

# The Chatham Daily Planet.

VOL. XII

CHATHAM ONT., WEDNESDAY, OCTOBER 14, 1903

NO. 2

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## JURY OF TWELVE KENT YEOMEN GIVE VERDICT FOR THE PLANET

Decision in the Alleged Libel Case Unanimously Reached  
in Seven Short Minutes—Finding Was  
"No Libel."

### Addresses of His Lordship and Counsel

Resume of the Evidence of Witnesses Called—Statements of the Officers—Planet had no Quarrel with Plaintiff But Believed He was Instigated by Individuals with Personal Animosity Against the Paper—Colonel Rankin Testifies that He Was Ill-Advised—Comment of His Lordship to the Jury.

It is a jury of twelve sturdy and upright yeomen of the county of Kent, just returned from their duty, who have decided that The Planet committed no libel in giving to the public interested a full, fair, accurate and unprejudiced account of the facts in connection with the recent Regimental Band and certain bandmen reduced to the ranks, while others were summarily dealt with and dismissed as a result of certain conduct on their part.

The action arose from a writ, charging libel, served on this journal by one J. G. Kerr, acting as solicitor for Harry C. Philip, bandmaster of the ex-Regimental Band, complaining of the following report of an officers' meeting which appeared in The Planet of July 10 last, alleging it to be libellous and asking therefor damages to the amount of one thousand dollars.

The full text of this report was as follows:

#### BAND TROUBLE.

The band embroglio, which has created such manifest interest throughout the city, was the subject of discussion at last evening's adjourned meeting of the officers of the 24th Regiment, Lieut.-Col. Rankin presided, and there was a large attendance of the officers present.

A number of applications for the position of regimental bandmaster and for membership in the band were laid over, also letters from former bandmen, now out of the city, relative to their instruments.

There was a strong sentiment evidenced in favor of the reinstatement of Bandmaster H. C. Philip. The Colonel pointed out that, while there were several grave inaccuracies in his published statement, he believed the ex-bandmaster was more sinned against than sinning. Lieut.-Surgeon Dr. Tye, Quartermaster Dr. Cornell, Adjutant Colliart and others spoke in the same strain and expressed their belief that Mr. Philip had been led into his present position against his better judgment by the unwise counsel of others.

It was pointed out, however, that in view of the recent action, instigated by the ex-bandmaster, of breaking in and forcibly entering the armory as King's property, nothing could be done pending the action of the military authorities at Ottawa. In accordance with the military law the matter will be to-day reported to Lieut.-Col. Peters, D. O. C., and thence to the Adjutant-General at Ottawa. The matter was now entirely out of the hands of the local militia and they could take no action pending instructions from headquarters.

It was decided, upon advice from headquarters, to at once proceed, in co-operation with the old Band Association, to replevin all instruments owned by the Regiment and the Association and now in use by the Band, and hold them pending the decision of the Adjutant-General.

In view of the expulsion of ex-Bandman W. H. Brackin from the Band and Regiment, it was decided to proceed against him under the civil law. The officers were very severe in condemnation of the reported conduct, actions and subsequent behavior of the young man, and it was decided to make an example of him. The officers instructed the laying of four serious Police Court charges against the ex-bandman, viz., the using of profane and insolent language to the soldiers while on parade, the threatened mutilation of the Regiment's property, the detention of the King's uniform, and the using, while in a public bar room, of obscene and profane language concerning Col. Rankin, Major Schofield and Adjutant Colliart.

The case came up before Chief Justice Sir William R. Meredith at High Court yesterday morning. A jury was empanelled and the case proceeded. For the plaintiff, Philip, were J. T. Mabey, K. C., of Stratford, as counsel; J. G. Kerr, who had acted as solicitor throughout, and R. L. Brackin, a young man who apparently took

himself seriously.

The Planet was represented by W. R. Riddell, K. C., Toronto, and O. L. Lewis, of this city.

In opening the case Mr. Mabey addressed the jury, presenting the plaintiff's view of the case. He alleged that in speaking of the plaintiff's instigating the breaking in and forcibly entering in connection with the report The Planet had libelled the plaintiff. He also briefly traced the history of the band trouble resulting in the replevin action of the plaintiff against Col. Rankin, in the course of which the breaking in alluded to took place.

Mr. Mabey asked if The Planet admitted publication of the article complained of.

Mr. Riddell—We admit publication of everything in our paper. The Planet has nothing to evade or conceal.

Mr. Mabey then filed with the court a copy of The Planet of July 10th, containing the article complained of, also other copies of this great home journal which he expressed intention of using later, and closed his case.

Messrs. Riddell and Lewis then took up the defence of The Planet, which was set forth in the statement of pleading prepared and filed by Mr. O. L. Lewis. It set forth that the article was a fair, truthful and accurate report of a meeting held on a matter of general public interest and was published in the public interests and without malice.

