

THIRD YEAR.

WEDNESDAY MORNING, NOVEMBER 29, 1882

PRICE ONE CENT

CALDWELL VS. McLAREN.

THE FEDERAL SUPREME COURT
OVERRULES THE ONTARIO
COURT OF APPEAL.

A History of the Case—The Question
Involved—What the Outcome Will Be.

OTTAWA, Nov. 28.—In the supreme court to-day decision was rendered in the case of Caldwell vs. McLaren. The full bench of judges was present, and the court was unanimous in reversing the judgment of the court of appeal of Ontario and affirming the decree of the court of chancery, which grants to Mr. McLaren a perpetual injunction restraining the defendant Caldwell from making use of the improvements on the streams in question, which are tributaries of the Mississippi river. The substance of the court's decision was as follows: These streams were in the state of nature non-floating and could not have been made so for the purpose of navigating saw logs and timber down to market during the spring, summer and fall seasons, and that McLaren having made these improvements so as to enable saw logs and lumber to be taken down, if the defendant desired to make use of such improvement, compensation should at least have been made to McLaren.

This celebrated case has passed through another stage and now the position of the matter is one well calculated to set the people not of Ontario merely, but of the whole Dominion thinking. In order to understand clearly what a position it will be necessary to give a brief resume of the HISTORY OF THE CASE.

The Messrs. Caldwell of the village of Lanark, in the county of Lanark, have for many years done a large lumbering business on the Mississippi river, on the headwaters of which they have their timber limits while their most important saw-mill is at Carleton Place. Mr. Peter McLaren has also for many years done a large lumbering business on the same river and his most important mill is also at Carleton Place. Partly by purchase and partly by construction Mr. McLaren has acquired control of the majority of the improvements, such as dams, slides, etc., erected from time to time with a view to making the river capable of floating logs from the upper waters of the hills above referred to. The value of these improvements is a matter of dispute, but this does not affect the merits of the question at issue.

Some three years ago the Messrs. Caldwell commenced driving their logs as usual, when they were stopped by Mr. McLaren, who claimed that the improvements were his property unless they would first formally admit his right to the absolute control of them. This they declined to do, as the control of the river was in the hands of the whole-stream log-driving companies and would enable Mr. McLaren to oblige what he pleased. After lengthy negotiations failed, they went to court and the case was carried into court and was brought up for trial before Vice-Chancellor Proudfoot on a motion for an injunction. A great deal of evidence was taken as to the value of the works in question, and also as to the character of the stream for floating logs. It was established that the stream was not, in a state of nature, fitted for carrying logs, it is at least the matter of doubt whether it is so now. Mr. McLaren claimed the benefit of the improvements. He decided that without the improvements owned by him the stream was not fit for floating logs, and his implied definition of floatability from the decision of the court of common pleas in the case of

Boale vs. Dickson, decided in 1863. It becomes necessary at this stage to recall the facts of that most important case. Boale was the owner of a slide on a branch of the Mississippi river, and Dickson, after passing his timber through it, declined to pay the amount demanded by Boale as slide dues. The latter carried the case to court, and it ultimately came before the full court of common pleas, which decided that as logs could not be floated past the slide, even during high water, he was entitled to a "reasonable" remuneration for the use of his improvements. The judges did not at that time decide that he had the absolute control of the river in the sense of being in a position to charge what he pleased or to stop timber from passing altogether, but they decided that he was not to be raised, and the judges did not, as too many judges are in the habit of doing, indulge in any *obiter dicta* outside of the record.

The decision in Boale vs. Dickson was based on an enactment in the consolidated statutes of Canada (1857) relating to the construction of mill dams and enforcing the construction of aprons for timber-floating purposes. There was at that time (1857) no provision in the statute law of the province for the assessment and collection of tolls or slide dues. The amount to be collected by the slide-owner and paid for by the timber-owner was purely a matter of agreement, and it is a striking proof of the sensible and law-abiding character of the people of Canada that with the exception of the dispute between Boale and Dickson, and one or two others of less important character the business of stream-improving and log-floating had been carried on almost entirely in accordance with the law of the province. It is interesting to have

WHAT V. C. PROUDFOOT DECIDED. Vice-Chancellor Proudfoot did not in his decision either approve or disapprove of the previous finding of the court of common pleas. He merely stated that, as a single judge, he felt himself bound by it, and advised the parties to go direct to the Ontario court of appeal without waiting to argue the matter before him. The court virtually decided (1) that if a river is not passable for logs in its natural condition in a time of high water the owner is entitled to reasonable remuneration for the use of his improvements; (2) that his title to common-law property is not affected by the improvements; and (3) that the Mississippi improvements, as well as the improvements on the other streams, were not in a state of nature floatable at certain points even in times of freshets. The question of what constitutes that state, when a stream is floatable, as a matter of law, and when it is not, was raised during the trial, but no decision was given. It is interesting to have

LOSS OF THE COLLINGWOOD.

