

DR. BOURKE MEANT IT

When He Proposed to Test Law

Which the City Council Passed Placing Its Members on the Salary List.

When Dr. Isodore McWilliam Bourke stated publicly a few weeks ago that he proposed to test the legality of the salary bylaw passed by the city council, by which the council voted to the mayor a salary of \$4000 and to each of the six aldermen a stipend of \$1500 for ten months' service, he was not making a bluff, as many supposed. Yesterday he filed with the clerk of the territorial court an action having for its purpose the intent mentioned. The doctor armed with his own affidavit appeared in his own behalf before Mr. Justice Craig, argued the matter at some length and upon the showing made his lordship caused a summons to be issued, which was served upon Mayor Macaulay yesterday afternoon, returnable at 10 o'clock Monday, June 9. The affidavit of Dr. Bourke upon which the summons was based reads as follows:

"1. Isodore McWilliam Bourke, of the city of Dawson, in the Yukon territory, make oath and say:

"1. That to the best of my knowledge and belief and I am credibly informed, three of the aldermen's names were published prior to the election, as not requiring any salary, and the mayor declared on the public platform that if returned as mayor, he would not require any salary whatever. They demand at the rate of 8 per cent. of last realized assessment.

"2. That in at least one case the income paid for his entire services to one of the aldermen is an equivalent for the amount now allowed to him by bylaw 10 for a short sitting once a week and even then he is not bound to attend.

"3. And that the amount allotted mayor and aldermen is excessive, they being only entitled to \$18 a year each and 10 cents a mile for traveling expenses when necessary."

The affidavit is signed by Dr. Bourke and was sworn to May 20. As will be observed the maximum salary it is considered the aldermen are entitled to is \$18 per annum. The action is entitled Isodore McWilliam Bourke vs. The City of Dawson, Mayor and Council, the former being styled the applicant and the latter respondents. The summons issued by Mr. Justice Craig, which also cites the reasons given by Dr. Bourke why the salary bylaw should be quashed, is as follows:

On the application of the above-named applicant and reading his affidavit made herein, dated 20th May, 1902, and hearing said applicant on his own behalf, it is ordered that the corporation of the City of Dawson do attend before the presiding judge in chambers at the court house of the city of Dawson at 10 o'clock in the forenoon on Monday, the 9th day of June, 1902, or as soon thereafter as the application can be heard, to show cause why an order should not be made to quash the illegality bylaw No. 10 of the city of Dawson aforesaid, passed the 14th April, 1902, by the council of the city of Dawson aforesaid, on the following among other grounds:

1. Said bylaw No. 10 of the city of Dawson is unauthorized and beyond the power and jurisdiction of said corporation and an illegal appropriation of the funds thereof, and that the grant as made and authorized by the said bylaw is not within the powers belonging to the said corporation for the remuneration of aldermen in the bylaw provided for. And the bylaw provides for illegal and improper charges.

2. Said bylaw should show upon its face that it is within the statutory power.

3. Nor does it show that the money is for attendance of members in council, nor at what rate.

4. Said bylaw should state the assessed value of the property of the city and whether the rates for raising the sum required were made on the actual value or the yearly value of the property and equally.

5. To make rate for salaries, bylaw should show on its face for what purpose required and how appropriated. Such was not done before September, 1902.

6. That Yukon ordinance No. 45 of

1901 gives no power to make such a bylaw as bylaw No. 10 of the city of Dawson.

7. That it would be illegal for the council to order a remuneration for their members at all except by bylaw.

8. That section 9 of the Yukon act and section 138 of ordinance 15 of 1901 direct the city of Dawson bylaws shall not be inconsistent with any statutes or ordinance in force in the territory.

9. That no sum for payment of mayor or aldermen being mentioned in clause 118, ordinance 45 of 1901, Yukon territory, the municipal ordinance chapter 70 (N.W.T.) section 90 avails here.

"Every council may pass a bylaw for paying the members thereof which shall in no case exceed the sum of \$150 per day and 10 cents a mile, etc.

"The number of days for which council is to be paid in any one year not to exceed twelve."

10. Clause 118, section 1 of the Yukon ordinance 45 of 1901, declares that only at the first regular meeting of the city council or any subsequent one (after the annual assessment roll has finally passed by the assessment appeal court and certified, has been laid before it) shall make estimates of all sums which are required for the lawful purposes of the city for the then-current year.

