

Publicans Are Granted Recount

The Supreme Court Upholds Decision of Mr. Justice Johnson That a Recount of the Whole Vote in Recent Plebiscite Must be Taken

In the Matter of the Election Act, 1915, and in the Matter of the Prohibition Plebiscite Act, 1915.

This is an application to reverse the order of Mr. Justice Johnson appointing a time to proceed with the recount of votes taken at the election under the Prohibition Plebiscite Act. The order was obtained upon an affidavit of Nicholas Vinnicombe wherein it is alleged that this witness, who attended the Count in St. John's, believes that the Returning Officer improperly counted and summed up the votes. Exception has been taken to the affidavit on the ground that the facts upon which the deponent's belief is founded are not set forth.

The statutory provision regulating the procedure to be followed with respect to recounts is to be found in the Election Act, 1915, which is incorporated by reference in the Prohibition Plebiscite Act, 1915, and in section 109 of the first named Act. It provides that in case it is made to appear on the affidavit of any credible witness, to a Judge of the Supreme Court, that such witness believes that the Returning Officer at any election in counting the ballots has improperly counted or rejected any ballot papers at such election or has improperly summed up the votes said Judge shall, within four days after the receipt of the said affidavit by him, appoint a time and place at which he will proceed to recount the same or to make such final addition. In construing this section it has to be treated as wholly self-contained and as an amendment of Election procedure applicable before the passing of the Act. A recount has always been an incident of a Parliamentary Election and prior to the enactment of the Statute, was, when demanded, conducted by the Returning Officer in the Booth.

Our Election Act has preserved the right to a recount but directs that the recount is to be taken before a Judge, and that a person applying for the exercise of the right is to make it appear to the Judge applied to that at the election in question there was an improper counting of votes. The credibility of the witness is a matter within the discretion of the Judge, but so soon as the applicant satisfies the Judge that there is this belief on the part of the witness he becomes entitled to the order called for by the Statute. In this case we consider that the Judge properly exercised his discretion in accepting the affidavit as strictly complying with the terms of the Act.

Mr. Dunfield, one of the counsel for the appellant in the course of a carefully reasoned argument has contended that, assuming an irregularity to have affected particular ballot boxes as these are separable from the other boxes the recount should be restricted to the ballot boxes referred to in the affidavit and should not extend to others. This is an argument drawn from convenience and after considering it in conjunction with what has been urged by Counsel on the whole subject we are unable to accept it as the construction which the Court ought to place upon the Statute.

There is not to be found any precedent in election law for a recount in part, on the contrary the invariable practice is for the recount to apply to the entire vote given at the election under review. Under the Prohibition Plebiscite Act there was but one election and it was taken throughout the Island. Districts did not as in the case of a General Election make separate choice of determination. The election was one and indivisible. It was determined by the votes of the whole electorate and irrespective of the number of districts in which the majority of electors voted pro or con. Electoral divisions were used only as convenient sections and as part of the machinery for the taking of the general vote. It was a plebiscite not of districts but of the Island and as such it is subject to recount by the terms of the Statute.

The Prohibition Act in regulating the time when the Colonial Secretary is to give notice in the Royal Gazette of the "results of such election" and the number of votes polled in the affirmative and the negative" declares that he is to do so "upon the result of a recount being certified to him by a Judge of the Supreme Court" or after the expiration of twenty-one days from the date of the Returning Officer's return "unless he shall in the meantime have been served with an order for a recount." The language of the section has reference but to one recount and that recount must necessarily include the whole vote

OUR THEATRES

ROSSLEY'S.

The contest at Rossley's to-night will be a dandy, by the number of names sent in. The Pantomime first, then the contest, which has some very funny turns. On Saturday the matinee for children, their last chance to see the big production. Don't miss to-night's show if you want a night's real amusement.

THE CASINO.