#### COL. J. B. RANKIN.

Colonel J. B. Rankin, K. C., was the first witness for The Planet. He testified that the reports of the officers' meetings had always been published in the city papers. The report complained of was a perfectly fair and accurate account of what took place at the meeting.

Plaintiff's solicitor objected to this statement.

Col. Rankin, continuing, testified that he had expressed himself at the meeting as being very sorry indeed that Mr. Philip had acted as he had done. Witness had said that he thought that a settlement of the trouble could have been arranged had Mr. Philip not instigated the recent action in reference to breaking into the drill shed. Witness thought that plaintiff, Philip, had been very badly advised. It was witness' duty to report the matter to the military authorities and he had done so.

Mr. Riddell—Is there a regular means provided for members of the militia to gain redress?

Col. Rankin—There is, through the King's regulations.

Cross-examined by Mr. Mabey, Col. Rankin said that the trouble with the band had started on the trip to St. Thomas, but the recent trouble had been caused by the bandmen dropping out on the occasion of the Regiment visiting Holy Trinity Church on Sunday, June 28, and had reached a focus when the band appeared in civilians' clothes at parade on June 29th. Mr. Philip was not blamed for the church trouble, but for the band appearing on Monday night in civilians' clothes to protest against the Colonel's criticism of the Sunday behavior. At the officers' meeting, on July 6th, witness had said that Mr. Philip was more sinned against than sinning, and expressed his belief that plaintiff had been led into his present position by the unwise counsel of others against his better judgment. He was a capable musician if he wouldn't allow others to influence and use him.

#### ADJUT. W. A. COLLIART.

William A. Colliart, late adjutant in the 24th Kent Regiment, said he was at the meeting in question, and corroborated Col. Rankin's evidence as to what had taken place. He had also surrendered H. C. Philip's clarinet to him without replevin order being served on him.

Cross-examined by Mr. Mabey, witness said he had spoken at the meeting exactly along the lines reported in The Planet.

#### MAJOR SCHOLFIELD.

Major G. P. Schofield, Manager of the Standard Bank, was the next witness. He said he had met the deputy sheriff, the plaintiff and J. G. Kerr in Harrison Hall on the day the drill shed had been broken into. Mr. Beeston said that he had been instructed to break into the armory and witness asked him to wait till the Colonel returned from attending court at Wallaceburg that evening. The solicitor for the plaintiff had refused to do so. Witness had asked that a stay of proceedings be granted, advancing many reasons. He said that one banker would wait for another if he gave his word of honor in such a matter, and he appealed to Kerr as to whether lawyers would not treat each other similarly. The solicitor, however, declined to wait even on the representations he made. He had afterwards attended the adjourned meeting of the officers and had heard what the Colonel had said. He corroborated the Colonel's statements in reference thereto. He had read the report of that meeting in The Planet, which was the article complained of.

Witness had assured Mr. Kerr in Harrison Hall that nothing would be disturbed in the drill shed if he would wait until Colonel Rankin came home, but his assurances were of no avail.

#### CAPT. FRED. STONE.

Capt. Fred. Stone, of the firm of Houston, Stone & Scane, was the next witness. He corroborated previous witness. Capt. Stone said he was also present at the meeting in question and had read the report complained of in The Planet. The Colonel had given a fair and accurate statement of the facts in connection with the meeting and the report.

#### CROWN ATTORNEY SMITH.

Lieut. Herbert D. Smith, Crown Attorney, said he had been present at the meeting in Harrison Hall when Major Schofield said that the plaintiff had a writ of replevin issued and the sheriff wanted to go into the armory. Witness said he didn't think that the Major could give permission. The Colonel was out of the city. He would no doubt be back that night, and witness asked Mr. Kerr to let the matter wait until morning. If the private property was not returned then, there would be plenty of time in the morning to break into the drill shed. Witness also questioned the right of the sheriff to break into the King's property. He said he did not believe he had that right. Mr. Kerr refused to wait and said, "Let matters take their course." Witness also stated that at the officers' meeting in question a committee had been appointed, composed of Dr. Tye and Harry Anderson, editor of The Planet. The committee had been named for the purpose of interviewing Mr. Philip with a view of securing his re-statement in the Regiment. Both of these gentlemen had been specially selected because of their friendship for Mr. Philip.

Cross-examined, witness said that he thought that if Mr. Philip had any complaint he should have made it under military law, that he was not justified in taking the course he did.

