1907
*Oct. 29.
*Nov. 5.

THE MANITOBA FREE PRESS COMPANY (DEFENDANTS) .... APPELLANTS;

AND

RACHEL MIRIAM GOMEZ NAGY (PLAINTIFF) .... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

Defamation—Printing report of ghost haunting premises—Slander of title—Fair comment—Disparaging property—Special damages—Evidence—Presumption of malice—Right of action.

The reckless publication of a report as to premises being haunted by a ghost raises a presumption of malice sufficient to support an action for damages from depreciation in the value of the property, loss and rent and expenses incurred in consequence of such publication. *Barrett* v. *The Associated Newspapers* (23 Times L.R. 666), distinguished.

The judgment appealed from (16 Man. R. 619) was affirmed, the Chief Justice dissenting.

APPEAL from the judgment of the Court of Appeal for Manitoba(1), reversing the judgment of Macdonald J. at the trial and maintaining the plaintiff's action with costs.

The plaintiff brought the action to recover damages for slander of title, alleging that the defendants recklessly, falsely and maliciously printed and published concerning her property in the City of Winnipeg, in the *"Manitoba Morning Free Press,"* the *"Free Press Evening News Bulletin,"* and the *"Manitoba Weekly Free Press,"* respectively, the words following:—

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Maclennan and Duff JJ.

(1) 16 Man. R. 619.

"A NORTH END GHOST."

"There is a ghost in the north end of the city that is causing a lot of trouble to the inhabitants. His chief haunt is in a vacant house on St. John Avenue, near to Main. He appears late at night and performs strange antics, so that timid people give the place a wide berth. A number of men have lately made a stand against ghosts in general, and at night they rendezvous in the basement and close around the haunted house to await his ghostship, but so far he still remains at large."

The house and premises said to be alluded to were untenanted at the time and, after the publication of the article complained of, continued to be untenanted for several months, until the property was sold for a price less than plaintiff had expected from some other purchasers in treaty for the purchase of the property whom she lost through the publication of the report in disparagement of the premises.

The plaintiff claimed damages for depreciation in the value of the property, loss of rent and expenses she was obliged to incur in protecting the premises from being damaged by crowds of persons who, in consequence of the report, nightly congregated about the premises.

At the trial, before Mr. Justice Macdonald, without a jury, there was no evidence adduced to shew actual malice and the action was dismissed with costs, His Lordship holding that the publication complained of was not actionable and that no special damages had been proved to have been suffered by the plaintiff.

By the judgment appealed from, this judgment was reversed, Perdue J. dissenting, and a verdict ordered to be entered for the plaintiff for $1,000 and costs.

1907

MANITOBA FREE PRESS Co. v. NAGY.

Ewart K.C. and *Hudson* for the appellants. Our grounds of appeal, shortly stated, are (1) that no action could be brought for the slander of real property; (2) the onus was on the plaintiff to establish that the words complained of were false and she failed to establish this; (3) that, if such an action could be brought, malice must be proved, and this was not done; (4) that, in any event, it was necessary to prove special damage arising from the publication in question and from it alone, and that there was no evidence of such special damage; (5) that any damages which could be awarded must be for such loss as might reasonably be apprehended from the publication in question, and that no reasonable person could apprehend any damage from such publication; (6) that the evidence shewed that the plaintiff was not the real owner of the property, and (7) that the court of appeal, in allowing damages, had no jurisdiction to make an order as they did, and that, in any event, the amount of their verdict is a mere guess and cannot be upheld.

We refer to Odgers on Libel and Slander (4 ed.) pages 75 and 102; *Burnett* v. *Tak*(1), and *Pater* v. *Baker*(2), at page 869; Clerk & Lindsell on Torts (last ed.) pages 601, 602; Pollock on Torts (11 ed.) pages 301, 302; *Hasley* v. *Brotherhood*(3), per Jessel M.R. at page 523; and on appeal(4), by Coleridge L.J. at page 388, and Lindley L.J. at page 393; *Ratcliffe* v. *Evans*(5), per Bowen L.J. at page 527; *Alcott* v. *Millar's Karri and Jarrah Forests*(6); and *Barrett* v. *The Associated Newspapers*(7). As to proof of special

(1) 45 L.T. 743.
(2) 3 C.B. 831.
(3) 15 Ch.D. 514.
(4) 19 Ch.D. 386.
(5) [1892] 2 Q.B. 524.
(6) 21 Times L.R. 30.
(7) 23 Times L.R. 666.

