

THE KLONDIKE NUGGET.

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THE NUGGET UPHELD

McCook Libel Case Decided In Favor of the Defendants.

THE STORY AS PUBLISHED WAS ABSOLUTELY TRUE.

And the Jury Held That Its Publication Was Justified.

The Reading of the Article Creates Mirth in Court—Attorney Pattullo Handles the Case in an Able Manner—The Judge's Instructions to the Jury—How the Verdict Was Received.

The trial of the criminal libel action brought by James Church McCook, the American Consul to Dawson, against Eugene C. Allen and A. F. George, manager and city editor, respectively, of the KLONDIKE NUGGET, took place before Judge Dugas, of the Territorial court, and a large audience of interested—even excited—people on Thursday last.

The result was an acquittal of the defendants, a complete vindication of the course of the NUGGET in its exposure of the official's misconduct, and a rebuke to Consul McCook that would have been stunning to a man of fairly sensitive perception.

That the verdict was acceptable and gratifying to the onlookers was attested in the liveliest manner; and that it was just and proper no one doubted who heard the evidence or the nearly two dozen witnesses who contributed to the erection of as complete a legal fabric as was ever designed by human skill.

The trial also proved a testimonial of the highest nature to the thoroughness, accuracy and reliability of the NUGGET's news service; for the evidence showed that every one of the hundreds of statements contained in the principal article constituting the alleged libel was absolutely true—so much so that the presiding judge was impelled, in his summing up of the evidence, to tell the jurors that they might consider all the allegations as proven beyond question.

The objectionable articles were read aloud by the clerk, and the audience was convulsed with mirth. The prosecutor, Consul McCook, was present at the time, but his bowed head showed plainly that he appreciated his position at last, and he disappeared entirely after the charges had been so fully verified by the first witness.

After the reading of the indictments, the case against E. C. Allen was first called, and the jury, consisting of R. Turner, F. J. King, F. J. Brew, T. L. Evans, H. Degrais and S. Tolmar, were sworn. Attorney A. G. Smith, counsel for Consul McCook, then addressed the jurors and described to them what he purposed showing and proving. That he failed in his expectations will appear later on.

When he had finished speaking he was followed by Attorney Pattullo, counsel for the defense, who quietly filed a special supplementary plea setting up justification for the alleged libels. He said that it was his purpose, first to prove all the statements of fact in the several NUGGET articles, and second to show that the publications were designed for the public benefit, and hence, under the existing conditions, were justified.

Attorney Smith was taken aback and evidently disconcerted by this unexpected action, and argued for the dismissal of the special plea, which he denominated as "unique."

Judge Dugas ruled that the pleading was supported by law, and that it would be allowed to go before the jury for their determination. However, he allowed the attorney ten minutes in which to prepare a demurrer, after which the case was proceeded with.

PROSECUTION SURPRISINGLY WEAK. The first witness called by the prosecution was Clarence Clifford, steward of the Dawson club, who identified a copy of the NUGGET of April 12, in which appeared the obnoxious articles and cartoon.

Geo. E. Storey, foreman of the NUGGET office, followed. He testified that he did not know

who set the type for the articles, and that Defendant Allen is manager of the paper.

Harry I. Clegg, stenographer in Magistrate Harper's court proved the stenographic report of the evidence in the preliminary examination, and the testimony of E. C. Allen in the case of Defendant George was read by him, with the intent of showing Defendant Allen's responsibility for the publications. It was as follows:

Eugene C. Allen on his oath says as follows: My occupation is printer by trade. I am the manager of the KLONDIKE NUGGET. It is sometimes customary and sometimes not to insert the names of the paper's management on the head of the paper. That name on Exhibit I was inserted with my approval as manager, and the accused is the A. F. George mentioned on the paper. I take the responsibility of the editorial myself.

Q. Do you know who was the writer of this editorial [Exhibit I]?

A. I do not know who was the writer of the article referred to.

Q. To whom would you have to refer to ascertain that?

A. I would have to refer back to the copy. That copy has been used, to the best of my knowledge and belief, to light the fires. I place no one in charge. I do not delegate the writing of the editorials to any particular one. I do not look to anyone in particular for the editorial.

