

BEN BEY
in packs of
5 and 10
Your favorite
10 Cigar

New Annan Today ANCHORS SHUT THE ROVERS OUT 5 TO 0

The pass word for many days past has been, "Are you going to New Annan Races?" So many have answered "yes" that it looks like some crowd for New Annan today.

The Horse Races that are scheduled for today are the best yet assembled at New Annan and from all indications there will be some dandy races with real red hot finishes that will bring the fans to their toes from the word "go" until they flash under the wire in stretch drives never before witnessed at New Annan.

By Playing Airtight Ball And Driving Out Light Hits The Anchors Jumped Into The Lead Of The Second Section Last Evening When They Let The Rovers Down Without A Run.

All the preparations are complete to handle the largest gathering yet and everything possible has been arranged for their amusement. All that is left is for fine weather and it looks that way and the crowd to come and be entertained.

Last evening at the Abegweit grounds the Anchors and Rovers met in the seventh game of the Second Section of the City Baseball League, the Anchors winning out by a score of 5 to 0.

There was a fairly good attendance of ball fans present, the weather was somewhat cool and the brand of ball although good was somewhat listless in spots.

The Anchors were playing a winning game from the start, every man on his toes and they succeeded in being the first City League team to go through a game without an error.

Both teams were right on edge, the Rovers feeling it more than the Anchors and erred several times, three of which brought home a run. The Anchors are now on top and from their style of play last evening it will be a hard proposition to wrestle their position away from them.

The Rovers were the first to go to bat, connecting for two hits but failed to score, the Anchors followed and filled the sacks but Carboneil got the last man down before an Anchor crossed the plate.

The Rovers in the second frame were retired again without a score getting the numbers count. The Anchors slid on a man around the bases, McGuigan getting first on an error and scoring in the same manner when D. Diamond grounded and was fumbled.

In the fourth the first two Rovers up again met their fate, before touching first, two by the swing out and one at first. The Anchors added one run, Francis drawing a free pass and getting home on a wild throw from the pitcher.

For two at first and Williams the other out on a nice running catch.

In the fourth hit first and the other missed three of Hoyt's hot ones. The Anchors once again added a run, Campbell getting a hit and scoring on Saunders' single.

McKenzie accounts for the first out on a long throw in from left to cut McGuigan off at the plate. Carboneil got the next on three strikes and McInnis' peg to first caught the third out.

The fourth was the same thing for the Rovers, two swinging out and one popping an infield fly to McGuigan. The Anchors got one man to second, Francis' single and steal, Williams accounted for the first out at first, Carboneil getting the second on strikes and Murley pulling down a high one in right field.

The Rovers in the sixth made a bid to get some runs after the first two up had been retired by D. Diamond at first. McInnis drove out a two bagger and stole third, Williams drew a pass to first, Whalen lining to S. Diamond at first who retired the side scoreless. The Anchors got two runs in their turn up. After the first two batters had taken three each from Carboneil, Saunders drew first on an error. S. Diamond singled and Hoyt slammed the pill for a two bagger and Saunders and S. Diamond come romping home. Francis got on the sacks, Carboneil cutting M. Diamond off at first.

In the seventh McKenzie got on by way of a hit stealing second and third and was cut down at the home plate by McGuigan, Doyle getting first on a fielders choice and being caught at second by Francis. Blanchard failed to get on and the game was called by the umpire with the Anchors sitting pretty on the long end of a 5 to 0 score. Summary.

Box Score
Rovers 1 2 3 4 5 6 7 R.H.E.
Anchors 0 0 0 0 0 0 0 4 6

BATTERIES
Rovers—Carboneil and D. Diamond.
Anchors—Hoyt and Francis.

OFFICIALS
Umpire—Jack McAleer.
Bases—Dr. Dougan.
Score—Charles Stewart.
Score Board—Eddie Vessey.
Police Officer—William McInnis.

NOTES
A little pep by the players in the field by way of talking to 'em would put a little life in the game. How about it next time? But not at the wrong time.

Only two more games of the Second Section left. Who will win?
Bill and Chick can sure pick the batters.

BASEBALL

On Friday and Saturday evenings of this week at six o'clock Charlottetown Baseball fans will be treated to two lively Baseball games between the Abegweits and the College players.

As both teams are looking for a place in the Maritime play-off it will be interesting to see the teams in action against one another.

The College players have been touring the Provinces and have only met one or two defeats out of sixteen games played. They are snappy and are out to win every game they play.

The Abegweits have the best team that they have had for years and are playing great ball, besides as being able to clout hard, they have annexed the Island title and are worth for both games.

PRINCE EDWARD Matinee—26c, 16c.
Evening—37c, 26c, 16c.

A Sea Thriller You Won't Forget!

