

Supreme Court of Canada
Scown v. Herald Publishing Co., (1918) 56 S.C.R. 305
Date: 1918-03-05

John H. Scown (Plaintiff) Appellant;

and

The Herald Publishing Company (Defendants) Respondents

1918: February 28; 1918: March 5.

Present:—Sir Charles Fitzpatrick C.J. and Idington, Anglin and Brodeur JJ.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Libel—Newspaper—Proprietor and publisher—Address of publication—Libel and Slander Act, 4 Geo. V. (2 sess.) c. 12, s. 15.

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In an action claiming damages for a libel published in a newspaper the Alberta Libel and Slander Act by sec. 15 requires for certain purposes of defence that "the name of the proprietor and publisher and address of publication" shall be stated at the head of the editorials or on the front page of the paper. The *Calgary Herald* publishes at the head of the editorials: "The *Herald* * * * Published at Calgary, Canada, by The *Herald* Publishing Co." The *Herald* Publishing Co. is both proprietor and publisher of the newspaper, and in an action against it for libel—

Held, Idington J. dissenting, that the requirements of sec. 15 were substantially complied with. Judgment of the Appellate Division (38 D.L.R. 43) affirmed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Alberta¹, reversing the judgment at the trial in favour of the plaintiff.

The only question raised on this appeal is whether or not the statement in the *Herald* that it was "Published at Calgary, Canada, by The *Herald* Publishing Co." was a compliance with the requirements of sec. 15 of the "Libel and Slander Act" that "the name of the proprietor and publisher and address of publication" shall be stated. The appellant contends that the fact of the company being both proprietor and publisher should appear and that the address of

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publication should be more specific. The trial judge agreed with this but was reversed on appeal.

*Geo. H. Ross K.C. and Barron for the appellant, referred to Skryha v. Telegram Printing Co.*², and *Ashdown v. Manitoba Free Press Co.*³.

*A. H. Clarke K.C. for respondents cited the above cases and Knott v. Telegram Printing Co.*⁴.

¹ 38 D.L.R. 43.

² 20 D.L.R. 692; 7 West W.R. 167.

³ 20 Can. S.C.R. 43.

THE CHIEF JUSTICE—Plaintiff (appellant) recovered \$300 damages for libel. It is agreed that the only question on this appeal is whether the respondent company can claim the protection which is given by the "Libel and Slander Act" (Alta. 1913, ch. 12, 2nd Session) in view of the provision of section 15, subsection 1, which is as follows:—

No defendant shall be entitled to the benefit of sections 7 and 13 of this Act, unless the name of the proprietor and publisher and address of publication is stated either at the head of the editorials or on the front page of the newspaper.

It is admitted and agreed that the only words published at the head of the editorials or on the front page of the newspaper in question approaching the requirements of the said section 15 were as follows:—

THE HERALD.

Established 1883, Evening and Weekly. Published at Calgary, Canada, by The *Herald* Publishing Co. Limited.

Mr. Justice Ives, the trial judge, concluded that section 15 was not complied with, as the name of the proprietor was not stated.

The majority of the appeal court (Stuart J. dissenting) reversed the judgment on the ground that "the stating the name of the publisher as is done in this case is stating the name of the proprietor as well."

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I would dismiss the appeal because, I agree with Mr. Justice Anglin where he says that

the spirit of the section (15) was substantially complied with by the respondent.

IDINGTON J. (dissenting).—The question raised herein is whether the 15th section of the Alberta "Libel and Slander Act" was complied with by the respondent in publishing at the head of the editorials or on the front page of a newspaper by printing therein the following:—

THE HERALD.

Established 1883. Evening and Weekly. Published at Calgary, Canada, by The *Herald* Publishing Co. Limited.

If that was not a compliance with said section the appeal herein should be allowed and the judgment for the plaintiff at the trial restored.

Said section 15 is as follows:—

15. No defendant shall be entitled to the benefit of sections 7 and 13 of this Act unless the name of the proprietor and publisher and address of publication is stated either at the head of the editorials or on the front page of the newspaper.

It so happens that in this instance the proprietor and publisher are identical, but quite clearly the proprietor may be and sometimes is an entirely different party from the publisher.

Such a thing has been known as the publisher being a man of straw used by a proprietor of substance as a tool for disseminating libels.

I think that possibly was within the range of vision of the draftsman of this Act which was designed to protect respectable newspaper proprietors and publishers and at the same time facilitate the enforcing of the legal remedies open to any one suffering at the hands of either such.

The clear intention was that every issue should contain the necessary information to enable any one

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so wronged to reach promptly and effectively the wrongdoer, whether proprietor or publisher.

