

The Lindsay Watchman.

Volume III. Number 13

LINDSAY, THURSDAY, APRIL 10, 1890.

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VICTORIA SPRING ASSIZES.

Several Important Cases.

The spring assizes for the county of Victoria opened Monday at one o'clock before Mr. Justice Rose. In addition to members of the local bar there were present B. B. Osler, Q.C., G. H. Watson, Q.C., William Laidlaw, Q.C., Toronto, and W. F. Kerr of Cobourg.

U. W. Coulter, Q.C., and A. P. Devlin, county attorney, conducted the crown business. There were five criminal cases and a long list of civil actions awaiting trial. There was a large attendance of spectators.

GRAND JURY.

The following gentlemen were sworn in as grand jurors: W. Eyles, foreman, Wm. Baltour, W. J. Blaylock, J. H. Cassidy, Arch. Cameron, John Coulter, Paul Creko, David H. Dick, Richard Greenaway, Henry Hill, Jas. Junkin, Morgan Johns, Francis Kelly, Thomas B. Laidlaw, James Li How, Geo. Lamb, George Matthews, W. Maher, Robert Oxby, Donald Spence, Jos. Staples, Nicholas Whalen, J. L. Winters.

ADDRESS TO THE GRAND JURY.

HIS LORDSHIP in addressing the grand jurors on the nature of their duties said there were not many cases before them, but there were some that would require very serious consideration on their part. There was a case of bigamy, one of arson and one of forgery, and his lordship briefly dwelt on each case. There were also two cases of criminal libel, and his lordship stated the law as to libel. Any one who maliciously published any defamatory language was guilty of libel. They should read the words of the articles, and if they tended to lower a man in the esteem of his fellows, or hold him up to ridicule or contempt, it was a libel. There was an erroneous opinion that editors and proprietors of newspapers had license to vilify and defame and write and print words that should not go into any man's home; and to use language that did not edify to good morals and to advance the interests of society. No editor had any such right or license, and the sooner this was clearly understood the better it would be for the good morals and the peace of this community. He had noticed a paragraph in the journal in forming an opinion of the articles for publication inquired a tribunal consisting of a mother and her three daughters growing to womanhood, and what was not fit for them to read aloud in each other's company was not published. This would supply a good way for the grand jurors to test the articles in these cases. If any of these articles would bring a blush of shame to the cheeks of their wives and daughters their publication was injurious to the welfare and morals of the community.

MacMurchy v. Clarke

The action of Mr. J. D. MacMurchy against D. Clarke for libel was called at six o'clock, but the defence were not ready to proceed and fully half-an-hour was expended in trying to get an adjournment to Tuesday or until the next court. Mr. B. B. Osler, Q.C., and Mr. J. McSwain for the plaintiff were ready to go on and opposed adjournment. Finally his lordship stated that he would adjourn to 3 p.m. when he would take up the first case on the record. On resuming at eight o'clock a certificate was put in from Drs. McAlpine and Burrows to the effect that Dr. Clarke was very ill and unable to attend court. After some discussion the case was postponed to the fall assizes, the costs of the day to be borne by the defendant.

Cooper v. Hughes.

The case of Cooper against Hughes for libel was next called. Mr. B. B. Osler, Q.C., and Mr. T. Stewart appeared for the plaintiff; Mr. Hughes took charge of his own case, assisted by Mr. F. D. Moore. The following jury were empanelled: Arch. Smith, Ephraim Wagar, John Ward, Matthew Wilson, John Rogers, Reuben Walling, W. Skitch, George Taylor, Jno. Teel, E. Prescott, John Windrim, John Torry. The defendant in his pleadings justified the article complained of as libellous.

EVIDENCE FOR THE PROSECUTION.

MR. OSLER briefly and clearly stated the case for the prosecution, reading from the Watchman samples of the libellous attacks.

FRED. MCBURNEY, law student in the office of McIntyre & Stewart, testified that he served notice of action on Mr. Hughes, and that he purchased copies of the Watchman of October 25, and of Nov. 8, 1889, with the libellous articles charged.

