

THE WATER-FRONT LEASE VOID

A Letter From Commissioner Ogilvie Conveys That Idea.

The Case of Dr. Bourke Brings Out Important Evidence—Well Argued By the Attorneys—The Case not a Representative One.

The trial of the case of Dr. Isidore McWm. Bourke vs. Morrison & McDonald, lessees of the water front was concluded in the Territorial court on Thursday afternoon, Attorney C. M. Woodworth opening for plaintiff, and Attorney's Pattullo and McKay for defendants. The testimony showed that plaintiff, in June last, leased a portion of the water front ten feet wide and extending from the street to the river bank. There he erected a building, only three feet of which, however, rested on the bank, the balance being on piles driven into the river bottom below. Plaintiff paid his rent until November and then refused to pay more. Mr. Grottschier with a power of attorney from the lessees, executed a warrant of distress, directed to Frank Harper, as sheriff. This was given to Constable Stewart, who, at 7:15 p. m., seized plaintiff's building and also his wood pile. About seven days later he abandoned the distress, however, and made a second seizure, as the former had been found to be illegal. Plaintiff thereupon set up his action for illegal distress and argument by his counsel Thursday was to this effect: That the records show there is no land there and that the street takes in all the ground to the river bank; that the seizure, made while the sun was below the horizon (it was during the short days), was illegal; that the back part of the building seized and all the wood were not on the leased premises; that the building is a fixture and not distrainable; that there had been a former distress and a second distress was therefore illegal; that the officer threatened to sell the goods without an appraisal by two appraisers; that they seized an excessive amount; that they did not give sufficient notice of distress; that the banks of the river belong to the public for the purposes of navigation.

The attorney also introduced as evidence a letter from Commissioner Ogilvie to Dr. Bourke, written Wednesday, describing his original survey of the townsite of Dawson, in 1897, which is claimed to have an important bearing on the whole river front controversy. In that it specifies that all of the present First avenue, according to the survey, extends to the river bank, regardless of the width at any point. After explaining that his commission to make the survey directed him to make the streets not less than 66 feet wide, Commissioner Ogilvie said in the letter:

"In making my survey, the first operation I formed in connection with the townsite was to mark First avenue, or front avenue. It was found necessary part of the length of First avenue to make it more than 66 feet in width on account of the curve in the bank of the river, as it would be impracticable to make the street line conform with the curvature of the river front. For a short distance, therefore, opposite blocks B, C & D, First avenue, is more than 66 feet in width, at one point being about 80 feet. * * * Mr. Gibbons' subsequent operations were done under instructions also, I apprehend, but mine was an original survey of that portion of the town, as he simply went over ground that I had laid out and remarked my points where they had been obliterated."

On the basis of this letter and the law on the subject, Attorney Woodworth held that Morrison & McDonald have no ground leased on the water front, as the ground is all street and cannot be leased. If this view is correct, the hearing of the letter the water front controversy of last summer will be apparent.

Messrs. Pattullo and McKay, for defendants, objected to the introduction of the letter as evidence, as a tenant has no right to question the title of the landlord, but the letter was accepted, subject to their objection. They also held that it would be manifestly improper to employ in this country, at the season of the year when there is no sun visible, the law prohibiting seizures being made between sunset and sunrise.

At the conclusion of the argument the court took the matter under advisement.

Creek Collection Post Offices.

Colonel Steele is destined to become a most popular member of the local government judging by the recent orders he has issued with a view to improving the mail service. His latest is to establish what may be called a "box collection" on the creeks. Printed notices are to be issued notifying miners to the effect that they can now consider all licensed road houses as mailing offices where they may leave stamped or unstamped letters for collection at stated times by the police. On the 11th and 27th of each month the police will collect at licensed houses on Hunker creek; on Dominion on the 12th and 28th; at Grand Forks and that vicinity on the 14th and 29th. The constable will bring the letters to town and deliver to the post-office without charge to the miners—in time for the regular outgoing mail on the 1st and 15th of each month.

