

IMPORTANT DECISION

Owners of No. 20 Below on Bear Creek

Win in a Protest Over the Ground Filed by Joe Boyle the Concessionair.

Gold Commissioner Senkler Saturday rendered a decision of unusual importance in the case of Joseph W. Boyle vs. A. D. Fields, Thos. Sparks and Frank Berry, the action being over the title to 20 below on Bear creek. The claim in question is below the mouth of the Bear creek canyon and is really in the valley of the Klondike river though located on the tributary. Boyle holds a concession on the Klondike and he alleged that the larger portion of No. 20 was within his boundaries. One point that the gold commissioner ruled upon was that no one has a right to question the title to a piece of ground granted by the government and which has been held undisturbed for several years unless fraud can be conclusively shown. The judgment in full is as follows:

"Creek claim No. 19 below discovery on Bear creek was staked by H. Lachman on September 27th and recorded on October 14th, 1896. No. 20 below discovery on the same creek was originally staked by one Halder in 1896, but after working a short time he abandoned the claim, and on February 4th, 1897, it was staked by Andrew Ness, and recorded February 5th. Both claims have been represented and renewed up to the present time and now stand on the records in the names of the defendants.

"On October 5th, 1900, the plaintiff, Joseph Boyle, obtained a lease under the hydraulic regulations of all and singular that certain parcel or tract of land in the valley of the Klondike river beginning about one and one-half miles up stream from the mouth of said Klondike river, thence up stream six and twenty-two one-hundredths miles, as shown on plat of survey thereof signed by T. D. Green, D.L.S. The placer claims in question are within the ground described in Mr. Boyle's lease.

"The third clause of the lease reads as follows:

"That the said lease or demise shall be subject to the rights or claims, but to such rights or claims only, of all persons who may have acquired the same under the regulations of any order of the governor general in council up to the date of these presents."

"A plan of survey of the placer claims above mentioned, made by Mr. Cote, D.L.S., was filed in the gold commissioner's office on August 7th, 1901, and an action was commenced by the plaintiff on September 26 following, protesting against said survey on the ground that it includes a large tract of mining property included in the lease to the plaintiff that was improperly included in said survey.

"The evidence shows that the mouth of Bear creek proper is at a point 145 feet above the down stream boundary line of claim No. 19. This point is marked on the ground by posts placed by Mr. Barwell, D.L.S. In other words, the stream from Bear creek flows into the valley of the Klondike river at this point, and the plaintiff contends that the lower 145 feet of claim No. 19 and all of No. 20, being in the valley of the Klondike river, they had no right to stake and obtain grants for this ground as creek claims under the regulations in force at that time.

"I must find from the evidence that the lower 145 feet of claim No. 19 and all of claim No. 20 is actually in the valley of the Klondike river, and I consider the ground outside of the line fixed by Mr. Barwell as the mouth of Bear creek, should not strictly be staked as a creek claim under the regulations. It also appears that the claims were staked irregularly, as the regulations required four posts, whereas these claims were staked with two posts. The plaintiff does not, however, attempt to show that there was any attempt on the part of the locators of these claims to fraudulently obtain ground that they were not entitled to under the regulations. Mr. McDonald saw Ness stake claim No. 20. He identifies accurately the position of the up stream post, and approximately the down stream post, said down stream post having been placed about 500 feet in the direction of the Bear creek valley continued towards the Klondike river. He is corroborated in this by Mr. Munroe, who saw the

posts shortly after the staking, and it appears that the down stream post of No. 19 was used as the up stream post of No. 20. Both these men, who were representative miners in this locality at that time, are of opinion that the locators of these claims were justified in staking the ground in question in the way they did, as owing to the meager information they had of the regulations at that time, the ordinary miner was not able to make fine discriminations as to whether ground should be staked as creek or river claims, or dry diggings. After these two claims were staked, however, grants were for creek claims regularly issued to the stakers by the representative of the department of the interior in this territory, and the owners have ever since worked the claims without their right to the property being questioned, until the commencement of this protest in September last. As stated before, the third proviso of the plaintiffs' lease states that said lease shall be subject to the rights or claim of all persons who may have acquired the same under the regulations of any order in council up to the date of the lease. I am of the opinion that grants having been issued for these creek claims before the hydraulic lease in question was issued to the plaintiff Boyle, he has no right whatever to attack these grants, especially in this case where the defendants held these claims for about four years before the plaintiff obtained his lease.

