

# PROGRESS.

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PRICE FIVE CENTS

## A Judge in Trouble.

There was a hearing in the Equity court on Tuesday morning that will have a widespread interest inasmuch as the affairs of a supreme court judge are involved.

Mr. A. H. Hanington made the applications in question and it was in effect a request to set aside a judgment obtained by John Hetherington against James A. Vanwart of Fredericton on the 5th day of September last.

Mr. Hetherington is a resident of St. John and a nephew of the late Rev. William Kinghorn who died possessed of considerable property, a good part of which he left in trust in the hands of James A. Vanwart, at that time a barrister in Fredericton. Since that time the lawyer has been made a supreme court judge and the suits on this account have caused considerable sensation among the legal fraternity.

The story of John Hetherington and his claim is told best in the complaint that was filed. His lawyers were Messrs. Macrae & Sinclair and they served the papers in the suit on the 31st day of July. This would give Judge Vanwart's attorneys until the 20th or 21st day of August to put in an appearance. No appearance was put in but as the equity court did not sit again in St. John until Sept. 19th advantage was taken of a sitting in Fredericton a fortnight earlier to sign judgment.

Here is the case of the plaintiff. The facts as presented are interesting.

The plaintiff complains that on the ninth day of February in the year 1893 and for some time previous to that date and since the defendant was a barrister-at-law and residing and practicing at the city of Fredericton in the County of York in the province of New Brunswick, and was previous to the said ninth day of February and thereafter until May 5th, A. D., 1893, the solicitor and confidential adviser of one, William Kinghorn, formerly of the parish of Douglas in the said County of York, clergyman, who departed this life on or about the fifth day of May, A. D., 1893, and that the plaintiff was on the said ninth day of February, A. D., 1893, and for some time previously and has since up to the present time been resident in the city of Saint John at number 225 Brussels street and is employed in the said city as a clerk.

That on the ninth day of February in the year of 1893, the said defendant did sign, seal, execute and deliver to the said William Kinghorn deceased a declaration of trust which consisted in part of the words and figures following, that is to say: "I, James A. Vanwart of the city of Fredericton in the county of York, Barrister-at-law, hereby acknowledge to have received from the Rev. William Kinghorn of the parish of Douglas in the county of York the sum of one hundred dollars to be forwarded to Alexander Port of 165 Stone street, Newcastle on Tyne, England by P. O. order, the forwarding of which P. O. order shall be a discharge therefor. I acknowledge to have also received the sum of one hundred dollars to be held in trust for the said William Kinghorn during his lifetime and at his death to be placed in the Dominion Savings Bank at St. John in the name of John Hetherington of 225 Brussels street, St. John, and the further sum of one hundred dollars to be held in trust for the said William Kinghorn during his lifetime, and at his death to be deposited in the Dominion Savings Bank at St. John in the name of Sarah Hetherington 225 Brussels street, St. John. Given under my hand and seal this 9th day of February in the year of our Lord 1893." Witness, Wm. Kinghorn, Jr. (sgd) J. A. VANWART.

The John Hetherington mentioned in the said declaration of trust is the plaintiff and the said declaration of trust signed by the defendant is now in the possession of William Kinghorn Junior the witness thereto who is a son of the said Reverend William Kinghorn and the plaintiff craves leave to refer to the said Declaration of Trust as a part of this, his bill of complaint.

Reverend William Kinghorn departed this life on about the 5th day of May, 1893, and the said defendant then had in trust for the plaintiff the sum of one hundred dollars mentioned in the declaration of trust referred to in the second paragraph of this Bill and it became the duty of the said defendant to place the said sum of one hundred dollars

in the Dominion Savings Bank at Saint John to the credit of the said plaintiff, but the plaintiff charges and states that no part of the said sum of one hundred dollars was ever so placed to his credit by the said defendant nor paid over to him or anyone for him, but the said defendant has ever since continually retained the same in his own custody and control and has used the same for his own purposes, and has refused to account to the plaintiff for the said sum of one hundred dollars or any part thereof, and has never with respect to the said sum of one hundred dollars carried out or performed the trust by him undertaken with regard to the same as set out in the said hereinbefore referred to declaration of trust.

