Found Guilty on Four Counts

MacDougall Liable to a Term of Five Years—Not Guilty on Charge of Knowingly Publishing.

The Macdougall case was resumed in the Circuit Court this morning.

Mr. Ritchie said: Before my learned friend resumes his address, I desire to take an objection to the obscenity count in the indictment I submit that no crime has been committed, even assuming these paragraphs are obscene, as there is no evidence of knowledge. I, therefore, ask that these counts be withdrawn

His Honor—Not at present. I will leave that for the jury.

The Attorney General then resumed his address to the jury. He accused Mr. Ritchie of attempting to introduce politics into the case. He reiterated his statements that such attempt was base. "I do not think that the liberals of this city will thank Mr. Ritchie for associating Free Speech and the name of C. B. Macdougall with them," Mr. Hazen said. Mayor Bullock, Ald. Frink and Magistrate Kay are prominent liberals; Mr. Mullin and Dr. MacRae are conservatives. He asked what would be the effect of libel against Dr. MacRae if it had been true? He would have been charged with the commission of a crime.

Mr. Mellish—The learned Attorney General has stated we could have pleaded justification. I submit that he has no right whatever to refer to the fact that we didnot put in such a plea.

Mr. Hazen—I submit I have the right to comment on their failure to plead justification. That course was open to them but they did not seem fit to take it:

Continuing, the Attorney General said that not only are Mayor Bullock, Dr. MacRae, Ald. Frink and Magistrate Kay affected by these libels, but society at large is affected. It is against public policy to allow a crime to go unprosecuted and for that reason, whether the gentlemen libelled cared or not, the crown did their duty when they instigated criminal action against MacDougall. Every man and woman who respects decency are interested in the outcome of this case. A paper of this sort, which rakes up all the dirt and slime it can, lowers the whole mortal tone of the community. For that reason the crown took a hand in the matter. The worst things this paper has published are not contained on the indictment. There are base scandals published in this vile rag against young women who are earning honest livings in the business houses of our city. There are vile insinuation hurled against women prominent in society circles against whom nothing but good can be said, Then this vile rag goes into the schools and tends to corrupt the young minds of our city.

The Attorney General then took up the obscene counts. He claimed that under the authority of Regina 28, Beaver, on Ontario case, that these paragraphs came within the definition of obscenity. He briefly reviewed the facts of the Ontario case and compared it with the present. He claimed that the present case was much stronger.

"Something offensive to modesty or decency, impure, indecent and lewd,"

Taking up the question whether it is "knowingly obscene," the Attorney General said that the fact that MacDougall can read and write is evidence of knowledge.

"My learned friend has referred to these libels as indiscretions on the part of the publisher of the paper." A nice indiscretion, gentlemen, to charge a man with a commission of crime. Mr. Hazen referred to the fact that the defence do not dispute the claim that Macdougall was publisher of the paper. His Honor then took up the Kay cartoon libel. He traced the cartoon from Wesley's engraving house to Moncton and thence to Newcastle. He claimed that this cartoon was not only libellous but a gross insult to the judiciary of this province. The paragraph accompanying the libel was written in Macdougall's hand-writing. The crown had proven that the prisoner knew that the cartoon was false.

Mr. Hazen read the Free Speech letter-head on which appeared the name of the prisoner as editor. He claimed that Macdougall held himself out to the world as editor of Free Speech. The Attorney General reviewed the business relations of the prisoner with Mirisses. The demand for Free Speech was increased according to letters from Mirissis. Macdougall at the same time satisfied the morbid curiosity of a large number of people while he was satisfying his pocket.

Referring to the "mythical W. C. Loggie," the Attorney General said that this idea of Loggie was only a blind.

The Attorney General said he would answer his learned friends when he asked why a civil action was not instituted. MacDougall had no property, and a civil action would be a good advertisement for him and his vile rag. "My learned friend said that the accused ha been punished enough. I ask you if Macdougall's punishment can be compared to the punishment inflected on Dr. A. W. MacRae's family. My learned friend asked for the benefit of the doubt. No sympathy should be extended in a case of this nature. We may have sympathy for the man who, in a heat of passion, commits homicide, or a man who is starving who steals a loaf of bread, or even the business man who, worried with business cares, commits forgery; but can there be a possible grain of sympathy for the man, physically and morally degenerate, who sets in motion this vile rag, Free Speech, which has attacked the basis of man's happiness his home and which has done irretrievable damage? The crown has proven that these articles are libellous, we have proven publication, and we have proved that the prisoner is the editor of this publication."

