

THE FACTS IN THE LIBEL SUITS

A Report of the Evidence and a Resume of the Chief Points of the Action.

Why Mr. Martin Threw Up His Brief—The Premier and President of the Council Called.

As Witnesses for the Defence, but Not Allowed to Give Evidence.

Nothing that has happened in British Columbia politics in years past has made such a sensation as the action for criminal libel instituted under section 297 of the Criminal Code by the Hon. J. H. Turner, premier of the province, and the Hon. C. E. Pooley, president of the cabinet council, against the Hon. Senator Templeman, manager of the Times, and Hewitt Bostock, M.P., Ian Coltart and W. C. Nichol, of the Province. The responsibility of Senator Templeman and the Times consisted in republishing an article from the Province of December 11th last, in which the two complaining ministers were sharply criticized for their alleged connection with English mining companies. The paragraphs in the article which it is claimed were of a libelous nature, were sworn to in the information as follows:

"There is light at last. The criticisms of the Province have proved too much for the mantle of dignified reserve which the ministerial decorum ducks and the esteemed Colonist were endeavoring to throw around themselves in connection with the mining company schemes, and at last the badger has been drawn. Dignified reserve is a handy thing to have in the family, but the Province has apparently found weakness in positions where it is not wanted. One day last week the esteemed Colonist came to the conclusion that criticism of the connection of the Hon. J. H. Turner and the equally Hon. C. E. Pooley with mining companies was an exhibition of journalistic blackguardism for any exhibition of it for any public, or useful object.

"The esteemed Colonist desires to make the public think that it is ingenuous, but it is hardly honest. Right and wrong are not merely a matter of locality. If other public men have misbehaved themselves in the manner in which the Hon. J. H. Turner and the equally Hon. C. E. Pooley are misbehaving themselves, then they should be denounced and punished for their misbehavior. It is not, however, with the public men of Great Britain or the other parts of Canada or the States that the people of British Columbia are called upon at the present time to deal. They are not on trial here, but the Hon. J. H. Turner and the equally Hon. C. E. Pooley because he practices law in the odd hours when he is not engaged in running the country. The chief point of the criticism has been that they are misbehaving themselves in their official positions for the purpose of inducing the investing public of Great Britain to buy mining stocks. Mining companies are notoriously uncertain enterprises, and it is a fact with which every one is familiar that the promoters have been bitten so often by the promoters of mining companies that they have become shy of investing, and only do so when the names of those connected with them are of such a high character as to inspire confidence. Naturally when the sale of shares is announced in a company in British Columbia having on its directors the premier of British Columbia and the president of the cabinet council of British Columbia, the fact has a tendency to make people believe that this company is not of the wild-cat order, but of such a character as to practically guarantee investors that their money will be safe. Will Mr. Turner or Mr. Pooley or the esteemed Colonist deny this statement of facts? Will they deny that the official positions of the Hon. J. H. Turner and the equally Hon. C. E. Pooley have been paraded before the people of England in circus poster type for any other purpose? Have they the effrontery to deny that they are trading on their portfolios for personal gain? Will they have the impudence to say that they are not posing as decorous ducks to bring the dollars into the gamey hands of the needy promoters hiding behind the prospects? What does this class in the Province mean? "With the opportunities which such a board of directors as that of this corporation will possess for obtaining early and reliable information as to the best sources of investment, this part of the corporation's business should, it is believed, prove a considerable source of profit." If it does not mean the Hon. J. H. Turner and the equally Hon. C. E. Pooley are prepared to put the government's money and purposes and secret information at the disposal of the company for the benefit of the shareholders? If the Hon. J. H. Turner and the equally Hon. C. E. Pooley do that they are making the government of British Columbia

subvert to their own private interests and the interests of this company. If they do not live up to that promise in the prospectus they have been a party to a transaction which many would not hesitate to characterize as obtaining money from the public under false pretences. They can accept whichever alternative they choose. Either one is sufficiently discreditable to damn them forever, and the government which they direct and control, in the eyes of honest men who are capable of seeing clearly the extraordinary position in which these two men have managed to place themselves. "The Province has no hesitation in describing the situation of affairs as absolutely unique in the history of Canada, and we may all be thankful that this is so.

