George Hewitt vs. The St. Paul Pioneer-Press

(1875)

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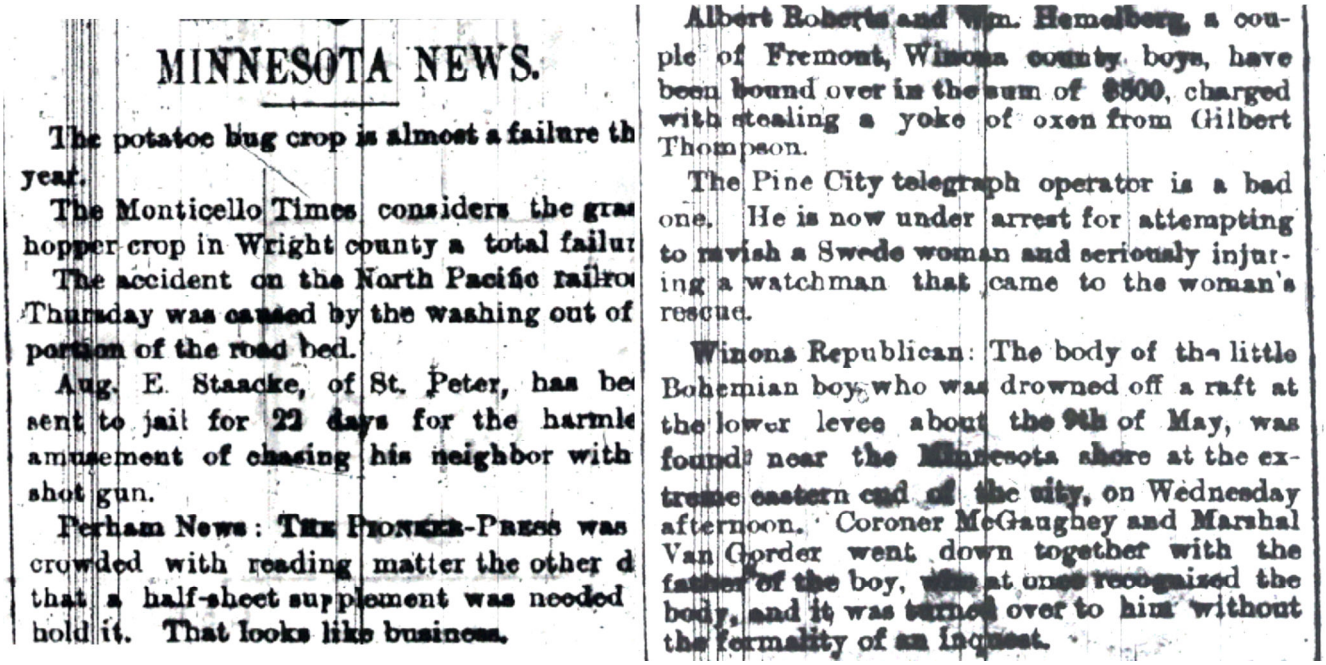
In the 19th century it was an accepted business practice for newspapers to reprint articles from other papers and not identify the sources. Stories about law suits, particularly libel litigation, were favored for copying. The pages of a rural weekly in the 1880s in Minnesota might have an item about a libel trial elsewhere in the state, in other states and even England. There was a practical reason for this—newspapers, whether daily or weekly, needed to fill the pages of each issue.

On June 19, 1875, the *St. Paul Pioneer Press* reprinted a squib that was published first in the *St. Paul Dispatch*, later in the *Minneapolis Daily Tribune*. It referred to the misconduct of the telegraph operator stationed at Pine City: [1]



MINNESOTA NEWS.

The potatoe bug crop is almost a failure th year.

The Monticello Times considers the gras hopper crop in Wright county a total failu

The accident on the North Pacific railro Thursday was caused by the washing out of portion of the road bed.

Aug. E. Staacke, of St. Peter, has be sent to jail for 22 days for the harmle amusement of chasing his neighbor with shot gun.

Perham News: THE PIONEER-PRESS was crowded with reading matter the other d that a half-sheet supplement was needed hold it. That looks like business.

Albert Roberts and Wm. Hemelberg, a couple of Fremont, Winona county boys, have been bound over in the sum of $500, charged with stealing a yoke of oxen from Gilbert Thompson.

The Pine City telegraph operator is a bad one. He is now under arrest for attempting to ravish a Swede woman and seriously injuring a watchman that came to the woman's rescue.

Winona Republican: The body of the little Bohemian boy, who was drowned off a raft at the lower levee about the 9th of May, was found near the Minnesota shore at the extreme eastern end of the city, on Wednesday afternoon. Coroner McGaughey and Marshal Van Gorder went down together with the father of the boy, who at once recognized the body, and it was turned over to him without the formality of an inquest.

[1] *St. Paul Pioneer Press*, June 19, 1875, at 2.

