

NOT YET CONCLUDED

Case Against Mr. Coltart, of the Province, Stands Over for a Week.

Captain Wolley's Regard for Newspaper Etiquette—Defendant's Evidence.

From Friday's Daily.

When the case of alleged libel against Mr. Ian Coltart, of the Province newspaper, was resumed yesterday morning the defendant went into the box and Mr. Cassidy again appearing for the prosecution.

Following is a detailed report of the proceedings:

Witness was asked what was his connection with the Province, Limited Liability, A—I am secretary of the company.

Q—Any other position? A—I am a director.

Q—When were you appointed secretary? A—Since February 22nd, 1895.

Q—And you have been a director since when? A—Since 6th December, 1895.

Q—Who are the other directors? A—George Bostock and A. H. Scife.

Q—Who is the manager? A—A. H. Scife.

To the Court—By manager I mean managing director.

Q—Who is the editor? A—W. C. Nichol.

Q—And has been since when? A—4th of October, 1897.

Q—A—regards this company, what duties do you assume? A—Purely secretarial duties.

Q—And you receive what? A—A salary of \$30 per month.

Q—You are charged with having published a certain libel on December 11th. What do you say to it? A—I say the charge is false.

Q—I will ask you, did you know anything of this alleged libel before it was published? A—Certainly not.

Q—Did you see this article before it was published? A—Certainly not.

Q—Did you give any instructions for its publication? A—Certainly not.

Q—Had you any reason to suppose it would appear? A—Nothing whatever.

Q—Tell us what you have to do with the publication of the paper or its editorial work? A—I have nothing whatever; my duties, as I have said, are purely secretarial.

Q—You have nothing to do with the editorial work? A—Nothing whatever.

Q—Or any control over it? A—No; no control of any kind.

Q—You say Mr. Nichol was appointed editor. How was this selection made? A—By the board, after the most careful consideration of the applicants.

Q—What were his qualifications or recommendations for being suitable? A—He was most unanimously recommended as being one of the brightest journalists in Vancouver.

Q—Have his conduct and writings for the paper been watched by the board, of your own knowledge? A—They have.

Q—Has anything occurred to make you think the paper was being improperly or libellously conducted? A—Oh, no.

Q—When complaint was made to you as to this alleged libel, what course was adopted? A—The only course was to refer the matter to the solicitors, with the result that the sale of the paper was promptly stopped.

Q—You heard Mr. Wolley's evidence yesterday? A—Yes.

Q—Mr. Wolley acted as editor for some weeks. When was the last date? A—19th June.

Q—That was the last time? A—Yes, and he did not do all the work on that paper.

Q—Mr. Wolley in his evidence said that you acted as manager for both companies and ran them as one concern. I ask you, what did you do outside your own duties? A—Yes, Mr. Scife's absence? A—I had more to do than my own duties during that time, and I tried to "show him the ropes" as much as possible, at Mr. Scife's request.

Q—Was this included in your proper duties? A—No, not at all.

Q—What ground had Mr. Wolley for saying you practically managed both companies and they were run as one concern? A—I cannot imagine his reason for making such a false statement, for that is what it is, unless it was malicious.

The Court—That is what we call "cassidism."

Q—Why for maliciousness? A—I don't think Mr. Wolley bears me any love. We had a row.

Q—Are you on speaking terms? A—No.

The court asked the witness whether he had Mr. Wolley had a fight with the witness replied no, and his honor said he was interested about that, as it would indeed have been a war of giants had they done so.

Q—The row was about the paper, was it not? A—Yes.

Q—Are separate books kept for these two companies? A—Yes.

Q—And separate banking accounts? A—Yes.

Q—In the same bank? A—Yes; the Province Publishing Company bank at the Bank of Montreal and the Bank of British Columbia; the Province, Limited Liability, at the Bank of Montreal.

Q—Have the Province, Limited Liability, a clerk in the office who sells the paper? A—Yes.

Q—Have you ever seen Mr. Wheeler selling copies of the paper? A—No.

Q—When Mr. Scife returned and resumed the editorship did you return to your own duties? A—Yes.

Q—Cross-examined by Mr. Cassidy.

Q—When did you become managing director of the publishing company? A—On the formation of the company, as far as I can remember.

Q—By this "board" you speak of, you mean the board of directors? A—Yes.

Q—There is no doubt from what you have said, and I don't suppose you wish to deny, that the newspaper is carried on under the direction of the board? A—Exactly.

Q—And the editor in his writings is subject to the control of the board? A—Well, he is in a way very much as a clock is subject to the person who winds it up.