#### HAD WRITTEN REPORT.

Harry W. Anderson, editor of The Planet, was the next witness. He said he was the Harry Anderson mentioned in the previous examination, and he was always very friendly towards plaintiff. He only knew of the proceedings under the writ of replevin from what the reporters brought in. He had written the report of the officers' meeting, complaining of it. It was a fair, full and accurate report in every particular. He thought it a pity to detail other members of the staff to do the work when he himself was present at the meeting. The meeting had not come to the conclusion that Mr. Philip should be court-martialled while witness was present. When he learned of the notice of writ served by Mr. Philip, he at once telephoned to plaintiff's office, but he was not in. A few days later witness met plaintiff in front of the Bell telephone office. Witness had said to plaintiff that there surely must be some misunderstanding. Mr. Philip had replied that he had no feeling at all against The Planet. Witness had told plaintiff that he had reported the meeting himself and had sought to be quite fair. Plaintiff had replied that he wasn't pushing the notice of writ, didn't want to, in fact, but Mr. Kerr wanted him to issue it to strengthen his

hand in the Brackin Police Court case.

It was only fair to Mr. Philip to say that at the same interview he had complained about an article in The Planet in which it had been stated that his band had been enabled to fulfil their engagement at the Eau Claire Hotel by borrowing instruments from the Fenian Band. This report, however, was quite true, although witness had assured Mr. Philip he regretted any annoyance it might have caused him. Mr. Frank D. Laurie, Manager of the Bell Telephone Co., had seen Mr. Philip and witness have the interview in question.

Some time afterwards Mr. Philip had telephoned asking Mr. Anderson to insert a notice of the first band concert on the Park. Witness had sent Mr. Angus to get the program and had printed it.

Mr. Kerr had telephoned him asking that Mr. Brackin's apology be not printed. He had assured witness that all proceedings against the paper had been dropped.

Cross-examined by Mr. Mabey, witness said that he didn't want anybody misled as to what had occurred at the officers' meeting and he was anxious that the public should know it just as it had occurred. Witness had seen plaintiff and the latter had assured witness that he did not want to sue The Planet for libel. He was urged into it by Mr. Kerr. The writ came about two months after the notice.

Witness acknowledged writing the article in The Planet of September 1st, in which it stated that The Planet had been served with a writ of replevin. He did not write it in the Satchel of the Satellite of July 4th to this effect, "Harry C. Philip is manly and straightforward. It's too bad there isn't some more like him. Of course, while thousands like him there are not so many like him."

#### THE BRACKIN CASE.

Witness had probably seen it before it was printed. Witness had written the paragraph beginning "By Proxy" in the issue of October 3rd. Witness had seen Harry C. Philip about the 13th or 14th of July. Witness had commenced the conversation. He had asked plaintiff what the difficulty was. Plaintiff claimed the only reason for the notices of writ was the desire of Mr. Kerr to strengthen his hand in the Brackin case. The Brackin Police Court case was disposed of about the 20th of July. The writ was issued on August 31st in this case, but after The Planet received the writ witness had never seen Mr. Philip. He knew that if confidence could be broken once it could be broken again. He also knew from what Mr. Philip said that the writ had resulted from some individuals with personal animosity against the paper and not from Harry C. Philip, and he felt, accordingly, that it would do no good to see Mr. Philip again. Mr. Kerr, solicitor for plaintiff, had also personally assured witness that the action against the paper had been stopped. Mr. Kerr had made this statement at noon on the day that the Brackin case came up in the Police Court. The interview had taken place in the doorway of E. J. MacIntyre's store and was at Mr. Kerr's request. Mr. Kerr was pleading with witness to use his influence with Mr. Stephenson not to have the apology of Bandman W. H. Brackin, which, he said, was a very subject one, published. Witness told Mr. Kerr that he had not yet seen the apology but would speak to Mr. Stephenson about it. In so doing, Mr. Kerr presented as a reason for asking this that the proposed actions against Mr. Brackin had been abandoned and he gave his word of honor to that effect. Plaintiff had not dictated any notice about the band concert but had simply telephoned witness.

Cross-examined by Mr. Mabey—Didn't Mr. Philip ask you specially to print it Citizens Band? Witness—He did not. Mr. Mabey—You printed it ex-Regimental Band? Witness—I can't say, but I think it was so printed.

Re-examined by Mr. Riddell. Mr. Riddell—It had been in your paper about the breaking open of the armory?

Mr. Mabey objected to this question.

The Judge ruled that this evidence should be put in to show that the breaking into the armory was a matter of common knowledge. It would be primary evidence in connection with the article complained of. Mr. Riddell didn't press the point.

#### AN OUTSIDE ANIMOSITY.

Witness, continuing, said that he hadn't sought Mr. Philip after the writ had been issued because there had been a breach of faith and agreement and he had consequently no confidence in any further negotiations. In the second place, he was quite confident that Mr. Philip was not taking the action voluntarily, but that other outside influence resulting from the Brackin matter was urging and prodding him on.