SAMUEL CORNELL, insurance agent, Lindsay, testified that he had read the article in the Watchman of Oct. 25 last and understood it referred to Mr. Cooper, the plaintiff; he understood the Joe Cooper in the article of Nov. 8 referred to the plaintiff; he understood the words "the family" referred to Mr. Cooper's family connections; Mr. Cooper had lived over twenty years in the town; other sentences in the article were read and stated as referring to the plaintiff.

MR. HUGHES conducted cross-examination and reflected on Mr. Cornell's memory as "very convenient."

HIS LORDSHIP said Mr. Hughes was not allowed to reflect on the evidence of witnesses in conducting cross-examination.

MR. HUGHES asked a few more questions, and the case for the plaintiff was closed.

FOR THE DEFENCE.

MR. HUGHES opened his defence with an address of an hour's length. It was mainly devoted to reading the articles in the Watchman which gave rise to the action. The court sat till 10 p.m. and then adjourned for the day.

The court resumed Tuesday morning at 9.30.

THOS. THOMPSON, farmer, testified that he lived near Cambury now and formerly lived near Omamee; knew Mr. Cooper; a portion of the Watchman was in his possession; Cooper with stealing article charging Mr. Cooper with stealing from Omamee at the dead hour of night was read to witness, but witness did not know much about it; as a friend of Mr. Cooper witness offered to draw a load to Lindsay when he talked of moving to Lindsay; Mr. Cooper and others loaded the press on the wagon; could not tell the hour when they left Omamee; it was sunrise

when they passed Dancy's hill, a mile and a half from Omamee; we then drove to Lindsay at leisure and with no particular hurry. (Defendant asked witness if the Omamee Warder was a brilliant newspaper. Objected to by counsel and by the court. Was there anything in the Lindsay Warder up to date of this article that would provoke Mr. Cooper to object to and retained by the court.)

Cross-examined by Mr. OSLER.—The removal of the press from Omamee occurred over 25 years ago. I merely helped Mr. Cooper to move the press. Mr. Cooper continued to print a paper in Lindsay. A lawsuit was going on then, but I did not then nor do I now understand the nature of the proceedings.

The defendant proceeded to re-examine witness, but his questions were ruled out by the court as not proper.

J. D. MACMURCHY, sworn.—I am an editorial writer on the Lindsay Watchman; I have read an article in the Watchman of Nov. 8, and have entered an action against Dr. Clarke for the false statements therein made. Defendant proceeded to question witness as to the article, but was stopped by the court, as the case against Dr. Clarke was not to be brought into this action.

Cross-examined by Mr. OSLER.—The article in the Watchman referred to a firm in town as well as to myself, and to Mr. Cooper and Mr. Sidney McKenzie.

In re-examination defendant brought up the Watchman of October 31 and read from an editorial article therein from a letter signed "Conservative" commenting upon the attacks of the Watchman and of "Swipes" upon the people of Woodville. Defendant asked who was the writer of the letter; witness was advised by Mr. Osler that he need not answer. Defendant remarked that his refusal to answer was an admission that witness wrote the letter, but his lordship said it was no admission whatever. Witness said Mr. Cooper did not write the letter.

THOS. STEPHENSON of Omamee testified as to the establishment of the Omamee Warder as a stock company by a number of residents of the village; Mr. Cooper conducted the paper. (Several questions by the defendant were stopped as not being in evidence.) Some time before the election of 1887 had conversation with Mr. Cooper as to the candidates for the house of commons; Mr. Cooper visited Omamee. (Some questions on this line were objected to and objection upheld by the court.)

Witness remembered when the press was taken from Omamee and when it was returned by Mr. Cooper; witness had received copy of the Lindsay Watchman, but had not ordered it; Mr. Cooper had the only printing office in the township. (Some questions on this line were objected to by the court; defendant held they came under the clause "you had a peculiar code of morality" in pleadings, but the objection was maintained.)