CAPTAIN SALVATION

MIGHTY As The Sea IN THRILLS

Out of a terrific storm and shipwreck, he rescued the sole survivor—a girl of rare and intriguing beauty! Into his life she brought romance such as he had never dreamed possible, stirring adventure, unforgettable thrills!

Produced with a notable all-star cast!

with LAES HANSON PAULINE STARKE MARCELINE DAY ERNEST TORRENCE

It Grips! It Thrills! It Amazes!

ADVENTURE THAT BREATHES THE SALT TANG OF THE SEA

NEWS—REVIEW ORCHESTRA



Judgment

(Continued from Page 1.)

of Canada; that thereupon deponent had boarded the said schooner in search of smuggled goods and on opening the hatches he found her hold filled with kegs of rum some of which bore the proper Customs or Revenue marks; that he thereupon took charge of and seized as forfeited the said rum as smuggled goods and at the same time seized as forfeited the schooner together with her rigging, etc., and placed a watchman in charge of the cargo; that the Customs Officers, having no place wherein to store the cargo, deponent sealed up the hatches and cabin of the schooner with a seal of the Customs of Canada and kept them so sealed, and the ship and cargo in his possession until the 25th day of July, 1927, when the Sheriff of Queen's County went on board the said schooner and proceeded to execute the said Writ of Replevin in which related to the schooner, her tackle, sails, rigging and furniture, but not to the cargo, which was then sealed up on board the schooner.

ectly, or by any of its officers is a party.

The application came on to be heard before me in Chambers on the 10th day of August, 1927, when counsel for the Plaintiff tendered in evidence seven several affidavits viz: the affidavit of Joseph Vatcher of Burgeo, Newfoundland, who deposes that on the 7th day of April 1927, he signed "an agreement of articles" (not stating with whom) as Master of the Nellie J. Banks for a period of six months and that the plaintiff is the owner. He thus in substance describes the ship's voyage: About the 21st day of May last she cleared from the island of Saint Pierre for the high seas. About 18th June she entered the port of Burgeo, Newfoundland, for repairs and supplies and about 28th June she left that port for the high seas, his ship's papers having first been duly stamped by the Customs officials of that port and still showing that she was cleared for the high seas from Saint Pierre. The ship had on board the Captain, a Mate, an able seaman and a cook. On the 22nd of July when the Captain and all hands were engaged in fishing codfish at a distance of eleven Marine miles from the nearest land, while they were still fishing and heading away from the land with only the foresail up, about half past 4 o'clock in the afternoon the steamer Bayfield in command of John C. McCarthy arrived and ordered him to heave to. He states that in the process of boarding and getting the Nellie J. Banks in tow she was struck amidships by the Bayfield, sprung a leak and was taken into Pictou, Nova Scotia, with the pumps constantly going to keep her from sinking, and on the following day she was towed into Charlottetown where she has since remained. The deponent further states that at no time after clearing from Saint Pierre on the 21st of May, 1927 up to the seizure by Captain McCarthy was the schooner within three Marine miles of the Canadian Coast.

emphasis, a Dominion Fishery Officer had seized a foreign ship for violation of the Dominion Statute prohibiting foreign ships from fishing without a license in British waters within three Marine miles of the Canadian coast. She was replevied by the owner and the Supreme Court of New Brunswick by a majority, three to two, refused to set aside the Writ of Replevin on the ground that the officer not having taken the ship to the nearest port for delivery to the Collector of Customs as required by the Act was a trespasser ab initio. The ship was therefore held not to be in the custody of the law and replevin would lie.

It is noteworthy that on the argument of McGowan v. Betts counsel for the plaintiff said: "We do not deny that replevin will not lie against a Revenue Officer seizing goods but this is a very different case." And Ritchie, C.J., delivering the leading judgment maintaining the action of Replevin, said: "So long as the property exists in specie and is uncondemned" would not set aside the Writ of Replevin. His reasoning was that the ship had only been seized as liable to forfeiture but had not been forfeited. She was at the time of the execution of the Writ of Replevin still in the hands of a person whom he regarded as a mere trespasser. The seizure was not a confiscation. If she had been condemned then his decision would necessarily have been against the validity of the writ.

In the present case the law under which the seizure took place is fundamentally different. Sec. 167 of "The Customs Act" provides that all such vessels seized as forfeited shall (prima facie) be deemed and taken to be condemned without suit, information or proceeding of any kind. In this case the seizure is a confiscation. The actual property is altered.

No case was cited on the argument and I can find none in which a Writ of Replevin was allowed in a Revenue case.

In a New Brunswick case decided in 1856, reported 8 N. B. 329, Chief Justice Carter under a Liquor Act of that Province which declared that every officer acting under the authority of that Act should be deemed a Revenue Officer and his acts done under the Act deemed to be done in execution of the law relating to the protection or collection of the revenue, said in his judgment setting aside the Writ of Replevin:—"Now we have heard no case where goods seized by a Revenue Officer for a branch of the Revenue laws has ever been replevied nor do we think any such case is to be found."