The reproduction of the comedy "Stop Thief," by the Klark Urban Co. drew another crowded house at the Casino Theatre last night. The audience were highly pleased with the presentation of this most ludicrous of farces and rounds of laughter resulted from each funny scene and incident. The performers acquitted themselves well and were frequently applauded. The musical and other specialties of the night before preceded the opening act and were well received. To-night and to-morrow night the company will produce "The Little Lost Sister," a beautiful drama and there will be the usual matinee to-morrow.

THE NICKEL.

The week-end performance at the Nickel Theatre is one of the finest since the New Year opened, and it is sure to attract large audiences, as everyone is interested in the performances at the Nickel Theatre. The feature for to-day is a three-part Diamond special by the Selig Co., entitled "The Quarry." This is an adaptation by Gilson Willets, of the world-famous novel of the same name. It is an absorbing story of the underworld and of how a victim of circumstantial evidence is finally exonerated. "When the Pates Spin" is an Essanay drama with Bryant Washburn in the leading role. "His Mother's Portrait" is a beautiful two-part social drama. "Whose Husband" is a comedy by the Vitaphone Co. The last subject is a splendid comedy, which should attract all lovers of the movies. To-morrow afternoon there is a bumper matinee for children.

Private Harry Rowe Writes from Cairo

Private Harry Mott Rowe, of this city, who was wounded in the last engagement on Gallipoli Peninsula, writing from the 5th Canadian Hospital, Cairo, Egypt, says that he is doing well. He mentions Bert Dicks, and other Newfoundlanders, who are all doing well. They spent Christmas in hospital and had everything that was needed in the shape of fruit, cigarettes, etc., to make them feel happy.

COMMITTED FOR TRIAL.

The preliminaries in connection with the Roberts' barratry case were concluded yesterday in the Magistrates Court and the accused were committed for trial in the Supreme Court on February 15th, next.

HOCKEY TEAMS AT WORK.

Last night the Vics and Fieldians' Hockey teams had practice. Both are showing marked improvement in their work already. St. Bon's and the Terra Novas will take the ice, the latter at 6.30 and the former at 10.30 for practice.

Released Under Suspended Sentence

The men Murphy and Greene who were arrested on a charge of stealing beans, flour &c. from the stores of the brigitta, 'Atilla' were before the Court yesterday afternoon and pleaded guilty. They were defended by Gibbs, K.C. and Higgins, B.L. who made a plea for leniency in each case, setting forth that the men were married and that this was the first time they were ever in Court for any serious offence. Mr. Mews for Baine Johnston & Co., said they did not wish to press for punishment. Mr. Hutchings, K.C., sentenced Murphy to six months imprisonment and Greene to three with the proviso that if they could furnish bonds for future good behaviour the sentences would be suspended. The men gave the required bonds and were released from custody last night.

recorded at the election. The appeal must therefore be dismissed. Mr. Hunt and Mr. Dunfield for Appellant. Mr. Kent, K.C., for Respondent.

M.C.L.I. Debate Interesting Topic

Affirmative Side Wins Out by a Small Majority—Messrs. F. G. Bradley and J. C. Currie Were Leaders

There was a large attendance of members at the M.C.L.I. last evening. The Chairman, Mr. Geo. Grimes presided and the subject for debate was: "Is it advisable that the principle of the Initiative and Referendum be adopted locally in relation to legislation on all great questions of Public Importance for which the Government has no mandate from the people?"

Mr. F. G. Bradley led for the Affirmative and Mr. J. C. Currie for the Negative, both in a masterful manner advancing ingenious and logical reasons for the contentions which they eloquently advanced. Mr. Bradley was ably seconded in his contentions by Messrs. W. H. Jones and W. Joyce and Mr. Currie by Messrs. Hearder and Bradley. Messrs. Peters, White and others participated ably in the debate and the affirmative side won out by a small majority.

HONOLULU UNDER MILITARY CONTROL

Honolulu, Jan. 14.—Honolulu's tenderloin district is under military control to-day, as a result of a systematic raid late last night, which was participated in by approximately 500 United States troops of the ninth cavalry (colored). During the demonstrations all the establishments conducted by white persons were wrecked.