Oath Not Essential.

Judge Dugas gave an important ruling in the territorial court on Monday relative to the right of a witness to decline to take the usual form of oath prescribed. The question grew out of the case of Leon vs. Schwartz and the plaintiff had refused to take the oath on the ground that he is an atheist. The court was inclined to believe that the gentleman was mistaken and a lengthy discussion, learned and pertinent on each side, ensued. Mr. Leon making an eloquent plea in behalf of liberty of conscience. As an upshot of the affair, Judge Dugas announced that he would adjourn

the case and give a ruling on the question, Monday. At the latter time he held the evidence might be accepted without an oath on an affirmative, when the presiding judge is satisfied, and he would permit Mr. Leon to testify in the case in hand. The Nugget man was watching the face of the plaintiff during the reading of the opinion and is sure that he saw the gentleman wink at a friend to signify the pleasure his victory afforded him. Mr. Leon is the brewer at West Dawson.

Strike Near Chilkat.

Another party of old timers arrived in from the outside on Thursday evening, leaving Bennett on January 20. They were Frank Bach, John Balduf, William Thomas and Thomas Davis. Like most other late arrivals, they report the lakes in bad condition, but a good trail from Thirty-mile down. The first named gentleman, when interviewed by a Nugget reporter, said that there has recently been a rich strike on Porcupine, 20 miles from Chilkat, in southern Alaska, resulting in a great stampede. He thinks the Atlin country will never be better than \$10 a day diggings, but that the field is large. Times are good in the states, he said, the exports for last year exceeding the imports by over \$700,000,000. The Skagway railroad has been completed over the White Pass summit and is a great engineering feat; he thinks it will tend, when completed, to make the trip to Klondike a favorite summer route for tourists. The railroad has made Skagway a booming city and killed Dyea. All the southeastern mining camps are flourishing. Mr. Bach reports meeting Nigger Jim near Selkirk and that Robert Duncan is seriously ill at Phoenix, Arizona.

H. B. Levy, who went out last summer, also arrived in on Wednesday.

How They Go.

Have you seen them come down the mountain back of town on skis? It makes you think of the Chinaman's description of his experience upon a toboggan: "Yup-pi! Walk back lee inile." The feat which all attempt is to come down the hill standing up on skis and they succeed in doing so quite often. When they fall, they come down head first or any other convenient way so they get down. Sunday afternoon quite a gathering assembled to watch the fun, and among the prominent citizens there could be seen Mr. Ogilvie. The prize runner of the crowd, H. M. Henning, was unable to make the run as he had made the trip on his shoulder in the forenoon. A dislocated arm is one of the drawbacks to the sport which some of us don't appreciate. After the run a meeting of the club decided upon a tournament in the near future. Messrs. J. L. Peterson and Thos. Chisholm guaranteed \$300 as a starter for the prizes. It will probably be open to anyone to enter, and a guarantee will be given all that not over a 150-foot jump over a house will be given to test your skill.

Trouble for Carr and Bates.

The examination of J. L. Bates was held last week and he was put on trial before the Territorial court. Bail was allowed.

Henry M. (Curley) Carr was also arraigned on two charges—that of vagrancy and theft. On the second specified offense it was shown that he had entered into an arrangement with Frank McArthur to represent a claim on Remington creek, McArthur furnishing the grub and Carr doing the representing. The latter evidently felt the oppressiveness of isolation from his old town associations most grievously for, it was set up, he sold the grubstake and returned to town in a short time. The owner of the claim lost his property through unrepresentation, McArthur was out his grubstake and much money and the arrest followed as a natural sequence. Attorney Pattullo induced the court to look with some favor upon his contention that the grubstake was Carr's to do with as he choose, and the action was dropped. However, he was found guilty on the charge of vagrancy and sentenced to six months at hard labor.

Postage Reduced.