In Chitty's Practise, 12th Ed. it is laid down at p. 1081: "It (replevin) is a remedy that may be adopted by a party in all cases where chattels are unlawfully taken from him except where the taking was in execution under a judgment of a Superior Court or in order to a condemnation under the Revenue laws or for a duty due to the Crown." Camthorne v. Campbell, 1 Anstruther, 212, is referred to as the authority. That case decided by Chief Baron Eyre in 1793 referring to Revenue cases in the Exchequer Court said: "If a man at this day there being a seizure in order to condemnation, was to presume to replevy the goods it would be a contempt of the Court for which an attachment would be granted instantly."

To the like effect is the statement of the ancient law in 7 Bacon, Ab. C. Replevin: "So where the King is a party the taking is in the right of the Crown, in these cases the Sheriff is to surrescure."

In the view I take of the case it is unnecessary to comment upon the provisions of the "Customs Act" for the protection of Customs Officers further than to say that in my opinion the defendant comes within that protection.

The conclusion at which I arrive for the reasons stated is that an action for replevin does not lie in this case. If any wrong has been committed in the premises the law provides other and adequate remedies.

The order will be made absolute and the Writ of Replevin heretofore set aside with costs.

Further Contribution To Red Cross Campaign

The following is a list of school districts and Women's Institutes which recently have sent in donations to the Red Cross Campaign, also corrections to previously published lists: Appin Road \$12.25, Clear Springs Women's Institute \$5.00, Chilton Women's Institute \$11.80, Ellington \$13.85, Grand River Women's Institute \$5.00, Granville South \$6.50, Lower Bechoque \$4.00, Meadowbank \$23.75, Milburn (Kings) \$10.70, Mt. Stewart \$25.10, North Wiltshire \$26.10, Pownal \$27.00, Springfield (Queens) \$40.75, Springvale \$10.00, St. Andrews (No. 156) \$6.00, Red Point \$20.80, York Point \$17.50.

Anchors
Hits—Hoyt a two bagger and a single, M. Diamond, Campbell, D. Diamond, Saunders, Francis and S. Diamond a single each.
Catches—McGuigan one. Runs—McGuigan, Francis, Campbell, Saunders and S. Diamond one each. Put outs—S. Diamond 3, Francis 3, D. Diamond 2, McGuigan 1. Assists—Hoyt 3, McGuigan 2, D. Diamond 3, Saunders 2, Francis 2. Strike outs—Hoyt 8, Free passes 1.

Rovers
Hits—McInnis a two bagger, Williams, Whalen and McKenzie a single each.
Catches—Williams and Murley one each. Runs—None. Put outs—Blanchard 3, D. Diamond 3, Williams 1, Murley 1, Assists—Carboneil 18, McKenzie 1, McInnis 1, Williams 1. Strike outs—Carboneil 7, Free passes 3.

Anchors
Catcher—Rovers
Francis
Pitcher—D. Diamond
1st base—Carboneil
2nd base—Blanchard
3rd base—Williams
Short Stop—Whalen
McGuigan

After the execution of the Writ of Replevin the cargo of rum was removed from the ship by the Customs Officers.

The application to set aside the Writ of Replevin is based upon the following grounds:—

1. That the issuing of the said Writ for the recovery of goods therein mentioned was contrary to the provisions of the Customs Act (Revised Statutes of Canada, Chapter 48) and amendments thereto;

2. That goods mentioned in the said Writ of Replevin were all in custodia legis at the time of the issue of the said Writ and at the time of the alleged replevin of the goods mentioned therein, and replevin does not lie in such cases;

3. That a Writ of Replevin cannot be legally issued against an officer of the customs for the recovery of the thing seized until a decision has first been given either by the Minister of Customs or a Court of competent jurisdiction in relation to the condemnation of the thing seized;

4. That the issuing of the said Writ was an abuse of the process of the Court in that the affidavit upon which the Writ of Replevin was issued herein did not disclose certain important facts in regard to the articles attempted to be replevied, that is to say:—

(a) That the defendant held the said goods in an official capacity, namely, as an officer of the Customs of Canada;

(b) That the said schooner was laden with a cargo of goods that had been seized by the Department of Customs, and that the holds and cabins of the said schooner were sealed with Customs seals;

5. That the Replevin Statute of this Province is not applicable to a case wherein the Crown directs.

George Otto Maskay, the ship's mate, Ella Pardy, seaman, and Samuel Vallis the ship's cook, confirm the Captain's statements.

