

STILL ARGUING THE POINT.

ATTORNEYS SPEAK IN TURN ALL DAY LONG.

Motion for a Nonsuit in the Weinstock-McClatchy Case Not Yet Determined.

When Judge Hughes' court convened yesterday Mr. Reddy renewed his argument on his motion for a nonsuit in the Weinstock-McClatchy case.

He said there was no innuendo in the article complained of that related to the plaintiff. The innuendoes or parentheticals contained in the various paragraphs cited in the complaint all relate to the Mayor, the Trustees of Von Arnold, and none of them relate to Mr. Weinstock.

Mr. Reddy said that there is a peculiar language used in the way contemplated by the code. Such being the case, it is a plain, straight complaint, founded on the rule of pleading. There being no ambiguity about it, it becomes purely a question of law, and in the province of the court to decide.

The burden then rests on the plaintiff to prove an actionable meaning to the article. He read from several authorities to fortify his position, and to the effect that if the language was not sufficient to convey to the ordinary mind the idea of a libel an action could not hold.

In response to the allegation that the article is false, malicious, etc., the answer denies that so far as relates to the plaintiff they are false. The defendants claim that all that is said of him is true, but that it is not libelous, and they are not compelled to prove it, as it does not impute anything wrong to the plaintiff.

He said that he had yesterday attempted to show that the article was a mere statement of opinion and not a matter of fact. He would call the attention of his court to the article and to that portion of it commencing with the words "What the Bee finds," in contradistinction of the first part of the article as to what the entries in the red pocketbook "indicated."

He claimed that the latter part of the article showed that the entries in the red pocketbook were not made by Mr. Weinstock of nothing and expounded him from suspicion. Neither in the findings nor the statement of fact does the name of Mr. Weinstock appear, he said. Reading the paragraph which states that a daily newspaper is to be started, and as the parties named are all more or less interested, the inference is unavoidable as to the uses to be made of it.

He claimed that only the persons interested were charged with being implicated, and that nowhere was Mr. Weinstock's name mentioned. It was easy to find out by a mere perusal of the article that Mr. Weinstock was not one of them. He claimed that all their names were mentioned in the paragraphs immediately preceding, being John A. Sheehan, the Mayor, the combine in the Board of Trustees. All that is alleged concerning Mr. Weinstock is that he was relied on by the combine for something.

The court said it was a very important point as to whether Mr. Weinstock was included with the Mayor and Sheehan, and he would like to hear Mr. Reddy's reading of the paragraph, leaving out the phrase set off by a parenthesis.

Mr. Reddy said that the innuendo of plaintiff's complaint set forth what he considered it to mean. Practical politics is now considered, he believed, morally right, and he did not consider that a statement that Weinstock and Sheehan intended to do some municipal affairs and patronage did not impute corrupt or immoral intent, for it might be intended to do so with the purest motives. The intent of rogues to use honest men to further their ends, they had not and did not accuse Mr. Weinstock of wrong doing in the matter, but, believing that rogues were trying to use an honest man for their own ends, the defendants wished to relieve him of the rogues. There is no indication that Mr. Weinstock had any knowledge of the intentions of the combine, nor was it his duty to be in any way connected with it.

The endeavor of rogues to use an honest man does not reflect on him, so long as he does not fall in with them. There is not a word or letter to show that Mr. Weinstock ever intended to make arrangements with Leonard to run for Mayor, or to speak of the starting of the paper, he claimed, that the naming of Weinstock and Grove L. Johnson as silent stockholders was simply a statement of the plans of the combine, and did not impute anything wrong to him. An effort to induce a man to do something is not to be made to a man who is already in, and would be an indication that Weinstock did not join the others. There is nothing to show that he consented.

He was sure that the language must be greatly strained to show any charges made against Mr. Weinstock. It has been said that the matter had been adjudicated by Judge Johnson, but he would show how small a portion of the article had been passed upon by him. In the first place, the head notes were left out, and, next, nothing was said of the red pocketbook. The findings are left out, which amount to an exoneration of Mr. Weinstock, and all that follows has been left out. It is stripped, he said, of everything that shows the full intention of defendants.

He cited authorities relating to the question as to whether or not the article was libelous, and said it did not charge him with violation of any of his duties as a citizen.