The plaintiff by his agents and solicitors has frequently applied to the said defendant James A. Vanwart for an account of the said trust money received and possessed by him, and for the application thereof in accordance with the terms of the said declaration of trust set out in the second paragraph of this Bill and had hoped that the said defendant would have complied with such reasonable request as in justice and in equity he should have done, and the plaintiff further charges and alleges that the said defendant frequently, promised the plaintiff's agents and representatives that he would pay the plaintiff the said sum of one hundred dollars with interest at six per cent but the said defendant contrary to his promises and the duty imposed upon him by said declaration of trust has not paid any portion of the said money nor interest to the plaintiff nor accounted therefor nor placed the same in the Dominion Savings bank at Saint John, but has applied and converted the same to his own uses.

At the time of the execution of the declaration of trust set out in the second paragraph of this Bill and for a long time thereafter the said defendant was generally reputed to be a man of means having in his own name and unincumbered large amounts of both real and personal property, but as the plaintiff is informed believes and alleges and charges the said defendant has recently become financially embarrassed and is very largely indebted to divers persons and is unable to pay his debts and has transferred, encumbered or otherwise made away with and put out of his control much if not all of the real and personal property formerly owned by him.

The plaintiff therefor prays that the said defendant James A. Vanwart may be removed from being trustee under the said declaration of trust, and that some other person ought to be appointed by this Honorable Court as such trustee in his place and stead, and that an account may be taken of the said trust money set out in the said Declaration of Trust and the application thereof and that it may be declared and decreed that the said trust money with interest thereon from the sixth day of May A. D. 1893, be paid to such new trustee and for such other and further relief as to this Honorable Court may seem meet, and that the defendant may be ordered to pay the plaintiff his costs in this suit.

When Mr. Hanington learned that judgment had been signed in Fredericton on September 5th he was not pleased and he began to make an effort to have the case reopened. His application was made to Judge Barker and he prepared and read the following affidavit in substance in support of his contention:

I am a member of the law firm of Hanington & Hanington, the Solicitors for the above named defendant in this cause. On or about the first day of August last past, we received from the defendant in this cause, the summons served herein with directions to enter an appearance and defend the said suit. The matter was entered in our office diary by mistake to be attended to on the eighth day of the present month, and in the absence of the junior partner who has been absent for some time, the mistake was not noticed and in consequence of such mistake, no appearance was entered in the said cause and the failure to enter said appearance was wholly by the default and mistake of our firm. I have the management of this cause and am acquainted with the facts thereto and read over the draft of the bill submitted to me by the plaintiff's solicitor, and as I am instructed, and verily believe the defendant

has a good defence to this cause on the merits. I am informed and believe the bill in this cause was filed on the twenty-first day of August, last past, and on or about that date I saw Mr. Sinclair, the solicitor of the plaintiff in this cause and explained to him certain matters in connection with the business and the suit and stated that I thought it would be better for all parties if the suit could be withdrawn and Mr. Sinclair informed me that he would talk to Mr. MacRae, his partner, about it and I understood him that he would let me know about it before anything further was done and I left Mr. Sinclair at the time under the impression that I was to hear from him before anything further was done, but Mr. Sinclair has since the bill was taken pro confesso in this cause informed me that he did not say he would let me know, and the bill in this cause was taken pro confesso for want of an appearance on the fifth day of September instant.

It is very important in the interests of the defendant that the decree to take the bill pro confesso should be vacated and set aside and the defendant be allowed to appear and defend the suit.

Upon this affidavit Judge Barker made an order for a hearing but this has been postponed from time to time and only came up on Tuesday. Mr. Sinclair's answer to Mr. Hanington is almost the same as a complete denial of his statement. It reads in brief as follows:

I have read what purports to be a copy of an affidavit made by Augustus H. Hanington herein on the eighth day of September A. D. 1899, and that with respect to the fifth paragraph thereof I say that the said Hanington did see me in the Equity Court room on or about the twenty first day of August last past, and spoke to me about this case. He said, "surely you are not going into Equity for so small a matter," or words to that effect, and asked me what I intended to do. I said, I intended to take judgment as soon as possible. Mr. Hanington then told me, that there was a trust deed in his office and that every one but my clients had joined in it or words to that effect, and that I better withdraw this suit. He then said, that if we wished to come in under the trust deed to go over to his office and see him, I said, that I would tell my partner Mr. Macrae what he (Hanington) said. This is all the conversation I had with Mr. Hanington.