OUR VOLUNTEERS

Yesterday the Volunteers drilled in the Armoury and received instruction preparatory to the examination for non-coms. and stripes. A large number of men have entered for the examinations. Sgt. A. D. Baird in an interesting manner addressed the men on the value of discipline. The bad weather prevented rifle practice. There are now 2748 on the list to date with the addition of Sydney Parsons, Lush's Bight, N.B.I.

SNOW STORMS WEST.

All yesterday but particularly in the afternoon and night it was very stormy on the Western section of the railway, especially from the Gaff Topsails to Port aux Basques. The wind blew a gale from the N.W. with snow and drift and it was very frosty for a while, the glass dropping below zero in some places. The trains ran with snow plows attached and were impeded considerably by the storm.

THE PROSPERO SAILS

The S.S. Prospero sailed north at 1 p.m. to-day with a full freight and these passengers:—Messrs. A. Barbour, J. Gillett, Job Kean, E. Jones, Jas. Gillett, W. Walsh, H. Clark, E. J. Ryan, D. Tuffin, R. Murrell, A. Scammell, T. Dawe, A. Roberts, J. James, E. Yuffin, W. Card, W. Snow, V. Tourville, R. Fowles, W. Bulgin, F. Locke, J. Jenkins, A. King, P. Newell, W. Pippy, R. Gillett, H. Earle, P. Murphy, W. Blackmore, Capt. Roberts, F. Wiseman, J. Norris, Capt. J. Knece, W. Edney, W. A. Strong, A. Seyiour, P. Knece, Capt. Bastone, J. Baker, E. Hull, J. Butcher, W. May, J. A. Strong, Capt. Harbin, H. Harbin, Sgt. Ryan, Capt. G. Barbour, P. Barbour, J. Green; Mesdames Pippy, Strong; Misses Adams, Keating, Earle, and 30 steerage.

THE KYLE'S PASSENGERS.

The Kyle arrived at Port aux Basque at 7.15 a.m. to-day, bringing Geo. F. Goldbert, Alec Coyall, J. M. Boak, Mrs. W. J. Cool, A. L. Demison, W. Nicholle, H. C. Moore.

INTER-COLLEGIATE HOCKEY.

The Feildian, St. Bon's and Methodist College hockey teams are now busy practicing for the intercollegiate matches. The series will likely open the 1st. Saturday in February as the teams are well balanced exciting games are looked for.

NOTE OF THANKS.

Mr. W. H. Jessop desires to express his sincere thanks to the gallant firemen who so promptly responded to the alarm of fire Wednesday morning. It is due to these gallant fire fighters that the blaze was not a more serious one.

He also wishes to extend his thanks to Supt. Grimes and the police for services rendered, and to Mrs. Sellers for her kind offer of shelter

SHIPPING

The S.S. Tabasco which left Liverpool Thursday week should arrive here in a day or so.

The Portia left Jersey Side, Placentia, at 4 this a.m. and is due here to-morrow morning.

The S.S. Stephano is expected to leave New York to-morrow at noon and should arrive here Thursday next.

The schr. "Archie Crowell" arrived here yesterday afternoon from Halifax after a run of five days with a cargo of oil for the Imperial Oil Co.

The S.S. Sagana arrived at Port aux Basques at 3.30 p.m. yesterday with a full freight and 83 bags mail better and local express with the mail is due here tomorrow afternoon.

The schooners Alexander and Minnie J. Smith, which left Seldom Sunday night last and was out in the storm of Monday and Tuesday past, arrived in port yesterday O.K.

POLICE TELL STRANGE STORY

We learn that officers Dempsey and Woodford tell a strange story in connection with the fire at Thompson's grocery on Duckworth Street a couple of mornings ago.

