILLS OF HEALTH.

Victoria Dairymen That Have Inspector Roper's Certificates.

The Gazette announced that the following have been granted clean bills of health as to their cattle by Deputy Minister J. R. Anderson of the department of agriculture under the contagious diseases (animals) amendment act, 1895: Peter Merriman, Cedar Hill road; William Wales, Colwood; John Irvine, Cedar Hill road; William Holmes, Cedar Hill road; Henry Mycock, Glandford avenue; Thomas Smith, Beacon Hill; Charles King, Cedar Hill; J. Sehls, Swan Lake; H. Caselton, Saanich road; William Hicks, Saanich road; Hobbs & Evans, Burnside road; George Rogers, Gorge road; Mrs. Muirhead, Victoria West; W. H. Short, Ross Bay road; Michael Anderson, Garbally road; Frederick Pemberton, Victoria; Thomas Alexander, North Pembroke street; George Coverdale, Wilkinson road; Mrs. Hooper, Ross Bay road; Samuel Suthern, Ross Bay road; A. J. Woodward, Ross Bay road; James Nicholl, Foul Bay; Alfred Few, Old Esquimalt road; Captain McCallum, Admiralty road, and James Barker, Strawberry Vale. Inspector Roper adds the following: "Those of the above-mentioned ranchers who supply the city with milk deserve great credit for the clean and tidy manner in which they keep their dairies, as well as for the care which they exercise in seeing that the milk is carefully strained and fit for market."

THREE WAYWARD BOYS.

Private Hearing of the Victoria West Lads for Obscene Writing.

There was a lengthy hearing in police court this morning of the three Victoria West boys summoned at the instance of the school trustees, two on two counts for breaches of the public morals by-law and one for the wilful destruction of property in breaking a window. The latter, the youngest of all, pleaded guilty, as did one of the others to both charges. The third was placed on trial and convicted. It was shown that the writing and figures on the wall were most filthy. The hearing was private but between witnesses, parents, teachers and school trustees there was quite a crowd present. Sentence was deferred until next Thursday, but beyond the severe reprimand given this morning it is not likely that anything will be done. The magistrate said the trustees had taken the cases into court to hide a deficiency in discipline in the school, and said he believed the remedy was in the hands of the teachers. He did not care to take the fines from the parents of the boys.

The charge of lack of discipline throws the responsibility upon the teachers, and their excuse is that one of the offenders does not attend the school and that neither trustees nor magistrate would support them in punishing him. They had consulted over the case and the facts were as clearly proven to them as to the court to-day and their decision was to take the cases into court. It is hoped that what has been done will have a salutary effect on the boys.

—Closing out sale tinware at Shore's hardware, 57 Johnson street. Come and see prices.

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World's Fair Highest Medal and Diploma.

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the cream of Cod-liver Oil, with Hypophosphites, is for
Coughs,
Colds,
Sore Throat,
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Weak Babies,
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in fact, for all conditions calling for a quick and effective *nourishment. Send for Pamphlet. FREE.*
Scott & Bowne, Belleville. All Druggists. 50c. & $1.