Q. Whom would you go to, from your knowledge of the management of the paper, when inquiring about an editorial?

A. I do not think I would need to inquire.

Q. To whom would you go?

A. The staff is not so extensive but that I could go the rounds. I might call them all together. There is no particular responsibility between the members of the staff.

Q. Do you give personal attention to the articles which appear in this paper?

A. I do, and before they appear.

Q. Whom do you consult with as to what shall appear in the editorial column?

A. No one has authority but myself. Anything that appears goes with my authority back of it.

Q. To whom do you repose the duty of attending to any particular branch when you are not present?

A. Each individual member attends to his own business. Each man has his own branch, and they are all responsible to me.

Q. Did you have any connection with this cartoon which is inserted?

A. I did not.

Witness Clifford was shown a cartoon consisting of a figure dancing on a flag-draped coffin and labeled "Here Lies American Dignity," which he said showed some resemblance to Consul McCook.

That was the whole case offered by the prosecution and the defense could hardly credit their hearing when Attorney Smith made the announcement.

Attorney Pattullo did not move for a dismissal of the action, as he would have been justified in doing, but contented himself with pointing out that the evidence utterly failed to show defendant's responsibility for the publications or that he was in any position of responsibility toward the paper on the day they appeared.

The court also took a charitable view of the prosecution and allowed the case to go on, only remarking that counsel for the consul might have brought stronger evidence to show that Defendant Allen was in a position of responsibility on the occasion of the alleged libels and the jury would be allowed to pass judgment on the question.

"AND HE HAD A GLORIOUS TIME."

The defense then took the helm and proceeded with the evidence that was to establish the triumph of the NUGGET. The first witness called to the stand was Pearl Hall, one of the girls at the Phoenix dance hall, where Consul McCook had indulged in the drunken and disgraceful revelry which called out the objectionable articles. She spoke clearly, pointedly and intelligently. "I saw Consul McCook enter the Phoenix on the occasion in question," she testified. "It was about 3:30 o'clock in the morning. He was accompanied by Gertrude Lovejoy, known as 'Diamond Tooth Gertrude.' They went to the bar and drank a bottle of wine, after which the consul danced with me and we had a bottle of wine. He was intoxicated and very jolly. The next I remember of him was when everyone was dancing; I spoke to him about being Consul McCook. He invited me to take another drink and then the other girls, coming up and saying they were Americans, were all invited to drink. A young man came in as the consul was asking 'Who is not an American?' The young man said he was not, but that he was a Canadian. The consul said he would rectify the mistake at once and make him one. They began to scuffle in a friendly way, I supposed, but the consul finally got angry over something that was said, forced the young man into the corner occupied by the Nugget Express, and they would have gone through the window had it not been for Mr. McDonald. The two then had several rounds of drinks, but the trouble continued all night. Later on I saw the two men and Peter Burke, the porter, in a bunch on the floor of the dance hall. Several other men took hold of them and dragged them into the bar-room. Soon after that the consul was again drinking at the bar with the girls and gave them some quarters and other pieces of money he had about him. When they were all gone he gave them a lot of nuggets and one of them his watch. Presently he threw up both hands and exclaimed 'Take the whole works.' [Titters and laughter.] They did it, too, turning all his pockets inside out, but they were empty. [More laughter.] The consul was laughing all the time. Soon after that he and Peter the porter got mixed up and were scuffling and rolling about on the floor as drunken men will. The next thing I noticed was that the consul had a small American flag, The Stars and Stripes, pinned to his back. He

was then placing his hands on the bar telling Pete to kick him and leaning over so that he would have a good square show. Peter then ran from the other side of the room and kicked the consul. Both were nearly knocked over the bar. The consul laughed and encouraged Pete to continue kicking him. Mr. McDonald tried to get them to stop, but they wouldn't. There was a big crowd present and everybody was laughing. The last time I saw the consul he was at the bar drinking and still cutting up. That was about 6:30 a. m. Witness then told of the girls being summoned to Col. Steele's office for the inquiry into the whereabouts of the consul's watchchain.