In conclusion, the Attorney General asked for a conviction, as the evidence supported such a finding.

His Honor Justice White began his address to the jury at eleven o'clock. He warned them against finding a verdict influenced by any feeling they had against the prisoner and advised them to exercise a special care in this regard. The Attorney General had referred to the fact that Free Speech had been in the habit of publishing slanders and libels against dress-makers and others. There was no evidence of that, and it should not be considered. The prisoner was on trial only for what was directly charged against him. The Attorney General had made some reference to matters of a political nature, but such questions should not be considered. He would warn them against any political considerations whatever.

There were in the indictments eleven counts. The first ten of these counts included five for defamatory libel. These five libels it was charged were published by the prisoner, he knowing them to be false. The penalty for a false defamatory libel was more severe than for one which the publisher did not know was false. The first, third, fifth and seventh counts had failed to be established by the evidence, as there was no proof that the prisoner had "knowingly published" these libels. He instructed them that they should find the defendant not guilty on those counts. On the ninth count he would instruct them later. They had then the second, fourth, eighth and tenth counts upon which to find a verdict. In cases of libel the law is different from that which generally prevails in that which deals with written documents. It was usual for the Judge to determine what a document meant and of its importance and so it was in cases of defamatory libel. That law has been changed, he thought wisely, and it is now left to the jury to say what consttitutes defamatory libel. As was stated by the counsel for the defense, it is a common thing for political cartoons to be published in the press. They were meant to ridicule political parties. One would not usually call these defamatory libels. But they must consider the spirit of the law as well as the wording.

The Judge then read from the statute a definition of defamatory libel. He would take up the libel charged in the second count. This was the paragraph in regard to Mr. A. W. MacRae. His Honor explained that the paragraph was an inuendo and meant to convey a meaning under the surface. There was nothing to show in the paragraph that there was anything wrong about the Sydney House or about Gertie McKeown, but to the crown alleged these words when construed are defamatory. It is necessary when an inuendo is requisite to bring out the libel, that the inuendo must be fully proven. If the jury is convinced that the inuendo does not mean what is charged in the indictment they cannot find the defendant guilty. The evidence showed that the Sydney House had the reputation of being a house of ill-fame and that Gertie McKeown had the reputation of being a woman of ill-fame. If the prisoner published the libel it was for the jury to say whether or not it was intended to mean that Mr. A. W. MacRae had been in the habit of frequenting a house of ill-fame. What else can it mean? Has anything else been suggested? The prisoner has been ably defended. He has had the advantage of able counsel and yet they have offered no suggestion as to what these words could mean other than what is charged in the indictment. We must judge a man from his intentions. You must be satisfied that the prisoner intended to convey a charge against Mr. McRae that he was a frequenter of a house of ill-fame.

Judge White then took up the fourth count. This charged that on the 10th day of July the prisoner published a paragraph in regard to Mayor Bullock which charged bribery with money and with whiskey. The inuendo laid to that was that the Mayor was a giver of bribes and a hypocrite. His Honor was not so sure that these should be called an inuendo, as the paragraph was quite plain.

It was for the jury to say whether the matter was defamatory. Public men were daily charged with all kinds of misconduct in the press. This charge was to be taken in that class they were therefore not to consider it a defamatory libel. Many men of high character abstain from entering public life because of the abuse hurled at them." But if you think this charge constitutes a defamatory libel," said His Honor, "it is not right to excuse it by saying that other men are abused in a similar way unless you consider that no one takes seriously the words that are used. If it has come to pass that charges of graft and similar ones are usual and do not constitute a libel, while it is a most deplorable condition, yet the prisoner must be given the benefit of the custom and usage. Such terms as "Turn the rascals out" were very often used and seldom resented. If they considered that this sort of language is so common and quite in the usual run, His Honor thought they should find defendant not guilty on this count. It is for you to say whether this does not go beyond the usual license of the press. These remarks would also apply to the count referring to the paragraph in which Dr. Frink was mentioned or meant. His Honor referred to the high character of all the men mentioned in the paragraphs of these three counts. The jury might find that these paragraphs did not contain libels but they would easily find that they did convey a libel.

He then took up the alleged libel against Mr. Daniel Mullin, K. C., which charged that Mr. Mullin fleeced his clients. They had heard what had been said by the counsel for the defence and by the Attorney General and he would leave it to them to say whether these words constituted a libel. He referred to the statement of the Attorney General that no attempt had been made to show that the statements were true. The fact that such a statement is true constitutes no defence. There was no evidence to show that the charge against Mr. Mullin is true.

