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WATER RIGHTS QUESTION

The Judgments Relating to Records on Murphy Creek.

Mr. Justice Martin Reverses Rulings of Officials.

The following is the text of the two judgments delivered on Saturday last by the Hon. Mr. Justice Martin, placing a definite construction upon certain sections of the Water Classes Consolidation Act, 1897. They will be read with interest by all concerned in water rights:

In the Supreme Court of British Columbia, the Centre Star and War Eagle Companies versus the B. C. Southern Railway Company, John Kirkup (Gold Commissioner) and the City of Rossland.

It is objected, first, that under section 11 of the Water Classes Consolidation Act an application cannot be made by two companies jointly.

Section 8 provides that "every owner of land may secure the right to divert unrecorded water" and section 10 contains a corresponding provision in favor of "every owner of a mine." By section 10 s. 13 of the Interpretation Act "words importing the singular number... only shall include more persons... of the same kind than one" and by s. 14 the word "person" includes any body corporate.

It is admitted that in the case of two co-owners of one mine there would be no objection to a joint water record, but it is contended that where two owners own two different mines it cannot be granted, and counsel gave several illustrations of difficulties which might arise in the practical working out of the act in the latter case. While I fully appreciate the probability of difficulties being encountered, yet a remedy therefor will, I think, in most cases be found in section 18 (3), 20 and 28, and even if not the element of difficulty would not of itself justify the Gold Commissioner in refusing to entertain such an application.

Seeing that the statute does not prohibit the acquisition of such an interest there is nothing at common law which is opposed to water records, being held jointly like any other form of property, the objection is therefore overruled.

It is further objected that the notice given under said section 2 was invalid because it included among the "purposes" for which the water was required a purpose not authorized by section 10, i. e. "domestic and fire purposes."

Applications by owners of land for water records for "agricultural, domestic, mechanical or industrial purposes" must be made under section 8 to the commissioner of lands and works in the district.

Owners of mines may secure similar records under section 10 "for any mining purpose or other purposes incidental thereto or for milling, concentrating or other purposes in connection with the working of their mines," and this application must be made to the Gold Commissioner. The statute certainly contemplates distinct applications to two distinct officials of limited jurisdiction. But does the fact that an applicant in applying to the proper official includes in his application not only a request for water which the official may grant but also a request which he may not grant, thereby invalidate the whole application and render it impossible for the official to deal with it at all? The contention to be effectual must go to this length that because an applicant asks for more than he is entitled to he is thereby debarred from obtaining that which he is entitled to. For the applicant it is on the other hand contended that the unauthorized request should be treated as a mere surplusage and that the Gold Commissioner should deal with the matter so far as his authority permits him and grant a record for what he may think the applicants are entitled to. At the hearing the applicants expressed their readiness to abandon their claims for "water for domestic and fire purposes" and requested the Gold Commissioner to deal with it as a claim for mining purposes only, but he refused that request and dismissed the application. Of course neither under section 13 nor 18 can the Gold Commissioner do more than grant a record for that amount of water which in his discretion "shall be reasonably necessary for the purposes specified in the application," but what is complained of here is that the applicant was not permitted to show what was reasonably necessary. In view of the facts arising prior to record priority of notice of application shall constitute priority of right," it is not, in my opinion, contemplated that obstacles should be placed in the path of one who conforming to essentials is endeavoring, bona fide, to obtain the benefits of the act. In the case of such an applicant the spirit of the statute will be best preserved by placing upon it a liberal and reasonable construction, and I am unable to agree with the argument that public or private interests are likely to suffer by allowing an applicant to abandon any part of the claim included in his notice.

In the present case, apart from the admitted "mining purposes," it might on investigation appear that under the particular circumstances a supply of water for fire purposes would be necessary and being directly connected "with the working of the mine" or "incidental thereto," that would be a matter for the Gold Commissioner to determine on the facts of each case. It might be proper to grant it for such purposes to one applicant and not to another.