Statement by a Survivor—A Terrible Tale of Suffering.

DETROIT, Nov. 28.—One of the survivors of the wrecked Collingwood is here. He says the vessel became water-logged during the gale of Thursday last and about 5 o'clock the sea made her roll over. Shortly afterwards the deck burst up and she sank. Four men succeeded in getting on a piece of deck about six feet square. We suffered terribly, it being biting cold and a fierce gale blowing. To make matters worse, the steward became a raving maniac during Thursday night, and was all day on the raft. All through that night and during Friday the man fought us, and several times succeeded in getting his hands on our heads, and dragging him out. About 4 o'clock Friday afternoon his strength gave out, and after a last maniacal struggle he died. We held on to the raft until about 10 o'clock, when we were overboard finally as we had no way of fastening it to the raft. We took some papers and things out of his pockets, and the body for which he had had no way of fastening it to the raft. We took some papers and things out of his pockets, and the body for which he had had no way of fastening it to the raft. We took some papers and things out of his pockets, and the body for which he had had no way of fastening it to the raft.

A JUDGE ON THE RAIL.

Charge against Judge Squires—A Commission of Esprit—Restoration.

GOVERNOR, Nov. 28.—Judge Burton arrived here last night to conduct the commission of enquiry into the conduct of County Court Judge Squires. At the last moment Judge Squires resigned, and thereupon Judge Burton adjourned the commission till next Friday, awaiting the action of the Dominion government. The charge preferred against the judge was in substance that he had been guilty of a commission of esprit in the case of the Ontario and Quebec Railway. At the last moment Judge Squires resigned, and thereupon Judge Burton adjourned the commission till next Friday, awaiting the action of the Dominion government. The charge preferred against the judge was in substance that he had been guilty of a commission of esprit in the case of the Ontario and Quebec Railway.

CANADIAN ITEMS.

On Thursday night the thermometer at Winnipeg had a dangerous flirtation with zero.

Madame Cauchon held her last Thursday afternoon reception at government house last week.

Notwithstanding the bitter cold the work of bricklaying on the new C. P. R. office, Winnipeg, still goes on.

The Canadian Pacific railway company at its meeting at Montreal, yesterday, raised its capital stock from \$15,000,000 to \$20,000,000.

Detective McVitty of Ottawa has recovered the watch stolen from Hon. John G. Thompson by Lavigne, and sold it to a resident of Quebec's Springs.

The by-law asking the township of Westborough to grant \$50,000 to aid the Port Rowan and Lake Shore railway was defeated by a thirty-five vote majority.

The headquarters of the mounted police are now at Regina, where the men have been comfortably quartered in the portable buildings forwarded for their accommodation.

Since the opening of the Canada Atlantic railway in connection with the Grand Trunk it is said the traffic has decreased amazingly in the Montreal and Ottawa on the Canadian Pacific.

After a very tough struggle the council of London on Monday night granted the petition of the London Junction railway company requesting a right of way into the city with free water and exemption from taxation.

Mr. Coolican sold at Winnipeg on Thursday night twenty sets of Agon street lots on an average of \$40 per lot; seventeen lots on Dufferin and Dominion street for \$1875, and four lots on Alexander street for \$348 each.

At a meeting on an auxiliary building for the Presbyterian hall at Montreal, erected and fitted up at a cost of \$50,000 by David Morrison, a dry goods merchant, the following resolutions were passed: That the general assembly of the body yesterday as a free gift.

Prayers and the Transit of Venus. New York, Nov. 28.—Prof. Brooks of Red House observatory, on behalf of the astronomical society and astronomers, asks that prayers be offered on Sunday next in all churches for clear weather on Dec. 6, the date of the transit of Venus. It is the solution of the sublime problem known to science will be attempted. An opportunity for repeating the experiment will not occur again for 122 years.

A Child Eaten by Rats. SPARTA, N.Y., Nov. 28.—On Sunday the family of Thomas Hager went to church, to be gone all day, leaving an infant in the charge of a colored girl. The girl went to a neighbor's, leaving a child on a pallet on the floor and was also gone all day. The child was found dead, and it is believed that it was eaten by rats.