This testimony confirmed nearly every statement made by the NUGGET relative to the consul's revelry at the Phoenix, and its effect was sensational in the extreme. The prosecution hadn't a word to say in the way of cross-examination, while a buzz of noises told of the excitement under which a large number of spectators were laboring.

THE EVIDENCE ACCUMULATES. Florence Lamar, another of the Phoenix girls, told of the consul falling to the floor while he was dancing and of her assisting in helping him to his feet. Witness did not share in the distribution of the nuggets, but saw the consul turn his back to the bar and throw up both hands, with the remark, "Take the whole works," or "Take the whole cheese." Witness described graphically the picture of the consul being kicked by Pete, the porter. The consul had his hands on the bar and was bent over with his head half turned to Pete, who was running across the floor. Miss Lamar's happy style of description was too much for her hearers, and it was necessary for the police to suppress the tumult of mirth that followed.

Nellie James and Edward Cowley substantiated all of the testimony given. Concerning the consul's condition, the last-named witness said he was not awfully drunk when he came in, but that after he had drunk the wine he got pretty drunk.

F. J. Britt was in the Phoenix on the occasion in question. He did not know the man who was making all the fun, but a friend said who he was and asked: "What do you think of our American consul?" (This was objected to.) He heard Pete, the porter, say to the consul: "I am an American; you and I come from the same part of the country and you have got to be kicked." The kicking followed, and witness was so convulsed with mirth over the affair that he sat down on a bench and laughed so much he couldn't keep track of subsequent events.

Walter Ritter testified substantially as did the others, confirming all the statements of the NUGGET relating to the affair at the Phoenix.

Hattie Lee saw the scuffling, drinking and kicking, but not the other happenings.

P. A. McDonald met the consul at the door as the latter entered with Gertrude. He appeared to be under the influence of liquor. Witness asked him if he knew where he was, and the consul replied: "Yes; I am having a good time to-night." Witness then told of the consul drinking, of his demanding who was not an American, of the trouble with the young man, etc. The consul had his hat and coat off and a small American flag was pinned to his back. Witness didn't know whether it was pinned on him there or somewhere else. Witness was finally holding the young Canadian down while two of the consul's friends took him away by the rear door.

George Fudges testified that he was one of the men who picked up the consul and carried him from the dance hall.

Harvey H. Brown, a miner, told of seeing most of the events described, as also did Wm. Hudson, one of the Phoenix musicians, Joseph Carr, bookkeeper at the Phoenix, Reuben Lyons, William Pasor and others.

Attorney Pattullo then changed the scene from the Phoenix to the foot of the alley behind the Aurora, and introduced evidence to prove the NUGGET's statements of the consul's doings there.

John A. Glover testified that on the morning in question he was a bartender at the Rochester bar and saw Consul McCook emerge from the alley some time between 7 and 8 o'clock. The consul attempted to walk across the street, but couldn't do it, fell down and finally made his way clear across the street on his hands and knees. He went into the saloon where witness was, asked for whisky, but was refused. The consul then sat down, bowed his head and said: "Kick me if you want to." After being there about half an hour the consul started up the stairs to his room, but fell down en route.

The court here raised objection to evidence of that nature, and insisted that the testimony should be limited to the allegations in the alleged libel.

Mr. Fields of the Aurora told of seeing the consul's doings on Second street. A large crowd of people were gathered about looking on.

The defense had a dozen other witnesses, but did not put them on the stand.

Corporal Wilson substantiated the NUGGET's statement of the police inquiry into the whereabouts of the consul. All that the inquiry developed was that the consul still had his chain when he left the Phoenix. Nothing else came of the inquiry.

Attempt was made by calling Colonel Miles to the stand to show that the obnoxious publications were endorsed by the American residents of the Klondike and that they were for the public benefit, but he was not allowed to give an opinion.