1907

MANITOBA FREE PRESS CO. *v.* NAGY.

damages being necessary, see *Hatchard* v. *Mège* (1); *Evans* v. *Harlow*(2); *White* v. *Mellin*(3); Odgers, Libel and Slander (4 ed.) pages 102, 384 and 560; *Brook* v. *Rawl* (4), per Parke B. at page 524, and *Vicars* v. *Wilcocks* (5), per Ellenborough C.J. at page 3.

The findings of the trial judge on disputed questions of fact should stand, and it is not credible that a probable purchaser, having read the report, should have refused to buy only because it was in the "Free Press," although other newspapers also published it. The plaintiff had the evidence in her own hands, but did not negative a binding contract to sell which might have been enforced. If there was such a contract the defendants should not be held responsible. *Burkett* v. *Griffith*(6); *Brentman* v. *Note*(7).

Mr. Justice Richards and Mr. Justice Phippen admit that there is no evidence enabling them to fix definitely the amount of damages which should be awarded. They merely say that it is evident the plaintiff suffered some damage, that this damage was occasioned in part by the publication in the "Free Press" and they guess the amount to be $1,000. The case of *Williams* v. *Stephenson*(8) is directly in point. There, as here, the evidence was insufficient to enable the trial judge to ascertain the damages, he guessed at the amount and this court allowed the appeal and refused to grant a new trial. There is no evidence of the amount of depreciation in value suffered in consequence of the rumour.

(1) 18 Q.B.D. 771.
(2) 5 Q.B. 624.
(3) [1895] A.C. 154.
(4) 4 Ex. 521.
(5) 8 East 1.
(6) 27 Pac. Rep. 527.
(7) 3 N.Y. Supp. 420.
(8) 33 Can. S.C.R. 323.

1907

MANITOBA FREE PRESS Co. v. NAGY.

It appears that there were mortgages against the property to amounts aggregating nearly its value. The action is for alleged injury to its value and it is submitted that the mortgagees should have been parties to the action, and were in fact the only persons who had a right to sue.

We also rely upon the remarks of Eldon C.J. in *Morris* v. *Langdale*(1), at page 289, and on *Ashley* v. *Harrison*(2).

J. Edward O'Connor for the respondent. The falsity of the report has been proved in evidence, the defendants must have been aware of its falsity at the time, and such reckless publication gives rise to a presumption of malice and a careless disregard of consequences. There cannot be excuse on the ground that they merely intended the article to be humourous. We might cite Æsop's fable of the boys throwing stones at the frogs. We suffered actual damages for their amusement, and they must be held responsible for the consequences of their reckless indifference, their neglect to verify the truth of the rumour before publication, their bad faith and injustifiable, officious and unnecessary meddling in affairs that did not concern them. This is not a case of fair comment on a matter of public interest, but an unwarranted and harmful intrusion into private affairs.

The evidence as to special damages is full and complete. We have an action on the case as designed by the Statute of Westminster (13 Edw. I. ch. 24) to give a remedy where a man suffered a wrong (1 Comyn's Digest, p. 278). It seems to have as wide a scope as articles 1053 and 1054 of the Code Civil of

(1) 2 B. & P. 284.

(2) 1 Esp. 47.

Quebec in question in *Cossette* v. *Dun*(1). This action is brought for a false statement made maliciously or negligently or fraudulently of and concerning the real property of the plaintiff and resulting in special damage. See *Green* v. *Button*(2); also remarks by Powys J. in *Ashby* v. *White*(3), at page 248. This objection did not prevail. See also *Chapman* v. *Pickersgill* (4), per Pratt C.J. in answer to the same objection; *Langridge* v. *Levy*(5), at page 522, and on appeal(6); *Pasley* v. *Freeman*(7), at page 63, also in 2 Smith's Leading Cases(8), at page 79, per Ashurst J.; *Allen* v. *Flood*(9), at page 73; *Winsmore* v. *Greenbank*(10), per Willes C.J. at page 581. In all these, and in many other cases which, like this case, were of first impression, this objection had been noticed only to be repelled. And see *Pavesich* v. *New England Life Insurance Co.*(11); *Lynch* v. *Knight*(12); *Smith* v. *Kaye* (13); *Lumley* v. *Gye*(14); *South Wales Miners' Federation* v. *Glamorgan Coal Co.*(15); *Sheppard Publishing Co.* v. *Press Publishing Co.*(16); *Hatchard* v. *Mège*(17); *Alcott* v. *Millar's Karri and Jarrah Forests*(18).