JUDGE HOLL REPLIES.

Judge Holl said that he had intended to do so. A great weight had been lifted from his shoulders. He had expected that the defense would mass all its forces in column and swoop down on the prosecution with all his power. Instead, the learned counsel had enveloped the case in a mass of sophistry that envelops it like the mist that comes in over the hills where he resides. He would sweep them away, however, as the morning breeze does those mists.

The first question in considering a libel is that the whole article must be considered. The rule in the construction of language is that it relates not only to the sense and meaning, but also to all the circumstances surrounding its publication, and in passing upon it, the court must place itself in the position of the person hearing or reading the matter complained of and pass upon the meaning of the language used. It must take the meaning of the whole article, and not the meaning of a particular portion of it.

Counsel for defense laid stress on the word "indicate." The court has nothing to do with a technical definition of the word, or even that of the grammar of the language used. It must take the meaning from the article itself. He could show authority for deciding that the expression of an opinion is actionable, but he intended to go farther. There is a difference between an opinion not founded upon facts relating to the subject matter and an opinion founded upon facts ascertained by investigation. The courts have decided that the opinion of the former class does and also that it does not constitute a cause of action, but there is no question about the latter.

Quoting from a California decision, he said that the court, in passing upon the question of libel, must place itself in the position of the reader and judge from that standpoint. This article claimed that a little red pocketbook had been found, the entries in which pointed to astounding disclosures that would result in the upheaval of municipal affairs. The article designated the matter as a huge conspiracy against the interests of the municipality. After an investigation of three weeks by detectives in the employ of the "Bee," it came forward with an article headed "A Stupendous Charge," as a formulation of the results of their investigation.

The expression that the entries in the red pocketbook "indicate" certain things is not an opinion, but a statement founded on the facts discovered during the investigation, which is a vastly different thing. A man may say "it is my opinion there is a great deal of gold in the Klondike," when he has never been near it. But when a man says "it is my opinion that there is much gold in the Klondike. I have been there and dug and seen the gold that others dug out and I think it will create an earthquake of excitement," that is a very different statement. This is a precisely similar case and the "indications" spoken of in the article are founded upon the facts developed by the investigations of defendants. Such being the case, it cannot be considered an opinion.

The word "indicate" does not mean an opinion. The dictionary says it means "to point out," "to proclaim," "to show," "to make known." That is the ordinary meaning of the word and the rule says that words must be taken in their ordinary meaning or acceptation, in construing language. As to the matter of an opinion, in some cases it has been held that it is not actionable, but there are others in which it has been held to be actionable. He denied, therefore, that the word "indicate" is equivalent to the word "opinion" and asserted that it means to show or point out. He also denied that the law was that an expression of an opinion was not actionable. On the contrary, the English law held that it would be dangerous to allow a man to express his libelous statements under guise of an opinion. In the case of Edwards against the San Jose Publishing Company, the latter had stated that "it is reported that Edwards is to have charge of the sack" to be used to influence voters. A motion for a nonsuit was denied, the court holding that the article imputed to the plaintiff a character which, if true, would submit him to obloquy and that the court could not avoid taking notice of the fact that the word "sack" had a recognized meaning outside of those given in the dictionary. The court held also that it was well settled that words must be accepted with the meaning attached to them by the masses of men and that the mere belief of the editor of a paper in the guilt or innocence of a person cannot be received as a defense or a mitigation of the damages.

The claim of defendants is that no harm could come to the plaintiff from the reading of the article according to their theory. On the contrary, he claimed, it imputes to him the most reprehensible conduct that can be exercised in the community. Taking the article as it stands, he said that the city's patronage, he said that it stated that a combine existed for protecting the gamblers for a certain amount, and also for the sale of public offices to the highest bidder, or for certain sums. This would certainly be a most infamous matter. It also states that the combination has been formed, which counted on J. G. Davis for support and John A. Sheehan and H. Weinstock to control the fall election and the city patronage. And defendants argue that this charge does not do any harm to Mr. Weinstock's character, and that the combination might have wished to purify politics and get good men into office. He admired the innocence of Mr. Reddy in believing that such was the case and that was what the article meant. There is no authority for saying that the article stated the combination was depending on Mr. Weinstock for support. On the contrary, taking out the parenthetical clause, the sentence charges that he is one of the combination for a bad purpose. It clearly means that the alleged combination of rascals was for the purpose of carrying on the city government in the interest of a corrupt combination and for corrupt purposes, viz., to control the fall elections and the city patronage.