"Let there be no confusion in the public mind regarding the position that these men occupy. In defying public opinion as they are doing, in scandalizing the press and the people of a large and important part of the British Empire and in taking advantage of the positions of trust and honour, to which they have been elected by the votes of the people, for the ignoble purpose of individual gain and to give a fictitious value to the stocks of mining companies, they have become mere political strumpets and are not entitled to recognition as honorable men. "The Province" makes this assertion in all seriousness and with a full sense of the gravity of the language it employs. A man who betrays a trust is entitled to respect or confidence, and the man who betrays a public trust is infinitely worse than his other wretched fellow who betrays a private one, for the one affects all the people and the good name of the country while the other concerns only the persons immediately interested. If it should be shown that a judge accepted a bribe for passing lenient sentence on a prisoner, there would be a howl from one end of the country to the other; yet what moral difference is there between a bribable Bench and a bribable Ministry? It is not pretended that the Premier and the President of the Council are lending their names and their official titles and influence and knowledge to the promotion of companies of a questionable character without receiving something in return. The consideration may be direct in the shape of stock or money or it may be indirect. Whatever it is it is obviously large enough to make it worth the while of men in high places to sell themselves. It is merely a case of bargain and sale. A great cynic once said that all men have their price, but it would be a deplorable thing if we were to accept this as true, merely because of the conduct of some of the members of the British Columbia Legislature. The optimist and no man has a right to be anything else in this world—will rather incline to the belief that these men are the exception. We are face to face with a sad crisis in British Columbia's history if they are not.

"But the whole course of the British Columbia Legislature has been of such a character as to invite suspicion and distrust. It has not been honest. We all admit that the Government of a vast and largely undeveloped country like British Columbia is a difficult matter. Every section has different needs, many of them urgent, and in clamoring for assistance. To help all, and especially to help all at once, is a manifest impossibility. The Government that set itself to work to study the conditions under which the people live here and do its best to ameliorate them would have its hands full, but it would find its reward in the grateful appreciation of the people. The Turner Government has no such feelings, it has devoted its life to giving away the public property to land sharks and charter-mongers and has ornamented Victoria with legislative buildings which are unquestionably the finest in Canada. No one pretends that these buildings were required. Their beauty we all admit, and we all know that it was advantageous to Victoria to have them erected here, but there was no necessity for them. The million dollars or so which they cost would have done the province just one million dollars more good if it had been spent in developing the country. The old buildings would have answered admirably for the next decade. Whether other influences than those which have appeared on the surface have been at work in this reckless waste of the people's land and the people's money is a problem difficult of solution; but we are all entitled to speculate on the possibilities of things. How much the Heines and Dunsmuir of the country have contributed directly to the pockets of the party in power, it would be interesting to know. Rightly or wrongly the opinion among those who are familiar with the Legislature and the legislative lobby is that the endorsement of the Government for any kind of questionable project can be purchased very much as one purchases a pound of beef-steak or a sugar-cured ham. It might not be inappropriate to supplement Mr. Dewdney's brass plate with another one bearing the legend: "Legislation for sale here to the highest bidder."

The case against Senator Templeman was heard first, when the action against Mr. Coltart was proceeded with. On Friday, January 8, Mr. Coltart was sent up for trial, and on the Saturday following Mr. W. C. Nichol, the editor of "The Province," was also committed. Mr. Bostock's case came to an end on Tuesday, January 11th, when he was also sent up. The prosecution was represented by Mr. M. Cassidy, the defendant Templeman by Mr. F. B. Gregory, and the other defendants by Mr. Archer Martin.

The issues involved in these cases are of such great political significance and possess such a keen interest for the electorate, that it has been deemed advisable to prepare an impartial report of the trial of the Nichol and Bostock cases, the evidence in the case against Mr. Nichol being reported as follows from the notes of the official stenographer:

In the police court of the city of Victoria, before Registrar Macrae, police magistrate, Victoria, B. C., January 7th, 1898, 10 a.m., Regina vs. Nichol. Mr. Cassidy appearing for the prosecution; Mr. Martin appearing for the defence. Ian Coltart, called and sworn, testified:

Q.—Your occupation, Mr. Coltart? A.—Accountant.

Q.—And you live on Craigflower road? A.—Yes.

Mr. Martin stated that if Mr. Cassidy wished to prove the editorship, he admitted it.

their office here, in which the paper is published, for a considerable period? A.—Yes.

Q.—Do you know who the editor of that paper is? Mr. Martin objected that the question was unnecessary in view of his admission.

Mr. Cassidy contended that the admission could not be taken in a criminal proceeding.

The court directed the evidence to proceed, and a note made on the margin of the deposition of the defendant.

Q.—Well, who is the editor of that paper? A.—Mr. Nichol.

Q.—The defendant here? A.—The defendant.

Q.—And he has been for how long? A.—About three months.

Q.—And has been for three months past? A.—About three months; yes.

Q.—Now, his duties as such editor are what? We are talking about the usual duties of an editor, are we not? A.—The duties of an editor, I take it, are practically that he manages the paper—the matter of printing, the reading matter, to see that it is in proper form, and so on.

Q.—You say he is responsible for the editorial matter? A.—Oh, he is responsible for everything, I take it.

Q.—He is responsible for everything that appears in the paper? A.—I believe so.

Q.—Now, with regard to the reading matter, am I correct in saying that he either writes it himself or revises it? With regard to the reading matter, he either writes it or revises it; looks it over, before it goes to press? A.—Oh, yes.

