

# ERROR OF HIS

(From Wednesday's Daily)

The adjourned sittings of the supreme court in this city, originally fixed for Feb. 11th, opened in the court house yesterday morning at 11 o'clock. Mr. Justice Martin presiding.

There were present in court S. S. Taylor, K.C., W. A. Macdonald, K.C., R. W. Hannington, H. C. Hannington, J. D. Spence, of Greenwood, D. Whiteside, of Grand Forks, James O'Shea, E. C. Wrasage and R. S. Lennie, of the bar, and a considerable sprinkling of spectators.

At the opening of the court the honorable Mr. Justice Martin made the following statement:

"The assignments were read by the registrar as follows:

Victoria, Jan. 21, 1908  
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(Sgd.) G. HUNTER, C.J.

Law Courts,  
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"The assignment of Mr. Justice Martin to hold the ensuing sittings at Nelson on Tuesday, Feb. 11, and at Rosland on Tuesday, 25th February, is hereby confirmed."

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"It is necessary, gentlemen, in view of the assignment just read and the embarrassing circumstances in which I find myself, that I should as shortly as possible state what action was taken in regard to the said assignments and the situation arising therefrom when the matter came before the full court consisting of Messrs. Justices Irving and Clement, and myself on the 19th instant on the appeal of Hunting v. McAdam."

"On Nov. 12th last I was assigned by the chief justice to sit in appeal, with Messrs. Justices Irving and Clement, which was an appeal from the chief justice himself, and after so constituting the court he claimed the right under the new rule, No. 190, to reconstitute it and to remove me from it and replace me by Mr. Justice Morrison. This right I challenged as beyond his powers, and I also objected to its exercise as it existed on the ground that when last year I had lodged a formal complaint with the provincial government against said rule on several grounds, and particularly because it gave the chief justice the power to select the judges who should sit in the court of appeal to hear judgments from himself, he had in reply to this very serious objection given the following assurance to the provincial government in a letter to the hon. the provincial secretary in August last, as follows:

"Moreover, before the last sittings of the full court after consultation with the other three judges it was considered that the preferable plan to adopt was that Mr. Justice Martin should sit in every appeal from myself and that we should not sit together in any appeal."  
(Sgd.) GORDON HUNTER."

"This letter was communicated to me by the provincial government and I was entitled to assume the assurance contained therein would be carried out, though it was no answer to the violation of the principle which I objected to."

"When on the 22nd of January I received from the chief justice the first of the above assignments just read by Mr. Registrar, I notified the C.J. on the 25th Jan. that it would be impossible for me to be here on the 11th instant, to take the sittings, because I had so much work then in hand, and immediately before me, as well as accumulations of work from my absence here in December, and also, to quote my own words: 'in any event because of the assignments you have already been pleased to favor me with, it will be impossible for me to do so.' This was owing to the fact that the chief justice had fixed the special sittings of the full court to hear Hunting v. McAdam in Victoria on the 11th Feb., the same day as the Nelson sittings. I, therefore held two conflicting assignments for the same day."

"To leave my right to sit in Hunting v. McAdam and to object to the right of the chief justice to remove a judge from a court, which he himself had selected to hear an appeal from himself, I remained in Victoria in attendance on the full court sitting on the 11th inst. and took my seat on the bench in Hunting v. McAdam, but the C.J. entered a formal objection to my sitting on the appeal to which he had assigned me, and filed a memorandum in court with the registrar to that effect, and to the counsel in the case, with the result that immediately upon the opening of the court the senior justice, Mr. Justice Irving, understood the situation and, without any discussion or argument of the matter and with the knowledge that I claimed the right to sit, that I was not a member of the court, and later a formal ruling was given that I was not a member of it, and that the chief justice had a right to reconstitute the court, revoke his original assignment to me and replace me by Mr. Justice Morrison."