About 1.30 a.m. or a little later they were doing their beat on Duckworth Street when they saw an outport horse and slide drive up the street, an unusual occurrence at such an hour. Shortly afterwards they saw the team standing at the foot of Holloway Street and going to it found a man, whom they took to be a Torbay man seated on the slide. Interrogated by the officers the man said he was waiting for a Mr. Thorne who had gone just above, and soon afterwards they saw a man either come down out of Kichim Place or out of Thompson's shop. Who he was they do not know, nor would they be sure as to the identity of the man they spoke to. About 20 minutes afterwards when they were near the Eastern Station the alarm of fire was given.

SACRISTON CLATENNEY RETIRED

Mr. David Clatenney, the well known Sacriston of the Cathedral, has been retired from his position which he vacated yesterday. Mr. Clatenney occupied the position of sacriston for the past 23 years, was a faithful worker and courteous and obliging to both priests and people. As far as one can learn his successor has not yet been named.

DUNURE DAMAGED IN STORM

Messrs. A. S. Rendell & Coy. had a message to-day saying that the bargin, Dunure, which was on her way from Pernambuco to this port, had arrived at Barbados with most of her canvas carried away and other damages to the ship which will necessitate repairs there likely. The vessel was over 60 days out and was likely well up towards this coast when caught in recent storms and was bound south. Captain and crew are well.

READ THE MAIL & ADVOCATE

CHILDREN PLACED.—Thomas Warren, of Woods Island, Bay of Islands, wish to place two motherless children aged nine and five years. Any person willing to take such children as their own, should communicate with the above.—jan4,16,daily

FOR SALE.—Schr. "Daisy Bell," 41 tons; Sails and Gear almost new. Will be sold at a bargain. Apply to CHAS. J. MURSELL, Herring Neck.—jan18,31

The Best American Mayo's... 15c Plug.

At the Royal Cigar Store, Bank Square, Water Street.

Last Night's Fire at Ayre's Bakery

Damage Done Was Not Serious—Work Will be Resumed in a Few Days—Fireman do Quick Work

At 7.57 last evening an alarm of fire was turned in from box 32 for a fire at Ayre's Bakery, at the corner of Cuddihy and New Gower Streets. With their usual promptness, the Western and Central firemen with their apparatus, were quickly on the scene and soon had streams of water from the plugs at Holdworth and New Gower Streets on the seat of the blaze, which was in the western section of the bakery in the basement. Shortly before the alarm was given, Mr. Young, the foreman, after setting a batch of bread in the bakery, left the place and went to the confectionary store on the corner. When he left everything was O.K., but he thinks that the gas engine became overheated and set fire to the wood-work.

The firemen worked well under Supt. Dunn and Chiefs Keon and Winsor, and in less than 15 minutes had the blaze quenched. The fire ate up through the floor of the next flat and damaged a roller and some other machinery. The firemen chopped away a section of the flooring to get at the seat of the fire. The damage to the building or machinery is not extensive and work will be continued to-day as usual.

Some of the flour and other stock was damaged by smoke and water. Some insurance is held by the building and stock. Supt. Grimes with a force of police, was present.

The "all out" signal came in at 8.23.

POLICE COURT NEWS.

F. J. Morris, K.C., presided to-day. A drunk who appeared about 17 times last year was before the Bar to-day for the first time in 1916. He was released. A man summoned his son for using threatening language towards him, but as neither turned up in Court the case was dismissed. A woman summoned her husband for assault on the 18th inst. It was shown in evidence that the man ill-treated his better half, throttling and beating her. He had to sign bonds to separate from her and to give her \$4.00 per week for her maintenance.

WHEAT SHIP DAMAGED IN THE STORM

The S.S. Frankier is now at the Furness-Withy piers in Halifax with her decks buckled up and other extensive damage done the hull as a result of the recent storms which prevailed on the North Atlantic. She had a cargo of wheat for England and a considerable portion of it became wet as the result of seas boarding the ship. The damaged wheat is being sent by train to Montreal to be dried.