Q.—Now, during the period to which you have referred, was there any other regular editorial writer on the staff of the paper than the defendant? A.—I don't know.

Q.—What? A.—I don't know. On the other hand, I don't know.

Q.—There was none other occupying a room in the building? A.—Well, I—

Q.—There is what is called an editor's room? A.—Oh, yes.

Q.—And that was occupied by Mr. Nichol during that period? A.—Yes.

Q.—There is only one editorial room there? A.—No.

Q.—There is a room with the word "Editor" on the door? A.—Yes.

Q.—Mr. Nichol occupied that room during that period? A.—Yes.

Q.—You were referred to by Mr. Templeman's case? A.—I was not, no. In Mr. Coltart's case.

Q.—In Mr. Coltart's case, you told me you sold this to my clerk, Mr. Davey? A.—No, I did not.

Q.—Well, I ask you now, Mr. Wheeler, do you remember selling this copy of the paper to Mr. Davey? A.—I don't remember selling that copy; I sold some copy.

Q.—You sold a copy of the paper to him on the 13th? A.—I don't remember what date. I remember selling it that week.

Q.—You remember selling it that week, the week in which December 13th was, and immediately after this issue? A.—Yes.

Arthur Davey, called and sworn, testified:

Q.—Your full name? A.—Arthur Davey.

Q.—A student at law? A.—Yes.

Q.—And you live where? A.—Burnside road.

Q.—I produce to you a copy of the issue of the Province newspaper of December 11th last, and ask you if you recognize it (handed to witness)? A.—Yes; I purchased this copy of the Province from Mr. Arthur Wheeler, the last witness.

Q.—You were referred to in the document referred to, marked exhibit A.

The Witness—Exhibit A in the Coltart case (the document referred to) I purchased from Mr. Arthur Wheeler, the room there in the Province building on December 10th.

Q.—At the place referred to in the evidence? A.—Yes, in the Province building.

Q.—Business excused; without cross-examination.

Mr. Ditchburn, resumed:

Q.—I produce to you a copy of the Province of Saturday, December 11th, and show you an article beginning "There is light at last," on page 908. Did you see that up? (Document handed to witness.) A.—I would not swear that I did. I suppose I must have; I am the only one that runs the machine there. I don't know whether I see it or not. I would not swear that I did.

Q.—You would not swear that you set it up, but you said you must have done it? A.—I suppose so, because I was the only operator in the office that was generally known to the public. I have another operator, but he very rarely works on the machine.

Q.—Yes, you are the only operator generally employed on the machine. Is that correct? A.—His name is Shad.

Q.—Give me his first name? A.—John A. I believe.

Q.—Is he employed there now? A.—Yes.

Q.—What do you say with regard to the machine? A.—He very rarely works on the machine.

Q.—Is he a competent operator on the machine—Mr. Shad? A.—I am not in a position to judge; the foreman is the best judge of that.

Mr. Martin objected that the inquiry was partaking more of the nature of a preliminary hearing before a magistrate.

Q.—Do you remember working for that issue? A.—No, I cannot say that I do. I cannot remember any particular dates. I do not set the head lines.

Q.—Well, you set up the whole of these articles; that is to say you set the whole article, not merely pieces of it? When they set an article by type-setters it is cut up in pieces? A.—Generally, yes.

Q.—It is with you, you get the whole article? A.—Yes.

Q.—And when set by type-setters it is cut up in pieces? A.—I don't say that rule applies to the Province office. It is generally the printing office, I don't know that it is the practice in the Province office.

Q.—So that when you set up an article you get the whole sense of the article? A.—Yes.

Q.—You have an opportunity then of observing the sense of what you are setting up? A.—No, not always.

Q.—Do you mean when you get the whole article? A.—I do.

Q.—For what reason? A.—Because the running of the machine is so complicated that very often you have to get up from your keyboard and work around the machine some, and then you go back and operate again.

Q.—Do you know who wrote the copy for that article? A.—I do not.

Q.—Do you know Mr. Nichol's handwriting? A.—No, sir, I have never seen his handwriting.

Q.—Do you know who was ostensibly the editor of the Province at that time? A.—I do not.

Q.—Did you know whether there was an editor of the Province at that time? A.—I did not.

Q.—Did you ever see — Mr. Martin objected that the witness was being cross-examined on every question.

Mr. Cassidy contended that the witness had shown himself adverse, and that he (Mr. Cassidy) should be allowed the right of cross-examination to which Mr. Martin objected.

Mr. Cassidy—I asked him if he ever saw Mr. Nichol about the office there where he works.

Q.—Now, trying your mind back, and having that handwriting of that Christmas story in view, when did that sort of handwriting first begin to come under your notice? A.—I could not say. Q.—A month? Would it be too much

to say two months before? A.—I would not swear how long it was.

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