In truth the only telegraph operator at Pine City, a young man named George Hewitt, had not been arrested or charged with any crime. A serious error had been made by the *Dispatch* reporter, repeated by the *Tribune* and again by the *Pioneer Press*. It was Goodwin, the Hinckley telegraph operator, who had been arrested and charged, not Hewitt.

George Hewitt then brought a libel suit against the *Pioneer Press* in Pine County District Court. He retained Davis, O'Brien & Wilson to represent him. Although Pine County was formed on March 1, 1856, by the territorial Legislative Assembly, the Hewitt libel trial was the first civil trial held there. The courtroom in Pine City, the county seat, was in "an old country dry goods store that had fizzled in business, and was only fit for a court house." Judge Francis Marion Crosby presided. He had been a district court judge since January 1, 1872 (and would serve another 35 years). The proceedings lasted into the night and attracted many local spectators. Reporters from the St. Paul and Minneapolis newspapers also attended and sent daily dispatches to their editors.

The following reports of each day of the trial were published in the *Minneapolis Daily Tribune*. Unfortunately they too frequently are condescending and cynical. After the trial the editors of the *Tribune* published a lengthy commentary on the state of libel law in this state. They deplored how the law disfavored newspapers that were attempting to provide accurate reports of current affairs to the public. The *Tribune* repeated these strong views many times over the coming years, as we shall see.

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FIRST DAY OF TRIAL

(Wednesday, October 6, 1875)

THE P-P. LIBEL.

The Newspaper Fraternity Dragged
to Pine City.

A Lively Time In the Interest of Justice.

Our Special Correspondent Photographs
Men and Things.

Mr. Driscoll, do you know you stand on historical ground. Four and a half Miles from this place the first printing ever done in Minnesota occurred on what is known as the "Mission Farm" on Pokegatna Lake, in the year 1837, by old man Nealy and another missionary, for the enlightenment of the Indians." 'Well, that's news," we chimed in. "We will make a note of it."

We had just arrived in Pine City, and was standing in one of the grand reception rooms of the West End, ironically speaking. Another point was about as interesting: "It snowed last night (Monday) up in the arctic regions and only distant 60 miles north of St. Paul."

We internally reflected. Some people reflect on the outside, have we use the word “internally." Pine City," we further observed, "is not a Saratoga or a young Chicago. It is not an Indianapolis in railroads, a Washington in public buildings or a San Francisco in hotels. Neither is it a Boston in culture, or a New Haven in Colleges. It doesn't rank with Philadelphia in manufactories or New York in commerce. It has no very big harbor and not very many steamboats."

Our business at Pine City was in connection with the

PIONEER-PRESS LIBEL SUIT,

brought by George Hewitt, telegraph operator and station agent. We visited the court room, immediately upon our arrival at the city, on Tuesday noon. It was an old country dry goods store that had fizzled in business, and was only fit for a court house. No platforms, but Judge, jury and lawyers all on a level. Behind his Honor swinging from a shelf, was a card, printed "Ayer's Pills, Purgative Medicines, &c. Judge Crosby was delivering his charge to the Grand Jury. All the heads of the jury were not Websterian, or all the suits from Broadway's nobblest artist. A full blooded

INDIAN,

Cap't. Sodd, who marched with Sherman to the Sea, was one of the. Grand Jury.

At the afternoon session, the Court announced that the libel suit would be taken up the first thing in the morning (Wednesday). That delay gave us more time to see the sights than we desired. Strange enough, the sights of Pine City can be seen at a glance. You needn't get out of the cars unless you have a surplus of lime on hand.

THE TROUBLE

with Mr. Hewitt is this paragraph: "The Pine City telegraph operator is a bad one. He is now under arrest for attempting to ravish a Swede woman and seriously injuring a watchman that came to the woman's rescue."

The Pioneer-Press published the above, clipped from The Tribune of the 19th of June, 1874 (sic). The Tribune's St. Paul correspondent boiled a Dispatch sensation down to those five lines, and sent it up to Minneapolis in his budget. The mistake in the item was in the locality. The Pine City operator's name was not mentioned in the item, and no reference was had to him whatever. The man that committed the outrage was the man we were after, and no other. It was the merest slip of the pen or innocent reproduction of a Dispatch statement that had every semblance of absolute truthfulness. A full retraction as to locality was made, but Mr. Hewitt thought he was still damaged in character and good name.

$2,000 WORTH,

and accordingly sued for that amount, with Davis, O'Brien & Wilson, of St. Paul, as his lawyers. For the first time in thirteen years Mr. Driscoll, of The Pioneer-Press, was obliged to come to trial in a libel case and trust his luck to the whims of a Pine county jury. Mead & Thompson, of St. Paul, are The P-P.'s lawyers. They will do their utmost to force nominal damages—say 5 cents. C. D. O'Brien, the bright and active member of his firm, appears for Mr. Hewitt. The trial is likely to develop considerable

FEELING.

Mr. Driscoll is here, and as his assistant witnesses John A. Rea, of The Tribune Messrs. McNamee, of The Dispatch, Richards and Jordan, of The Pioneer-Press. McNamee wrote the item for The Dispatch, Rea for The Tribune, and Jordan copied it for The P-P. and Richards made the apology.

