

Jury Gives One Dollar Damages

In \$5000 Suit Against Journal

And Plaintiff Will Be Given Only One Dollar Costs in the Case

Complete Victory for the Newspaper's Right to Publish Fair Reports From Court Pleadings

The Jury in the Case.

W. H. DARBY, SALEM.
J. A. MELSON, SALEM.
W. A. JONES, BROOKS.
W. J. HADLEY, MARION.
S. S. MARTIN, SALEM.
J. F. ZEIGLER, GERVAIS.

EUGENE MANNING, GERVAIS.
BEN ROBERTSON, TURNER.
MATT SMALL, SO. SILVERTON.
J. R. LINN, SALEM.
GEO. EMERT, BROOKS.
CHRIS KREIGER, AURORA.

After being out but a short time the jury in the libel suit brought by L. H. McMahan for \$5000 damages against Hofer Bros., publishers of The Journal, on behalf of his client in a divorce suit brought in a verdict of only \$1 damages, and hence only \$1 of costs, for plaintiff.

A report of the testimony for the defense and the arguments of the counsel are given below. The verdict is a victory for The Journal, and for the right of all newspapers to print fair news reports based on the pleadings in public courts.

Defendant's Testimony.

E. Hofer testified that the first time he had seen the matter complained of was when he was served with the papers in this suit. He was at Newport at the time the article appeared. Asked if he had any malice against Mrs. Gibson, McMahan objected. Sustained.

J. W. Cochran, city reporter, who wrote the court reports complained of was called. He told how he performed his duties by calling at the court house and gathering the news. E. Hofer was absent from the city and A. F. Hofer never saw the article complained of.

Cross-examined he said he had no definite instructions to not publish news. His instructions were to get the news.

A. F. Hofer was asked if he knew Mrs. Gibson. He did not know article was published until the suit was begun.

McMahan's Argument.

In opening the case to the jury he said that he did not pretend that Hofer Bros. had intended to injure Mrs. Gibson or that they had intentionally done her any injury. It was what they did, not what they had intended to do.

He read the article from the Journal and commented on it to the jury. He read from the report the charges of Mrs. Gibson against Mr. Gibson, showing that the paper printed both sides.

He claimed that the pleadings in courts were privileged and newspapers had no right to print reports of suits until they were fully before the court for trial. He read from Hume vs. Upton, Ore. 24.

Whatever the reporter of a newspaper had done, the publisher was liable for damages. The suit was to recover damages done the woman and not to determine whether they had acted with bad intent.

J. A. Jeffrey's Argument.

Counsel for defendant showed that the matter complained of did not show that a woman was referred to. The plaintiff was a woman but she had not thought enough of the case to appear as a witness and claim that her character was injured one cent by this publication. Not a witness had been called to prove damages. It had been proved that the Hofers knew nothing of this publication when it was made. Cochran acted without their knowledge.

The most that could be claimed in this case was that inadvertently an injury had been done the plaintiff. McMahan admitted all absence of malice or wrongful intent. Plaintiff had not connected defendants with this suit.

These parties had both had their

sides of the case shown up in The Journal and other newspapers. One had got the worst of it and as they could not sue each other they had to sue the newspaper. It was a case of getting revenge against the Hofers.

Mr. Holmes Speaks.

Senior Counsel for defense argued that if Mrs. Gibson was injured it was done by her husband filing his answer in court. The charges against Mrs. Gibson were not published as the truth. They were not even alleged to be the truth about Mrs. Gibson. It was not claimed that Mrs. Gibson was damaged, even in her feelings, as she was not even known to have seen the article. One man often repeated something said about another, but that was not a libel.

The animus of McClellan and McMahan was commented upon. Neither McClellan nor Craig testified that Mrs. Gibson had been injured one dollar or lost a moment of sleep on account of this publication. The Hofers were not traducees of women and if their attention had been called to this they would have made any suitable correction asked of them. But they had no notice whatever until jumped into court.

Holmes commented on McClellan as a swift witness and willing partner of McMahan, who objected.

"The remarks are legitimate," remarked the court.

Holmes proceeded to dissect the unusual activity of the two Mc's.

McMahan Closes.

Plaintiff's counsel commented on the testimony that Hofers gave no instructions to Cochran as to what was proper news and what was not. They had allowed him to use his discretion.