Q—Well, suppose the clock did not according to the board keep the time of day, would they have the right to set it properly? A—At their regular meeting they might pass a resolution, but unless the clock went seriously wrong they would not interfere.

Q—Now, the attacks on Messrs. Turner and Pooley for their connection with companies had been going on in the Province for some time? A—I really cannot say.

Q—You read the Province? A—Oh! yes.

Q—And you don't know that these attacks had been going on? A—You use the word "attack."

Q—Well, I will withdraw the word "attack," and will say the line of observations which culminated in this article had been going on? A—I suppose any newspaper would take such a matter up.

Mr. Martin here objected to Mr. Cassidy asking witness a question and then trying to get the answer put down in a different shape on the depositions. It is said Mr. Martin, "impossible to know whether he is asking a question or giving evidence himself."

Mr. Cassidy then asked the witness whether the line of observation which culminated in the article of December 11th had not been going on for some stand the expression "line of observation."

I—I mean blaming these gentlemen along the same lines as this article? A—I don't think "blame" is the proper word.

Q—Well, suggest a word. A—I should say criticism.

Q—Well, all right, criticism? A—I don't know that there was any criticism of Messrs. Turner and Pooley before.

Q—The truth of the matter is, A—You don't want to give me an answer? A—You—

Q—Well, will you put it this way: was the editor authorized by the board to criticize Messrs. Turner and Pooley? A—The board never expressed any opinion about Messrs. Turner and Pooley that I ever heard.

Q—Had Mr. Scife anything to do with the management of the publishing company? A—Oh, dear, no.

Witness here objected to the use by counsel of the name "publishing company," claiming that mistakes were liable to be made unless the two companies were referred to by their full titles, but the court pointed out that by consent it had been arranged to refer to the Province, Limited Liability as the "newspaper company" and the Province Publishing & Publishing Company as the "publishing company."

Q—Who managed the newspaper company? A—Mr. Scife.

Q—Besides editing the paper? A—Yes.

Q—Did anyone else manage it? A—No, not that I know of.

Q—Had anyone else anything to do with the management of it? A—No.

Q—Was anybody appointed manager of it when Mr. Scife went away? A—No.

Q—At any time? A—No, not at any time.

His honor here commenced to make a suggestion to Mr. Cassidy as to some point sought to be obtained in cross-examination, and Mr. Cassidy said: "Your honor, I don't want to suggest anything to me about cross-examination."

His Honor—Thank you.

Q—Mr. Scife was away at the time this article was published? A—Yes.

Q—Was he the only director of either company on the spot? Witness answered in the affirmative, but on Mr. Martin calling attention to the fact of "either company" having been mentioned, Mr. Scife was amended and witness said: "Oh, no."

Q—You were the only one of the directors of the newspaper company on the spot at the time of the publication of the article that was published? A—Yes.

Q—Well, were there any of the directors of the publishing company in Victoria? A—No.

Mr. Martin said he thought it was about time to object. It appeared that Mr. Cassidy was endeavoring to prove that there was a desire on the part of the defence to take shelter under something, although nothing fairer or more straightforward than the statement given by Mr. Coltart could be imagined, and Mr. Cassidy had no right to use a legal expression, to "go fishing." When he put in the articles of incorporation and examined his own witness, Mr. Woolton, he then proved that the two companies were two distinct legal entities, and this article was published by the Province, Limited Liability. Why, then, is he allowed to go fishing into the affairs of another company? There would be no limit to his line of inquiry if this was allowed, and if the court is satisfied that there is any separate legal entity, then the line of demarcation must surely have been reached. Quoting from 12 Times Law Report, at page 521, Mr. Martin emphasized his objection, but the court said Mr. Cassidy had not gone beyond the right lines and the examination was continued.

Q—Was there any other director of the publishing company in Victoria at the time? A—Yes; Mr. Willis.

Q—Was Mr. Willis taking any share in the management of the Province Publishing Company at that time? A—No.

Q—And separate banking accounts? A—Yes.

Q—In the same bank? A—Yes; the Province Publishing Company bank at the Bank of Montreal and the Bank of British Columbia; the Province, Limited Liability, at the Bank of Montreal.

Q—Have the Province, Limited Liability, a clerk in the office who sells the paper? A—Yes.

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Q—There is no doubt from what you have said, and I don't suppose you wish to deny, that the newspaper is carried on under the direction of the board? A—Exactly.

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certain individuals. You would deny that? A—Certainly I deny that.

Q—I produce to you a copy of the Province of November 27th, 1897. You have seen that before? A—Yes; I presume so.

Q—And you have read it? A—I presume so.

Mr. Martin here interrupted, saying that unless it was proved that they had been previous libels the publication of the previous issues of the paper was irrelevant.

