

GOLD HILL DECISION

Case Two Years Old is Settled

Cause of Action Due to an Alleged Encroachment of Another's Mining Claim.

The old and well worn case Williams et al vs. Faulkner et al which has been before the court here for the past two years has at last been disposed of, at least as far as the territorial court of the Yukon is concerned. Mr. Justice Dugas rendering a decision a day or two ago which is final unless an appeal is taken to the court of appeal at Victoria. At a previous trial of the same cause of action judgment was rendered in favor of the plaintiff in the sum of \$7,700 which upon being appealed was set aside and an order issued to proceed to trial in the ordinary way; the previous judgment having been given upon the findings of an expert appointed by the court for that purpose. The nature of the action while not complicated yet required rare discrimination in arriving at a judgment that was fair and equitable. Plaintiffs and defendants are owners of bench claims on Gold Hill which are only 100 feet square and sandwiched in with which are numerous fractions of every conceivable size and shape. It is from 40 to 60 feet to bedrock and at such depth from the surface and in such pay as Gold Hill has been noted for it has been almost impossible at times for one to keep within one's own boundaries. There has been a great deal of litigation over alleged encroachments, the case just decided being one of the many. His lordship's decision is interesting and will be found herewith in full.

"The parties are proprietors of adjacent claims, the plaintiffs of what is known as the 'Baker' fraction, and the defendants of the adjacent claims thereto. It is alleged in the statement of claim that the defendants have encroached upon their fraction at two different places, to wit: By tunnelling through the same at the upper portion of the fraction, and between the Huson claim and the same fraction; thereby wrongfully taking therefrom large quantities of pay dirt, containing gold and gold dust, which they have mixed with other dirt from the other claims of the defendants. And it is alleged that thereby plaintiffs have suffered great loss and damage. Damages are claimed therefor, accounts, judgment for the amount of gold dust so taken from the plaintiffs' claim and for an injunction and receiver.

"The defendants allege that the plaintiffs are not and were not at the time the alleged cause of action accrued the holders of unexpired miners' licenses—this pretension is not insisted upon. Secondly, that the plaintiffs were not, at the time the alleged cause of action accrued, the owners of the Baker fraction, nor entitled to sue for any encroachments thereon. The defendants admit being proprietors of the Huson claim. They admit further that prior to the purchase by the plaintiffs of the said Baker fraction, and while the same was the property of the Dominion government, they did, in pursuance of permission granted to them by the mining inspector for the district, run a tunnel into the said Baker fraction a distance of not more than 20 feet, and they deny having encroached upon the said claim, and having taken therefrom or rocked out any quantities of pay dirt. And, generally, they deny having removed any pay dirt from plaintiffs' claim. In their reply the plaintiffs deny the power of the mining inspector to grant the permission alleged.

"When the case was first called an expert was appointed; he made an award and judgment was entered confirming the same by which, I think, the plaintiffs were allowed \$7,700 damages. Upon appeal all this was upset and order given to go to trial in the ordinary way. The case having, therefore, been brought to trial before me, I now find that it shows however careful courts of justice may be, it is sometimes difficult to have the true rights of litigants strictly upheld. I will not enter into any details but will shortly mention what I think, that it cannot be seriously contested, even by the plaintiffs, that there is no proof that the plaintiffs ever suffered any damages on account of the tunnel run at the upper end of the claim, and which has been generally mentioned by the different witnesses as the 'short tunnel.' This is proven to have been made before the plaintiffs ever had any interest in the claim and with the permission of the crown, who, through the mining inspector, had given a permit to that effect, and also afterwards gave a receipt to the amount of \$75, being so much apparently paid as a compensation for the privilege.

"After the argument of the learned solicitor representing the plaintiffs, I declared that I had no hesitation to come to the conclusion that as far as this portion of the encroachment was concerned the plaintiffs had no standing before this court and I still adhere to this opinion.