Accidentally Shot. DRIFTWOOD, Pa., Nov. 28.—Edward Young, aged 15, while out hunting this morning near this place, caught his foot in some brush and was thrown to the ground. His gun was discharged, and its contents lodged in his stomach, causing his death before medical assistance could arrive.

Home-Whipping a Lieutenant-Governor. KEY WEST Fla., Nov. 28.—Lieut.-Gov. Bethel yesterday lashed C. P. LeDroit, editor of the Democrat, and candidate for senator, before open court, at adjournment of the legislature on the lieutenant-governor's face and horsewhipped him. There is much excitement.

Increase of Idiots and Lunatics. WASHINGTON, Nov. 28.—The report of Rev. Frederick Wines, chief of the division census, relating to defective, dependent and delinquent classes, will show that within the last ten years the number of idiots and lunatics in this country has doubled.

Poisoned by Eating Fish. SAN FRANCISCO, Nov. 28.—The family of a laborer named Sullivan was accidentally poisoned to-day by eating fish. The children died by eating fish. The wife and two remaining children will recover.

Overdue Steamer. NEW YORK, Nov. 28.—The Italian line steamer City of Montreal is overdue since Saturday.

IMPERIAL PARLIAMENT.

THE TOTAL COST OF THE EGYPTIAN WAR.

The Congo River Question—The Condition of Ireland—The Land Courts—Arab's Trial.

LONDON, Nov. 28.—Sir Charles Dilke said the government was most desirous to see free navigation on all rivers in Africa. The government was seriously considering the Congo river question.

THE SPORTING WORLD.

W. G. GEORGE TO VISIT TORONTO.

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THE BLUE RIBBON MOVEMENT.

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A meeting of the more enthusiastic portion of the temperance community was held last night in Shaftesbury hall for the purpose of taking steps to revive the blue ribbon movement in the city. The Rev. Mr. Powis occupied the chair and in a few well-chosen words pointed out the need of a re-vised temperance work. Rev. Mr. Burtell followed with an able address, in which he sketched the growth of gospel temperance work and its essential features. The meeting was also addressed by Mr. Rose, Rev. Messrs. Smith, Cameron, and others. An executive committee of seventeen was formed to transact the business of the movement. Meetings will be held in Shaftesbury hall and other places in the city during the winter.

THE MERRY WAR.

Mr. J. M. McWannam, general agent of Haverly's open company, is in town. The company will open next Monday and will play a week, the piece being the Merry War, a new opera by Johann Strauss. The New York Sun says: The recent triumph of this company in New York were the theme of universal commendation in the musical, literary, commercial, club and social circles. Where so many of honest praise has been voluntarily given, coupled with the fact that a run of over two hundred performances was awarded the presentation of Johann Strauss' latest comedy opera, The Merry War. It only remains for us to assure the public that no efforts will be spared to render the performance as enjoyable as any of the great musical events that have ever transpired in this city. The cast includes the names of ladies and gentlemen very well known as embracing the best talent of both comedy and music.

GIVING WRONG NAMES.

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At the regular communication of Ashlar lodge No. 247 A.F. & A.M., G.R.C., held at the lodge rooms, Yorkville, last night the following officers were elected for the ensuing Masonic year: W. Bro. Sanderson, P. M. (re-elected); Bro. J. H. Burns, S. W.; Bro. B. M. Jackson (U.C. college), J. W.; V. Bro. T. F. Blackwood, Treasurer; Bro. W. B. Secretary; W. Bro. Pritchard, W. G.

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The Condition of Ireland—The Land Courts—Arab's Trial.

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THE LAND COURTS.

Mr. Trevelyan stated that the speech of Mr. Davitt was under consideration. He said important communications were being exchanged with Dublin with regard to the preservation of peace.

MR. GIBSON (CONSERVATIVE) MOVED THE ADJOURNMENT TO CALL ATTENTION TO THE LAND COURT VALUERS.

All the conservatives rose in support of the motion. Mr. Trevelyan said the government was disappointed at the slow progress of the business of the land courts. It would be obliged to adopt means to grapple with the block of cases. Four lay commissioners will be attached to each court instead of three, in order that two could inspect farms, while two were engaged in the court.

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CRIME IN IRELAND.

PROCLAMATION OF CURFEW LAW IN DUBLIN.

Two Important Arrests—Furor of Cox—Protracted Meeting of Irish Freix Council—Way Field Was Assassinated.

