ROUTINE BUSINESS

New Bylaws Are Passed by the Council

Will Hereafter Meet Only on Alternate Mondays—Bank Offer Accepted.

The session of the council was rather uninteresting last night, being confined almost wholly to routine business, and though the meeting was somewhat lengthy the time was largely occupied in the consideration of several bylaws by the committee of the whole.

There were only two communications presented. One was from J. R. Hamilton, a second hand dealer on Princess street, and Anna Cloes, and the other from J. W. Sullivan, manager of the McDonald Trading Company. The former recited that the petitioners were the owners of the south 21 feet of lot 19, block A, in the Ladue addition, upon which is erected a frame building 10½x50 feet. The owners wish to build an additional 10x42 to that already erected making of it one building. The building inspector has required that iron sheeting be placed on the side next to the building at present in position, instead of allowing them to build on to the old building without such sheeting. They protest over such decision and desire the council to grant them the permission they desire.

The communication of the McDonald Trading Company was a grievance referring to last year's taxation. The company considered they were greatly overtaxed, they paid the rates assessed against them under protest and now think they are entitled to a substantial rebate. It was stated that the assessor visited the company's warehouses in company with John Cormack, an attache of the company and that it was mutually agreed that an assessment of $10,000 would be fair and just. On September 20 the company received notice that they had been assessed at the enormously high figure of $100,000, when as a matter of fact their stock on hand had never exceeded $15,000. They protested the assessment and appeared before the court of revision with sworn statements to the effect that their total importations had amounted to only $58,000. They made a proposition to ex-Mayor Macaulay and T. G. Wilson, then one of the council, that they appoint a man to audit their books and the company would abide by his decision and would also pay the expense of such auditing. It is alleged their offer was not considered, though their assessment was reduced to $75,000 upon which amount they paid the taxes under protest. Their books are open to inspection at all times to any committee the council may appoint. The matter was referred to the committee on finance.

A. Allayne Jones was, by resolution, allowed $150 premium on the bonds demanded of the tax collector and his assistant, such being furnished by a Toronto guarantee association.

After the Hamilton communication had been read, the writer, who was present, desired to make a few remarks, but as he was out of order it was not allowed.

The finance committee in its weekly report recommended the payment of the following bills:

Electric Light Co.	$383.80
Yukon Saw Mill Co.	68.25
Yukon Saw Mill Co.	42.25
N. C. Co.	188.20
N. C. Co.	12.75
Standard Oil Co.	24.00
Smith's Book Store	4.50
A. C. Lochhead	13.50
Wm. Campbell	10.00
Klondike Nugget	134.00
Yukon Hardware Co.	400.00
Yukon Hardware Co.	1.75
George Layfield	16.00
George Layfield	72.00

Chairman Johnson, of the finance committee, notified the council that he had received advices from the Bank of Commerce to the effect that they would be pleased to furnish the overdraft desired by the city at the same rate as last season, 8 per cent. per annum.

Ryan asked if tenders had also been asked from the Bank of British North America, saying that he had understood they proposed making an offer of 7½ per cent. His worship and also the city clerk replied that the Bank of B.N.A. had decided to make no tender. They did not want the loan. Johnson moved the offer of the Bank of Commerce be accepted and it was agreed.

The council resolved itself into a committee of the whole for the purpose of considering the amendments to the license bylaw, a full digest of which was published in the Nugget a few days ago. La Lande took the chair. The original decision to issue licenses to cover twelve, nine, six and three months, all to expire December 31, was altered. All licenses issued between January 1 and September 30 will bear the full yearly rate, no matter the date of their issue. Those issued between October 1 and December 31 will cost half the regular rate. All will expire December 31.

The license for bootblack stands, no matter where they are located, is placed at $50. Some thought the figures quite high and Macdonald surprised them by stating that last season some of the bootblacks had asked that the fee be placed at $300.

The fee for victualling houses, restaurants, etc., was fixed at $100. His worship considered that the restaurants which keep open doors the year around should be protected against those who open up in the spring and close down in the fall. He also favored the fee including a cigar license.

Macdonald said the question of cigar licenses was one that had caused the old council considerable trouble last season. The regular dealers complained bitterly against the drug stores, groceries and restaurants which were selling cigars, yet possessed no license. They should be protected in some manner or other.

In speaking of the clash between the second hand dealers and the auctioneers, Ryan asked the city solicitor if a man could auction off his own goods without a license.

Donaghy — That is a disputed point. Personally, I do not think he can.

The bylaw will not receive its final reading until the next meeting and his worship suggested that the standing committee meet some time this week and receive suggestions from those interested who may have anything to offer.

The bylaw amending that providing for the meetings of the council was given its third reading, passed and was numbered 42. By the amendment the council will hereafter meet only on alternate Mondays instead of every week, except in case of an emergency, when the members will be subject to a call by the mayor.