There will be an effort made to rule out the testimony of both McNamee and Rea and leave the P-P. stand alone without excuse or palliation as the original and only author of the so-called libel. The suit creates quite a sensation in this burg, and is besides, one of great importance to the press of the State. It will be claimed hereafter as a precedent by the party winning.

If it goes against the P-P, in a sum of $2,000, a new trial will be asked for and probably granted, on the ground of excessive damages. How it will go is as doubtful as the love of an Indian. You throw up a penny heads yon win, and tails I lose.

HEWITT

is a short heavy man of about 20, with red complexion and heavy sandy mustache. He seconds O'Brien nobly. Juries, like political bodies, have to be cultivated. That is, treated pleasantly and covered with a certain amount of lip salve.

Wednesday morning as we entered the ragged court room, we noticed over the grand entrance, as it were, the words "Bible Depository." We failed to see any

Bibles, and concluded that the inscription was there by mistake. Probably the man that put it up did it for a joke. (Right here a neighbor to my right says in dead earnest and for a fact, that there were two inches of snow in Pine City on Monday night.)

The case of Geo. Hewitt vs. The Pioneer Press Company was announced, and the clerk ordered to call the jury. He called and had five responses. The others were off taking their bitters. The Sheriff went for them. The tedious business of getting a jury was interrupted by the appearance of the Grand Jury for identification for Wednesday's work. The jury was identified, including Capt. Sodd, who doesn't understand English and can't speak it, if we take his response as a sample. When his name was called he answered "Ye-ha." He should have supplemented his affirmative with "Ho! Big Injun, ready to scalp ye." Only an hour and a quarter spent in the jury tediousness. That ended, C. D. O'Brien, Esq., read the pleadings in the case, which gave a history of the alleged libellous publications.

Mr. O'Brien read the papers in a low tone. The court room was as silent as a church. Great respect is shown a court room in Pine City. The answer of The Pioneer-Press Company paid a compliment, as well as admitted a fact, in saying that The Minneapolis

DAILY TRIBUNE

was a paper of large general circulation in every town and county of the State, Mr. O'Brien briefly explained his understanding of the pleadings, and stated what he expected to prove. He claimed that The Pioneer-Press company was not capable of malice because it was a corporation. Mr. P. Driscoll he charged with being the head and brains of The Pioneer-Press, and asserted that he should employ such men as had judgment that would not print such articles or paragraphs. His short introductory address was impressive and very clear. O'Brien is neither dull or obtuse.

HEWITT'S TESTIMONY.

George Hewitt, plaintiff, was the first witness. Lives in Pine, City. Been here four years. Not married. Telegraph operator and station agent. On the 19th of June last was the only telegraph operator at Pine City, and had been for eighteen

months. Knows the P.-P., and is not a subscriber. When witness was asked if he saw the paragraph in The P-P. relating to himself, defendant objected on the ground that the paragraph didn't refer to witness. Question modified as to whether he saw the paragraph mentioned in the pleadings, and question admitted with au affirmative answer. He was the only operator at Pine City when he saw that paragraph. He sent a letter by mail to The P-P. demanding a retraction.

Defendant refused to produce the letter, and witness produced a copy of a copy that he swore to. Court ruled it out. Didn't receive an answer. Saw Mr. Driscoll several weeks after Hewitt had commenced his suit. Mr. Smith, of the St. Paul firm of Smith & Lewis, was with Driscoll. Driscoll wanted to talk with Hewitt about the suit. Driscoll asked him to withdraw the suit, as they had copied the article and it was of general circulation, and they would retract. Driscoll said he would defend himself with all the weapons in his power, making this statement after Hewitt refused to withdraw the suit. Statement of D. stricken out.

THE EFFECT.

Nearly everybody asked him if it was so. By train the passers-by asked if he was the operator at Pine City. In the town here they joked him about it, and constantly annoyed the witness. This continued until the time he brought suit. He was ashamed to go out on the platform, and ashamed to meet any ladies of the city. Heard of this report from his friends elsewhere. His relatives don't correspond with him, and the few times they have, not a friendly letter since the publication of this paragraph. At other places his attention was called to the publication. Not a word in the article is true as bearing upon him.

Recess until afternoon, and our report closes. The case will not be concluded before to-morrow (Thursday). Every inch is closely contested.[2]

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[2] *Minneapolis Daily Tribune*, Thursday morning, October 7, 1875, at 1.

SECOND DAY OF TRIAL

(Thursday, October 7, 1875)

"FREEZE OUT."

The Game They Played at Pine City.

A Sensation in Court—Sharp Tactics by O'Brien.

Lightning and Railway Trains at His Bidding.

The Jury Hanging.