Mr. Riddell—This W. H. Brackin is the young man who with Philip had issued notices of writ against The Planet through Mr. Kerr?

Witness—Yes, sir.

Mr. Riddell then read the Regimental Orders, published in The Planet of June 30th and asked witness if the man Brackin mentioned as being dismissed for having acted in an insolent and insolent manner while on parade was the same person.

Witness—Yes.

Mr. Riddell—In view of the expulsion, the officers decided to proceed against Brackin under the civil law?

Witness—Yes.

Mr. Riddell—They laid four serious charges against him in the Police Court, didn't they, for using profane

language, filthy and

guage and all that sort.

Witness—Yes.

Mr. Riddell—And he a

victim by making an ab

Witness—He apologised

cases were then withdrawn

Mr. Riddell—You didn't p

apology as a news item in

port?

Witness—No. We excluded it as

result of Mr. Kerr's request.

Mr. Riddell—The Regiment inserted

ed the apology in The Planet as a

paid advertisement and you had no

thing to do with it?

Witness—Yes.

CORROBORATIVE EVIDENCE.

J. W. Young, of The Planet staff, was sworn to prove that J. G. Kerr, solicitor for plaintiff, had said that the notices of writ were all a bluff. The Judge, however, ruled this evidence out as irrelevant. He said that what Mr. Kerr had said had no bearing on the case and he would so instruct the jury.

Mr. Riddell said he had other evidence to offer regarding Mr. Kerr's statements but the Judge ruled it out.

THE PROPRIETOR.

S. Stephenson, proprietor of The Planet, was the next witness. He did not see the article complained of until it was in print. He was out of the city at the time and knew nothing of it. The matter was in the hands of his editor.

FRANK D. LAURIE.

Frank D. Laurie, manager of the Bell Telephone Co., had seen Mr. Philip and Mr. Anderson talking in front of the Bell Telephone office some time in July. This was after the Brackin trouble had started and before Mr. Laurie left on his holidays on July 23rd.

This closed the case for The Planet.

THE PLAINTIFF CALLED.

Harry C. Philip, the plaintiff, then went in the box on his own behalf. Witness first made a correction in his examination for discovery. He had said that he unlocked the outside door of the drill shed. He had not done so but had given the key to Mr. Beeston.

Mr. Mabey—It's been sworn by Col. Rankin that when you came to his office on the 4th of July he promised to go over to the drill shed?

Witness—That's not true.

Q—Do you know whether he went to the drill shed or not?

A—I don't know.

Q—Had you seen the Colonel at his office previous to that time?

A—Yes.

Q—Was it material to you to have your instrument?

A—Yes.

Q—State your reasons for wanting the instruments?

A—We were under contract to the Lake Erie R. R. and we had to have the instruments to play.

Q—You know Harry Anderson, the man who wrote this article?

A—Yes.

Q—You were always friends?

A—Yes, but not particular friends. Little difficulties have occurred before.

Q—He says that he met you on the street in front of the telephone office. You heard what he said?

A—I don't remember meeting Mr. Anderson in front of the telephone office.

Cross-examined by Mr. Riddell:

Q—Brackin was never a member of your band?

A—No.

Q—Was he not a member?

A—No.

Q—Did he wear bandmen's clothes and play in the band?

A—Yes, he played a cornet.

Q—What was his position in the Regiment outside of that?

A—I don't know.

Q—Why was he expelled from the Regiment, then?

Q—I don't know.

Witness stated that when he presented the demand to Colonel Rankin for his instrument he didn't wait for an answer but went right across the road to his lawyer's. He didn't think it necessary to wait to see if he was going to get his instrument.

Witness had served the demand so as to get a writ of replevin. He did not have an interview with Mr. Anderson in front of the telephone office, and both Mr. Anderson and Mr. Laurie must be mistaken about it. He had never told Col. Rankin, Major Schofield or Crown Attorney Smith that he was in a hurry. He had told Dr. Cornell.

Q—The Planet is a paper of considerable daily circulation?

A—I take it.

Q—You saw that the band trouble was creating considerable public excitement?

A—Yes.

THOMAS MAISONVILLE.

Thomas Maisonville was the next witness.

Witness began to tell what Col. Rankin had done.

The Judge—We are not trying whether Colonel Rankin is right or wrong. Only give evidence, please.

Witness said that Col. Rankin had said that they could have their instruments and he issued orders to that effect. Witness went back again on July 4th with a written demand. His version of what occurred in the Colonel's office varied from previous witness.

A. E. Jones was the next witness. He gave his version of what occurred in the office of the Colonel on July 4th.

When Mr. Riddell rose to cross-examine a short interchange occurred.

Mr. Mabey offered some suggestions.

Mr. Riddell—Don't trouble.

Mr. Mabey—I don't intend to.

Mr. Riddell—Well see that you don't.

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