The bylaw authorizing the overdraft at the Bank of Commerce was given its second reading and considered section by section.

Macdonald notified the members that eight lengths of the fire hose purchased from the Toronto Gutta Percha Company for the use of the fire department leaked and had proven defective. The hose had been guaranteed for five years and it was up to the council to see that the guarantee was fulfilled.

Chief Lester being on hand stated the hose was not entirely out of use, though it leaked considerable. The rubber lining was split and it was not the fault of the web. The break had happened the first time the hose was used. Authority was given Macdonald, he being chairman of the fire, water and light committee, and he will notify the Toronto company of the defective hose and endeavor to have it replaced as soon as navigation is open.

The number of passengers carried by boats on the Great Lakes is from a quarter to a third of a million each season.

WANTED—Clean rags at Nugget office for wiping machinery.

Japan has an avenue of trees fifty miles long.

England.

Hay is the most profitable crop in

Best hot drinks in town—The Sideboard.

The Nugget's stock of job printing materials is the best that ever came to Dawson.

COURT OF APPEALS

Decision in McDougal-Rose Case

Judgment of Mr. Justice Craig Concurred by Both of the Associate Justices.

The court of appeals sitting en banc yesterday delivered a judgment rendered in a case appealed from the decision of the gold commissioner. The opinion of Mr. Justice Dugas received by mail was read by Clerk of the Court Mackay. The case was that of Frank J. McDougall vs. J. S. Rose, the latter being the appellant. The decision of Mr. Justice Craig, which was concurred in by both Mr. Justice Dugas and Mr. Justice Macaulay, is as follows:

"The plaintiff was the owner, of a half interest, and entitled in equity to the ownership of the remaining interest, in bench placer mining claim opposite upper half, left limit, No. 1 terest, in bench placer mining claim was due for representation on the 21st July, 1901, but proof of representation work was not made, nor was any relocation or renewal grant issued to the plaintiff of the said claim. The defendant Rose on the 7th of October, 1901, was granted a relocation grant of the said claim. The facts seem to be that the plaintiff relied upon his co-owner — one Packwood—to attend to the representation work. It is clear from the evidence that a large amount of work had been done far in excess of the requirements of the regulations, namely about $1200, prior to the 21st of July, and almost an equally large amount continuing the work up to August and before the restaking by Rose. Packwood did not attend to the representation work, and both he and McDougal were out of the country during the following winter. McDougal on his return endeavored to settle the matter but settlement was not effected, and this action was brought on the 27th of June, 1902. The defendant Rose swears that he could not see any work on the claim. He saw tailings which he assumed came from the upper claim. The learned gold commissioner finds as a fact that Rose did not know of the prior work and if I agreed with the gold commissioner upon that point I might have some hesitation in coming to the judgment at which I now arrive; but I cannot understand how a person going on the claim as Rose did, could not see the amount of work which it is sworn to by witnesses was done and which McDougal swears he paid for having done. I, therefore, differ with the gold commissioner upon the facts as to Rose's ability to see the work, and I find that the work must have been apparent on the ground when he staked."

His lordship follows by quoting the section of the regulations under which the matter must be decided and continues:

"It is purely a question of the interpretation of that section. Certainly the facts and equities are with the plaintiff in this case. He performed his work. The claim-jumper is not entitled to the sympathy of the court and the court should not read into the regulations more than they actually contain. It would seem at first sight that the non-obtaining of the renewal certificate was ipso facto a cancellation of the claim, particularly when the section is read in conjunction with the grant which provides that the grant shall lapse and be forfeited unless the provisions of section 41 are strictly complied with, but as I had occasion to remark before that form of grant affects the crown and the party receiving it, and the right which third persons have to enter upon such lands and relocate them is governed by the regulations and not by the grant which the former owner received. Former regulations provided for the claim reverting to the crown. There is no such provision in the present regulations. It would have been very easy for the crown to enact if they so wished, that a claim becomes absolutely forfeited and void upon the non-performance of the conditions, but they do not do that. They use words which are capable — and I think naturally capable—of another construction, "shall be deemed to be abandoned." Shall be deemed to be abandoned for what cause? If the annual amount of work has not been performed. But the annual amount of work has been performed and no one is justified in deeming the claim to be abandoned under those conditions. The language is unfortunate, there is no doubt. But it would be, it seems to me, a scandalous thing if the property of an innocent person making an accidental slip, should be confiscated in the manner in which it is proposed to confiscate this property, when over $2000 worth of work was performed on the claim, — absolutely stolen by one who has no more right, than any other free miner.