DUBLIN, Nov. 28.—The funeral of Detective Cox to-day excited great interest. Traffic in the streets was suspended during the passage of the cortege, which included several hundred constables and twenty carriages containing citizens.

TWO IMPORTANT ARRESTS.

Two persons were arrested to-day in connection with the murder of Cox. Both had been imprisoned under the coercion act in connection with the murder of Kenny in Sville place, but were liberated on the expiration of the act. One is named Poole and was seen by the police on Saturday night. The other is named Grundy and lives close to the residence of Devine. The police attach much importance to this arrest.

FIELD A MARKED MAN.

It is stated that Field, the juror in the Hynes case, stabled yesterday, handed a note from the box to Mr. Goddard of the emergency committee yesterday. The contents of the Freeman's Journal on this subject explained that the note was of an innocent nature. Field is able to speak this morning, but is still very weak.

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BUY A WORLD EVERY DAY.

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LOCAL NEWS PARAPHRASED.

Finch's \$3.75 overcoats. It is said that ex-Ald Baxter will be a candidate for St. Patrick's ward at the coming municipal elections.

The public is reminded that on Friday night Dr. Damrosch appears at the Horticultural gardens, conducting his celebrated orchestra.

A number of new second-class passenger cars for the Grand Trunk railway arrived from the Point St. Charles workshops this morning.

On Sunday evening a sneak thief entered a bedroom at the Markham house on Jarvis street and carried off a valuable gold watch belonging to a boarder.

"Garnet" was again produced at the Grand opera house last night by the Strachan opera company, with Miss Minnie Hauk in the title role.

Who cares a splinter about the winter? With Finch's clothes from head to toes.

Yesterday a young man named Arthur McNair fell from a building in course of erection on Church street, and had his left collar bone broken and his head severely cut.

The public school board will meet tonight for general business, when probably the question of the introduction of the kindergarten system into the public schools will be discussed.

Rev. W.S. Rainford of St. James cathedral received a telegram last night from St. George's church, New York, stating that they had agreed to his terms. Mr. Rainford therefore will accept the call.

John Ford is held at No. 3 police station charged with having called at the store of Geo. Henderson, at the corner of Spadina avenue and Queen street, purchased a number of articles, and on leaving carried off some meat.

The management of the Toronto Zoological and Acclimatization society presented a report of the last season's business to the directors of the society on Monday afternoon last. The meeting was held in Ald. Scarth's office, the president in the chair, and was very gratifying to those present.

A very successful conversation was given in St. Peter's church on Monday night by the young men's society. The president, Mr. Caldwell, delivered an address on Luke-warmness, after which a literary and musical program, including a solo by Mrs. Bradley.

The sleighing on many of the streets was pretty good yesterday, and all who were in a position to do so went out for a drive. Youngsters with hand-aleighs could be seen enjoying themselves wherever there was a grade down which they could run their sleighs.

Poultry fanciers will be glad to hear that the Zoo is holding a poultry show. With the many attractions of the gardens the attendance is sure to be large, and from what we have seen in the past, no effort will be spared to make it a great success. The number of entries promises to be very large, and the finest strains of stock will be represented.

Dyspepsia, liver complaint and kindred affections. For treating giving successful medical attention. Address: World's Dispensary Medical Association, Buffalo, N.Y.

The kindergarten. Yesterday afternoon at 2 o'clock Miss Blow and Mrs. Hubbard continued their exposition of the kindergarten system before a large audience, composed of teachers, normal school students, parents and children.

The system was explained at greater detail than in the previous lecture, but in a manner even more interesting to those who attended, and especially the little ones. Miss Blow left for St. Louis last evening, but Mrs. Hubbard remains in Toronto for some time and continues her instructions upon the system. Meanwhile the school board have decided to send one of the city teachers to St. Louis to acquire a thorough knowledge of the kindergarten, with a view to its introduction into the schools.

Draft on the imagination. From the Texas Siftings. "My father," said Goldthorpe solemnly, "was more sensitive to colds than anybody I ever knew. The slightest exposure gave him a cold. That must have been very disagreeable." "Indeed it was. He never could sit near a draft for a minute without catching a cold. I remember on one occasion he was sitting in the office of a friend, when all at once my father began to sneeze. He insisted that there was a draft in the room. Every effort was made to discover where the draft was, but in vain. The doors and windows were closed and there was no fireplace, but my father kept on sneezing and insisting there must be a draft in the room, and so there was." "Where was it?" "In an envelope on the table, and it was only a little draft for \$3.50."