If it were proven that matter of this nature were published as a mater of public good, such proof might be a defence, but no such proof had been forth-coming. In the ninth count it is charged that there is a libel against Magistrate Kay of Moncton. His Honor referred particularly to the statement that there was a misplaced bowel in Magistrate Kay's head. His Honor said that when you called a man a putty head you really did not mean that his head was made of putty. "Are not the words of the paragraph figurative?" asked His Honor. "Every man who read it must have known that it was not true." He believed that the words were intended to convey that Magistrate Kay was a man of inferior intellect. Counsel for the defence had said that a certain portion of the public were seeking to have Magistrate Kay removed and that the paragraph was only a fair comment on public question. It was for them to determine whether it went beyond the limits of fair comment. They should take into consideration the fact that cartoons were continually being published for the purpose of exciting ridicule.

In regard to the question of publication he would say that they would have to decide whether or not the matters were defamatory libel and whether published in St. John and by the prisoner. If you believe that or at his instigation Mirissis sold a single copy of the paper containing the defamatory libels with the aid or approval or as the agent of the prisoner that would constitute a publication by the prisoner. It is not necessary to publish broadcast the issue of one paper is a publication. There can be no doubt as to the publication of the issue of July 31st, according to the evidence of Kenneth MacRae and Policeman Lucas. It had been proven that papers had been sold from every issue received by Mirissis. Mirisses had made remittances to the defendant from time to time. It has also been shown that the prisoner had arranged with an engraver to make the cut for the cartoon. He did not think that they would have much difficulty in deciding that the paper had been forwarded to Mirissis by the prisoner. He believed that there was ample evidence that they could find that the prisoner was the publisher of the paper or was responsible for the matter which appeared in the paper. He warned them that if the proof on this point fell short then they would not find the prisoner guilty.

His Honor then took up the eleventh count which covers the publication of immoral or obscene matter and which is punishable by two years imprisonment. They would determine whether or not the prisoner knew of the publication of the paragraphs quoted in the counts as obscene matter. His Honor said the important part of this count was as to whether the matter referred to was really obscene. His Honor quoted a similar case, the description of an elopement of a married woman which would infer adultery. If they called such a story obscene they would be carrying the law to a pitch which he believed no jury would sustain. It might be that the paper was intended to prevent people from committing evil deeds or it might have been intended to pander to the tastes of the evil-minded. Before they could find him guilty they must gravely consider the matter and if there is any doubt he is entitled to the benefit of that doubt.

The court adjourned at 12.40 o'clock until 2 o'clock.

Concluding his address His Honor instructed the jury how to render a verdict upon each count. He told the jury that he was to deliver a sentence if they convicted the prisoner. He warned them not to be influenced by personal feeling or political consideration.

Mr. Ritchie asked His Honor to refer to the evidence of Mr. K. J. MacRae about the reputation of the Sydney House. His Honor briefly reviewed the evidence.

Attorney General Hazen asked His Honor to advise the jury upon the reason why Dr. McRae and the other gentlemen libelled did not take the stand.

His Honor (to the jury)—"You will pay no attention to the non-appearance of these gentlemen in this case as they do not have to give evidence as a plea of justification was not furnished by the defence."

At 2.40 o'clock the jury retired.

At ten minutes to five after being out two hours, the jury filed into their places and through their foreman, Timothy T. Lantalum, reported that they had arrived at a verdict on all the counts but two.

"We find the prisoner not guilty on the first, third, fifth, seventh and ninth counts; on the second, fourth, tenth and eleventh we find him guiity; on the sixth and eighth we cannot agree."

It will be remembered that the indictment set out five alleged libels and a count for distributing obscene literature. The alleged libels were against Dr. MacRae, Daniel Mullin, K. C., Mayor Bullock, Dr. Frink and Police Magistrate Kay of Moncton.

Each one of these libels was divided into two counts, one setting out that the defendent published the alleged libel knowing at the time to be false. and other merely that he published the libel with the "knowingly" omitted.

On the first style of count the prisoner was liable to two years imprisonment or a fine or the imprisonment and a fine included, while on the second count the imprisonment is only one year.

On the count for distributing obscene literature he is liable to two years. These counts with the obscenity one made in all eleven counts.

On the conclusion of the case for the crown Mr. Ritchie had moved to have the counts in the libels alleging that the prisoner published them knowingly witheld from the jury as the crown had not proven their case in this regard.

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