Rev. Dr. Jones On Divorce

St. Thomas's Men's Bible Class Hear Eloquent Discourse on This Great Social Question—Large Attendance Present

St. Thomas's Men's Bible Class last night was remarkable for the large attendance, as well as for a beautiful address given by the Rector, Rev. Dr. Jones, on the subject of "Divorce. Referring to the Passages in the new Testament" bearing upon the subject the Rev. Doctor gave a very eloquent dissertation on this most interesting and vital subject, dealing with the teaching of Jesus as regards its indissolubility and sapiently on which religious, social and political life depends. The address was indeed a treat to the large audience present and was profitable and instructive. Mr. R. Dowden spoke briefly after the Rector had finished, on matters affecting the Class and welcomed several gentlemen from outports and others to the Class. "The Child" will be the subject for next Thursday's address.

LOCAL ITEMS

Mrs. Ballard of Lime Street, aged 29, was yesterday taken to hospital ill of diphtheria.

This afternoon a magisterial enquiry will be held into the fire at A. Thompson's grocery in the Magistrates' Court when several witnesses will be examined.

Mr. Jas. Jardine of the Customs Examining Warehouse, who has been ill for some time, is only making slow progress. Though he does not keep his bed his condition is serious and gives much concern to his family and friends.

MUD IN BELGIUM IS EVERYWHERE

How the Plucky Soldiers of King Albert Struggled With this Foe as Against the Germans.

With the Belgian Army in Flanders, Jan. 12.—As soon as one leaves Nieupoort town, as distinguished from Nieupoort beach which is held by the French, and travels to the southeast along what was once the Nieupoort-Dixmude railroad, one meets the little Belgian army, as stubborn at their work of protecting their last strip of country as in the epic days of August, 1914.

All numbers are naturally secret, but I can say that every Belgian from sixteen years of age upwards has voluntarily responded to King Albert's call, and now the unit is a wonderfully equipped well set up and compact little army of tremendous value to the allies in the great struggle against the invader.

An Unceasing Struggle.

Here we enter a region of mud and water—black mud, grey mud, mud that clings and clogs as you advance—mud everywhere. The mud is here as much of the enemy as the Teutons. It is a struggle that never ceases.

Contrary to the French system of trench building in a ripew design, the Belgians have been forced by their arch enemy, the mud, to take advantage of the old railroad for trenches, which, therefore, present the aspect of an unending perfectly straight line to the southeast as far as Dixmude, where it obliquely to the southwest along the Yser Canal, which it follows as far south as Ypres.

During the past few months great draining operations have been carried out.

It is indeed remarkable how all the troops have adapted themselves to a troglodyte life. They seem entirely indifferent as to what happens outside their own shelter. Their business is fighting and they take no chances. As soon as they are free from duty they crawl into their dug-outs, remaining there till they again go into the trenches.

As I stood in the trenches I was able to survey a seemingly unbounded expanse of flooded country. Where once fruitful fields contributed largely to Belgium's agricultural wealth, murky lagoons have submerged everything as far as the eye could see. Here and there ruins of farm houses and leafless trees emerged, intensifying the picture of desolation.

"I was in those trees," the commanding officer remarked to me, "that a few Germans took refuge when caught by the floods. We watched them for five days clinging desperately to the branches in the vain hope of being rescued. On the sixth day we saw them dropping in to the water one by one exhausted from fatigue and hunger. Such is war."

Emerging from the trenches at half mile intervals are miniature jetties three feet wide built of piles which the Belgians have thrown across the flooded land for communication with the "listening posts," which are established wherever sufficient advanced cover is afforded by ruins.

When first built these jetties were subjected to a continual German fire, but whenever they were destroyed the Belgians stubbornly rebuilt them in the dead of night time. The Teutons, realizing the futility and waste of ammunition, gave up the game.

In a triangle where the locks which control the flooding are situated the Germans can regulate the height of the water from Ostend. Flooding is a ticklish and sometimes an amusing business. When the Belgians see the waters reaching a height which imperils their own entrenchments they close the lock gates, whereupon the Germans open their and vice versa. This necessitates continuous watching, for the flooding does not bring the waters rushing onto the plains, but causes creeping inundations that are barely perceptible.