As to proof of damages against Mrs. Gibson, it was not necessary. Both she and her children would be injured for all time to come. The damages must be measured by its effect, and a careless reporter should not excuse these defendants as publishers. It was their duty to protect their wives, children and mothers by giving the plaintiff substantial damages. He pleaded for the protection of the reputation of a defenseless woman in trouble. It had been his privilege to stand in the amphitheatre of Rome, and on the battlefield of Waterloo, but it was the greatest event of his life, when abroad on his foreign travels, when he stood on sacred ground at Runnymede, where the Magna Charta was written by King John from the Barons of England, etc. He pleaded for the jewel of life, a woman's reputation and honor. These men had accused this woman of all crimes. They had claimed that she was unclean and a gharah. He cited Moses and Jesus Christ and the Scarlet Letter, and other grand appeals to the sympathy of the jury.

On the whole trial the fact never was permitted to come out that both sides of the case were published as a fair news report and that the plaintiff Mrs. Gibson was not prejudiced in her suit. Defendants had either intentionally or unintentionally blasted the

reputation and ruined the character of this woman forever.

Instructions of the Court.

Judge Burnett gave the jury the following instructions:
Extracts from Judge Burnett's instructions.

"The principal allegation in the complaint, and which is denied by the defendants, is 'that on the 30th day of August, 1902, defendants maliciously published in said newspaper of and concerning plaintiff, a certain article containing false and defamatory matter, following, to-wit,' and then sets out a local which plaintiff alleges was published in the paper."

"It is said that this act was done maliciously. So far as that is concerned the law presumes that every person intends the natural and probable consequences of his own act, and, therefore, that the natural and probable consequences of defamatory matter published by a party, were to injure and defame the persons against whom it was published, and the law will infer that a defendant or defendants, if they cause or negligently permitted the publication of false and defamatory matter, it will be injurious in consequences, although the defendants may not have entertained any special ill-will toward the person injured. It is not necessary to render an act malicious that a party be actuated by a feeling of ill-will toward the individual, or that he entertain or pursue any bad purpose. On the contrary the defendants may be actuated by a good purpose, but, if in pursuing that, they inflict a wrong on another, which is not warranted by law, such act is malicious."

Oregon Law Defined.

"It is libelous in a person, and a person would be guilty of libel to repeat maliciously any libel, although composed by another. For instance, it would be libelous in me to go around telling that Mr. Robertson stated falsely, that Mr. Martin had been guilty of murder. It would not screen me to say Ben Robertson told me. If I repeat anything libelous or slanderous which Ben Robertson says, I am equally guilty, and Mr. Martin could sue me and let Mr. Robertson go free if he chose. It would not be an excuse or defense against the action to show that a libel was published or composed by the agent of the party. The defendants would be liable for the acts of their employee, done in the course of his employment, and it would not be an excuse for them to say they did not have any actual knowledge of it. So they would be liable for the act of their reporter in the course of his employment, though the act was not in the actual knowledge of the defendants themselves."

"Any false and malicious writing published about another is libelous of itself, when its tendency is to render the person contemptible or ridiculous in public estimation, or expose the person to public hatred or contempt. And where a publication charges against or imputes to another an indictable offense."

"The falsity of defamatory words is presumed, because the law will not presume misconduct in a person, and if libelous per se, malice is always presumed."

"The presumption of innocence is prima facie evidence of explicit malice, and want of probable cause will be presumed and to impute to a person an indictable offense would be libelous of itself."

"If I go out in the town and publish concerning Mr. Martin that he murdered Mr. Jones, that of itself would constitute libel, to publish it in writing and circulate it where people could read it and see it, that would be libel of itself."

"You will have an opportunity to read the article charged as libel, because it is set forth in the complaint."

"I have already stated to you that the absence of the defendants, or either of them, from the city, or their lack of knowledge, would not of itself be any defense to the charge, but evidence of that has been admitted to you as part of the circumstances surrounding the case, and as affecting a degree of malice. It would be worthy of more punishment or greater degree of damages if they themselves had penned the article and had printed it, and had gone around themselves circulating it in person. It would be

Right to Publish Sustained.

THE VERDICT OF THE JURY IN THE LIBEL SUIT AGAINST THE JOURNAL, GIVING \$1.00 DAMAGES TO THE PLAINTIFF, IS A VICTORY FOR ALL OREGON PUBLISHERS, AND VIRTUALLY SUSTAINS NEWSPAPERS IN THE RIGHT TO PUBLISH FAIR NEWS REPORTS FROM THE PLEADINGS FILED IN PUBLIC COURTS. UNDER THE OREGON LAW OF LIBEL THE PUBLISHER HAS NO PROTECTION WHATEVER AGAINST THE MISTAKES OF REPORTERS, BUT JURIES HAVE ALMOST UNIFORMLY AWARDED MERELY NOMINAL DAMAGES IN SUCH CASES.

pute a greater degree of malice than if published in the ordinary course of business, and without their actual knowledge. I give you this as an illustration. If it was published in their paper by their reporter, in the ordinary course of employment, they would be responsible for it, and would be liable to the proper amount of damages."