"This would be my judgment on the law as I have always considered it, and I would concur in dismissing the appeal but for the opinion expressed for this court in former cases, Steere vs. Lund and Mercier vs. St. Laurent, where it was held that once a grant had been obtained by a person, no matter by what means, then that the ordinary free miner had no standing or status to attack any such grant. There is no doubt that the grant of McDougal is a dead grant. It has expired. His grant only subsists from year to year subject to the right of renewal according to the regulations. It has not been renewed. He has no title whatever in the ground now except what may be called a color of title, and his right to a renewal. The title, so far as the regulations go, is in Rose, and if he had the right to stake and did stake without fraud or false affidavit, the crown has used its right to grant to Rose; has considered that his claim is forfeited as provided for by the grant to McDougal, on non-representation, and has given a grant to Rose. Again, the case of Hartley vs. Matson, decided in the supreme court, is one which I think also affects this matter. I take the meaning of that judgment to be that where a free miner, having no other rights than the rights of a free miner, stakes upon land granted by the crown, he has no status whatever and that no person has a status to attack a grant from the crown unless he has another grant himself. * * *

"When this court was constituted by the order-in-council of March, 1901, it was provided that rules could be framed for the procedure. These rules were framed and were confirmed by order-in-council, and it seems to me that when there is a color of title and the attacking party has some equity and interest, then that a mandamus is not the proper remedy where he is attacking the right of some other person; a mandamus, as I take it, is right to compel the performance of an administrative act and not of a judicial one. There can be no mandamus to compel an officer who has judicial discretion to exercise that discretion either one way or the other. It would be quite competent to issue a mandamus when the contest arose between the applicant and the gold recorder only and the duty to be exercised was one of an administrative character, but I cannot see how mandamus is the remedy when there is a judicial function and a discretion. For that reason I do not think that the case of Hartley vs. Matson is a block to this proceeding upon the ground that mandamus should have been the remedy. I have not given that case the full study which I should have liked to have given it but this is my view of it upon the consideration which I have already given to it. I am more disturbed by the findings of this court on the other branch of the case, that there is no status whatever in any person to attack a crown grant or lease, however issued. I think the appeal should be dismissed without costs and upon the terms as to costs and other matters imposed in the court below."

While 3500 coal-cutting machines are used in the United States mines, there are less than 400 such machines in British collieries.

See Mr. Geo. Craig as the "Sergeant of Police" in the opera "Pirates of Penzance" at the Auditorium on Wednesday, Thursday, Friday and Saturday, Feb. 18—21.

Will care for one or two good dogs for their use during the balance of the winter. Apply Nugget office.

NO DEPOSIT NECESSARY

Can Apply for Grant Without It

No Money To Be Paid for Placer Locations Until Grant Received

Now that there are eighty claims on the Matson & Doyle concessions to be thrown open, it may be information to a great many would-be claim owners that after staking they do not have to deposit their $15 at the time of their making application for a grant. About this point there seems to be some misunderstanding.

The matter was brought to the attention of the Nugget some time ago by the query of a correspondent as to why some of those who had been refused grants in the Milne concession, for reasons given, had received their deposits back and others had not. Enquiry this morning seemed to prove that the enquirer had not presented his application for the return of his deposit in due form or it would have been returned to him in due course. Under the old rule an applicant must first deposit his receipt for the $15 paid in with his application, providing he does not get a grant, and sign a paper to be sent to Ottawa asking a refund of this deposit. This was because all moneys received were at once paid in to the credit of the receiver-general at Ottawa, and could not be withdrawn except under his signature. So the depositor had unfortunately to wait until the communication could reach Ottawa and a warrant be received in reply.

But early in July last the gold commissioner's department here, instead of sending in these deposits to Ottawa, deposited them in a local bank in an account called the Gold Commissioners' Suspense Account, and whenever a depositor who had not received a grant applied for the return of his deposit a check was drawn on this account for $15. Then they had the records hunted through, and every applicant who had not received a grant was notified to produce his receipt and have his deposit returned.

The responses to these notices, and the applications for the return of this money, have been more tardy in coming in than were the responses from Ottawa for the refund, which generally came as promptly as the state of the mail facilities permitted. As an instance there came in today, in response to a notice offering this refund sent out from the office on July 5th, a certificate of deposit issued on March 4th in regard to a claim on Lovett gulch, a grant to which had been refused because the ground applied for was within the limits of an hydraulic concession. There are a great many of such instances.

But since the opening up of the Milne concession another great convenience has been made in the method of issuing grants, and one altogether in favor of the applicant. No money need be deposited with the application for a claim, although quite a number of applicants will insist upon paying in favor of the applicant. No money tion. At the time he puts in his application the applicant has to make no deposit, but is informed that he will be advised when the application if granted will be ready, and on that date he applies and the grant is handed to him at the same moment that he hands over his $15.

This is the rule with regard to all placer staking now, and the Nugget has pleasure in giving the news the widest circulation, as there are probably many on the creeks who are not aware of it.

MISSING.—If there is any one who knows the whereabouts of P. Chris Peterson please notify Mrs. S. Peterson, 12 Schuyler avenue, Kankakee, Illinois, U.S.A.

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