In the afternoon on Wednesday the libel suit of Geo. Hewitt vs. The Pioneer-Press Company, at Pine City, was continued, with the plaintiff on the witness stand. Hewitt produced the copy of his letter to the editors of The Pioneer-Press, dated Juno 19, and the letter was admitted in evidence. The letter said no such occurrence on the L. S. & M. railroad had transpired, and surely none in Pine City. He said it was scandalous, and no decent paper ought to publish such reports without ascertaining the truth. He asked for the publication of this note. Witness acknowledged that he had a letter from Mr. Driscoll saying that the substance of his (Hewitt's) letter had been published.

HINCKLEY OPERATOR.

Mr. Mead then took the witness and placed him on the rack of cross-examination. Witness was not certain whether the Hinckley operator was in Pine

City on the 19th of June. He thought the Hinckley operator was here on the 17th. He was in the same business, received the same wages, boarded at the same hotel, and was not effected by the article in Pine City. He stood just as well now as ever with the ladies of Pine City. Named two or three persons in St. Paul that spoke to him of the article. Saw the article in The Minneapolis Tribune two or three months afterwards. He saw it in The Pioneer-Press first. A Mr. Wilcox showed him the article in The Tribune. Talk of these charges against Mr. Goodwin, the Hinckley operator, was current.

THE CLERK.

Don Willard, the Clerk of the Courts, testified that he had heard of the paragraph, but did not see it. Thought there was no other operator here during June. When the night train was put on in June or July an additional operator was employed.

NO OTHER.

J. P. Peterson stated there was no other operator at the time of the publication of the article in question. Thought the night operator came to Pine City in July. Goodwin, of Hinckley, was charged around town with the charges of the publication. Mr. Miller, of Hinckley, told him of the Goodwin outrage and upon witnesses advice Goodwin was arrested for assault and not on the attempt of injuring the Swede girl. The understanding in Pine City was that the article referred to the Pine City operator.

WHAT GRANT HAD TO SAY.

Wm. H. Grant, Esq., saw the article, and in his opinion the only operator at Pine City at that time. He spoke to Hewitt about the article because of his seeing it in The P-P. These charges were not made in a legal form against the Hinckley operator, Mr. Goodwin. Witness defended Goodwin on charge of assault. A number of people asked him about the publication—probably fifteen or twenty in St. Paul. Plaintiff rested his case, and Mr. Thompson opened for the defendants in a clear-headed talk.

FIRST MAN FOR P-P.

Wm. J. Blackstock, Justice of the Peace, met the Hinckley operator, Goodwin, about June 15th. He issued a warrant tor G's arrest and had an examination of him. Alfred Miller, of Hinckley, was the complainant. Witness believed that the Hinckley operator was in Pine City three days. The Hinckley operator was reported as guilty of the charges in the paragraph.

A LEGAL TUSSLE.

John A. Rea sworn. Am night editor of The Minneapolis Tribune on the 19th day of June, 1875, was St. Paul correspondent of the same paper. A copy of Tribune of that date was offered as evidence by plaintiff and objection was made by defendant.

A long argument ensued, and the objection was overruled. Defendant then offered (and it was admitted) that the article published on the 18th day of June, 1875, was copied into The Pioneer-Press June 19. An attempt to get at the source of Rea's information failed. Also an effort by the plaintiff to show that The P-P. and Tribune were at loggerheads.

A. C. Jordan, night editor of The Pioneer-Press, caused the article to be clipped from The Minneapolis Tribune and inserted in The Pioneer-Press of June 19. Received a letter from Mr. Hewitt on the 21st of June. It contained a longer tirade on newspapers than the copy adduced by Hewitt, and a demand for a correction and apology. He wrote a retraction and apology which was read to the jury. O'Brien and Jordan had lively interview over the contents of Hewitt's letter to The P.-P. editors, but J. held his own.

CITY EDITOR RICHARDS.

City Editor Richards testified to an additional apology that The Pioneer-Press made through his writing in the local columns. Mr. Brackett, of the Brackett House, was the next witness. He noticed no difference in the life and manners of Mr. Hewitt after the publication.

THE ORIGINATOR.

Mr. McNamee, the originator of all this trouble, reported on the witness stand as a member of The Dispatch staff. He was asked where The Dispatch was published, etc.. Answered correctly. A question to witness whether The Dispatch contained the substance of an article published in The Pioneer-Press of June 19, was ruled out by the court on objection of Counsellor O'Brien. No further questions asked the representative of The Dispatch, that Judge [LaFayette] Emmett swears is not a paper of general circulation. The attempt to get Rea and McNamee to explain the origin of their articles, and whom they meant when they rushed into print, was futile. Oliver Wilcox supposed the publication was a

MISTAKE,

and referred to Goodwin, of Hinckley and not to Hewitt. With this witness the evening session of the first jury trial (civil case) ever tried in Pine county concluded, owing to the indisposition of Mr. Driscoll who was down as the next witness.

Following this adjournment to Thursday morning was a political caucus in the court room. Jesse Thompson and W. H. Grant, of St. Paul, manipulated the caucus strings. The crowd was a mixed one. After the caucus an adjournment to the Lakeview House to engage in billiards and

"FREEZE OUT."