THOS. MITCHELL, auctioneer and painter, Omamee, testified that he remembered when the press was taken from Omamee; he went to Lindsay to serve a paper on Mr. Cooper; he met Mr. Cooper on the way and served on the way.

JOHN JONES testified that he held stock in the Omamee Warder. Questions as to disposal of the stock to Mr. Cooper were stopped by the court.

JOHN ENGLISH of Omamee testified that he had one tenth share in the Omamee Warder. (Questions as to disposal of stock to Mr. Cooper and as to Mr. Cooper's debts were objected to by the court as it was not an issue in the case.)

THOS. MATCHETT, county treasurer, testified that he formerly lived in Omamee and took an active part in the establishment of the Omamee Warder; had stock in it; did not consent to the removal of the press to Lindsay; it was returned to Omamee by Mr. Cooper on order of the court; personally witness knew nothing of the purchase of stock by Mr. Cooper.

TO MR. OSLER.—Witness did not know of any other shareholder but Mr. Cooper desiring to remove the paper to Lindsay; Mr. Cooper thought he could do better in Lindsay; the Omamee shareholders were opposed to the removal.

ARTHUR McQUADE was examined as to the removal of the press. Defendant asked what the people there called the transaction. The court objected that such expressions were not evidence. The defendant said he wished to show what was said to justify his use of the word "stealing" in the press.

THE COURT.—As it was a matter of 25 years ago I think it possible you did not hear it then. (Laughter.)

RICH. TOUCHBURN, grain-buyer, Lindsay, testified that he had had conversations with defendant as to the price of grain in Lindsay. (Question as to the conversation stopped by the court as it was not evidence. Examination as to the price of grain was checked by the court as it was covered in the pleadings. The court said the charge against the plaintiff was that there was a combine in butter, eggs, barley and flour, and the evidence was to be confined to the plaintiff running such a "corner.")

Defendant then asked if Mr. J. D. Flavelle was a son-in-law of the plaintiff, and was stated in the article, behind the connection of the produce market generally, and would hear evidence only as to the connection of the plaintiff with the corner in butter, eggs, barley and flour.

J. D. FLAVELLE testified Mr. Cooper was his father-in-law; he had assisted Mr. Cooper financially at the time the job printing office was started.

J. R. DUNDAS testified that he was Mr. J. D. Flavelle's uncle; his firm had assisted Mr. Cooper financially in starting a job office in Lindsay.

Defendant argued that this established the connection of Mr. Cooper with the firm or the concern.

HIS LORDSHIP said that it did not, any more than borrowing money from a bank made a man a banker.

CHAS. S. BLACKWELL testified that portions of the article read referred in his opinion to the "concern" and not to Mr. Cooper.

TO MR. OSLER.—Witness said he understood the article to refer to Mr. Cooper. S. HUGHES, the defendant, then entered the witness box and was sworn. He started to read from the Watchman what he claimed was a series of attacks on him to provoke him to retaliate.

MR. OSLER said he would have no objection to go into these matters, but there was a controversy, and it would be fair to have the articles on the other side.

THE COURT said it would be better to admit the papers and let the jury take them; the defendant making a general statement covering the case. The defendant said these attacks had

stated him to be a drunkard, a scene in the streets, an unmitigated ass, a blackguard, a ruffian, a political mountebank, with making a great big ass of himself, with being a dox, a liar. The defendant read the full text of an article of Oct. 31st in the Watchman, and put on one of articles and paragraphs in previous issues of the same paper.

Cross-examined by Mr. OSLER.—The Watchman was started about two years ago; it was not supported by the conservative party; it was supported by the equal rights party and by the Roman Catholic church; West-General Laurent wrote a letter saying he was doing all he could for the Watchman; I never attacked Mr. Cooper, not unjustly.—Mr. Osler read portions of several articles from the Watchman of various dates to show that the Watchman's comments were justifiable and in the public interest. Mr. Osler put in several copies of the Watchman articles and which were admitted by the defendant as having been written by him.—The defendant suggested his lordship might wish to have them read.