Next came the statement that Von Arnold was to open a concert hall with gambling-rooms, which would be protected by agreement with the Mayor and Trustees as stated in the paper in which Mr. Weinstock was to be a stockholder secretly. If it is not libel to say that a man is going to associate himself with a combination for such a purpose, what is libel? Would not such conduct justify hold Mr. Weinstock up to the scorn of his neighbors and injure his character wherever he is known?

In regard to Judge Johnson's ruling, the only reason defendants can urge for disturbing it is that the whole article has now been introduced, while he ruled on part of it only. He did not

think there was any weight in the contention or that it was entitled to consideration. H. W. JOHNSON'S ARGUMENT. H. W. Johnson, Judge Holl's associate counsel, spoke on the same two points. He believed the contention that the expression of opinion by a newspaper was not a libel had been pretty well settled by his associate. In this day it is well settled, he claimed, that the expression in a newspaper of a charge against a man will injuriously affect his character in the community is libel. He thought the defendants might remember the Hobson case, where the language was, "We believe that John D. Hobson is a gambler." His honor had heard the decision in the Edwards case, where the phrase used was, "It is reported." Is that half as strong a statement as "It is my opinion" that such is the case? The day when such things were held to be not actionable and the law of libel had reached its point of perfection that a man can no more shelter himself behind his opinion or say that what he published was told him by some one else. When he prints it in his paper he becomes responsible for it in justice as well as by every rule of logic. If that be the case, there would be no limit to the infamous charges that could be made against citizens under the shelter of "it is my opinion."

It is all very well to talk of freedom of the press, but a man is made responsible for what he publishes. It is his libelous guilt, no matter whether it is the opinion of the editor? Is it not libel to say that in their opinion H. Weinstock is associated with a band of scoundrels? If it is their opinion they are not obliged to publish it, but if they do so they are responsible for it. They must pay damages if they are awarded. Why should they be allowed to vilify citizens in their paper and damage their characters, and then shelter themselves behind the plea that they only published it as their opinion?

Real Estate Transfers.

The following real estate transactions have been recorded since our last report: H. Voorman and H. A. Voorman to swap and reclamation district, 563 acres of land on Tyler Island, on Broad Slough; \$5,300.

Peter Kunz et ux. to H. J. Goethe—North half of south half of lot 1, south half of north half of lot 1 and all of lot 2, R and S, and Second and Third streets.

J. F. Dickson and Edith S. Pendery to Julia L. Mack—Quit claim of all interest to north 33 feet of south half of east quarter of lot 3, L and M, and Sixth and Seventh streets, in trust as stipulated in decree of distribution in estate of Nancy A. Little. To correct error in former deed to Nancy A. Little. F. C. Hyde et ux. to Miss Lulu B. Butler—Lot 6, block 23, Oak Park.

Herman H. Grau et ux. to Charles S. Ott—Lot 120, block 1 and north 10 feet of lot 73 feet of lot 2, S and T, and Twenty-first and Twenty-second streets.

S. P. Higginson et al. by commissioner, to Germania Building and Loan Association—Northeast quarter of section 28, township 5 north, range 7 east; \$2,091 1/2.

Minle F. Gormley to William F. Gormley—East half of lot 6, J and K, and Fifteenth and Sixteenth streets. Thomas Colburn to William Colburn—East 24 feet of west half of lot 3, E and F, and Sixth and Seventh streets. C. N. Hartwell to Lucy R. Hartwell—East 60 feet of south 80 feet of lot 5, township 11 north, range 4 east, 18 1/2 streets; south 35 feet of lots 1 and 2, P and Q, and Second and Third streets.

Estate of Jose Simas Sibastiao, deceased, to Antonio Simas Sibastiao—47.58 acres in sections 28, 33 and 34, township 11 north, range 4 east, \$2,700. George R. and Alice M. Strohecker, James H. Donnelly—Lot 8, block 62, Folsom; \$25. J. E. Harris et ux. to Joseph A. Walker—East 30 feet of lot 4, Q and R, and Twelfth and Thirteenth streets; \$50.