"As to the encroachment on the side line of plaintiffs' fraction, the only two witnesses who can be relied upon are the surveyors, Jephson and Barwell, and yet they do not agree although they prove some encroachment. I may say that, notwithstanding that they are experts, it is difficult to arrive at an exact calculation and determine the number of feet encroached upon. Mr. Barwell fixes it at about 4x20 feet, which is less than the estimate of Mr. Jephson. As both are witnesses of the plaintiff, I would base my calculation upon his testimony. Averaging the pay dirt to have been about three feet in depth, this would make about nine cubic yards of dirt which the defendants would have appropriated as belonging to the plaintiffs. It has been proven that the pay dirt on that claim gave from ten to twenty cents to the pan, and that a cubic yard contains about 170 pans. This would bring the total number of pans taken out by the defendants to 1530. Calculating this at an average of 15 cents to the pan (which I still believe to be very high) would bring the total amount of gold taken out by the defendants from the plaintiffs' fraction to \$229.50 in value. The plaintiffs have admitted that the rest of this fraction has been worked out by them, and that it has been far, as they say, from having been a paying proposition. It was hinted that the encroachment by the defendants was one of the causes of their loss; this is untenable not to say more.

"I am convinced that the defendants acted all through without knowing that they were encroaching on the plaintiffs' claim and these views are, I believe, sustained by the fact that two experts like Messrs. Jephson and Barwell could not themselves agree as to the extent of the encroachment, showing that even with the best of good faith a mistake could easily be made by the defendants.

"Now, taking into consideration the fact that the plaintiffs have not been able to work the rest of the claim to any benefit to themselves, and the very limited amount of encroachment proven, I think that they have been very inconsiderate in making such exaggerated demands as they have made, fixing the damages suffered at thousands of dollars; having had a receiver appointed, gold dust to the value of several thousand dollars belonging to the defendants has been in possession of and deposited in court where it has been lying idle, without any profit to the defendants, for over two years, necessarily to their great damage, forcing the defendants to defend themselves against such unlimited pretensions they brought themselves large expenses which might have been avoided, perhaps, if the plaintiffs had limited themselves to what one of them considered, before the trial, a fair compensation, to wit: a demand of one hundred dollars. Taking besides as a further consideration the fact that, although specific damages are sought to be recovered, none are alleged in the statement of claim, I believe that I am justified in bringing down to a low limit the penalty to be imposed for such an encroachment. It has not been proven what it cost to remove the earth or dirt from the ground encroached upon. It might have cost the whole \$229 just as well as more or less, and, therefore, under all the circumstances of the case I fix the damages at \$50, but as I believe that whatever incidental costs have been incurred in the case, by the appointment of a receiver or the demand for an injunction were unnecessarily incurred, I order that the plaintiffs pay those costs. As to the main action, each party will pay their own costs.

We can do your repairing on short notice. Geo. Brewitt, the tailor, Second avenue. Job printing at Nugget office.

THE NEW SCHEDULE

Of Rates Are Now in Effect

Cut Rate Boats Which Sailed Saturday Night Were Loaded to the Guards.

The new schedule of rates which was agreed upon last week by the local steamship companies went into effect this morning and will continue, so it is said, without further change until the close of navigation. By the terms of the agreement the rates will be \$50 firstclass and \$40 secondclass, with the exception of the Whitehorse, Dawson and Selkirk, of the White Pass Co., on which the firstclass fare will be \$5 higher but the secondclass rate will remain the same as on the other boats.

This puts all the boats on an equal footing as far as the secondclass fare is concerned, but the smaller boats are given a \$5 preferential tariff over the three boats above named. The low rates following the breaking of the former agreement of the companies was taken advantage of by a large number of people, and as many as could get ready who were intending to go out this fall, and many who had not thought about it until the low rates were advertised, packed up their grips post haste and engaged their staterooms. The heavy travel is generally conceded to be over and it is not thought that any boat now going up river will carry such a large passenger list as has been the case during the last few weeks.

The Victorian arrived yesterday afternoon with the following passengers: Mrs. Hutcheon, J. McDonald, Upper Lebarge, H. Grötschier, Stewart, W. J. Dempster, Ogilvie. She leaves for Whitehorse at 7 o'clock to night.