An Unpleasant Front

With the combination of floods blockhouse lines and the indomitable spirit of the Belgians, I have not the faintest doubt that this section of the front from Nieupoort to Oostkerke is absolutely unbreachable. Dixmude now in German hands, is dispirited.

The ice at the Parade Rink last night was in a splendid condition, and the many skaters and spectators enjoyed themselves to the full. The music given was by the Terra Nova Band, which was admired by all.

The big rotary plow which was held at Bishop's Falls is now out on the railway line in the Gaff Topsails section clearing the snow from the cuts. Much snow accumulated on the line in recent storms.

puted ground, and is the scene of practically the only fighting going on in the sector by the Belgians. Here the opposing trenches are within a few yards of each other, and to the south-west only the Yser Canal separates the foes.

The Belgians zig-zag across the canal, in some parts holding the eastern bank, but nowhere have the Germans obtained a footing on the western bank.

The batteries to the rear keep up a desultory cannonade against the German big guns, which all day long search the countryside, battering farmhouses or any other ruins across the vast Flanders plain that might serve as Belgian observation posts.

The activity is principally deadly to the civilian population for the peasant folk cling desperately to their shell-racked soil. The most violent pounding does not shake their resolution to remain on the spot and cultivate their fields.

King Albert, who daily inspects the whole country, has often personally endeavored to persuade them to evacuate, but he invariably meets the reply:

"What's safe enough for the King is safe enough for me."

The day before my arrival two children, a woman and an old man were killed by German shells while gathering cabbage near Nieupoort, where 1,538 civilians lived in an industrious life under direct German fire.

Small Towns Shelled

The small towns behind the lines are subjected daily to bombardment. Ampernisse, Loo Alveringhem, Hoogstaede, etc., are continually drenched with missiles.

Loo, one of the most ancient of Flemish towns, whereof the Count Baldwin marched out with his Crusaders, has suffered immensely. Its magnificent twelfth century cathedral is now nothing but a heap of ruins, blown to smithereens by German half-ton high-explosive shells.

Its superb belfry was a target for German gunners throughout December. Finally only a long, gaunt fragment remained, but the Germans obstinately continued to aim at it till the Belgians were forced to destroy it themselves in order to protect the civilian population still living in the cellars from the ceaseless rain of shells.

All round the church shells have quarried the roads and graveyards, scattering century-old bones among the wreckage.

Bleakest Spot in West.

Without question Flanders is the bleakest spot on the whole western battle front. During winter it rains six days out of seven, and on the seventh a drenching sea mist is sure to obscure the landscape.

The only artistic compensation for these conditions are the sunsets, for which Flanders is renowned. On the brink of the horizon, across a slate colored pall, the sun sinks in a riot of flame-colored red, giving the impression of some great holocaust in a distant city.

It is a perpetual reminder of the burning of Louvain and at every sunset the little Belgian army silently renews its vow to avenge its wrongs. The lot of these faithful sons of Belgium is especially hard, not because of bodily discomfort, for they are all well cared for and warmly clad, but because most of them have not had a word of the fate of their kith and kin since August, 1914.

Frightful Suffering

The staff officer who was my guide had a seventeen-year-old son killed in the first German onslaught, and six months later his wife and sixteen-year-old daughter escaped into Holland, assisted by smugglers, just before the Germans electrified all the frontier. They endured frightful suffering crossing the German lines standing for hours at a time neck deep in the icy waters of the Antwerp floods. This experience must not be regarded as exceptional. It is just typical of the hardships, braved by thousands of civilians who cannot tolerate the oppressive methods of the army of occupation.

Incidentally the Germans are beginning to close their eyes to the civilians' attempts to escape from Belgium and the occupied French districts. The reason given by the fugitives is that the Teutons welcome any slight relief from the pressing food problem.

The man who returned the silver name plate from Washington's pew was probably conscience-stricken because he didn't take the pew.

READ THE MAIL & ADVOCATE