"This decision, I submit, with all deference, cannot be considered as conclusive of binding, because in the first place one member of the court, the chief justice, had made a declaration without any judgment as a matter of form merely, and in the second place I do pay regard to be compelled to say that each and all of my learned brothers refused to give me any opportunity, in spite of my repeated urgent requests, to even advance reasons and arguments or to elicit authorities in support of my right to retain that seat on the bench which I then occupied, but I had to bow to the decision of the majority and consequently I was forced to give up my seat under such unprecedented circumstances."

"But there is abundant authority from the highest tribunals to show that a judgment delivered without giving the parties affected an opportunity to be heard is contrary to natural justice and cannot stand and is therefore no precedent. The consequence is that the very grave question involved must still be regarded as unsettled and the situation of affairs must be as unsatisfactory to litigants as it is to me who was deprived of my seat on the bench under such conditions. I regret very much being compelled to refer to this matter in view of the fact that the same question has been read and the action that has been taken by the full court on the questions directly arising out of them it is impossible

to avoid doing so, and indeed it would otherwise appear on the face of the assignments of that rule, which has been created, and I fear will continue to create, so much trouble, but the responsibility therefor is not mine, but it is essential that all should now clearly understand the exact position of affairs and also that this unprecedented rule has brought about a situation which is without parallel in any other province of Canada or in England, from which country the civil procedure of this court is supposed to be taken."

"For the guidance of the profession on the whole matter of assignments in general and in the particular, I have handed down the full stenographic report of the said proceedings in the full court in Hunting v. McAdam, which speaks for itself, and I have only to repeat my deep regret at the unavoidable compulsion to allude to a matter which has been so painful to me."

"The only case tried during the day was that of Attwood v. the Kettle River Valley Company for trespass, H. C. Hannington appearing for the plaintiff and D. Whiteside for the defendant company. The action is brought by the plaintiff for certain of his lands taken by the defendant land company which he claims are worth \$300,000. The defendants refusing to pay so large an amount. Hence the plaintiff brings action of trespass with an alternative of \$300 damages. At a quarter of eight o'clock yesterday afternoon the whole case of the plaintiff was in and the court rose to sit again this morning at 10 o'clock when the hearing will be continued."

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"This decision, I submit, with all deference, cannot be considered as conclusive of binding, because in the first place one member of the court, the chief justice, had made a declaration without any judgment as a matter of form merely, and in the second place I do pay regard to be compelled to say that each and all of my learned brothers refused to give me any opportunity, in spite of my repeated urgent requests, to even advance reasons and arguments or to elicit authorities in support of my right to retain that seat on the bench which I then occupied, but I had to bow to the decision of the majority and consequently I was forced to give up my seat under such unprecedented circumstances."

"But there is abundant authority from the highest tribunals to show that a judgment delivered without giving the parties affected an opportunity to be heard is contrary to natural justice and cannot stand and is therefore no precedent. The consequence is that the very grave question involved must still be regarded as unsettled and the situation of affairs must be as unsatisfactory to litigants as it is to me who was deprived of my seat on the bench under such conditions. I regret very much being compelled to refer to this matter in view of the fact that the same question has been read and the action that has been taken by the full court on the questions directly arising out of them it is impossible

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"For the guidance of the profession on the whole matter of assignments in general and in the particular, I have handed down the full stenographic report of the said proceedings in the full court in Hunting v. McAdam, which speaks for itself, and I have only to repeat my deep regret at the unavoidable compulsion to allude to a matter which has been so painful to me."