John L. Siller et ux. to Edward I. Galvin et ux.—South 50 feet of west 43 feet of lot 1, P and Q, and Fourth and Fifteenth streets; \$2,950. Richard P. Burr et ux. to Nancy W. Anderson—East half of lot 2, L and M, and Twentieth and Twenty-first streets. Accident to a Wheelman. In order to prevent his being run over by an express wagon at Fifteenth and O streets on Tuesday night, A. V. Hodge, who was riding a wheel, was forced to ride against the curb. He was thrown and one of his arms broken.

Notary Public. Governor Budd has appointed F. C. Ford to be a Notary Public for San Francisco, to reside at the Presidio. Normal Kindergarten Work. The Normal Kindergarten Training School, sessions from 2 to 4, Mondays, Wednesdays and Fridays, at Tenth and Q-street Kindergarten. Apply to Miss Valentine Frichard, 1501 N. street.

Cheerful on Top. The coffee which was awarded first premium at the State Fair. Barton's Ice-Cream. Delivered on time at your residence. Chocolate creams made fresh every other day. A nice lunch or hot tamale at the El Dorado, 826 J or 1008 Ninth. Coronado water, Stockton sarsaparilla and iron, champagne cider, ginger ale, orange cider, J. McMurry, agent. Call and see our domestic heater. Tom Scott, agent, 305 J street. For Welland's extra pale bottled beer, \$1 a dozen, call up Blauht. Tel. 297. Make Woodman Ninth Trustee. Try McMurry's Blend Coffee, 35.

Police Court.

A Hundred Days for Frank Hale—Peace Disturber Convicted. Frank Hale stood up in the Police Court yesterday morning and entered a plea of guilty to a charge of having stolen a hand saw. He was sentenced to serve 100 days in the County Jail. John Norton was fined \$10 for striking Echo Goodwin. The evidence showed there had been trouble between Norton's bull dog and Goodwin's pup, and that Norton had taken up the battle and knocked Goodwin down. John Young and John Melby were arraigned on a charge of disturbing the peace. The former pleaded guilty and will be sentenced this afternoon. Melby declared his innocence and his case will be heard to-day.

James Welch, W. C. Clark, Fred Bloom and John White, who were arrested Tuesday night for disturbing the peace in the vicinity of Sixth and E streets, were discharged. Charley West, the twelve-year-old boy who was with the men at the time of their arrest, and who claimed to have beat his way from Denver, was held and will be turned over to the Society for the Prevention of Cruelty to Children.

Election of Officers. The Sons and Daughters of Pioneers have elected officers as follows: Past President, Ella G. McCleary; President, Mery C. Farnsworth; Vice-President, L. B. Cummings; Secretary, Annie L. Luther; Treasurer, Matie Johnson Edinger; Marshal, George P. Putnam; Directors, George M. Lorenz, L. B. Cummings, Mrs. Alice Weiss, Mrs. Alice Martin, Ella G. McCleary, Flora E. Luther, Mery C. Farnsworth and Marie Garrett.

Worden's Reprieve Extended. Governor Budd yesterday further reprieved Salter D. Worden, the condemned train wrecker, until the 19th day of next month. When Worden's case was taken before the Supreme Court Governor Budd reprieved him until October 15th. There is at present no likelihood of the case being disposed of before that date, hence the action of the Governor in further extending the reprieve.

Fell From a Train. Early yesterday morning the railroad track walker on the section east of Emigrant Gap found a man lying by the railroad track, who had evidently fallen from a moving train. He was badly bruised and his left arm broken. He was taken to the Placer County Hospital at Auburn, where he gave the name of William Bryant.

Appointed Assignee. Judge Hughes yesterday appointed Sheriff Johnson assignee of the estate of Will X. Clark, an insolvent debtor, with bond fixed at \$100.