"Freeze" is a game that is popular in Pine City. The boys all play it. It was at freeze out that Richards first saw Hewitt. Freeze out is a game of cards with ivory chips as stakes. Each player takes twenty chips and goes in. That is, he goes in if he holds a grand poker hand, otherwise he stays out and leaves the reckless betters push in their chips. A man can play all winter without losing, and hence we suppose the name of the game. The loser sets up the drinks. We mean by the loser the man that gets rid of his chips first.

This libel trial may be likened to the game of freeze out. Hewitt is trying to freeze $2,000 out of The Pioneer-Press Company, and The P-P. is trying to freeze Hewitt out of every red cent except one or six. The successful player is not known tonight (Wednesday), but Hewitt is looked upon as the most likely

contestant. It may not be $2,000, but it may be $500. We adjourn to our little couch at the Brackett house, and there end Wednesday in peace and luxurious slumber like a log.

THURSDAY MORNING.

The crowd was not so extensive as on Wednesday evening, but it had a larger sprinkling of the aborigines that seem to abound in this vicinity.

MR. DRISCOLL.

Mr. Driscoll, "the business head and brains" of The Pioneer-Press Company, was the first witness, and the lion of the witness corps. After stating who he was and what he did, the witness remarked that he had seen the publication in issue. The offer to prove that he saw the article in The Tribune and Dispatch before it was in his own paper, was objected to and ruled out.

Mr. Driscoll had an interview of thirty minutes with Mr. Hewitt in July, at the Brackett house. He assured him that there was no malice in the article and that It had been published in The Dispatch and Tribune before, and was fairly presumed to be correct.

THE ATTORNEYS.

He told him that he (Driscoll) believed that he was the tool of other men in this suit, and that the paper had criticised Gov. Davis in his official action, and C. D. O'Brien in his official action. Hewitt denied that it was brought at any other man's instigation and that he (Hewitt) was responsible for it.

Mr. Driscoll said to Mr. Hewitt that he would do all in his power, consistent with journalists, to correct any wrong impression made; that nobody in Pine City believed that the item referred to Hewitt.

NO FEELING.

Mr. O'Brien began his cross-examination of Mr. Driscoll by inquiring into the feelings of Mr. D. towards Hewitt. He had no ill feeling towards Hewitt. Mr.

O'Brien wanted to know if Mr. Driscoll's reporters had not already sent to the Pioneer-Press a column or two of ridicule of Mr. Hewitt for publication in this morning's Issue, This inquiry was objected to, and the Court sustained the objection. There was a feeling discussion over the admission of this question.

SIDE EXERCISES.

Then came some war in spite of the rulings of the Court. The remarks would get in. There was a neat tussle over the impression that each party should make upon the jury. Propositions to introduce certain testimony with appropriate, accompanying remarks, always have their effect. It takes a highly intelligent jury to rid itself of all impression produced by these side exercises.

Mr. O'Brien asked if Mr. Driscoll didn't cause to be written a letter from Pine City with the following headlines:

> "Two thousand dollars—Geo. Hewitt of Pine City, would like to make this sum out of the P-P. Co.—A libel suit for an error that was promptly corrected and an apology offered.—The annexed libel published in two other papers before It was published in the P-P.—Case on trial at Pine City—Description of the court room and the injured individual—A pathetic account of his sufferings, his mind, body and estate."

This question was not asked as the court ruled it out.

QUICK WORK.

Mr. O'Brien had a telegram from St. Paul with the above headlines, and in a few minutes W. H. Grant pranced in with an actual copy of The P-P. of this morning. (Sensation with a thrill,) "How the deuce that paper got here ahead of all trains?" was the query of attorneys, reporters, auditors and the court. In a few minutes a freight train camo thundering into town, fifty-five minutes ahead of time. That explained the arrival of the paper, which was received off the train a short distance from town where the train had to halt. This looked as if the railroad and telegraph lines were in collusion with Hewitt, and not with Mr. Driscoll. O'Brien suspected that maybe The P-P. would write up the plaintiff, and

consequently the activity. W. H. Grant was a witness for the plaintiff to prove that the copy of Hewitt's letter was seen by him at the time Hewitt made it. He couldn't prove the language, but gave his recollection as favorable to the copy.

CONTRADICTION.

Hewitt, in rebuttal, was called, and testified that Davis' or O'Brien's name was not mentioned; that Driscoll did not say that this suit was at the instance of Gov. Davis or C. D. O'Brien because of the criticisms of their official action by The Pioneer-Press.

Mr. C. D. O'Brien offered in evidence the article in this morning's Pioneer-Press, to show that Mr. Driscoll caused to be written an article and mailed to his paper, reflecting upon the plaintiff. The evidence was not admitted.

It cropped out that the head lines were not written here, and that the article went down without any. Hence Mr. O'Brien's dispatch was useless.

During all this sprightly maneuvering there was some excitement that interested the boys and held their strict attention. On resting the case on both sides the jury was given five minutes to breathe.

THE LAWYERS' BATTLE.