My decision herein is not that it was necessary that there should have been any amendment of the notice but that the Gold Commissioner was not justified in refusing to exercise the powers he had because the applicant asked him to exercise those he had not. When the applicant abandoned the unauthorized claims in his notice of application they should have been considered as mere surplusage and the hearing proceeded with on the remaining claim which the Gold Commissioner had jurisdiction over.

The adjudication of the Gold Commissioner is reversed and the matter referred back to him for re-hearing and re-adjudication.

The appellants are entitled to the costs of this appeal, to be paid by the British Columbia Southern Railway Company.

GOLD AT FISH CREEK

THE DISTRICT QUITE EXCITED OVER THE LATE DISCOVERY.

EFFECTS OF THE SILVER-LEAD DEPRESSION IN THE SLOCAN.

J. Fred Ritchie P.L.S., has returned from a trip to Comapix and Camborne, the scenes of the recent gold strike in the Lardo. He arrived on the ground within a day or two of the outbreak of the rush for claims and went over the ground where the rich mineral was discovered and which was staked from end to end within a day of the arrival of the first prospectors. The country, Mr. Ritchie states, is in a ferment of excitement over the strikes, and all ordinary occupations are abandoned for the time, while the inhabitants prospect and talk mining. He believes that the Camborne camp will eventually be a great free-milling camp, all the earmarks of rich quartz ledges being in evidence. Up to the present time the country has only been scratched and even this much can only be said of certain sections. Further development will indicate the continuity of the leads and otherwise demonstrate the merits of the camp. In addition to the ledges the country possesses magnificent waterpower, Poole, Fish and other minor creeks furnishing all the power that will be required to operate hundreds of batteries.

The principal operator in the Camborne camp at the present time is the Imperial Development syndicate of Nelson, which owns the Eva, Imperial and Cholla groups. On these groups, which include the ground from the limit of the Camborne townsite to the apex of Lexington mountain, or almost a mile, have been opened out to some extent, a force of twelve to fifteen men having been employed there almost continuously for the past eight months. The area to be covered, however, is so great that but comparatively little development has been accomplished in any one spot. Their showings are remarkably good, and the proposition gives promise of becoming an important producer. The Criterion adjoins, and on this claim galena is found in combination with an iron capping carrying gold. The free-milling ledges appear to extend west from Lexington mountain across Fish creek, and the indications are that the leads on the further side of the gulch are identical, the intervening sections having been graded by the action of the creek. The area staked during the rush of the past week or two has been small. A two-foot outcrop of milky schist was discovered and it was along this outcrop that the locators planned their stakes. How far the ledges extend after the outcrop is lost is totally unknown, but it is generally believed that the distribution is more general than was formally imagined. Samples from the outcrop when examined with the glass show fine gold liberally sprinkled throughout. Mr. Ritchie secured an interest in one of the most desirable claims, and is having assays made from samples taken.

Phil J. Hickey, manager of the Ivanhoe mine in the Slocan camp, was in the city over night. Mr. Hickey owns a group of claims, including the Typhoon, adjoining the Great West, and while in the city looked into the matter of the annual assessments. When asked if he proposed to do work on a more extensive scale on the properties this summer Mr. Hickey responded in the negative.

At the present time the Ivanhoe is practically shut down, including the modern concentrator erected by the company last summer. It is doubtful whether operations will be resumed. Mr. Hickey is somewhat pessimistic as to the immediate future of the Slocan. At prevailing prices for lead on the London market, where the Canadian product is marketed, the silver-lead producer only receives about \$1.00 for his lead, at least this was the sum netted by Mr. Hickey on his last shipment of Ivanhoe ore. At the figure specified the margin of profit is so small to the miner that it does not pay the mines to get their stoves in an attempt to do business. Nor, in his opinion, is the market likely to improve at an early date. Even the American Smelting Trust is beginning to feel the pressure of over production and limited markets, and has issued instructions to the producers in the Cœur d'Alene that their output must not exceed a certain tonnage per week, and that all shipments in excess of this figure will be refused at the smelters. When the Oriental market is reopened to American and Canadian producers by the restoration of normal conditions in China there is every indication that the demand for lead products, stimulated by the lack of supply for the couple of years during which China has been in turmoil, will exceed in activity anything yet seen there, and the silver-lead producer will have a return of their old prosperity. Until this condition of affairs is brought about the mining industry in the Slocan is likely to be confined to a few of the principal properties in the silver-lead belt, although the producers of dry ore will, of course, have a ready and profitable market for all the ore they can produce.