That intention might be frustrated by the courts holding, as the court below has, that only the name of the publisher need be printed as directed.

And the mere accident that in this case the publisher happens to be also proprietor, does not meet the requirement of the statute.

It obviously was intended to furnish full information at a glance to be read by all concerned without being under the necessity of going to the expense of instituting legal proceedings to obtain it.

The proprietor might be liable in damages as a publisher for printing and giving to his ostensible publisher copies of the publication, or might be liable to be enjoined from continuing to print any defamatory matter regarding some person whom he desired to attack in that way.

This legislation to ameliorate the conditions of the public press imposes a very simple price as preliminary to enjoyment thereof.

It is idle to point to the use of the singular number of the word name as indicative of any legislative purpose to enable a purchaser thereby to fulfil the requirements of the statute; for the same sort of reasoning would justify the publication of only one name out of many proprietors or publishers. My opinion is that the respondent failed to comply with the law. I am also far from thinking that "the address of the publication" required, is satisfied by the words, "Calgary, Canada."

It might have been quite sufficient in 1883.

It is not only the well-known and highly respectable newspaper, such as I assume that in question herein to be, that we must keep in view, but also the possibly

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obscure and disreputable publication that may emanate in a large city from some place almost, if not altogether, unknown and difficult to discover, that has to be considered in determining the true construction to be put upon an Act of this kind.

This substitute for registration required by legislation elsewhere, if lived up to, will, I suspect, be well worth while making it so full and clear that no complaint is likely to arise.

I think the appeal should be allowed with costs and the judgment entered by Mr. Justice Ives be restored.

ANGLIN J.—It is conceded that if the defendant has complied with section 15 of the "Libel and Slander Act" of Alberta (ch. 12, of 1913, 2nd session) this action has been rightly dismissed by the Appellate Division for non-compliance by the plaintiff with section 7 of the same statute.

Section 15 is as follows:—

15. No defendant shall be entitled to the benefit of sections 7 and 13 of this Act unless the name of the proprietor and publisher and address of publication is stated either at the head of the editorials or on the front page of the newspaper.

At the head of the editorials in the defendant's newspaper there was printed:—

The Herald. Established in 1883. Evening and Weekly. Published at Calgary, Canada, by The *Herald* Publishing Company, Limited.

It is common ground that The *Herald* Publishing Company is both publisher and proprietor of the *Herald*.

The appellant objects that "the address of publication" is not given with sufficient particularity, and that the fact that The *Herald* Publishing Company is

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the proprietor of the newspaper as well as its publisher is not stated.

The address as given would be sufficient for post office purposes and it supplies the information necessary to enable any person affected to comply with section 7 of the statute. I agree with the majority of the learned judges of the Appellate Division that the objection to it should not prevail

It would almost seem from the use in section 15 of the word "name" in the singular and the non-repetition of the preposition and article "of the" that the legislature did not contemplate or provide for the case where the publisher and the proprietor of a newspaper should be other than the same person or body. The fact that only one address—that of publication—is required to be given tends to strengthen this view. Yet the proper construction may be "the name (or names) of the proprietor and publisher," or *reddendo singula singulis*, "the name of the proprietor and (the name of the) publisher," and when, as may happen," the proprietor and the publisher are different persons or bodies the spirit of section 15 would not be satisfied or its purposes accomplished unless both names were stated.

It is contended for the respondent that, read literally, the statute prescribes merely the printing, in either of the two designated places, of "the name" of the publisher and proprietor. But that interpretation would seem to ignore the significance of the use of the word "stated" which implies more than the mere printing of the name. Moreover, while the printing of the name in prominent characters at the head of the editorials might, without more, afford some indication that it is that of the publisher and the proprietor of the newspaper, the mere printing of

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it in some inconspicuous part of the front page, as the statute permits, would not convey that information. I agree with Harvey C.J. that the spirit of section 15 would not be satisfied were the information that the name printed is that of the proprietor and publisher not furnished—at least substantially. It should not be overlooked, however, that it is by implication from the use of the word "stated" rather than because the statute explicitly so directs that we reach the view that this is its proper interpretation. Where, as here, the

same person or body is both the proprietor and publisher, the spirit of the section, to which, in the absence of explicit direction, effect should be given, is, in my opinion, substantially and sufficiently complied with and its purpose is attained by the printing in either of the designated places of the statement that the newspaper is published by that person or body.

I would dismiss the appeal.

BRODEUR J.—I concur with Mr. Justice Anglin.

Appeal dismissed with costs.