Captain Dicks, the plaintiff, deposes that he is (on the 10th day of August, 1927) the owner of the schooner, that he has no knowledge of the circumstances leading up to or in connection with the seizure and that the "kegs of rum alleged to have been found" in the schooner by the defendant were not smuggled by him or with his knowledge or connivance.

The affidavit of Sheriff Dougan of the execution of the Writ and the affidavit of Mr. J. J. Johnston, Esq., Attorney for the Plaintiff, set forth conversations with the Collector of Customs at Charlottetown and the defendant as to whether or not they had reported to the Commissioner of Customs the circumstances relating to the seizure and detention of the schooner and that each stated that he had not reported.

The history of the ship on her mysterious voyage, and her capture by the Revenue Cruiser Bayfield, will be material for the consideration of the proper tribunals but in my opinion would not relate to any issue which might be tried in this suit.

The first question for determination on this application is:— Does an action of Replevin lie for the recovery of goods seized as forfeited and held under condemnation, rightly or wrongly, by the Customs officers?

I find the ship and cargo in the actual possession of the officers of the Crown in the right of Canada purporting to hold the same under the provisions of the "Customs Act", a Statute of the Parliament of Canada affecting a subject within the exclusive jurisdiction of the Parliament of Canada.

It is true that property in the Province is within the exclusive jurisdiction of the Province but it is now an axiom that where in such case a conflict of jurisdiction arises the Provincial must yield to the Dominion legislation, at least to the extent that is necessary to give effect to the latter.

To allow a Writ of Replevin to issue in respect of property held as this ship is held would only tend to delay and possibly frustrate the operation of the Dominion law in its exclusive field.

Numerous cases have been cited by counsel for the plaintiff to show that the Writ of Replevin has been allowed in cases where the goods claimed were unlawfully held under the authority or supposed authority of a subordinate court or tribunal, but we are not here dealing with a subordinate tribunal whose proceedings we would have a right to review but with a custody purporting to exist by virtue of a case of McGowan v. Betts.

In the case of McGowan v. Betts, reported 13 N. B. 296, upon which counsel for plaintiff placed special

emphasis, a Dominion Fishery Officer had seized a foreign ship for violation of the Dominion Statute prohibiting foreign ships from fishing without a license in British waters within three Marine miles of the Canadian coast. She was replevied by the owner and the Supreme Court of New Brunswick by a majority, three to two, refused to set aside the Writ of Replevin on the ground that the officer not having taken the ship to the nearest port for delivery to the Collector of Customs as required by the Act was a trespasser ab initio. The ship was therefore held not to be in the custody of the law and replevin would lie.

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The order will be made absolute and the Writ of Replevin heretofore set aside with costs.

CANADIAN PACIFIC
SAILINGS
FROM MONTREAL TO LIVERPOOL
Aug. 16, Sept. 16 Montrose
Aug. 24, Sept. 23 Montclair
Sept. 2, Sept. 30 Minnedosa
Sept. 9, Oct. 7 Montclare
To Belfast—Glasgow
Sept. 1, Sept. 29 Metagama
Oct. 6, Nov. 10 Melita
To Cherbourg—Southampton—Antwerp
Sept. 8, Melita
To Cherbourg—Southampton—Antwerp
Aug. 15, Sept. 9 Montreal
Sept. 9, Oct. 19 Montclair
To Antwerp only
To Cherbourg—Southampton
Aug. 24, Sept. 14 Express of France
Aug. 31, Sept. 21
Sept. 7, Sept. 28 Express of Australia
Sept. 7, Sept. 28 Express of Scotland
Calls at Hamburg
Apply Local Agents
G. BRUCE HURFEE
Dist. Pass. Agent
40 King Street
Saint John, N. B.

A FREE BREAD KNIFE This Week

All this week and part of next week, or in fact so long as they last, your grocer is authorised to give free a beautiful Bread Knife (regulation size 12 inches in length) to each person who purchases a 98 pound bag of REGAL FLOUR.

This is a wonderful opportunity to secure a bag of the very best flour milled in Canada, at the market price and a new Bread Knife without cost.

REGAL FLOUR is sold with an absolute guarantee of money back if not satisfactory in every way.

Union Commercial College Notes

College re-opens on Tuesday, September 6th.

Many graduates of last term are now in positions and giving satisfaction to their employers.

Already a number of applications are on file. Everything points to a large attendance this coming term.

The success of the U.C.C. shows it meets the wants of the business community.

Civil Service classes under the personal direction of Principal

Moran will be opened this term. The Union Commercial College class rooms are among the best in Canada. Heated with hot water, hardwood floors, with special oil treatment for dust, all modern conveniences, sanitary towels, sanitary drinking cups, etc. Everything to safeguard the health of the students.

Write today for full information and get on the road to success.

Mrs. Jones gave what is called a "White Elephant Party" that is, everybody was to bring something of little use, and yet too useful to be thrown away. Six women turned up with their husbands.