HIS LORDSHIP.—I don't wish to hear any more of it than is necessary.

EVIDENCE IN REBUTTAL.

MR. JOS. COOPER, sworn, (to Mr. Osler) stated the circumstances under which the Watchman was printed in Omamee. A considerable number of stockholders owed him money for subscriptions and printing and they paid him by assigning their stock to him; he thus owned a majority of the stock; in removing the press to Lindsay he was acting under the advice of his lawyer, Mr. Hector Cameron, after two applications in the Toronto courts had failed to prevent the removal; proceedings were taken in chancery and the chancellor held that under the conditions on which the stock was taken the paper would have to be printed in Omamee, and that if he returned with the press he could not be dispossessed of it.

Cross-examined by Mr. HUGHES.—I removed all the plants in the daylight; I did not tell Mr. Thompson to keep quiet about the removal of the press; I did not say I was afraid of the people of Omamee, they were such barbarians; I never used such an expression and was never afraid of the people of Omamee. This closed the evidence and the court rose.

On resuming at two o'clock,—

MR. HUGHES addressed the jury on his own behalf. He explained that his case had been very badly prepared by his lawyers (Messrs. Hudspeth and Jackson) and he had been compelled to consult Mr. S. H. Blake, but it was understood that the case would not commence until Monday evening and Mr. Blake had arranged to attend, but had found it impossible to do so. He had, therefore, to take charge of his own case. He then went on at considerable length to contend that he had always been the party attacked, that he had borne these attacks a long time, until he had found it advisable to reply. He branched out into extraneous matters several times, and had to be checked by the court, who told him that he could not comment on matters not in evidence. He argued that the words "stealing" and "big game" in the article on Mr. Cooper should be taken in their broad sense and not in their narrow technical meaning. He reviewed the articles on the Methodist conference and on other questions, and contended that the Watchman had received great protection, that it was not abusive and that it always came out triumphant. He referred to his attack on the Rev. Mr. Dewey and claimed that Mr. Dewey was still as warm a friend of his as ever. He next took up, read and commented on several articles in the Watchman which he held were unprovoked and personal attacks. He denied absolutely a Watchman statement that the Watchman's course was not approved by the conservative party, and declared that it had wide and hearty approval from that party and from others. The Watchman had dangled before his nose the red rag of persistent attack, and when he had turned on the Watchman, that paper squealed. The Watchman had tried to make a quarrel between himself and Mr. Hudspeth and other leading conservatives, but without success. It had failed in that party and failed in its attempts to discredit him before the community, and to hold him up to ridicule and contempt. Mr. Hughes closed with a strong appeal to the sympathies of the jury.

ADDRESS TO THE JURY BY B. B. OSLER, Q.C.

May it please Your Lordship, Gentlemen of the Jury:

No one regrets more than I do that the defendant in this case has been disappointed in the large assistance that he hoped to have had. At the same time you must all be satisfied that he has from his natural ability so treated his case that nothing has been left undone or unsaid, and that no injustice will come to him at all from his want of legal assistance. There would have been a very much more technical contest, perhaps, if there had been a lawyer on the other side. I have endeavored in my conduct of the case for the plaintiff to carefully avoid embarrassing Mr. Hughes in the conduct of his case. And I have given him concessions in the matter of very great moment, but concessions we lawyers would not give to one another. Now, at the same time, I do not think he has treated his solicitors, Hudspeth & Jackson, very fairly, when he has said that his case was improperly prepared or his pleadings improper. It occurs to me that his pleadings, put everything that he desires upon the record. He has justified the truth of all the important allegations against this plaintiff; he has put that on the record; he has stated that all the paragraphs from six to twenty are true in substance and in fact. Well now, when a man does that, and the charges are so general, as some of these charges were, a plaintiff has a right to say, I want particulars. I want you to tell me before court what I have got to meet, because a man cannot be called on in the box here to answer a charge that he is a thief, or that he took a press, or that he did that or the other thing. The court orders that some particulars shall be given so that a plaintiff, whose whole life is in review, may have a fair chance to meet the

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