A business controversy. From the Judge. Mr. Isaacs and Mr. Blumenthal kept rival clothing stores on the Bowery, within a few doors of each other. Mr. Isaacs was always to be found with his head out of the door, soliciting custom from the verdant passer-by. Mr. Blumenthal objected to this shabby manner of doing business, having found that the watchful Isaacs had captured several of his customers, and one day he went up to Isaacs and said: "Look here, Mr. Isaacs, you don't keep your ugly face inside? You might pester get a jacks to stand by to door. He would be a big improvement."

"Well," said Isaacs, "I'd try dot vance, and all de people as dey pass by say to him, 'Good day Mr. Blumenthal; I see you've moved.'"

Hickson vs. Stuart. From the Montreal Gazette. After a careful perusal of Mr. Stuart's reply to Mr. Hickson, we are confirmed in the opinion that the latter gentleman has fairly stated the position.

Decline of Man. Nervous weakness, dyspepsia, impotence, sexual debility, cured by "Wells' Health Renewer." \$1.

FROM THE FAR WEST.

MR. F. WHITE INSPECTS THE MOUNTED POLICE POSTS.

The Condition of the Force—The Proposed Changes in its Distribution—The Status of the Indians—Five Thousand Cattle Arrive for the Cochrane Range—Coal Mining Operations.

From the Winnipeg Sun, Nov. 24. Mr. Fred White, private secretary to Sir John Macdonald, and controller of the mounted police force, has just returned from a tour of inspection of the mounted police posts, in which he was accompanied by Mr. Patterson, assistant auditor-general of the dominion. Last night they left for Ottawa. When going out Mr. White left the line of railway about thirty miles from Moose Jaw and made the rest of the distance by wagon. He visited in turn Fort Walsh, McLeod, and Calgary, returning by the same route. This time he was able to take the railroad some fifty miles west of the point at which he left it on the way out. The discipline of the police is described to be very satisfactory, and the men are well satisfied.

"What preparations are being made at Regina for the headquarters of the mounted police?" asked a Sun representative of Mr. White.

"The new portable buildings are being put up at the rate of one per diem. There are twenty-two buildings for living in and five large stables. Eighteen out of the twenty-two are 16x48 and four 16x24. The contractors are Mr. Riley of Sherbrooke, and Messrs. Logan & O'Doherty of Ottawa. The buildings are in sections of four feet each."

"Are any members of the mounted police force on the ground yet?"

"A number of them are already there, and in the course of a month the number will be increased to about 150 or 200. Col. Irvine, the commandant, will be located there, as also several of the other officers. What will be the effect of changing the headquarters?"

"One result will be that supplies will now be brought in by the C. P. R. instead of by the Missouri river route, and the distribution will take place from Regina. Canadians will in the future have a better chance to successfully tender than before, and Winnipeg will in all probability become the basis of supplies. We will also be able by means of the railway to transport men more rapidly than before."

"Will any of the present outposts be abandoned?"

"Fort Walsh will be abandoned for a new outpost to be located at a more northerly point on the railroad not yet determined upon."

"Is anything of importance to be noted in connection with the outposts?"

"No, with the exception that new buildings are being erected at Calgary on the government lands, the old buildings having fallen into absolute decay."

"How will the men be distributed in the future?"

"It is probable that 200 men will be stationed at headquarters, and the remainder distributed among the outposts as occasion may require."

"Is it true that the Indians are becoming indifferent to the police, and that on occasions they have gone to the posts, and insolently demanded food?"

"No, on the contrary, the Indians complain that the police are everywhere."

"Is it true that the Indians have been committing a number of depredations, and indulging their proclivities for stealing horses more than usual?"

"The case of horse-stealing occurring within the last two months that I heard anything of was the taking of fifteen horses from Mr. Secaton of the C. P. R., and seven from squatters. These were taken by Piegan Indians from across the line, and the police are now endeavoring to recover them, but it is a very difficult matter."

"Did you see many of the Indian farms?"

"No, but I believe that, generally speaking, our own Indians are settling on their reserves and making rapid progress towards civilization. On the Blood Creek reserve a number of huts have been put up by the Indians themselves, and this year they grew a quantity of potatoes and vegetables."

"No, although I passed over what used to be a good buffalo country. I heard of a few buffalo having been seen, but any idea of depending upon them for a supply of food has been given up."

"How will the Indians be fed this winter?"

"By the government I suppose; but what they have grown will help out to a certain extent."

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