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# A DARK HORSE

(Special to The Daily News)  
Vancouver, Feb. 26.—The local conservatives believe they have found a way out of the impasse that has existed for some time past regarding the choice of a candidate to contest this city in their interests at the coming dominion campaign. There have been three candidates in the field for the party nomination, Sir Hilbert Tupper, Woodworth and lawyer Cowan, neither of whom was satisfactory to the entire rank and file of the party, although each has strong support. Tupper's claims in particular being strongly urged by the Orangemen and those of George Cowan by the old time element and the anti-McBrideites. The solution of the difficulty is to be found by placing Charles E. Tisdall, ex-M.P. P., in the field as the nominee of the party. Tisdall can unite all factions and is personally known to and liked by every man, woman and child in the city. Tisdall formerly represented the city of Vancouver in the local legislature. He is a successful business man and all round good fellow, whose relations with the labor element have always been of the friendliest character. He is known to R. G. Macpherson's plans. The general supposition is that Macpherson will retire to the post office at the close of the present session of parliament and in that event, the choice of a successor will rest between W. W. B. McInnes and H. Senkler, the former commanding a very large support in the East End and the latter having a following in the West End that might prove disastrous to any conservative nominee, no matter how popular.

It is unlikely that any official announcement of Tisdall's nomination will be made yet awhile, but when the time is ripe his name will be brought before the nominating convention and, according to present indications, it will be favorably received and be supported by Tupper, Cowan and Woodworth. If attorney general Bowser ever had any notion of seeking the local Tory nomination, his chances of securing it had faded to the vanishing point in the last few weeks owing to the exposure of his trickiness in connection with the Natal and the importations of contract Japanese laborers.

UNFAIR DISCRIMINATION  
John Oliver Exposes Tory Treatment of Liberal Candidates

The Vancouver Province, a McBride government organ, thus reports certain remarks of John Oliver, M.P., agent of the government's treatment of liberal candidates:

"Last year the average allowance voted to the constituencies represented by the opposition was \$3160, while that for the conservative ridings was \$14,708, almost double, in addition to the grant, which was made in the form of a grant, the government's treatment of liberal constituencies."

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# SHILOH'S

Quick ease for the worst cough—quick relief to the heaviest cold—SAFE to take, even for a child.  
That is Shiloh's Cure.  
Sold under a guarantee to cure colds and coughs quicker than any other medicine—or your money back. 34 years of success commend Shiloh's Cure. 25c. 50c. \$1.

QUICKLY!

Tested Stock Seed,  
Acclimatized Trees, Plants  
FOR THE FARM, GARDEN,  
LAWN OR CONSERVATORY.

Reliable varieties at reasonable prices. No borers; no scale; no fumigation; no damage to stock. No windy agents to annoy you. Buy direct and get trees and plants that grow.

Fertilizers, Bee Supplies, Spray Pumps, Spraying Materials, Cut Flowers, etc. Oldest established nursery on the mainland of British Columbia. Catalogue free.

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FOR  
ROYAL CROWN  
SOAP  
WRAPPERS

Drop us a post card asking for a box today.

prophecy of a very busy summer. Several real estate deals have been made in the last few days, and several new settlers have taken up residence here.

Among the new settlers are C. B. Blacklock and J. W. Joseph of Thorpe, England, who have purchased Lang Hill's ranch, and also ten acres from G. W. Goodlove. Both of the purchasers are high in the ranks of the district, and intend making extensive improvements both to their newly acquired ranch and to the unimproved ten acres.

James Thompson has been looking over several properties during the last few days with a view to purchasing. It is understood that Mr. Thompson has finally decided to purchase here.

George Smith, Gordon Hallett, Clarence Ogilvie and A. T. Davies are still busily engaged getting out a book containing 50,000 feet left here on Wednesday for the district.

R. Allen is putting the finishing touches to his new book, which when completed will surpass anything of its kind in this district.

Harrop contemplates making considerable enlargements to his already commodious store here to enable him to meet the spring trade.

MINES AT HEDLEY CITY  
GOOD PROGRESS MADE AT NICKEL PLATE PROPERTY

BIG G. N. R. CONSTRUCTION CAMPS AT WORK

Grand Forks, Feb. 22.—A prominent mine man arriving today from Hedley City, Ont., gives a most glowing account of the mining situation in that district. He says that the Nickel Plate mine is now working 140 men. The Nickel Plate is now operating 120 stamps and is making daily shipments by freight trains of its high grade concentrates to Kerekes where they are shipped by rail to the east. The ore runs about 80 per cent in gold and silver.