Mr. Mead summed up for the defendant, and apparently demolished the plaintiff's whole case. He left nothing standing except the little article "the," which is used by newspaper men in an indefinite sense as frequently as in a definite. "The" takes the place of "a" in speaking of an operator at a place. We say "the operator" Chicago, and not "a operator."

C. D. O'Brien is a telling talker, and we admit that the jury was attentive while he made his brief speech for the plaintiff. Recess to 1:30, at which time our correspondent and others of the fraternity left for civilization. The judge delivered his able and impartial charge, and then the jury retired to sit upon the thing. Coming home called for a report of how the jury was getting along, when

at the stations of Wyoming and White Bear, but response except "out." We expect an answer more definite before the paper goes to press.

LOOK OUT FOR HOT SHOT.

As an index of what may follow this we quote from an editorial of the P-P.: "With a popular candidate for County Attorney, C. D. O'Brien can be beaten out of his boots, and certain forthcoming developments will show that he ought to be." "Forthcoming developments!" what's up now? It will be a hot war—Pioneer-Press on the one side and Davis, O'Brien and Wilson on the other.

9:10 p. m.—Jury still out.[3]

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THIRD DAY OF TRIAL

(Friday, October 8, 1875)

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FROZE OUT.

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The Pioneer-Press—George Hewitt
Awarded $500 Damages.

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Fine Hundred Dollars Per Line.

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[3] *Minneapolis Daily Tribune*, Friday morning, October 8, 1875, at 4. Two changes have been made to this article: 1) "Minneapolis Tribune" was capitalized in the original and 2) it had two spellings of the last name of the Hinckley operator. Here Goodwin is used instead of Goodin.

[Special to Tribune] PINE CITY, Oct. 8.-The jury, after being out all night, returned a verdict this morning of five hundred dollars. The Judge granted a stay of proceedings for the purpose of hearing a motion for a new trial.

There were five lines in that so-called libel, and the jury estimated it value at $100 per line. Jordan, of The P-P. never pasted on a slip of paper a more expensive paragraph, and another man we know of, never wrote a more costly one. As Mr. Driscoll is too much of a fighter to let the verdict rendered stand without an effort to kill its immediate effect, we anticipate that he is too much of a warrior to let the battle with Mr. O'Brien cease with the banging of the Court room door.

Mr. O'Brien has been nominated by both parties for County Attorney, and his standing up to present writing has been constantly improving until as a candidate for that office he is regarded as invincible. Now The P-P. hints developments that will smite him more effectually than anything in the history of local politics. Can it be possible they will come out? [4]

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The following editorial on the current state of libel law in Minnesota was published in the *Minneapolis Daily Tribune* on October 13, 1875, after the verdict was returned.

THE LAW OF LIBEL.

> The law of libel in this State is so very peculiar that it affords a ready means for unscrupulous persons to blackmail the newspapers or wreak upon them their private malice. That it is so used has been conspicuously exemplified in more instances than one. The law assumes that a newspaper is, from its very nature, a malicious institution, and that it is not necessary to prove malicious lying at the bottom of its utterances. If a person feels aggrieved at anything he

[4] *Minneapolis Daily Tribune*, Saturday morning, October 9, 1875, at 2.

sees in a public journal, no matter whether it appears originally in that journal or is copied from another, he has only to bring suit for libel and his case is made out. All that it is necessary for him to show is that the publication was made, and is untrue. The law then assumes that the publication was instigated by malice, not that the plaintiff is entitled to recover damages. All that the defense can do is to introduce testimony in mitigation of damages but, it matters not that he is able to show that there was an entire absence of malice in the publication; that he has done all in his power to correct the error; has apologized and published a retraction; these facts go for nothing. Under the law the plaintiff is entitled to damages, and it only rests with the jury to fix the amount. This is a very great hardship upon the public journals of this State.

With but two or three exceptions, the papers of this State are above the average found elsewhere, point of character, ability, and the care and watchfulness exorcised in their make-up. Yet with the exercise of the greatest amount of care, it is utterly impossible to prevent errors creeping in. Their conductors are as responsible for an error occurring in their telegraphic news as in an editorial article. If the telegraph announces that John Q. Hamlet, for instance, has been arrested for forgery in New York city, and it should prove that it was John P. instead of John Q. Hamlet who was the culprit, the latter can recover damages in this State from every paper which published the erroneous dispatch. The absence of malice goes for nothing—the law declares that it was malice which prompted the publication

This is all wrong. It places the press of this State at the mercy of every sharper who desires to fleece the newspapers. The injustice of this law has been peculiarly exemplified in the suit against The Pioneer-Press, just terminated at Pine City. The St. Paul Dispatch published a sensational article regarding the telegraph operator at Pine City. No names were mentioned whatever. The paragraph was erroneous in that it charged upon the telegraph operator at Pine City offences for which the operator at Hinckley had been arrested and taken to Pine City for trial. A five-line synopsis of The Dispatch's

lengthy article was printed in the St. Paul department of The Tribune, and those five lines wore copied by The Pioneer-Press two days after the publication of the original libel in The Dispatch. The Pine City operator brought suit against—not the originator of the article, The Dispatch—but against The Pioneer-Press, claiming $2,000 damages. The same paragraph was printed in nearly every paper in the State, and also in The Chicago papers. It was an item of current news, which all State journals felt impelled to print in order to fulfill their mission as newspapers. At the trial the defendant showed the source whence he derived the item and also that he had published corrections of it on two occasions. It made no difference the court was forced to instruct the jury that the plaintiff was, under our peculiar law, entitled to recover, and they accordingly brought in a verdict for $500 against the defendant.