11. Bylaw No. 10 was made without estimate aforesaid and without a rate being struck as required by law.

12. All municipal taxation must be levied equally on all rateable property, clause 5, assessment act, and no such equalization can be effected until completion of assessment.

13. The municipality of the city of Dawson has no general fund to pay deficiencies and such if any might have to be raised by the sale of township property.

14. A city bylaw must be based on estimates and such rate should be calculated at so much upon yearly value in cities and towns.

15. Section 181 of the Yukon ordinance 45 of 1901 provides in subsection A for payment of salaries or compensation to mayor and aldermen. Sub-section 5 for payment for salaries and compensation to the officers and servants of the city, the intention being that in the case of mayor and aldermen payment was to be to the extent of compensation for money expended in traveling, but if given as salary, the amount was not to exceed that specified in section 90, chapter 70, municipal ordinances N. W. T.

16. That any sum voted by council of the city of Dawson, as in their bylaw No. 10, for remuneration for service as mayor or aldermen, is illegal and a misappropriation of public money.

17. That in other respects bylaw No. 10 of the city of Dawson is illegal and especially that the salaries are excessive.

Attached to the summons and affidavit is a certified copy of the offending bylaw.

SUED FOR DIVORCE

Annie Gallina Who is in Dawson

Her Husband Charges Habitual Drunkenness—No Children or Property.

Special to the Daily Nugget.

Spokane, May 27.—P. Gallina has begun suit here for divorce from Annie O. Gallina. He alleges she is a habitual drunkard and has treated him with great cruelty since their marriage in Seattle, in July, 1899. Mrs. Gallina is said to be in Dawson. They have no children and plaintiff alleges there is no community of property.

To Fight Wire Trust

Special to the Daily Nugget.

San Francisco, May 27.—Henry Huntington, the railroad magnate, has announced that a five million dollar wire company will be organized for the purpose of furnishing all electric railways with wire. The plan is to fight the wire trust. The plant will be located either in this city or in Los Angeles.

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J. A. CLARKE HELD OVER

To Appear Before the Territorial Court

Charged With Having Criminally Libeled Police Magistrate C. D. Macaulay.

When the police court convened yesterday to begin the preliminary hearing of Joseph A. Clarke, charged by Judge C. D. Macaulay with criminal libel, every seat in the court room was occupied and standing room was at a premium.

Magistrate Starnes was on the bench. Crown Prosecutor Congdon appeared for Judge Macaulay while Clarke was his own attorney. Clarke objected to Congdon appearing for the prosecution, saying he had a written statement from F. C. Wade to the effect that a crown prosecutor could not appear in a criminal libel case without a permit from the attorney general. Congdon told Clarke he had no such statement and Clarke said "Don't you call me a liar."

Constable Stewart was the first witness called. He testified to having served papers on Clarke in the case at about 7:30 o'clock Saturday evening.

Joseph Anstett testified that he is a printer employed on the Klondike Miner of which Joseph A. Clarke is editor and publisher; that of the issue of the Miner of May 17th, the issue containing the publications objected to by Mr. Macaulay, there were printed 650 copies, all of which have since been circulated in Dawson, on the creeks and through the mails.

At this stage Clarke insisted on an enlargement of the case but his motion was denied by the court.

C. D. Macaulay was the next witness. He testified that since the first of last September he has been and is yet stipendiary magistrate in Dawson; that he has been notified of his elevation to the territorial bench; that he had read such telegrams in the Daily Sun and Daily Nugget of April 18th, and that he had been congratulated on his promotion by many Dawson friends, also by letter from many friends in various parts of Canada; that he believed the innuendoes contained in the publication in question were intended to bring discredit on his name and to ridicule him in the eyes of his friends.

The papers relating to the late alleged gambling cases heard by him were introduced and explained; he had never been approached by anyone regarding the judgment he was to render in the cases. "No one," he said, "had the audacity to approach me with any suggestion." Asked if he knew who was referred to by the words "Whisky Boss," he said he could not swear but supposed it was either Arthur Lewin or Chief Wills. He had never talked over his judgment in the gambling cases at his home but had rendered it according to his interpretation of law and evidence, honestly, fearlessly and as he deemed right. Evidence in the cases had not been sufficiently strong to warrant convictions, it not having been proven that the defendants had been playing for gain. Witness had no recollection of Clarke having ever applied to him for a warrant to procure and destroy gambling paraphernalia and he, as magistrate, had no authority to issue such document even had it been asked for.

