

1895
 *May 9.
 *June 26.

LOUIS ARTHUR BÉLANGER (DE- } APPELLANT;
 FENDANT)

AND

LOUIS CHARLES BÉLANGER } RESPONDENT.
 (PLAINTIFF)

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

*Contract—Proprietor of newspaper—Engagement of editor—Dismissal—
 Breach of contract.*

A. B. and C. B. who had published a newspaper as partners or joint owners entered into a new agreement by which A. B. assumed payment of all the debts of the business and became from that time sole proprietor of the paper, binding himself to continue its publication and, in case he wished to sell out, to give C. B. the preference. The agreement provided that :

3. Le dit Charles Bélanger devient, à partir ce ce jour, directeur et rédacteur du dit journal, son nom devant paraître comme directeur en tête du dit journal, et pour ses services et son influence comme tel, le dit Arthur Bélanger lui alloue quatre cents piastres par année, tant par impressions, annonces, etc., qu'en argent jusqu'au montant de cette somme, et le dit Arthur Bélanger ne pourra mettre fin à cet engagement sans le consentement du dit Charles Bélanger.

The paper was published for some time under this agreement as a supporter of the Liberal party, when C. B., without instructions from or permission of A. B., wrote editorials violently opposing the candidate of that party at an election and was dismissed from his position on the paper. He then brought an action against A. B. to have it declared that he was "*rédacteur et directeur*" of the newspaper and claiming damages.

Held, reversing the decision of the Court of Queen's Bench, that C. B. by the agreement had become the employee of A. B. the owner of the paper ; that he had no right to change the political colour of the paper without the owner's consent ; and that he was rightly dismissed for so doing.

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Gwynne, Sedgewick and King JJ.

APPEAL from a decision of the Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment of the Superior Court in favour of the plaintiff.

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The facts of the case are sufficiently set out in the above head-note and in the judgment of the court.

White Q.C. for the appellant.

Brown Q.C. for the respondent.

The judgment of the court was delivered by :

TASCHEREAU J.—The controversy between the parties in this case relates to the control and editorship of a certain newspaper, called *Le Progrès de l'Est*, published in the city of Sherbrooke. To avoid confusion, owing to the similarity of names, I will call the plaintiff, respondent, simply Charles, and the defendant, appellant, Arthur.

The document upon which Charles sues Arthur, is dated the 24th February, 1890, and reads as follows : The parties, plaintiff and defendant who had heretofore published the said newspaper as partners, or joint owners :

Se donnent mutuellement quittance de tous comptes et demandes pour toutes les affaires qu'elles ont fait ensemble comme éditeurs et propriétaires du journal *Le Progrès de l'Est*, et imprimeurs, depuis l'entrée du dit Arthur Bélanger à l'atelier jusqu'à ce jour, et ce dernier s'engage à acquitter seul les dettes contractées au nom de Bélanger et Compagnie, de manière que le dit Charles Bélanger n'en soit point recherché.

2. Le dit Arthur Bélanger prend à lui seul, à partir de ce jour, l'atelier d'imprimerie et le journal à titre de propriétaire et d'imprimeur, et s'engage à continuer la publication du dit journal et à donner la préférence au dit Charles Bélanger, dans le cas où il voudrait vendre ;

3. Le dit Charles Bélanger devient, à partir de ce jour, directeur et rédacteur du dit journal, son nom devant paraître comme directeur en tête du dit journal et pour ses services et son influence comme tel, le

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Taschereau After carrying on the business for a time under this
 J. agreement, and publishing the paper as a supporter of
 the Liberal party, a dispute arose in 1891 between the
 parties as to the support to be given to the Liberal
 candidate in Sherbrooke, at an election then pending,
 and Arthur, not pleased at the stand Charles intended
 to take and actually took in relation thereto, dismissed
 him from the editorship.

Hence the present action by Charles, who asks by his
 conclusions, that he be declared to be the " rédacteur " and " directeur " of the newspaper in question, to have his name inserted in the paper, as such, and that he be declared to be entitled to the editorial control of the paper, and that defendant be ordered to grant him editorial control of the paper, and to deliver to him the exchanges ; that he be held thereto by all legal means, and that he be condemned to pay \$5,000 as damages to him, the plaintiff.

Arthur pleaded to this action that he had a right to dismiss the plaintiff as he had done. That plea, in my opinion, has been conclusively established. It cannot be questioned that under the agreement between the parties, above mentioned, Arthur was vested with the full ownership of this paper, with power to sell it at any time, and that Charles became thereafter the salaried employee and editor of and for Arthur, the owner. The document says so in plain terms, and no surrounding circumstances can be admitted to make it say the contrary.

That being so, the respondent's contention that he was in a position of absolute independence towards Arthur is utterly untenable. It is true that by the last

part of art. 3 of the said agreement, Arthur bound himself not to put an end to Charles's employment as editor, without Charles's consent. But to contend that, in virtue of this stipulation, Charles's rights in the editorial share were above his employer's rights, is a proposition I cannot accede to, though he was "directeur" besides being editor. This stipulation is, of necessity, impliedly accompanied by and subject to the understanding that the owner's responsibility and interests should be respected in the columns of the paper and the owner was the sole judge of the manner in which that was to be done. The respondent would contend, forsooth, that he was even at liberty to direct his writings against his employer. That is what his contentions virtually amount to. The paper had always, or for a long time, been known as an organ or supporter of the Liberal party. On the eve of the election I referred to, Charles as editor wrote an article, unknown to Arthur, in which he abused the Liberal party in unmistakable terms, concluding by saying that in Sherbrooke the Liberals were "*rari nantes in gurgite vasto*," which is cruelly translated in Sherbrooke French by: "*Ils sont comme les pois dans une soupe claire*." Such conduct on the part of Charles deserved dismissal, and he cannot complain if he got it. When an editor finds that his opinions are not in accord with those of the proprietor he must either submit or quit. And if he takes advantage of the confidence that is reposed in him to abuse his proprietor's political friends, and in the midst of a political battle turns traitor to the party he is paid to support, his conduct cannot be too severely censured.

In the present case Arthur, the owner, would have had a perfect right to change the political colour of his paper, and Charles the editor would have had to follow him, and obey his orders, or abandon the

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editorial chair. But the interversion of these relative rights and duties, that Charles contends for, cannot be sanctioned. He certainly, also, had a perfect right to change his political views, but he had not the right to change the political colour of Arthur's newspaper, without Arthur's consent.

I would allow the appeal and dismiss the action, with costs in the three courts against respondent.

Appeal allowed with costs.

Solicitors for the appellant: *White, Cate & Wells.*

Solicitors for the respondent: *Brown, Morris & McDonald.*