The La France reported this morning at Stewart river about 8 o'clock and is due in port between 5 and 6 tonight. She is conveying the largest raft ever brought down the Yukon, containing 200 cords of wood.

The Bonanza King is due in port tomorrow.

The Yukoner sailed for Whitehorse Saturday evening with the following passengers: L. A. Jackson, Mrs. F. G. Mills, Miss M. White, Miss Hill, Ike Goldberg, F. E. Hendry, W. Hix, F. A. Smith, W. R. Ridgeway, Mrs. C. F. Rhind, Alex. Simard, Fred Allard, N. Jensen, C. E. Johnston, F. Sager, M. Neider, T. E. Foley, Jos. Moren, Mrs. M. J. Burkeholder, W. D. Smith, Thomas Davidson, A. W. Roberts, T. A. Harrington, S. Albert, R. C. Wood, Chas. La Minx, A. Gernain, L. Maynard, Leon Chapier, L. Rousseau, L. C. Mann, M. A. Howard, Mrs. W. Clark, Mr. and Mrs. Morris, J. Godshalk, Robert Hansen, T. H. Ingerson, Mr. and Mrs. O. Finstad, K. J. Oksrig, Ed. Langlow, Pete Hansen, Mrs. H. J. Smith, Mrs. J. H. Holmes, F. A. Rhynd, Mrs. F. A. Atwood, George H. Walton, Florence C. Holbrook, Leeford Dodson, Mrs. L. E. Weber, Mrs. B. E. Aze, Mr. and Mrs. A. McPhee, George Skoland, Miss Daisy Skoland, George Pile, Mr. Johnson, P. Slattery, Mrs. Andrew Eerland, G. Edwards, Mr. and Mrs. J. Henderson, J. Barlow, W. E. Branson, J. W. Scott, H. Baun.

The following was the passenger list of the Zealandian which arrived from Eagle Saturday night: Eagle City—Mrs. Morris, J. Oldfield, L. Peterson, P. E. Nelson, R. Camp, J. F. Emmet, R. A. Weiss, W. M. Fitzhugh, E. E. Kellog, J. M. Beagles, Rev. and Mrs. J. W. Kirk, A. R. Hellig, F. W. Clayton, Fortymile—C. Meyers, F. Mason, G. Stewart, M. Syverson, L. L. James, J. A. Kemp, B. R. Grask, J. Ellis, H. Darby, Mrs. Vincent, U. G. Norton, J. C. Delaney, W. D. Evans, Mr. and Mrs. J. J. O'Neil, T. G. Wilson.

WATER FRONT NOTES.

The Thistle sailed Saturday night with the following passengers: Nat Judrick, Mat Judrick, Geo. Harmon, George Stump, E. J. Roberts, M. Ouenville, Noah Legault, Philip Butcher, W. H. Johnson, A. R. Wolcott, C. H. Madson, Mrs. Madson, F. Alberton, Mrs. W. T. Boone, Mary Paicment, Mrs. Gillen, Nels Nelsen, Mrs. Nelsen, P. Nicholson, Ida L. J. Goth, Mrs. Merrifield, T. Warfield, Alex. Fraser, S. Gustofson, J. H. Fulton, Ch. Gasperini, Mrs. Gasperini, A. W. Gregory, Mrs. Gregory, Angus Chisholm, Mrs. Chisholm, Jno Baker, Mrs. Faulkner, Oscar Rey-