THE SUMMING UP. The evidence being all in, Attorney Pattullo took the floor and presented a recapitulation to the jury. It was a clean cut, comprehensive, logical and eloquent argument, and carried conviction to the minds of the jurors. He began with a reading of the complaint, which specified that the obnoxious articles were libelous because they imputed to Consul McCook habits of drunkenness, etc. The evidence, he said, and the reading of the articles showed that this was not true. The local article related solely to the occurrences of one night, were published with evident reluctance and no indication of malice whatever, but solely for the benefit of the public. The articles were true in the ordinary sense, and had been so proven by a long list of unimpeachable witnesses. Indeed, the testimony showed that unusual care had been taken in the preparation of the articles. The articles also dealt with the doings of the consul in his official and not his private capacity. The evidence showed that, while at the Phoenix, he exploited himself as the American consul, bought drinks for all who declared themselves to be Americans, etc.

He then presented citations to show that newspaper statements are not libelous when shown that they were published for the benefit of the public and that the plea of justification on those grounds shall constitute a defense. On that point he alluded to the fact that the majority of residents of the territory are Americans, and that it was their right to know through the public press that the representative of their country was bringing disgrace upon it and upon them. Were the positions reversed, he said, and the juror living in the United States, where an accredited agent of the Canadian government misbehaved himself as Consul McCook did, the jurors would be the first to say that such conduct ought to be published, in order that he might be removed from office, if nothing else. It may be, he said, that the publication of the articles in question will result in Consul McCook's recall, and he would submit that such a step would be for the public good.

In reference to the cartoon in the NUGGET entitled "The Eagle's Drooped Wings" and the cartoon entitled "Here Lies U. S. Dignity," the attorney held that the former contained no misstatements, as they had all been proven.

At the conclusion of the address Attorney Lisle made a lengthy argument for the prosecution.

THE CHARGE TO THE JURY. His lordship's charge to the jury was considered by the attorneys and others present as a most impartial delivery. The clearness and lucidity with which the laws were expounded cleared up a number of more or less knotty points which might otherwise have puzzled the jury.

He directed their attention to the point as to whether the responsibility for the insertion of the alleged libel had been definitely established. To his lordship's mind there was still a lingering doubt as to the prosecution's success in this respect. It was for the jury to determine whether the evidence as brought forward had definitely determined the responsibility of the defendant. As to the libelous character of the articles and cartoon in question, the judge said there was no division of opinion. Both the prosecution and the defense were agreed that the printed articles and cartoon alike were essentially libelous.

But the law justified a libelous publication under certain circumstances. It must be shown conclusively that the libelous articles were true in every respect. It was not sufficient that a portion of what had been printed was true, but each and every assertion of a libelous nature must be established beyond doubt. Unfortunately for the prosecution, the defense had succeeded remarkably well in proving the truth of the assertions made in the publication in question. "Yes," continued his lordship, "it may be well for us to consider who there is among us that should cast the first stone."

But not only must the truth of the libel be shown, in order that a return for the defense might be made, but it must be proven as well that the libelous articles were published for the sake of the public good. It was good law that the acts of a public man while acting in his capacity as such were legitimate objects for attack and comment by the public press. It must not be forgotten that the liberties which we as a race enjoy have been gained and guaranteed to us largely through the instrumentality of the press. For this reason the law, as well as public opinion, conceded to a newspaper a certain amount of liberty in the criticism of public men. As to the contention of the learned counsel for the prosecution that Col. McCook could not, from the nature of his position, be considered a public man, his lordship was of the contrary opinion. Col. McCook was present in Dawson advertising himself as

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UPPER KLONDIKE FERRY.
Since and Flume Lumber a Specialty.
ALL KINDS OF DIMENSION LUMBER.
LOWEST PRICES IN THE KLONDIKE.
City Agents: *Stauf & Zilly*.
Office at Mill. *BOYLE & SLAVIN* Prop.