If false and malicious statements as to goods resulting in special damage be actionable, why not false and malicious statements as to land? See *Levet's*

(1) 18 Can. S.C.R. 222.
(2) 2 C.M. & R. 707.
(3) 1 Sm. L.C. (11 ed.) 240 at p. 266.
(4) 2 Wilson 145, at p. 146.
(5) 2 M. & W. 519.
(6) 4 M. & W. 337.
(7) 3 T.R. 51.
(8) 11 ed. 666.
(9) [1898] A.C. 1.
(10) Willes 577.
(11) 69 L.R.A. 101.
(12) 9 H.L. Cas. 577.
(13) 20 Times L.R. 261.
(14) 2 E. & B. 216.
(15) (1903) 2 K.B. 545; (1905) A.C. 239.
(16) 10 Ont. L.R. 243.
(17) 18 Q.B.D. 771.
(18) 21 Times L.R. 30.

1907

MANITOBA FREE PRESS Co. *v.* NAGY.

Case(1), quoted by Cave J. in *Allen* v. *Flood*(2), at page 30; *Paull* v. *Halferty*(3); *Bruce* v. *J. M. Smith, Limited*(4); *Barrett* v. *Associated Newspapers*(5); *Bowen* v. *Hall*(6), per Brett L.J. at pages 337 and 338. This action lies as the statement is false, malicious and has occasioned damage. Odger's Libel and Slander (4 ed.) pages 73, 74, 75, 89, 102.

In cases like the present "malicious" need not mean actual malice in the sense of spite or ill-will, but legal malice, or doing, intentionally, the act complained of without just cause or excuse, and also that one is presumed to intend the natural or probable consequences of his own acts. *South Wales Miners' Federation* v. *Glamorgan Coal Co.*(7); Odgers on Libel (4 ed.) pages 319 *et seq.*; *Wilkinson* v. *Downton* (8); *Ludlow* v. *Batson*(9); *Bromage* v. *Prosser*(10).

The means were at hand for ascertaining the truth, the defendants purposely neglected to avail themselves of it and chose to remain in ignorance when they might have obtained full information. This is evidence of such wilful blindness as amounts to malice. Odgers (4 ed.) pages 323, 331; *Elliott* v. *Garrett*(11); *Gott* v. *Pulsifer*(12); *Green* v. *Miller*(13); *White & Co.* v. *Credit Reform Association*(14); *Plymouth Mutual Co-operative and Industrial Society* v. *Traders' Publishing Association*(15); *Thomas* v. *Bradbury, Agnew & Co.*(16).

(1) 1 Cro. Eliz. 289.
(2) (1898) A.C. 1.
(3) 63 Penn. St. 46.
(4) 1 Ct., Sess. Cas. (5 ser.) 327.
(5) 23 Times L.R. 666.
(6) 6 Q.B.D. 333.
(7) (1905) A.C. 239.
(8) (1897) 2 Q.B. 57.
(9) 5 Ont. L.R. 309.
(10) 4 B. & C. 247.
(11) (1902) 1 K.B. 870.
(12) 122 Mass. 235.
(13) 33 Can. S.C.R. 193.
(14) (1905) 1 K.B. 653.
(15) (1906) 1 K.B. 403.
(16) (1906) 2 K.B. 627.

1907

MANITOBA FREE PRESS Co. *v.* NAGY.

To constitute actual malice it is not necessary that the defendant should be actuated by any special feeling against plaintiff in particular. He need not even be personally acquainted with him; Odgers (4 ed.) page 322; and it is no excuse for the publication, even of a correct copy of an entry, in the police register or other official document which does not relate to a judicial proceeding, that such register or document is open to the public; *Reiss* v. *Perry*(1); one who makes a statement recklessly, careless whether it be true or false, can have no belief in the truth of what he speaks; per Herschell L.J. in *Derry* v. *Peek*(2).