If this law is to remain unchanged upon the statute books of Minnesota it will be a disgrace to the State. It will also be fatal to respectable journalism within her borders. The high character and enterprise of the papers of this State—especially those of Minneapolis and St. Paul—are invariably commented upon by strangers as the best evidence of the character of the communities in which they are printed. From a personal acquaintance with most of the editors of this State, we are convinced that they are, as a rule, careful conscientious men, deeply interested in promoting the welfare of the State, and devoting themselves earnestly to the task of securing the growth and prosperity of their respective localities. They are deserving not only of the earnest sympathy and liberal support of the people whom they serve, but also of the protection of the law. As the law now stands it is decidedly against them, and tends to cripple them in their business, their enterprise, and their usefulness.

We hope to see them take such an interest in this matter of libel as will result in an amendment being made to the law governing it. We want no immunity to reckless or malicious journalism, but simply that journals of character and standing shall not be made the lawful prey of sharpers and blackmailers. A simple amendment, leaving

> the question of malicious publication to be determined by the jury as other questions of fact are, is all that is necessary to give the papers such protection as they require and should have.[5]

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The *Pioneer-Press* moved for a new trial, which Judge Crosby granted. An appeal to the state Supreme Court was taken by Hewitt's lawyers. On October 23, 1876, the Supreme Court affirmed Judge Crosby's order. The *Minneapolis Daily Tribune* reported the Supreme Court's decision in its October 25, 1876, issue:

The P.-P. and Hewitt Libel Suit.

> In the libel suit of Hewitt against The Pioneer-Press, instituted because of the publication of an item of news in which Hewitt was erroneously designated, instead of some other person, as guilty of disgraceful and criminal conduct, appealed by Hewitt, the Supreme Court decides that in an action for libel (the act being properly pleaded) the defendant may, in mitigation of damages, prove that prior to publishing the alleged libel it had seen the same matter published in other newspapers. That relieves The Pioneer-Press.[6]

The Supreme Court's ruling ended the litigation. It was not retried.[7]

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Appendix

[5] *Minneapolis Daily Tribune*, October 13, 1875, at 2. This editorial brought a letter-to-the-editor from "Citizen," who argued that newspapers should be held accountable for "indecent articles" and debunked their claim that freedom of the press was in danger. That letter, published on October 15, 1875, at 2, upset the *Pioneer Press* which published a long rejoinder under the caption "The Law of Libel," which was republished in the *Tribune* on October 17, 1875, at 4.

[6] *Minneapolis Daily Tribune*, October 25, 1876, at 2.

[7] Newspaper accounts of Hewitt's dismissal of his action have not been located.

MINNESOTA REPORTS

VOL. 23

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF

MINNESOTA

MAY, 1876—JULY, 1877

GEORGE B. YOUNG
REPORTER

ST. PAUL
WEST PUBLISHING CO.
1879

JUDGES

OF THE

SUPREME COURT OF MINNESOTA

DURING THE TIME OF THESE REPORTS.

HON. JAMES GILFILLAN, CHIEF JUSTICE.
HON. JOHN M. BERRY,
HON. F. R. E. CORNELL.

SAMUEL H. NICHOLS, ESQ., CLERK.

ATTORNEY GENERAL,
HON. GEORGE P. WILSON.

GEORGE HEWITT *vs.* PIONEER-PRESS COMPANY.

October 23, 1876.

New Trial for Misconduct of Jury.—The granting of a new trial for misconduct of the jury is in the sound discretion of the trial court, and it requires a clear case against its action to justify this court in reversing the decision of such court.

Libel—Mitigating Circumstances—Prior Publication.—In an action for libel the defendant (the fact being properly pleaded) may, in mitigation of the damages, prove that, prior to publishing the alleged libel, it had seen the same matter published in other newspapers.

Action for libel, brought by plaintiff, the only telegraph operator at Pine City, against the defendant, publisher of the *Pioneer-Press* newspaper. The paragraph complained of was published by defendant in its issue of June 19, 1875, as an item in a column headed "State News," and was as follows: "The Pine City telegraph operator is a bad one. He is now under arrest for attempting to ravish a Swede woman, and seriously injuring a watchman that came to the woman's rescue." In its answer the defendant pleaded, among other things, in mitigation of damages, that, prior to its publication of the alleged libel, it had seen all the statements and charges therein printed and published in the *St. Paul Dispatch*, of June 17, 1875, and that the article complained of was published on June 18, 1875, in the *Minneapolis Daily Tribune*, from which the defendant copied it, believing it to be true, and as a matter of current news.