"The defendants and those through whom they claimed title, worked these properties very considerably, and at a very large expense, before they proved their value, and now that they have done so it would be most unjust that at this stage a plaintiff, who did not obtain his lease until after the ground was proved, should step in and question the right of the defendants to have a creek claim on the ground in question, obtained by them from the government four years previously. The crown only can question the validity of the grants issued for these claims, and the crown only can question any irregularity in the process whereby these grants were obtained.

"The plaintiffs have, however, the right to have the boundaries of the claim defined, as under their lease they are entitled to all land not lawfully occupied in that vicinity. The defendants have received grants for creek claims, and the position of the upper post of 20 being accurately defined, and the lower post approximately, there is no doubt of the ground that the stakers intended to stake from Mr. McDonald's evidence, that is, so much ground on each side of the location posts. There being no base of the hill on each side of the location line, the claim should, I consider, be confined to ten chains in width. The system of surveying with north, south, east and west lines is inconsistent both with what the parties intended to stake and with the amendment of this section passed on December 24th, 1894, in which creek claims were changed from 400 to 500 feet in length, running in the general direction of the creek or gulch. There is not a case in the history of the territory where this system of survey has been followed. From the evidence I would find that the stream at the time these claims were staked ran straight out of the gulch into the Klondike valley, a distance of about 360 feet, and then took a horseshoe turn back to the base of the hill, a short distance below the mouth of Bear, on the Klondike.

This, though, does not, to my mind, affect the case. It is entirely a question of what the locators actually staked and intended to claim. I think claim No. 20 should consist of 330 feet on each side of a line commencing at the post marked 'A' on Mr. Tyrrell's plan, 49 feet westerly of Mr. Cote's base line, on the up stream line of said claim, and running parallel with said base line to a point 500 feet towards the Klondike river, excluding therefrom that portion of the southwest corner thereof that is above the base of the hill. Or in other words, Mr. Cote's survey should be amended by excluding from the eastern end a rectangular piece of 59 feet in width and adding to the west end a rectangular piece of 53 feet, excluding therefrom that portion that would be above the base of the hill as above stated. That portion of the survey of claim 19 that lies east of the east line of claim 20 as amended produced in a southerly direction, shall be excluded from said claim, and the survey shall be amended accordingly.

"Mr. Cote's reasons for making the side boundary lines of the claims in the way he did are to my mind not tenable.

"I have come to the conclusion that each party should pay his own costs.

Found a white and brown spotted bitch. Owner can have same by applying to C. E. Garrison, 34 Eldorado, and paying expenses. c20

COMING TO THE FRONT

Upper Country Tributary to Dawson

Government Representatives at Stewart Have Miserable Quarters.

In order to accommodate the local trade between Dawson and the mouth of the Stewart river, the steamer Prospector whose regular run is between Dawson and Fraser Falls on the Stewart river, made a special trip to Stewart City Saturday night, returning to Dawson last night at 9:40. A few persons, among them a Nugget representative, made the trip as guests of Manager and Mrs. Meed and to them it was given to see and form some idea of the magnitude and extent of business which is being carried on in the country above but tributary to Dawson.

Prospectors and their little outfits were dropped off all along the river, wood camps were replenished with supplies and an almost continuous business conducted all along the river from Dawson to Stewart. Far over on a navigable slough on the right limit, fully three miles from the main channel is the Henderson creek landing at the terminal of the new government road which leads from the river out to the mines. Here several tons of goods and a number of passengers were unloaded. The distance from the landing out to the first working claim is about fourteen miles but the road is perfectly smooth but rather damp at present owing to recent heavy rains. It will be a first class winter trail.

