

ON TRIAL BY JURY

Joseph A. Clarke is in Territorial Court

Several Members of Venue Ad- mitted Prejudice—Hearing Now on.

The trial of Joseph Andrew Clarke upon the charge of criminally libelling Police Magistrate C. D. Macaulay was begun this morning before a very large and highly appreciative audience. In fact, since the trial of George O'Brien and later of Brophy and Tomerlin there has not a case appeared before the territorial court that has possessed a fascination so potent or a drawing power so apparent. Clarke appeared as his own counsel, wrapped in his usual imperturbability, conscious, however, that at least for the time being he was occupying the centre of the stage, the cynosure of many eyes. The accused received the benefit of no advice from anyone save an occasional suggestion from Mrs. Luella Day McConnell who sat in close proximity within the bar enclosure. If he betrayed any nervousness whatever it was in the persistent biting of his finger nails.

At the opening of the case and before the summoning of a jury had been begun Clarke again objected to the crown prosecutor appearing in the case as a private prosecutor, saying he had received a letter from Mr. Wade, the regular prosecutor, to the effect that Mr. Congdon had no right to so appear. The latter gentleman stated that he was appearing as counsel on behalf of Mr. Macaulay and not as the crown prosecutor. Again did Clarke raise the same objection, but his lordship remarked that the case was set for trial and for them to proceed. Then Clark raised another objection as to the manner the jury had been chosen, insisting that it should not have been selected from the city alone but should have included the entire territory from which the panel was drawn. He would have also have moved for a change of venue had there been any other court in the territory to which he could have gone. His lordship reminded the defendant that he had probably not read the N. W. T. ordinance which permits the judge full liberty in the selection of a jury. Objection No. 2 was thus disposed of and still another arose. Clarke objected to his lordship hearing the case and wished it transferred to Mr. Justice Craig upon the ground of personal feeling and possible prejudice on the part of the judge, quoting the Woodside case and also that of the Bank of Commerce vs. the Syndicate Lyonnais as precedents. His lordship informed the gentleman that he was not unfriendly toward him, still Clarke insisted and the court finally terminated the argument by saying "the application has been settled and I will not discuss the matter with you."

The first panel of six jurymen called consisted of W. D. Bruce, G. D. Edwards, R. A. Rumsay, T. H. Alcock, F. S. Long and Alex McCarter. Mr. Bruce was at once challenged for cause and upon examination before R. W. Courtley and T. D. Green, triers appointed for the purpose, admitted that he had known the accused for years, their relations were very unfriendly and he was decidedly prejudiced against him. "That should be sufficient to disqualify the gentleman," dryly remarked Mr. Congdon and his worship with a smile agreed.

R. A. Rumsay was also challenged for cause upon the ground that his position as an employee of the Bank of Commerce was such that he would not be impartial and could not give a fair verdict. He also confessed to prejudice upon examination and was excused.

W. A. Harrington was called and was challenged peremptorily by the defense. Peter Vachon was also

called but was excused on account of being a witness in the case. Wm. Brownlow was excused by the court. S. C. Elkington was challenged peremptorily, the jury as finally selected and sworn consisting of G. D. Edwards, T. H. Alcock, F. S. Long, Alex McCarter, Robert Moncrief and J. F. Seabrook.

After the jury had been sworn and the clerk had read the charge Clarke asked that they be informed that his plea of justification had been rejected to which the court replied that he (Clarke) had nothing to do with that. An objection was also raised to the manner in which he had been committed after the preliminary hearing.

"Go on with the case," said his lordship and the defendant subsided. Mr. Congdon devoted only about ten minutes to his address to the jury in the opening of the case, referring, however, more particularly to the two counts contained in the charge, the first for having published the articles knowing them to be false and defamatory and the second for having published them without knowing they were false. The crown to sustain its charge must prove the publication and also that it is defamatory which it is alleged it will be an easy matter to do. The liberty of the press in the British Empire was referred to and it was stated that no where on earth were greater privileges enjoyed by the press. No one is exempt from criticism by the public press and one may even be abused shamefully as long as the criticism is fair, honest and courteous, but such criticism must not hold up a person to ridicule or contempt without justification.

Joseph Anstett, foreman of the Miner, was the first witness called by the crown. He testified as to his position and identified copies of the paper of May 17, 24 and 31, which were offered as exhibits. Of the former date 650 were issued and the issue was exhausted, 100 or more being sent outside. About 700 was the issue of the 24th and a larger number of the last date named. Clarke did his own circulating up the creek because he found difficulty in getting anyone to do it for him.

The cross-examination by Clarke was lengthy, exhaustive and equally barren of results. About the only thing brought out was that there had been open gambling since May 2, the witness had played and had lost some money.

H. G. Blankman, stenographer for Judge Macaulay was called and gave evidence as to the dates of filing and rendering of judgment in the Woodside case, and also the informations sworn to by Sergeant Smith in the now famous gambling case and the judgment of Judge Macaulay which followed the trial. The decision referred to was dictated to witness on Thursday, transcribed the same day and delivered to the police magistrate that evening and by him delivered from the bench the following Saturday.