"DAY" MALARIA "CURE" OTT'S LIVER PILLS. Best pills on earth for torpidity of the liver, sick headache, biliousness, constipation, gravel, etc. Never gripe or sicken, nor leave one constipated. Price, 50c. FRANCIS S. OTT, Manufacturing Druggist, 800 K Street, South Side Second and K Streets, Sacramento, Cal. SPECIAL NOTICES. Vehicles—Baker & Hamilton—Hardware, Carts, Buggies, Carriages, Phaetons, Bain Farm and Header Wagons, Wholesale Hardware. Send for catalogue. SPECIAL LOW rates on palms, ferns, house plants, bouquets, etc. Bell Conservatory Co., Nursery Tenth and Y.

YOUR LIVER can be stimulated and restored to good working order and all that nasty nauseous feeling dispelled by the use of GOGINS' VEGETABLE LIVER PILLS. R. E. Gogins, Plaza Drug Store, 604 J STREET. W. G. Taylor, 718 J Street, Dentist. Indapo Made a well Man of Me! THE GREAT HINDOO REMEDY Results in 30 days. Cures all Nervous Disorders, Female Emotions, Headaches, Sleeplessness, Nightly Emissions, etc., caused by past abuses, gives vigor and size to atrophied organs, and quickly but surely restores Lost Manhood in old or young. Each bottle \$1.00. Six for \$5.00 with a written guarantee to cure or money refunded. DOWNS' PATENT. But insist on having INDAPPO. If your druggist has not INDAPPO REMEDY Co., Proprietors, Chicago, Ill. or our agents for U. S. will send it to you. WALL PAPER. HINDOO REMEDY Co., Proprietors, Chicago, Ill. or our agents for U. S. will send it to you. WALL PAPER.

F. C. KNAUER'S Pacific Brewery BEER IS THE BEST. TRY IT. EVERY KEG has the latest improved patent valve. NOTICE TO HUNTERS. NO SHOOTING OR HUNTING WILL be allowed on the Rancho Del Paso. Any violation of this order will lead to arrest. JOHN MACKAY, Superintendent. C. H. KREBS & CO., F. H. KREBS, Manager, 626 J STREET, DEALERS IN PAINTS, OILS, GLASS AND WALL PAPER. Painting, Papering and Decorating in all its branches. Telephone 367. For the Best Laundry Work GO TO THE American Steam Laundry PRINTING D. JOHNSON & CO., 410 J STREET. ORDERS FROM THE COUNTRY PROMPTLY FILLED.

Exposure to the weather can be counteracted by a course of Fred Brown's Jamaica Ginger. Stimulates the system to throw off chill, rheumatism, or cold. Non-alcoholic. Fred Brown's Jamaica Ginger. At all druggists. FRED BROWN, Philadelphia. Business Houses, Contractors and Public Men FURNISHED WITH NEWSPAPER INFORMATION OF ALL KINDS BY THE PRESS CLIPPING BUREAU, 610 Montgomery Street, San Francisco.

AMUSEMENTS.

METROPOLITAN THEATER. CHAS. P. HALL, Lessee and Manager. L. HENRY, Business Manager. Second and Last Week of ELLEFORD'S BIG COMPANY. Including the Charming Sourette, JESSIE NORD. Change of play nightly. TO-NIGHT, TO-NIGHT, Thursday, October 7th. First time here. THE CORNER GROCERY. Friday. First time here. RUNAWAY WIFE. Matinee. HUMPTY DUMPTY. Saturday. STOWAWAY. Songs, Dances, Specialties. Popular Prices, 10c, 20c, 30c. No Higher. Seats on sale for all performances.

THE CLUNE. CHANGE OF BILL. C. F. GIBNEY'S ALL STAR COMPANY. TO-NIGHT AND BALANCE OF WEEK. The Laughable Comedy, A BULL IN A CHINA SHOP. New Songs and Specialties. Prices—10c, 20c, 30c. KLAMATH HOT SPRINGS. A NOTED HEALTH RESORT. HOT swimming, steam, sulphur and mud baths. Table and board at the highest and best bidder, all of that fine corner lot No. 1, 80x130 feet, in the block bounded by Tenth and Twelfth, J and K streets, with improvements. Sale positive. Terms perfect. EDWIN BROS., Real Estate Auctioneers.