Postmaster Hartman is in receipt of instructions from headquarters to the effect that, commencing with January 1st, the rate of postage for all mail addressed to Canada and the United States has been reduced from three to two cents per ounce and fraction thereof.

The postmaster's receipts for the registered mail which left here on Nov. 2d, which arrived in this week, show that it must have been badly damaged, as the receipts are water-stained and torn. The registered mail which left here on December 15th arrived in Victoria on January 12th—less than a month's time. Mail will leave Dawson for the outside on Wednesday, 14th.

Court Improvements.

When the Territorial court-room was thrown open this morning a vast and imposing improvement in its arrangement was seen to have taken place since Saturday. The desks provided for the judge, clerk, attorneys and stenographer had been stained and covered with red felt and the whole enclosed by a wooden railing. A dock was also constructed for the witnesses. The effect of the whole is quite imposing and reflects credit upon Sheriff Harper, by whose directions the improvements were made.

Claims Bought and Sold.

By Louis Couture, North West House, two miles above mouth of Hunker.

Three Cheers and a Tiger.

The fifth dog team to be dispatched for the outside by the Nugget Express left Dawson at noon on Monday in charge of Ernest Blank. He had a generous load of letters and express matter, which he will land at their destination with the dispatch which has characterized the

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previous deliveries. A large crowd was congregated about the express office as the team started on their long trip and Blank was encouraged with a hearty round of cheers and a "tiger." The regularity observed in the dispatch of teams by the Nugget Express and the care devoted to all business entrusted it, has not failed to impress the public and the business entrusted to it has steadily increased as a consequence. This has also justified the management in making plans to continue the service during the coming summer.

Doings at Circle City.

Messrs. Henry Raymond, Dell Clark and W. H. Parsons arrived up from Circle City Sunday and will proceed to the outside after a rest of two or three days. "Cyclone" Hanson, another well known resident of the place and a representative of the N. A. T. & T. Co., is also here. Mr. Raymond, with whom a Nugget man conversed, reported affairs as very quiet at Circle City, though the mining country tributary is being actively worked. The best creeks now under operation, he says are Independence and South Harrison, the first named being now in advance of Mastodon, which had formerly been the leader. Independence is turning out an average of 35 cents to the pan with a pay streak four to seven feet in thickness. South Harrison is not a new creek but had not been developed until this winter. The pay streak has been located under a slide at one side of the gulch and is known to be 90 feet wide. In the neighborhood of Eagle Mr. Raymond reports practically no mining except on American creek. Naturally, Mr. Raymond expects a bright future for Circle City, and claims that it will continue to be the second city on the Yukon.

A \$3,000 Blaze.

Monday afternoon the fire boys had an opportunity of testing their steam engine, some thing they have not done for some months. An usual fire was in the quarter of town devoted to the demi-monde—and French, at that. The building is situated in a row of similar cabins on Second avenue, between Third and Fourth, opposite the Pioneer drug store. A little after one o'clock the two girls occupying the place lay down to sleep, the large heater being left full of wood. They woke up in time to save themselves, but little else. With the opening of the door the flames burst forth in great masses. The alarm brought out the fire boys and the chemicals; but the flames had too great a start and the steamer had to be brought into play. The building was falling in when the hose was turned on and the next one south was in a fair way to become involved, but a very few seconds sufficed to kill the flames and make the neighboring buildings safe.

Investigation reveals the fact that the same building has been a source of danger for some time, owing to ineffectual fires and the only wonder is that the building has not burned before. The total loss can be roughly estimated at \$1,000 for the building and some \$1,900 in clothing, jewelry, money and dust.

Hockey Club.

On Feb. 10th the Dawson Hockey club was organized, with the following officers: President, Dr. Richardson; vice-president, Dr. Norquay; secretary-treasurer, Maurice Marsden; captain, C. J. K. Nourse; executive committee, Messrs. Stevenson, Hardisky and D. McMurray.

The Merchants' Lunch at the CAFE ROYAL, Second Avenue, starts from 11:30 a. m. to 3 p. m. \$1.25

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