On cross-examination Clarke sought by means of expert testimony to have the witness interpret some of the billingsgate contained in the alleged libelous article. The crown objected to such evidence but the court held that the witness could say what his own construction had been upon the sentences in question.

"What would you think was meant by the '7-come-11 judgment' as used in this article?" questioned Clarke. "The only construction I could possibly place upon it would be that it imputed a dishonest, snap judgment on the part of Mr. Macaulay."

No further expert evidence was attempted to be brought out. At the hour of adjournment for luncheon Hugh McKinnon was on the stand. It is scarcely thought the case will be finished today as Clarke has some 20 or more witnesses he proposes putting on the rack.

Judgment Rendered

In the case of F. S. Dunham vs. the dealers in cheap groceries, the public have decided in favor of Dunham and will continue to trade with him because they know they can depend on always getting the best at The Family Grocery, corner Second avenue and Albert streets.

Reid Sails

Special to the Daily Nugget. New York, May 31.—Whitelaw Reid America's representative to the coronation, sailed for England today.

NEWS OF THE WATER FRONT

Several Steamers Ex- pected This Evening

Two Sunday Excursions—The Str. Sarah Leaves for St. Michael Saturday.

The Prospector left at three o'clock this afternoon on her regular run to the Stewart, taking up several more miners for Duncan creek to add to the thirty carried on her last trip. The boat will make a trip every four days all through the season, and the management expects to do a much larger business than last season in consequence of the rapid development of that section.

The Lorelie came in last night from Fortymile with several passengers and will leave again tomorrow. She is to be kept on this run all summer.

The Casca started on an excursion at the unholly hour of two o'clock yesterday morning and, naturally, the boat was not uncomfortably crowded. The trip was a success, however, and was thoroughly enjoyed. The excursionists were taken as far as Reindeer and at about seven o'clock in the evening came down the river with the band playing and gay colors flying, the waterfront black with envious crowds. They went down as far as Mooshide and then returned.

Jim Wortham, manager of the Clifford Sifton, has taken desk room at the Aurora dock, in the office of Frank Mortimer.

The telegraph operator at Five Fingers, at nine o'clock last evening, was trying to say that the Whitehorse had just passed there, when the wire went down. She passed Selkirk at nine o'clock this morning, and Mr. Rogers expects that she will reach here about seven this evening.

Nothing further has been heard of the Zealandian, which left lower Lebarge two hours ahead of the Whitehorse, so she may arrive here at any moment.

The N. C. steamer Rock Island will leave for Bergman and Bettles on Thursday. A number of returning Koyukukers are already booked, some of them with their families and housekeeping fixtures.

The Sarah leaves for St. Michael on Saturday, with United States mail, and as she tows no barges and has little way freight is expected to reach her destination in ten days.

The W. H. Isom leaves tomorrow night, with four barges, for St. Michael.

The Eldorado passed Ogilvie at 1:30 this afternoon and should be here by 5 this evening.

Louis Sloss, president of the N. C. Company, with Mr. Washburne, the superintendent of the company, are expected to arrive here in about a week. They are coming on the new steamer Koyukuk, which is to make a quick trip to Bettles, carrying neither passengers or freight, except for the company. She will be kept entirely on the Koyukuk run, for which she has been specially constructed.

The steamer Lavalle Young left at

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1:30 Sunday morning for Eagle. She carried a number of excursionists. At noon today she passed Fortymile on the return trip.

George Wade, for six years with the Mounted Police, who came to Dawson in 1898, has been appointed landing waiter of the Canadian customs, as successor to the late Geo. Marsh. Mr. Wade began his new duty this morning.

TEETERING SIDEWALKS

Are Now the Proper Caper in Dawson

Settling Foundations Leave Walks Suspended in Mid Air or Badly Listed.

The recent thawing of the ground has caused the sidewalks in various parts of the city to become loose as to their underpinning with the result that they shake and wobble until the man who is not wholly a total abstainer is apt to ask himself the question: "Where did I get it?" This is the result of the sinking of sidewalk foundations until in many places they are suspended until they sway like a rope suspension bridge.

For almost a block northward from the Cascade laundry on Second avenue the sidewalk is in such condition as to cause the pedestrian to burst into song with

"Rocked in the cradle of the deep." If all the sidewalks in town were in the condition of the one mentioned there would be no need for the "Move on!" order now being issued on First avenue, as it would be impossible for the persistent loiterer to retain his previous meal unless he had it battened down.

Where the sidewalks do not thus sag suspended, in many places they have a list like a schooner whose cargo is shifted and the result is that baby carriages in passing over them are liable to spill their contents.

As the sidewalk question is one which does not require being referred to Ottawa, it should be attended to locally some time between now and fall and before teetering parties become the fashion, for once they do people will be loath to give up their swaying sidewalks.

STEAMER ..CLIFFORD SIFTON..

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