WHY PAY FROM \$80 to \$100 for an old-fashioned Electric Bell when we can furnish a first-class Bell for less than half the price? All goods warranted. Send for catalogue. PIERCE & SON, 714 Sacramento Street, San Francisco. For sale in Sacramento \$25. For sale in Sacramento \$25. PLAZA DRUG STORE, 904 J Street.

OUR SPECIAL SALE OF— GENUINE DELFT CHINA has reduced our stock wonderfully. We still have a few very desirable pieces left, and in order to clean them out also we will continue the sale a few days longer. Don't miss this LAST OPPORTUNITY to enrich your China Closet. Sacramento Glass and Crockery Co., 629 J STREET. The Exclusive Crockery and Glassware House.

Overcoats, Office Coats, Bar Coats, Fancy Vests, Underwear, Union Suits, Hosiery, Neckwear, Umbrellas, Fancy Shirts, Etc., At Popular Prices. MASON'S Steam Laundry and Shirt Factory, 528 J Street. AUCTIONS. Auction Sale of Real Estate. WILL SELL ON THE PREMISES SATURDAY, October 9th, at 10 o'clock a. m. sharp, to the highest and best bidder, all of that fine corner lot No. 1, 80x130 feet, in the block bounded by Tenth and Twelfth, J and K streets, with improvements. Sale positive. Terms perfect. EDWIN BROS., Real Estate Auctioneers.

R. E. GREER & CO., General Auctioneers. Cash Paid for Household Goods. Office and Salesroom, 1004-1006 J St. Capital Tel. 508.

FOR THAT feeling Take a Breuner couch, place it in an odd corner of your home and throw yourself down upon it whenever you feel an attack is imminent. Seriously, there is no article of furniture that makes a house look so comfortable and homelike as a couch, and none that is made use of more generously. Silverware. We talk too little of silverware. So much to talk about in this big store that it's small wonder some things are lost sight of. We mean that this silverware store of ours shall grow to be one of the best in California. We carry only worthy goods, and select only the most tempting designs, passing by the mistakes and the commonplace shapes that are sure to be offered by every maker. Judge the stock by these quotations on some of the standard goods. Rogers Bros.' 1847 knives, heavy plate, per set of 6, \$1 75. Rogers Bros.' steel forks, heavy plate, with handles to match knives above, per set of 6, \$1 75. Rogers & Bros.' extra quality plate, satin finish: Teaspoons, per set of 6, .95c. Dessert spoons, per set of 6, \$1 80. Tablespoons, per set of 6, \$1 90. Asbestos stove mats. You know what they are. For use on top of stove to set dishes on that you wish to keep warm. Keep dishes neat and clean. 3c. "Surprise" Egg Beater—the simplest affair for beating eggs yet invented. And the cheapest. 2c. Round Maple Chopping Bowls, will last a lifetime. Four sizes, 8, 15, 20 and 30 cents.

John Breuner Corner Sixth and K.

AMUSEMENTS. METROPOLITAN THEATER. CHAS. P. HALL, Lessee and Manager. L. HENRY, Business Manager. Second and Last Week of ELLEFORD'S BIG COMPANY. Including the Charming Sourette, JESSIE NORD. Change of play nightly. TO-NIGHT, TO-NIGHT, Thursday, October 7th. First time here. THE CORNER GROCERY. Friday. First time here. RUNAWAY WIFE. Matinee. HUMPTY DUMPTY. Saturday. STOWAWAY. Songs, Dances, Specialties. Popular Prices, 10c, 20c, 30c. No Higher. Seats on sale for all performances. THE CLUNE. CHANGE OF BILL. C. F. GIBNEY'S ALL STAR COMPANY. TO-NIGHT AND BALANCE OF WEEK. The Laughable Comedy, A BULL IN A CHINA SHOP. New Songs and Specialties. Prices—10c, 20c, 30c. KLAMATH HOT SPRINGS. A NOTED HEALTH RESORT. HOT swimming, steam, sulphur and mud baths. Table and board at the highest and best bidder, all of that fine corner lot No. 1, 80x130 feet, in the block bounded by Tenth and Twelfth, J and K streets, with improvements. Sale positive. Terms perfect. EDWIN BROS., Real Estate Auctioneers.

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Advertisement for Baco-Curo, a permanent and kindly vegetable cure for tobacco habit.

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