nolds, W. Tilden, Chas. Barbour, Fred Musgjer, Frances Calligan, Agatha Calligan, Miss Downey, Lewis Smith, Frank Sabet, D. G. Stafford, B. L. Skene, Mrs. J. H. Caskey, Miss Marion Dexter, Mrs. A. H. Deper and child, Mrs. A. J. Hont, Geo. Doherty, A. Wildhaber, J. M. Poitros, George Fardel, Robert Wayer, Noah Webster, James Griffith, W. A. Somers, O. R. Haskell, James Dalziel, T. Fjeldsgard, A. Lund, W. Willard, G. C. Keeton, A. J. Gillis, Martin Bogan, Leon Olson, John Caplias, M. J. Howard, J. O. Richardson, C. F. Adams, Edward Sherrill, C. H. James, Ole Styvold, Erik Starn, A. J. Aspass, A. Johnson, P. Berg, Dan M. Irwin, Thomas McClelland, Alex. O'Connor, H. Backinon, J. Williams, G. Williams, John Englaise, Robert Sharts, A. McInnes Mrs. Burnett, J. P. Lawler, A. C. Popejoy, Mrs. Popejoy, J. E. Strong Mr. and Mrs. T. A. Davies, F. H. Horn, Miss Laura Robbins, Mrs. Meyers, E. W. Sandison, Mrs. Gillan, Ph. Butcher, Chas. Cederblade, George Carroll, A. Matson, S. Markwood, M. Conley, E. L. Davis, John Leahy, J. J. Brown, W. Lehman, P. Wade, C. Littlewood, J. Royston, P. D. Morgan, Mr. and Mrs. R. J. McChesney, J. Sargent, A. Morrison, J. Campbell, Dave Guy, Dave Gordon, Lee Arsino, O. Crosby, J. A. Macklin, A. Olson, C. E. Miller and E. C. Miller.

MERCHANTS DECLINE

To Receive Dust Any Longer

Radical Step to Force All Gold Dust Out of Circulation.

A radical step has been taken by the merchants of Dawson today in the form of an agreement to accept commercial dust hereafter at the rate of \$13.50 per oz. As the banks are now offering \$14 currency for the same grade of dust, the effect of this action will be to take dust entirely out of circulation.

Early last spring a similar agreement was made by which the valuation at which dust was taken was reduced from \$16 to \$15 per oz. It is explained that at the time the above mentioned reduction was made it was believed that all gold dust would as a consequence be withdrawn from circulation. Such, however, was not the case. The new rate is expected to end the use of gold dust as a medium of exchange.

In 1897 gold dust was accepted in Dawson at the rate of \$17 per oz. The following year it was taken at \$16. From that valuation no change was made until this spring when the reduction noted above went into effect. Hereafter it will be a case of currency or nothing.

The agreement effected today is as follows:

To Whom it May Concern:—We, the undersigned merchants doing business in the Yukon Territory, agree that on and after September 10, 1902, all sales made by us of goods and all prices quoted shall be for currency.

Gold dust, other than the commercial dust, will be received at its actual value. Clean commercial gold dust will be received at the rate of \$13.50 per ounce.

Northern Commercial Company. North American Trading and Transportation Co. Ames Mercantile Company. Palmer Bros. J. E. Lilly & Co. Macaulay Bros. Holme, Miller & Co. McLennan, McPeck & Co., Ltd. Dawson Hardware Co., Ltd. Hamburger & Weissberg. McDonald Iron Works. Mahoney Trading Co. Standard Oil Co. William Barrett. J. T. Adair. McDonald Trading Co. I. Rosenthal & Co. Murray & Ross. Klondike Mill Co. The Joseph Ladue G. M. & D. Co. Hersberg & Co. Townsend & Rose. M. Des Brisay & Co. Royal Grocery Co. H. W. Butler. Klondike Thawing Machine Co. Sargent & Pinsky. H. Pinkert. Yukon Saw Mill Co. T. G. Wilson. Stanley Searce. Lowe & Sickinger. Dawson Wholesale Grocery Co. Emil Staup. The Orr & Tukey Co., Ltd.

ALASKA'S MANY NEEDS

Are Discussed by Seattle Business Men

Gov. Brady is Opposed to Territorial Form of Government.

Seattle, Aug. 28.—Alaska was the subject most under discussion at the Chamber of Commerce meeting yesterday morning. The people favoring a territorial government had a hearing in a lengthy letter read from Secretary LeFevre, of the Skagway Chamber of Commerce, and the anti-territorialists had a spokesman in the person of Gov. Brady of Alaska, who arrived in Seattle yesterday morning from a long cruise among the seal islands of the north.