Stewart City is almost as quiet on Sunday as Dawson, but owing to its location at the entrance of a large and rapidly developing district and surrounded by wood camps, it shows indications of considerable activity on week days.

Mr. L. T. Burwash, mining recorder for the lower Stewart district, reports business as very good in his office. But it is a shame that no better quarters are provided. The office is in an old cabin of the vintage of '97. The door is only about four feet high, the roof, or what little there is of it, is so low that only in the center can an average man stand straight, and every time it rains, which is daily, the miserable little office is flooded and the recorder is put to the necessity of covering his books and safe with canvass to prevent their being ruined. However, the mining recorder has but little more to complain of than have the police boys as their present quarters are a fright, but the indications are that they will be in their new barracks now under construction before winter. An appropriation was made several months ago for a new recorder's office at Stewart but that is as far as the improvement has gone. There are five men at the Stewart police force, Sergeant Tillman being in charge.

Manager Meed of these prospectors gave his guests a "high bush" cranberry picking party in the afternoon at Stewart and Captain Johnson followed with his kodak to see that nobody or nothing was lost.

On the return in the evening a stop was made at Ogilvie where Mary Ann, the pet moose calf which is the property of the police, was kodaked in half a dozen poses. Mary Ann is probably the most hungry animal in the Yukon although she is eating all the time. Nor is she particular as to what she eats as only two days ago she made a raid on a cache and ate a bucket of lard and six bars of laundry soap. The moose is about four or five months old and looks very much like a young mule. It is very much of a pet and could not be driven away from the settlement.

The run from Indian river to Dawson, a distance of 28 miles, was made by the Prospector last night in one hour and thirty-five minutes with the result that the contents of a guessing pool were pulled down by Manager Meed, he having guessed the time by less than one minute.

The Greatest Irish Bull
To the Editor of the Evening Sun—Sir: Won't you please tell a "Constant Reader" who Sir Boyle Roche was, and what was his "bird"?

E. H.
Sir Boyle Roche was a member of the Irish parliament, who was and is famous for his bulls. His greatest success in this line was when he said in the house, "A man can't be in two places at the same time, unless he is a bird."—New York Sun.

STAMPEDEERS RETURNING

Office Thronged With Locators

On Boucher Creek and Tributaries—Three Hundred Men, But No Women.

All day long on Saturday from the opening to the closing hour at the gold commissioner's office there was a crowd of stampedeers in line from the new strike on Boucher creek waiting to record their locations. Fully 300 men participated in the stampede and in addition to those who have already recorded there are still many to come. The strike is the first new one that has been made in a long time in which ladies have not taken part. Why they did not do so in this instance is doubtless on account of the hard trip the run necessitated. There were no road-houses, or cabins between here and the scene of the strike and it was necessary for each man to carry blankets and sufficient rations for the round trip. The route followed by most of the stampedeers was via the Glacier creek trail which was traveled a distance of 17 miles. Leaving the trail at that point, the route lay to the left along a ridge for 15 miles where the Sixtymile was first encountered. Crossing the Sixtymile another divide was climbed on the opposite side of which and about ten miles distant lay Boucher creek. The creek is about 30 miles long and of uniform width, the distance from rim to rim at discovery being approximately 350 feet. Everyone talked to of the general appearance of the creek thinks well of it and says that the indications are all right. There is an abundance of wood both in the creek valley and on the hillsides and plenty of water for all purposes, the creek running more than double the amount of Bonanza.

All the claims being staked under the new regulations which define a claim as being 250 feet long and 2000 feet wide, there will be no room for hill-sides. Many of the pups and tributaries have been located in addition to the main stream, the principal ones taken up being Huot, Butler and Nielsen gulches. One party which left here Saturday week ago did not

return until the following Saturday, the members of which were without anything to eat the last thirty-six hours out. The main stream is staked so far to 62 below discovery and 127 above.

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