Mr. Hanington did not at any time tell me that he intended to appear or oppose my getting judgment nor did I tell him that I would let him know about it before anything further was done nor did I say anything that should lead him to believe that I would not proceed with the suit as rapidly as possible as in fact I told him I intended to get judgment if possible.

Mr. Macrae has filed another affidavit dated December 11th, in which he throws more light upon the subject. In substance his statement is as follows:

I have had the management of this cause and am acquainted with the facts connected therewith, and prepared the plaintiff's bill herein and as I am instructed and verily believe the defendant has no defence whatever on the merits, that as far as I can ascertain there is no dispute nor difference between the plaintiff and defendant as to the facts to be determined in this cause.

When I gave to Augustus H. Hanington Esq., a copy of the Plaintiff's Bill in this cause as stated in the seventh paragraph of his affidavit of the eighth of September last past, herein, the said Hanington informed me that the defendant had executed a trust deed to one D. McLeod Vince for the protection of the defendant herein and other bequests in trust which I could examine in his office.

On the fourth day of December, instant, accompanied by Kenneth J. MacRae, a student in my office, I called upon the defendant's solicitor Messrs. Hanington & Hanington and interviewed both members of the firm. I requested Mr. Augustus H. Hanington to allow me to peruse the trust deed referred to as executed by the defendant. Mr. Charles S. Hanington went into another room and brought back with him and handed to me a paper which Augustus H. Hanington stated was the said trust deed. I examined it and noticing that it purported to be a copy only said to Mr. Hanington "this is only a copy I wish to see the original," Hanington replied "I have not the original, I have only this copy." I

## Eager for the Front.

Colonel James Domville is well known as a politician and a military man. He was a prominent merchant and later an enterprising gentleman farmer and still more recently the manager for a Yukon mining company.

But perhaps it is as a military man that the Colonel is as well known as he is in politics. The Princess Louise Hussars of which he was in command for so many years were complimented again and again by the commanding officers in Canada for their efficiency. At one time the Colonel wanted to take them to the Sudan and offered their services to the British government for which he was officially thanked but the war department did not avail itself of the proffered assistance. Nothing daunted, when the South African war broke out the Colonel was to the front again with an offer but he was too late or something of that sort, and again he had to remain at home.

Now when a second contingent is going, and most of them mounted troops at that, it was expected that the Colonel would be right at the front. He is no longer in command of the Hussars, it is true, but the same spirit still animates him and it is understood that under certain conditions he would go to the front.

These are in brief the command of the men who go forward. The views of the Colonel on this point are plainly stated. He thinks that the men should be thoroughly understood by their commanding officers and that he should look after their welfare from the time the application is made to enlist.

He should look them over then, and if he comes to the conclusion that the man possessed the necessary robustness and intelligence, then find out what else he could do. Take his word for nothing. If he said he could shoot try him and find out if he spoke the truth.

He maintains that the commanding officer should look after the uniforms of the men, select them and see that they are fitted for the climate in South Africa. He should take into consideration the fact that in South Africa the days are intensely hot and the nights cold. Preparation should be made first to make the men comfortable, then the horses should be looked after. With both man and beast in good condition they could not fail to render a good account of themselves.

Colonel H. H. McLean, not to be outdone by Col. Domville, has made a special offer to the government to raise one hundred body New Brunswick pioneers and equip them at his own expense. The offer is generous, but has not been accepted as yet. Colonel McLean's idea is that the woodmen of this province would make great scouts and there is no denying such a fact. They would make the best corps of that sort in the world. The country in Africa would no doubt be different from that in Canada, but their adaptability would have plenty of scope there. They are so hardy and enduring that they could be of the greatest service. It will be a matter for some regret if the minister of militia cannot see his way clear to accept the offer.