The needs of Alaska have been a subject of considerable discussion in the Chamber of Commerce for some time past, and a few weeks ago resolutions drafted by the committee on Alaskan affairs were turned down, and resolutions proposed by Donald Fletcher were passed instead.

The subject came before the chamber yesterday when Secretary Meikle read a long letter from Secretary LeFevre of the Skagway chamber stating that everybody in Alaska wants the land opened to settlement; the people especially in the westward want wagon roads, telegraphs, railroads, and everybody is willing that they should have them; and the repeal or modification of the license law, so that the revenue may be expended in Alaska by Alaskans. His letter states that men of all shades of opinion are willing to stand upon the foregoing as a platform, and that fifty prominent Alaskans will attend the next session of congress to press their claims.

The Skagway Chamber of Commerce is sending out to all commercial bodies in the United States a memorial which they wish adopted and a copy sent to them, so they can present the whole formidable mass of memorials to congress next winter. The memorial asks that "congress speedily enact liberal laws for the district of Alaska, to open the land to settlement and the mineral wealth of that district to the industry of the United States. That such aid be extended as may be necessary to the construction of, wagon roads, railroad and telegraph lines; that its numerous hardy, industrious and intelligent population may be represented in the halls of congress, and that the Alaska license law be repealed or amended so that the revenue derived therefrom may be disbursed for the needs of the district and by the people of Alaska."

The Treadwell city council sent in a set of resolutions, passed August 9, stating that the granting of territorial government to Alaska at the present time would not be for the best interest of the district and favoring, instead, "that all moneys collected as taxes or licenses be used for the benefit of the schools, roads and other public purposes in the district; the right to elect a territorial delegate, and appropriations for additional lighthouses."

The towns of Douglas and Treadwell sent in numerous signed petitions asking for better mail service. They want every fast boat on the run between Seattle and Alaska to carry mail. As it is now the boats of the Pacific Coast Steamship Company carry all the mail, and it is frequently the case that they receive goods on one of the fast boats not owned by that company, and have to await the arrival of one of their boats before they receive the invoice or bill of lading of the goods.

The committee on Alaskan affairs will wrestle with the whole matter and will make a report to the chamber in the near future.

Gov. Brady addressed the chamber by request. He carefully avoided all reference to the question of territorial government, which is stirring up so much strife in Alaska, except to say that he was opposed to territorial government on principle, and that the country up there was not ready for that kind of government because of the expense, and the tendency to get into debt, and that he thought the business growth of the country would be retarded by excessive taxation. "I may say," said he, "that much of this agitation for self-government comes from a class of men who want to make of Alaska a political carcass."

"But what we do need in Alaska is the extension of more liberal laws, so that land may be taken in under

donation claims the same as is the case in Washington or Oregon. Mining is going ahead at a prosperous pace, while agriculture remains at a standstill. We have the making of a great agricultural country, and give us the old donation claims, so that settlers may get a title to the land without first having a government survey, and you will find men flocking to the north.

"We have millions of acres of grasses that grow as high as a man's shoulder, capable of feeding immense herds of live stock and producing millions of tons of hay. I believe that in the not far distant future you will find that the finest butter and cheese sold in the United States will bear the label 'Made in Alaska.'"

"We want to go on as we are for a few more years. I favor a delegate in congress, who will always be on hand to furnish information to the committees, and look after the interests of Alaska generally."

"But what we need right away and first of all is that Alaska shall be set off as a separate lighthouse district, giving us a lighthouse tender and an inspector of our own. That would mean for us the expenditure of \$30,000 a year for the improvement of navigation."

GOES TO SOLOMON'S MINES. The scientific world is watching with great interest the equipment of the expedition into the interior of Africa, and the epicurians of Dawson are keeping their eyes on The Family Grocery, for they know Dunham always keeps the best.

The Senator—at Auditorium.

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