Mr. Cassidy—I am trying to do the best I can to conduct this inquiry in a courteous manner, and I think my friend should do the same.

Mr. Martin replied that if his friend was doing the best he could, he would not succeed very well, and his honor added: "Yes, I will say, Mr. Cassidy, you have not succeeded very well."

Mr. Cassidy asked if the court referred to his (Mr. Cassidy's) remark to the effect that the matter referred to in cross-examination, but his honor said he was not alluding to that, although he would have mentioned that matter privately to Mr. Cassidy, as he thought it would have been inadvertently, although not perhaps intentionally, discourteous.

Mr. Cassidy said a good deal of "bickering" had been done which was unnecessary. Witness said: "I don't think the advice to speak for himself."

Mr. Cassidy then explained to the court that he was trying to prove that articles criticizing Messrs. Turner and Pooley were published in the Province for some time and that the course which had been pursued by the editor had been the endorsement of the board.

Mr. Martin, relying upon 297, s. 2, of the code, pointing out that it was necessary for the prosecution to prove that the article was published in the Province, and to ask the court to pass upon that point was to decide the whole case. His honor thought, however, that Mr. Cassidy's line of argument was admissible, and the witness was produced and shown to the witness.

Witness looked at the paper and was proceeding to examine it, when Mr. Cassidy said: "You don't think we have done this specially to show you, do you?" Witness said: "I don't think so," and said he thought he had read the article on page 833 shown him, before.

Mr. Cassidy proceeded to read the article to the court, and Mr. Martin objected, and another long argument took place on section 279 of the code. Some heat was displayed by counsel, owing to Mr. Cassidy's attempting to "railroad" the witness, and the court intervened to put in, and on a suggestion from the court, it being now one o'clock, an adjournment was taken until 4 p.m.

Q—I don't care what you call it. A—The quarrel was occasioned by the appearance or non-appearance of certain articles in the Province.

Q—Was that while his connection with the paper still continued? A—No, it was not.

Q—Do you say this Dewdney matter was not one of them? A—I don't say so.

Q—Was there any time between Mr. Wolley's leaving and Mr. Scife's return? A—No, there was not. If you mean between Mr. Wolley's leaving and Mr. Scife's actual appearance in the office, there may have been a day or two.

Q—Was there not a period after Mr. Wolley left before Mr. Scife resumed his duties? A—Yes.

Q—Between the time that Mr. Wolley left and Mr. Scife's return did you assist in the editorial work? A—No more than I have said. No more than the files. He was acting as manager of the Province, Limited Liability since Mr. Scife left. A—No one.

Q—Has the editor an absolutely free hand? A—With a limitation, I believe. Mr. Nichol's reputation and recommendations were so very high that the directors often seeing his work expressed satisfaction with his mode of conducting the paper.

Q—As he was a fact had a free hand? A—I don't think that he has ever been called in question, but "giving a man a free hand" is rather too broad.

Q—With a limitation, I believe, he had a free hand? A—I think he has.

Q—Has he? As a matter of fact? A—I am under oath, your honor, but so far as I know—

Q—Have you, either as a member of the board or as a private director, any private director in the management? A—No, I haven't, your honor.

Re-examined by Mr. Martin.

Q—As a director of the newspaper company, as a director of the publishing company, or as a private director, had you any knowledge of the alleged libel? A—Certainly not.

Q—What is the contract between the newspaper company and the publishing company? A—Cassidy—we have had all this before.

Mr. Martin—Now wait a moment. Having shown that the publishing company print the newspaper for the newspaper company, what else do they do? A—They contract to print and supply the whole issue, and that is what they do.

Q—Does the publishing company sell any of the copies itself? A—No.

Q—Or distribute it? A—No.

Q—And now let me ask you, is, if anything, that occurred in relation to that matter of English and British? A—The whole thing was this: Mr. Scife had his attention called by a correspondent to the use of the words English and British, and following the example of The Bits, an English paper of very large circulation, he had agreed not to allow the obnoxious words to appear and had given general instructions that if they appeared in copy they should be deleted.

By the Court—Did you know that any of the clerks of the Province, Ltd. Ltd., sold the paper? A—No, your honor.

Q—You didn't know, for instance, that Wheeler sold it? A—I suppose that one clerk may have had to go away and ask a printer to fill his place for a time, much the same as in a bank; a teller may ask another clerk to look after his box.

The Court—But you are arguing now Mr. Coltart, you are not answering. Did you ask that one or more of the employees present at Dr. Chase's? A—No, I did not.

The Court—Did you see any of the employees present at Dr. Chase's? A—No, I did not.

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