Mr. Hickey does not expect that the federal subsidy on Canadian lead will exercise any substantial effect on the silver-lead industry in the immediate future. At best he believes that its influence will not be felt until the refinery is erected and in operation for a time, and that even then the miners will not be benefited unless the smelter people are willing to share the subsidy, as under conditions of the grant the smelting interests are in a position to add the sum total of the subsidy to their profit account.

A large seizure of smuggled silks and Chinese liquor was made on the steamer Tartar today.

THE SECOND CASE

In the Supreme Court of British Columbia—War Eagle and Centre Star Companies vs. John A. Turner (Assistant Commissioner of Lands and Works at Nelson, B. C.) the B. C. Southern Railway Company, and the City of Rossland.

In regard to the first objection, that the Assistant Commissioner had no jurisdiction to deal with the matter because the "volume of unrecorded water available for diversion" had not been proved, all I have to say is that in paragraph eleven of the petition it is stated in effect, that there was no unrecorded water available at all, so consequently the Assistant Commissioner proceeded under section 18, sub-section (3) and granted an interim record. Though it is true that the final paragraph of section 18, sub-section (1) provides that the procedure on an application for a grant of recorded water shall be the same as that on an application for unrecorded water under section 13 yet I see nothing in the language of that section which would prevent the adoption of the course herein taken were it not otherwise objectionable.

But section 13 requires the adjudicating official under either section to have regard to "pending applications," and at the hearing before the Assistant Commissioner now complained of the appellants appeared and objected to the application of the respondent company until the application of the appellants under section 2 had been pending before another independent official, the Gold Commissioner, had been finally disposed of on the appeal from his decision set down for hearing before this court.

As regards the matter pending said appeal it was proved that the prior application of the present appellants for 175 inches embraced nearly all the water in Murphy creek, the average flow being about 206 inches during the dry season.

I confess I do not understand why the Assistant Commissioner deemed it necessary to dispose of the matter without regard to the pending application of the appellants. There is, to my mind, nothing in the order or judgments of the learned Chief Justice which contemplates such a course and it would appear to be most seemly where two different officials are exercising their distinct functions in regard to water rights, that the official who is determining the junior application should stay his hand till the final result of the senior application before another official in regard to the same water be known, except of course when it clearly appears that the volume of water is sufficient to satisfy all applications.

It follows from the judgment I have just delivered in the case of the Centre Star Mining Company vs. the B. C. Southern Railway Company, to which I refer, that the rights of the appellants have been prejudicially affected by the adjudication or decision complained of and that adjudication is consequently declared to have been prematurely and improvidently made and the water rights and the record complained of cancelled. The matter is referred back to the Assistant Commissioner for re-hearing and re-adjudication. The respondent company will pay the costs of this appeal.

VICTORIA NEWS.

The Railway Ferry Barge—An Absconding Agent.

Victoria, May 30.—(Special.)—Work is to commence at once on the barge Georgian, which is to be employed as a ferry barge between Liverpool, opposite New Westminster, and Victoria. Three parallel tracks will be laid on her, to accommodate 17 freight cars. F. J. Wheeler while in the city a day or two ago issued orders to commence work on her.

An unconfirmed report has been received here that Leitner, the absconding Northern Pacific agent, has been captured at Winnipeg. The police deny knowledge.

A committee of metal workers leaves for Seattle tonight to endeavor to have the boycott on the steamer Garrone misused so that she can be repaired here.

The fisheries of the province are to be operated under a modus vivendi between the provincial and Dominion governments, pending the settlement of the dispute as to which government has control under the terms of Confederation.

FOR A BIG PRICE.

Hayes Mine at Alberni Sold to MacKenzie & Mann.

Vancouver, May 31.—(Special.)—Col. Hayes' mine at Alberni was sold today to MacKenzie and Mann. Hugh Sutherland is having put through the deal. The price is \$600,000, and the first payment is to be made on July 15th. The purchasers propose the immediate construction of a tramway to salt water, and may build a smelter next year.