As to liability on the ground of negligent publication, it is submitted that the defendants owed a duty to the respondent to take at least ordinary care to prevent any article being published in the newspapers owned by it that would or might result in damage to the respondent or her property. Bevan on Negligence (2 ed.) vol. 1, pp. 97, 100; *Vaughan* v. *Menlove* (3). The doer of a negligent act is responsible for the consequences flowing from it, in fact, even though antecedently the consequences that do flow from it seemed neither natural nor probable. Bevan, vol. 1, 97; vol. 2, 1601; *Vaughan v. Taff Vale Railway Co.* (4); *Dulieu* v. *White & Sons*(5).

As to damages. Special damage was proved in the loss of the sale as a result of reading the article in question, and, as an actual injury has followed the slander, it is no answer to shew that the third person would probably have acted in the same way had the

(1) 11 Times L.R. 373.

(2) 14 App. Cas. 337, at pp. 374-375.

(3) 3 Bing. N.C. 468.

(4) 5 H. & N. 679, at p. 688.

(5) [1901] 2 K.B. 669.

1907

MANITOBA FREE PRESS CO. v. NAGY.

slander not been used; *Knight* v. *Gibbs*(1). It is the same, also, as to the expense of protecting the house and of moving into it for that purpose.

If this action lies for a negligent publication special damage is not necessary to constitute a cause of action.

THE CHIEF JUSTICE dissented from the judgment dismissing the appeal.

DAVIES J.—The only doubt I had at the close of the argument in this case was one on the question of the sufficiency of the proof of the ingredient of malice.

A more careful examination of the authorities and of the evidence has removed that doubt. The wrong complained of was the publication by appellants of an untruth respecting the plaintiff's property calculated to depreciate and which did as a fact depreciate its value.

The plaintiff was bound to prove malice. But malice in this connection is a question of *mala fides* or *bona fides*. If the absence of *bona fides* is shewn or may fairly and reasonably be inferred from the facts proved then I take it that the ingredient of malice is sufficiently proved. It is laid down by Mr. Pollock in his work on Torts, page 301, that in actions of this kind

the wrong is a malicious one in the only proper sense of the word, that is, the absence of good faith is an essential condition of liability.

(1) 1 Ad. & E. 43.

1907
MANITOBA FREE PRESS Co.
v.
NAGY.
Davies J.

As put by Lord Coleridge in *Hasley* v. *Brotherhood*(1), at page 388, speaking of the publications which sustain actions

besides its untruth and besides its injury *express malice must be proved, that is to say, want of bona fides* or the *presence of mala fides.*

The question of honesty or dishonesty in the publication so far from being immaterial may be the determining factor as to whether the action lies. The very essence of the case is the falsity of the publication complained of and the want of good faith in publishing it.

As said by Baron Parke in *Brook* v. *Rawl*(2):

To support this action it ought to be shewn that the false statement is made *malâ fide* and that the special damage ensues from it.

See also *Wren* v. *Weild*(3), approved in the case of *Hasley* v. *Brotherhood*(1), above cited.

Given therefore the three ingredients of the publication of a false statement respecting plaintiff's property, the absence of *bona fides* in the publication and special damage following as the result I cannot doubt that an action lies.

In the case at bar I think the evidence only admits of one conclusion and that is that the article complained of was false and was published by defendant recklessly without regard to consequences, and that in this may be found the absence of good faith which imports the malice which is an essential condition of liability.

Actual malice in the sense of a predetermined in-

(1) 19 Ch.D. 386. (2) 4 Ex. 521 at p. 524.
(3) L.R. 4 Q.B. 730.

1907
MANITOBA FREE PRESS Co.
v.
NAGY.
Davies J.

tention to injure plaintiff or his property cannot be necessary to be proved. If it was there would be practically no restraint upon false publications by newspapers, causing the most serious damages to the property of others. The reckless publication by a defendant of an untruth respecting the complainant's property the natural result of which is to produce and where it does produce actual damage is sufficient evidence of the absence of *bona fides* and of the malice required by law.