At the trial in the district court for Pine county, before *Crosby*, J., the defendant offered to prove the prior publication in the *St. Paul Dispatch*, and that the article in that paper was seen and read on that day by defendant's business manager, and by its news editor, who afterwards clipped from the *Tribune* the item complained of. The evidence was excluded, and defendant excepted. The jury found a verdict for plaintiff for $500. The defendant

moved for a new trial on all the statutory grounds, the motion was granted, and plaintiff appealed.

Davis, O'Brien & Wilson, for appellant.

Mead & Thompson, for respondent.

GILFILLAN, C. J. The motion for a new trial in this case was made upon all the grounds for a new trial allowed by the statutes, and there is nothing in the case to indicate upon which of the grounds the motion was granted. We have examined the case as to all the grounds alleged, and can find nothing upon which we can sustain the order granting the new trial, except the ground of misconduct of the jury, and of error of the court in excluding evidence offered by defendant in mitigation of the damages. Upon the first of these the affidavits are very contradictory. At the best, they make out a case of irregularities and improprieties on the part of the jury; and at the worst, they show gross misconduct by some of the jurors, and by those acting in behalf of the plaintiff, and apparently with his assent. The court below, from its knowledge of what took place at the trial, and from the appearance and demeanor of the parties, jurors, and those whose affidavits were taken, was in a much better position than we are to determine which set of affidavits probably contained the most truth. If the new trial was granted upon the facts disclosed by these affidavits—and we cannot say that this was not the ground of granting it—we could not overrule the decision of the court below upon them. The granting of a new trial for such reasons being in the sound discretion of the trial court, it would require a very clear case against its action to justify us in reversing its decision.

The error of the court—and it is the only one which we find—consisted in this. The defendant offered to prove that, two days before the publication by it of the article alleged to be libellous, there was published in the *St. Paul Dispatch*, a newspaper published at St. Paul, an article substantially the same, containing the same statements of

fact as the article sued for, and that it came to the notice of the defendant's editors before the publication of their article. This was excluded. Prior to this offer, the defendant was allowed to show that the alleged article was, before its publication by defendant, published in, and by defendant taken from, the *Minneapolis Tribune*, a newspaper published at Minneapolis. The matter offered and excluded was duly pleaded in the answer. The statute (Gen. St., c. 66, § 96) entirely removes the vexatious uncertainty and embarrassment which, before the statute, existed, as to when a defendant in a suit for libel or slander could prove mitigating circumstances. Now any matter properly pleaded, and which is proper for the jury to consider in assessing the damages, may be proved.

As, in an action for libel, exemplary damages may be allowed, the plaintiff may prove actual malice, and the defendant may prove want of actual malice, to enable the jury to determine whether they will allow such damages; and, if so, to what extent; and, to show want of actual malice, it is proper for the defendant to prove that, at the time of the publication, he reasonably believed the libellous writing to be true. Any fact tending to show such reasonable belief may be proved; and where the statements in the writing have appeared in newspapers, and have come to the knowledge of the defendant through such newspapers, before his publication of the writing, he may prove such facts, in order to show that, when he repeated the statements, he reasonably believed them to be true. Thus, in *Saunders* v. *Mills*, 6 Bing. 213, an action for libel, the defendant was permitted to prove that he had copied the alleged libel from a newspaper. Tindal, C. J., who admitted the evidence, stated "that evidence might weigh with the jury, as showing there was less of malice than if the defendant had been the original composer of the libel." Proof of similar publications in other newspapers was rejected; but no satisfactory reason is given for approving its rejection, except by

Mr. Justice Gaselee, who stated that, "beyond the report which was admitted, the defendant was not shown to have acted on any knowledge of such publications." In *Huson* v. *Dale*, 19 Mich. 17, an action for slander in charging plaintiff and another with larceny in stealing a horse, it was held that defendant might prove that certain persons had told him that plaintiff and such others had stolen the horse, and that he had stated the facts to counsel, and been advised that the offence was larceny. The court, on page 35, after speaking of the defendant's right to show his belief in the truth of the words spoken, say: "And he had the right to introduce any facts and circumstances tending to show grounds for such belief at the time of the speaking of the words." That the defendant had, before publishing the charge, seen it published in different newspapers, would certainly be a circumstance tending to show grounds for it to believe it to be true; and the greater the number of newspapers in which it had, before publishing the alleged libel, seen it published, the stronger would be the grounds for such belief. The evidence was competent in mitigation of damages, and the new trial ought to have been granted because of its rejection.

Order affirmed.

Statutes, c. 66, §§ 95-96, at 462 (1866).

SEC. 95. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published or spoken concerning the plaintiff; and if such allegation is controverted, the plaintiff is bound to establish on trial, that it was so published or spoken.

SEC. 96. In the action mentioned in the last section, the defendant may in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances.

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