On cross-examination Mr. Macaulay again denied that Clarke had ever come to him for authority to destroy gambling tools; he had never discussed his judgment in the cases referred to with O. H. Clark or anyone else and any statement that it was known several days before it was handed down what it would be was an absolute falsehood. If a similar verdict was given in Ontario the witness said he would think the judge had acted properly and according to law and evidence. Mr. Macaulay ad-

mitted that he had never looked up the dictionary meaning of the word gambling. Asked what evidence would have been necessary to convict, the witness said evidence that they were gambling for gain, but such evidence had not been forthcoming in the cases heard by him. Witness has heard that gambling has since been carried on in Dawson but no one has called on him for warrants. His duties are not those of a detective or policeman. The macaroni dispatches in the Miner, in the opinion of the witness, were intended to reflect discredit on him. Witness was not familiar with the term "bull-con," but took it to mean being a fakir or dishonest.

Question—What would it mean if used in Ontario?

Answer—It would mean if you spoke of a judge there as a "bull-con" judge you would be in jail.

Some argument arose at this stage of proceedings between Clarke and Attorney Congdon and several very uncomplimentary passages were made. The court commanded quiet and Clarke said he was there in the capacity of an attorney and wanted no advice as to his deportment, but it was noted that there were no more outbursts from Joseph.

Hugh McKinnon was the next witness, his testimony being in the nature of that of an expert. He had read the paper in question and was confident the references contained therein were intended to reflect discredit on Mr. Macaulay both as a man and magistrate.

Being cross-examined he was asked how the Klondike Miner would compare with the papers of his home town, Hamilton, Ontario. The witness replied that the Miner would disgrace any part of Canada the same as it does Dawson. Questioned regarding his early education the witness said he had gone sufficiently high to acquire a good knowledge of the use of the English language. The witness gave the meaning of the term "bull-con."

But little more was accomplished in the hearing yesterday evening when it was adjourned until this morning.

The session was brief this forenoon and was concluded in a few minutes when Clarke was held over to answer before the territorial court. He was sent under police escort before Justice Dugas to have the amount of his bond named.

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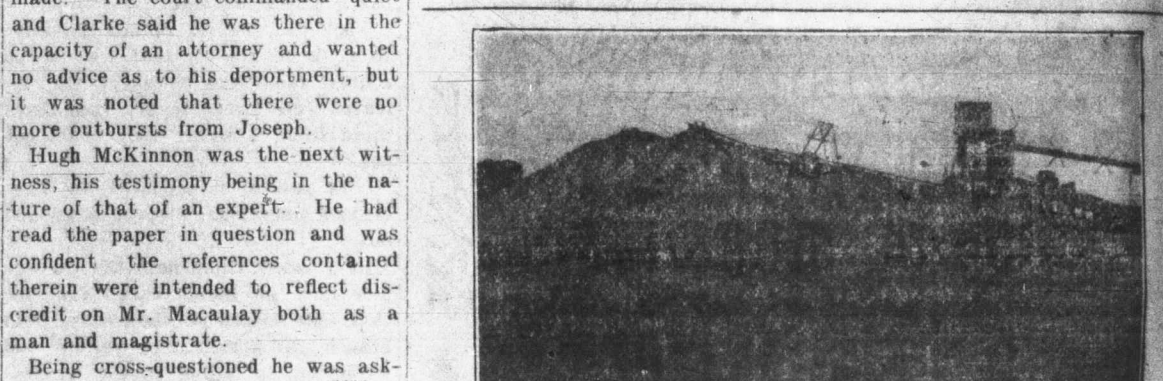
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Tammany Busted Special to the Daily Nugget. New York, May 27.—The Tammany treasury, usually well lined, is almost empty. The organization is in debt and cannot raise money to pay its bills. This condition of affairs is amazing to those who knew the amount of money raised by Tammany during the last campaign.

Metric System Special to the Daily Nugget. Washington, May 27.—The house committee on weights and measures favorably reported on the bill making the metric system compulsory in all departments of the government except in completing surveys of public land.

Yankees Cause Chills Special to the Daily Nugget. London, May 27.—The report that an American firm in the pottery line has offered to furnish coronation cups free of charge on the condition of having the firm name on the bottom of the cups, has caused a fresh quiver to run up the spines of conservative Britishers. The order for cups went to Germany.

Lucky Duke Special to the Daily Nugget. London, May 27.—King Edward approved conferring the most honorable order of the garter upon the Duke of Marlborough in succession to the Earl of Kimberly.

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