Some remarks made by the Master of the Rolls in the late case of *Barrett* v. *The Associated Newspapers* (1), at page 667, were relied upon by the appellants as shewing that actual malice must be proved in actions such as this. I do not think, however, the language of the learned Master of the Rolls justifies the inference sought to be drawn from it. The judgment there proceeded upon the ground of the absense of proof of any special damage; and the Master of the Rolls who delivered the judgment of the court said that

it was not necessary to consider the more difficult question of malice,

but that his impression was the appellant was right on that point also. In the case before him that may well have been so. There the newspaper sought to be held liable only purported to publish a statement of what a tenant, who had abandoned his occupancy, made as to his reasons for doing so, which were the hearing and seeing of certain noises, appearances and movements in the house leading to the conclusion it was haunted by ghosts. It did not appear that anything

(1) 23 Times L.R. 666.

was added to the tenant's statement of what he and his family supposed or believed they had seen and heard. It might well be that under the peculiar facts of that case the court if compelled to determine the point might have declined to imply the absence of good faith. They might well be unable there to find the reckless publication of an untruth which in the case at bar we have no difficulty in finding.

The appeal should be dismissed with costs.

IDINGTON J.—The Court of Appeal for Manitoba, on appeal from the trial judge who had dismissed this action, determined that a publication appearing in the respective morning and evening and weekly editions of the appellants' newspaper, was defamatory of the respondent's property named therein and adjudged appellants should pay $1,000 for damages.

The publication was as follows:

A NORTH END GHOST.

There is a ghost in the north end of the city that is causing a lot of trouble to the inhabitants. His chief haunt is in a vacant house on St. John Avenue, near to Main (meaning thereby the property of the plaintiff so described as aforesaid). He appears late at night and performs strange antics, so that timid people give the place a wide berth. A number of men have lately made a stand against ghosts in general, and at night they rendevous in the basement and close around the haunted house (meaning thereby the said property of the plaintiff so described as aforesaid) to await his ghostship, but so far he still remains at large.

I think it proven beyond doubt that an actual sale of the property had been so far negotiated that but for this publication it would have been sold.

I think it was further proven that within the principle upon which the decision in the case of *Ratcliffe*

1907
MANITOBA FREE PRESS Co.
v.
NAGY.
Idington J.

v. *Evans*(1) proceeds, the property in question had become less saleable than it had been and thus depreciated in value.

I do not think a person owning property, and suffering from such depreciation as results from disparaging publications such as this, bound to sell the property in order to fix the damages. They can be established by general evidence of the character put before the court here.

The falsity of the publication is proven so far as that can be shewn in any such case. The witnesses who were present on the nights between the first and last publication give enough of evidence to satisfy the requirements of the law on that phase of the case.

Was there such malice as the law requires to be shewn to found such an action? There was not shewn that malice that would be implied in satisfying the demands of a vindictive or wicked spirit solely bent on the specific work of destroying the value of the plaintiff's property. There is abundant evidence of almost every kind of malice short of that.

An entry in a book kept in a Winnipeg police station for the guidance of the police is made the basis of the publication.

Its entry was manifestly designed to suggest that the officers on duty should dissuade people from assembling at the property in question.

To pervert its purpose and contrary thereto promote the assembling of crowds at the place in question was evidently what was likely to flow from its publication.

No man possessed of right feelings towards his

(1) (1892) 2 K.B. 524, at p. 527.

neighbours should have entertained for a moment any thought of its publication.

Yet the appellants' servants and managers for whom it is responsible, regardless of those decent feelings that should have restrained them, dressed up the original entry in such a way as to distort the statements it contained, by making them positive instead of being colourless as they stood, and by expanding, and adding to them so as to render the publication more attractive, more sensational, and more damaging,—and then published it.

I am, with every respect for those who see otherwise, unable to think that such a case needs under our law more than a bare statement of fact.

In the recklessness and indifference these facts display, I find furnished abundant evidence of malice and hence a legal remedy for such a palpable wrong.

I think the appeal should be dismissed with costs.

MACLENNAN J. agreed that the appeal should be dismissed with costs.

DUFF J.—I concur in the opinion of Mr. Justice Davies.

Appeal dismissed with costs.

Solicitors for the appellants: *Hudson, Howell, Ormond & Marlatt.*

Solicitors for the respondent: *Morice & O'Connor.*