In addition to the Nickel Plate several other properties are working in the immediate vicinity of Hedley City, among which is the Golden Zone, owned by J. J. Marks and others. At this property a modern compressor plant is being installed just now as well as a cyanide plant. The Bradshaw group near Hedley is also starting up as well as the Kingston property.

The Great Northern railway is now laying track between Kerekes and Hedley City, a distance of 20 miles. The railway contractors have no less than five big camps in this short stretch of work, and very slow progress in laying steel is being made as the Similkameen river has to be bridged no less than three times and much rock and other heavy grading is being confronting the contractors. May 1 is fixed for the date the rail is supposed to reach Hedley City.

As a proof of the present value of well selected lands in the Bulkley valley in the north it is today stated that Ed. Covert, a pioneer of this valley, has just been offered \$100,000 for his hay ranch of 30 acres situated in the Bulkley valley.

Word has just reached here today that hereafter the pay off for the division of the Great Northern railway will be in St. Paul instead of Spokane as heretofore.

CHAMBERLAIN'S HEALTH  
London, Feb. 26.—Hon. Joseph Chamberlain, accompanied by Mrs. Chamberlain, left London today for the Riviera where they will remain for several months. Chamberlain's health continues to improve slowly.

RUBBER PROFITS  
Montreal, Feb. 26.—The net profits of the Canadian Rubber company last year were \$200,000.

# MAINTAINS BIG OUTPUT

GRANBY SMELTER BEING WORKED FULL BLAST  
CARLOAD OF BLISTER COPPER SENT TO JERSEY

Phoenix, Feb. 22.—Following the new high record smelting made by the Granby Consolidated, made on Wednesday of this week when 300 tons were put through the eight blast furnaces of that plant in one day, as already noted, it is learned that the record made by the plant for the next day was but little less, running up to 250 tons, and then the plant ran out of ore and the furnaces were banked a couple of hours till two trains on the way arrived. This is a total of 600 tons of Phoenix ore smelted in two days, or 48 hours, and is a record never before attained in the Boundary or in British Columbia. Indeed the ore ran so well that the daily order at the mines of 300 tons for the smelter when it is operating eight furnaces has been increased to 200 tons, so that in future there shall be no shortage of ore supply at the reduction works. As it is well known, that the company's mines there is no difficulty in getting out 500 tons of ore daily, if the order from the smelter calls for that much.

The smelter this week, while it treated but a little over 20,000 tons of ore for the seven days, will probably shatter all records next week, if things continue to run as smoothly as in the recent past.

Plenty of coke is now available and long trains of this commodity, as well as of ore are constantly on the way to the Granby smelter and every day, about a carload of blister copper is dispatched over either of the railways to the refinery at New Jersey.

FERNIE'S COURT HOUSE  
NEW BUILDING IS PRACTICALLY COMPLETED

COLEMAN AND FERNIE TO MEET AT HOCKEY ON FEB. 26

Fernie, Feb. 22.—The officials of the local government have at last moved into the new offices in the court house building, which is now completed with the exception of the court room, which will be finished in a few days. The offices are large, comfortable, and arranged in a most convenient manner for the public. Sittings of the court will still be held in the temporary premises on Victoria avenue for a few weeks.

A concert given in the opera house last night under the auspices of the Fernie city band was attended by a large and appreciative audience and they were treated to one of the best musical entertainments ever given in the past. The program was a long varied and attractive one and the appreciation of its artistic excellence was attested by the repeated applause that greeted the performers.

The devotees of curling are making up for their enforced absence from their favorite game in the early part of the season by daily games on their new rink, several of which are scheduled for the next week.

The first of the series of hockey matches for the Whelan trophy will be played here on Wednesday next, between Coleman, and the local team and a great deal of interest is being taken in the event.

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