The craze for enlisting is not confined to the men themselves. The officers of the local militia have not been backward this time and the names of Tilley, Markham, Armstrong, and others figure among those young men who are willing to go forward and serve their country. Tilley is the youngest son of the late Sir Leonard and Messrs. Armstrong and Markham the sons of colonels. Whether their offers to serve will be accepted or not remains to be seen.

There are plenty of other offers and among those noted in the press this week was that of District Passenger Agent Lambkin of the C. P. R. The news appeared first in a Moncton paper and soon reached St. John. The friends of Mr. Lambkin here, knowing that his son was in South Africa with the first contingent were not surprised to learn that his father wanted to go too and when they saw his familiar figure appear on the street this week he had a good many inquiries to answer. He had his replies all ready and at one stage got his audience so enthused with the idea that there was only one thing to do now—go to the war; and to use his own

words he could have raised a thousand men in a few hours. There is no doubt he would make a great recruiting officer if ever the Intercolonial consented to let go of him. Ald. McGoldrick is a great friend of his and when some inquiry was made whether it would not be possible to include him among the local contingent in some official capacity it was learned that he was already down as the "Little Corporal."

It is not likely that the contingent will leave from this port. Halifax seems to be the place spoken of and because of the immense drill hall recently erected there it will no doubt be chosen. But there are many in this city who think St. John should be chosen and nothing will make them change their minds.

### IS THERE A REGULAR RATE.

Carleton Hackman and the Game They Sometimes Play on Strangers.

Have the Carleton hackmen a regular rate of charges or have they not, is a question that should be settled at once. Those who come to St. John by the Shore Line are particularly interested in the matter for most of them would prefer to walk the short distance between the depot and the floats, on that side of the harbor, to paying just whatever a hackman has a mind to charge.

The people of Carleton, when they patronize the coaches, say they can be driven all around the west side for five or ten cents, but strangers are a fair mark for the avarice and meanness of these men, and they usually have to pay thirty cents from the Shore line depot to the floats.

A few days ago a lady travelling by the route mentioned, arrived on the west side and took a hack to the floats. She considered ten cents a fair payment for the few minutes' drive—and besides it was all she had. When she tendered the money the driver became most insulting, swearing at her and otherwise becoming disgracefully abusive in his language. The hackman is one of two of the same name, and the case cited is not the first time a traveller has received insolent treatment from him.

A west side citizen informs PROGRESS that the regular fare from Dykeman's Corner near the city line, to the floats, is five cents, and as the depot is not a fourth of the distance, the charge of even ten cents seems most exorbitant. There is no reason why strangers should be made to pay five or six times as much as a resident, and the sooner the matter is looked into the better.

### Miss Richards and Sergeant Campbell.

Nellie Richards keeps a beer shop on Walker's wharf and this week she complained to the magistrate of the conduct of Sergeant Campbell. The full character of the charge was not made public because she did not appear Thursday when it was set down for a hearing. It is understood that the complaint was withdrawn. Campbell is the patrol sergeant and he walks about town all day or night seeing that the other officers do their work. He is a favorite with the chief and has again and again has the coveted privilege of currying that officials horse and driving the owner to his camp at Spruce Lake. There was a report once—and PROGRESS took some notice of it at the time—that the sergeant was a first rate hand at shoveling snow and coal. It is a pity that so good a man should fall under the shadow of a charge. There was no doubt he was in Miss Richards' place but what his object was—whether he was searching for liquor or not—is not clear. If he was not bent upon such an errand as that it is not quite clear what he wanted there. It is fair to Campbell to say that he denies the charge. Those who were about at the time he was in Miss Richards' say that he got a warm reception and was treated to a recital of his failings and virtues that would have done credit to any linguist.

### Mr. Kelly and the Policemen's Coats.

James Kelly has not been in the tailoring business for some time and he was surprised when the safety board gave him the contract to make eight policemen's coats at \$24 each. True he had put in that figure but he rather expected to do the repairs on the coats of the whole force than make the new ones. Repairs it is said are more profitable. When the council met Thursday however Mr. Kelly, it was announced could not make the coats for that money, and the director was authorized to get them made somewhere at that price. It seems that when the tenderer found that he and not the city would have to supply the shining brass buttons he declined the contract. Brass must have gone up, though one wouldn't think so.

(CONTINUED ON FOURTH PAGE)