Mr. McMahan took exceptions to the instructions of the court in failing to instruct the jury that pleadings in civil cases were privileged, and that absence from the city on the part of the Hofers or ignorance of the publication went to mitigate their liability.

The jury was out but a short time when they returned a verdict of \$1 and costs.

The court informed them that the law fixed the costs, and that it was not in their province to award costs beyond the amount of damages in the case, which in this case will be \$1.00.

The jury was then dismissed. The case was ably presented and argued by Messrs. Holmes and Condit and Jeffrey for the defense, and by Mr. McMahan for the plaintiff.

Unfair Arguments.

Having the closing appeal to the jury, plaintiff's attorney could make almost any statement he saw fit. He charged that The Journal was an unclean newspaper and unfit for any family to read, on which subject there was not a word of testimony introduced. He accused the Hofers with branding his client as an adulteress, and guilty of other crimes that were never charged, even in her husband's answer. The Journal had never accused the woman of anything. In fact, the suit was an attempt to get damages for something never done, and on the basis of a printed report of what was merely alleged in pleadings, and which not a single reader took to be anything more than the accusations which people bring against each other in the heat of a lawsuit, and no one, so far as we know, believed the truth of them. The attorney branded his unfortunate client with a defeat when he asked that her character be put on trial for matters she was never charged with, and for which The Journal publishers would rather suffer any amount of damages than charge any woman with, and still less would never seek to justify as the truth, if they were

actually published. But under the Oregon libel law a publisher can be accused of anything to a jury, but the jury has more sense and intelligence than to believe it.

Journal Policy as to Divorces.

The Journal has a fixed and definite policy in handling the reports of divorce cases, but the court could not allow the publishers to state the rules of the paper. The Journal considers the verdict as an approval of the general policy of publishing fair news reports of divorce trials, and all public trials before any court. The right is the only safeguard of the public that it shall have the news of the public courts laid before it, and such publications of proceedings and pleadings, whether privileged or not, are the only moral protection the community has against star chamber proceedings, and the spread and multiplication of the evils of divorces. Many applicants for divorces dread newspaper publicity more than the verdict of the courts. In fact they will make almost any kind of accusations, under oath, to get divorces, to the shame and scandal of all decent family life, and the degradation of the marriage sacrament, if they can only keep the charges and proceedings out of the newspapers. The right to print extracts from the pleadings in such cases cannot be surrendered without multiplying the number of divorces. Without it people with marital trouble on their hands would get divorces, remarry and be divorced over again, and there would be a promiscuous state of morals, indeed. Where either party to such a suit asks to have reasonable exclusion from the newspapers, The Journal grants the request, and respects the rights of the parties in the most scrupulous manner. Where there is no demand to be kept out of the press, it prints a fair news report.

Mrs. Gibson Wronged.

Mrs. Gibson has been wronged by this case being brought at all, and The Journal feels sorry for the poor woman and her children to have been dragged to Salem over bad roads, and in inclement weather, and given the publicity she has to endure in a case that had not a shred of good common sense to stand upon. The unfortunate woman has been put to great expense for witnesses she was never permitted to have testify in her behalf. The Journal publishers, in place of having any malice or ill-will toward

her have only the most profound regret that she was ever dragged into such an unfortunate suit. We wish to apologize to her for having been even the innocent cause of her litigation, and rejoice that she even got a nominal verdict for one dollar, for it technically clears her of a misfortune that befell her through no fault of the public or press.

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In a recent letter from the Studebaker people in regard to our sales of their vehicles for 1902, after commenting on the amount, they take occasion to remark that "This is a most splendid showing, and we wish to congratulate you on the grand success you have had with our line of goods."

Of course that makes us feel pleased, for we have left no stone unturned to push the sale of wagons and spring rigs. We really did a remarkably good business, and we are setting out to make a big increase this season. We have much improved facilities for the handling of our trade in this line, having moved our office back to "let der goods loog out of der vinda," as some one suggested. We have now much more light for our lower floor, and will soon have an elevator for moving heavy rigs to and from the upper floor.

We have a car of buggies, road wagons, hacks and surries now on the way, and will soon be in a position to show a splendid lot of new, stylish, up-to-date jobs, in steel and rubber tires, tops, opens and all. Wait to see them. Big line of wagons, all sizes, ready for the farming and wood hauling trade.

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already passed the senate and awaits the consideration of the house. In its operation, the bill will deprive the sheriffs of the different counties of quite an item of fees that they now receive for taking patients to the asylum.

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