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ROSSLAND'S NEW COURT HOUSE

The Building That Was Recently Opened Is Well Built and Well Planned For Its Appointed Purpose.

The Miner presents herewith an excellent exterior view of Rossland's courthouse, the cells and the janitor's living apartments. Hot water is used for heating the building, and a large boiler is provided to furnish the water on the low pressure system. Automatic drafts and dampers are a feature of the heating plant, ensuring perfect safety with efficiency. The cells are three in number and a guard's room adjoins. These cells will be utilized for convenience of the public. Each of the divisions enumerated is provided with a substantial fire-proof vault for the storage of documents and other valuables. Each suite also has a lavatory and similar conveniences. The desks in the offices will be of oak, and the tops of the counters are of a similar material, with a natural finish. The furniture throughout will be uniform and one pattern of linoleum or similar flooring will be used in all.



special occasions, for instance when a prisoner elects for a speedy trial and is held pending a hearing or removal to the provincial jail at Nelson. Fred Burrows is at present janitor of the building and his quarters are commodious and comfortable.

The second floor is entered from the Columbia avenue main doors, and the entrance itself is worthy of mention. Two heavy swing doors comprise the first portal, and within is a lobby about 15 feet square, with small doors to the right and left into private offices and other two swing doors into the main hall of the flat. It is here one encounters the cedar, natural finish, doors and woodwork that prevail throughout the building.

Passing through the main hall, and to the right is found the suite of offices devoted to the gold commissioner and staff. These are three in number, the first being for Mr. John Kirkup's private use in his capacity of government agent and gold commissioner, the second for the clerks of the mining recorder's department, Messrs. John Hoson, first clerk, and Edward Job, second clerk, while the third is the office of the mining inspector. Across the hall is a suite of three offices for the registry department. The first of these on the Columbia avenue front of the office is Mr. Frederick Schofield's private room, where he will discharge the duties of the office as supreme court clerk. The second apartment is a large room intended for a public office, and it will be occupied by Mr. H. R. Townsend, deputy clerk of the supreme court. The third room in the suite will be used for examinations and taxations before the clerk of the supreme court. At the northwest corner of the building on this flat is the office of the sheriff, where Mr. W. J. Robinson will reside. This office is provided with an entrance from the west side for the

AGGRAVATING DELAY

commencing work on the roads, and there seems to be no reasonable excuse for the delay now that all the money has been voted, and a portion of the amount lying idle for two years. The secretary was authorized to urge the government in the strongest manner to make the move, and the hope was expressed that the board's recommendations would attain the desired end.

The matter of preparing reading matter for distribution at the Glasgow exhibition, the Pan-American exposition and the Toronto Industrial was gone into and discussed at some length. It was agreed that the idea was an admirable one and that the advertising done by the city heretofore had been well repaid. Further consideration of the matter will be taken up at another meeting.

A communication was read from W. A. Gallier, M.P., stating that he had endeavored to induce the department of public works to place vaults in the post-office building here, instead of safes, as proposed, but without success. Apparently Mr. Gallier's efforts were without result, as Mayor Lalonde stated the department was now calling for tenders for vaults instead of safes.

CONTRACTS SIGNED

Construction of the Grand Forks and Republic Railway.

Road to be completed this summer—Smelter projected.

Republic, Wash., June 4.—W. C. Morris and associates signed contracts to-night in Spokane for work on the Republic and Grand Forks railway. Work is to begin tomorrow, and 1,000 men are to be at work in a month.

A smelter is also to be erected, but until it is in working order the Granby smelter will handle Republic ores. The railway is to be completed this summer. It will be standard gauge and 46 miles long.

Public Institutions have found Pain-Killer very useful. There is nothing equal to it in all cases of bowel troubles. Avoid substitutes, there is but one Pain-Killer, Parry Davis', 25c. and 50c.

Thomas Stout, druggist, leaves today for the east en route to Scotland, where he will remain for six months. Mr. Stout will take in the Pan-American exposition en route.

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