The Norton-Cravens Libel Case

(1903)

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In September 1903, the libel suit Thomas F. Norton brought against Fay Cravens was tried to a jury in Milaca, Minnesota, the county seat. Norton was a commissioner of Mille Lacs County while Cravens was the publisher of the *Milaca Times*.[1] While there was pre-trial talk that this dispute was the "result of social friction and very bad feeling between Mr. Norton and parties residing at [the village of] Cove and vicinity," the trial seems to have centered on the acts of Commissioner Norton as a public official, including allegations by a woman that he "threatened to take the county aid away from her if she did not vote his ticket at the school election." Unfortunately for the *Times*, the witness' testimony did not prove its charges against the Commissioner. Without her testimony, the evidence of libel was so strong that Judge Luther L. Baxter ruled the jurors must find for Norton and award damages anywhere from one cent to $5,000.[2] But in a rare case of jury nullification, a verdict for the defendant was returned.[3] The story of this case unfolds in Mille Lacs County newspapers.

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[1] It is probable that Norton did not sue the *Milaca Times* because it was an unincorporated sole proprietorship owned by Cravens.

[2] In 2021 a directed verdict is governed by Rule 50 of the Rules of Civil Procedure:

> 50.01. Judgment as a Matter of Law During Trial
> (a) Standard.
>
> If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may decide the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

[3] In Minnesota's territorial era, jury nullification was more frequent. See "Proceeding in the Territorial District Courts, 1851" 19-23 (MLHP, 2016). In criminal prosecutions of several white settlers for introducing liquor into lands reserved for Indians in violation of federal and territorial law, the evidence was so strong that Judge Bradley B. Meeker ruled jurors had a "duty to find a verdict of guilty." But a verdict of not guilty was returned. The district attorney then dropped other prosecutions "deeming a conviction impossible." Later prosecutions ended in hung juries. Chief Justice Jerome Fuller directed a verdict in West v.

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1. From the *Princeton Union*, October 1, 1903:

COURT IS IN SESSION.

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Judge Baxter Presiding at the
September Term—Not a Very
Heavy Calendar.

. . .

Judge Baxter was on hand bright and early last Monday morning [September 28, 1903] and opened the September term of the district court at nine o'clock. There were few attorneys present when court opened, as most of them did not arrive until the morning and afternoon trains.

. . .

It was late when these cases were finished, but the libel suit of T. Norton against Fay Cravens, publisher of the Milaca Times, was called and a jury empaneled. The case was presented to the jury after which court adjourned until this morning. Mr. Norton who is county commissioner and who resides at Cove, has brought an action against Mr. Cravens for libel and asks for a verdict for the sum of $5,000 for the publication in the Times of what plaintiff considers libelous articles, in which it is alleged Mr. Norton is referred to as a "scamp and a scoundrel," and whose character it is claimed has been injured by various other references in communications and statements that have appeared in the Times. The articles that are claimed as libelous were the result of social

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Northrup, a civil case, in Ramsey County District Court, but the jury disregarded his instructions and returned a baffling verdict. See Douglas A. Hedin, "Chief Justice Jerome Fuller (1808-1880)" 14-16 (MLHP, 2016).

friction and very bad feeling between Mr. Norton and parties residing at Cove and vicinity.

Mr. Cravens in his defense will place on the stand a lot of witnesses to prove that the articles declared plaintiff as libelous, were justified by facts, while plaintiff on the other hand, will introduce witnesses and testimony to prove that his character and his acts are not as were stated in the Times. W. S. Foster is conducting the case for Mr. Cravens while J. Van Valkenburg and F. N. Hendrix of Minneapolis will represent the plaintiff. The case promises to be an interesting one, and unless the judicial bars are kept well up, there will be a lot of racy and red hot testimony introduced, and the social skeleton of Cove community will be dancing some lively jigs in court.

. . . .

There were a large number of people down from Mille Lacs lake to attend court, many of them being witnesses in the Norton vs. Cravens and Lynch vs. Foley Bean Lumber Co. cases. Among those who were present in court were W. J. Eynon, A. J. Porter, Rev. E. N. Raymond, William Wallace, D. G. Wilkes, Gus Anderson, and Andrew Lundeen of Cove; J. Warren, John W. McClure, D. Magee, J. W Orton, T. J. Warren and W. C. Prouty of Onamia; D. Green of Page and a lot of other lake residents.

. . .

Charles Freer who is teaching the school in district No. 17 at Cove is down as a witness in the Norton Cravens case, had no sooner reached the court house than he was wanted to do jury duty.[4]

2. From the *Princeton Union*, October 8:

[4] *Princeton Union*, October 1, 1903, at 1, 5.

DISTRICT COURT FINIS.

Wind Up of September Term—Jury in the Norton-Cravens Case Finds a Verdict for Cravens.

The September term of the district court was adjourned by Clerk of Court Briggs last Friday morning [October 2]. At the close of the libel suit against Fay Cravens by T. F. Norton on Thursday afternoon the jury retired with instructions from the court that under the evidence it would have to find a verdict for plaintiff, the amount to be anything from one cent up to amount sued for, $5,000, which of course is the amount usually stated in most damage suits.

After the jury retired there was nothing of any importance left on the calendar that had not been disposed of and the judge took the afternoon train for St. Cloud.

There were fourteen witnesses examined during the trial of the Norton-Cravens case, five for the plaintiff and nine for the defense. The witnesses that Mr. Cravens placed on the stand to prove the truth of all statements made in the Milaca Times were Mrs. Young, A. S. Anderson, Frank Daigle, D. G. Wilkes, A. Gunter, Rev. D. N. Raymond, W. J. Eynon, J. A. Noble and A. J. Porter, while in rebuttal Mr. Norton put on the stand B. Braford, Sam Mattson, James and George Simpson and Gust Anderson. Two of the witnesses for Mr. Cravens did not swear to certain facts and statements as they were published in the Times, and the court had nothing else to do but to instruct the jury to find for plaintiff under the circumstances.

The jury was out until about ten o'clock Thursday night when it came in with a verdict for Mr. Cravens.[5]

3. From the *Milaca Times*, October 8:

A jury was empaneled late Wednesday afternoon [September 30] in the case of T. F. Norton vs. Fay Cravens, publisher of the TIMES, the case being a suit for damages against the publisher for alleged libelous articles which appeared in this paper a year ago. No evidence was introduced until Thursday morning and the trial of the case consumed most of the day, being given to the jury at about 3:30 p. m. Evidence was introduced by the defendant to substantiate the statements published. Mrs. Christina Young, the widow woman who made the statements to the TIMES a year ago that Mr. Norton had threatened to take the county aid away from her if she did not vote his ticket at the school election failed to make a good on that charge when placed on the stand. Judge Baxter held that her failure to testify to the allegation was equivalent to introducing no testimony on that point, and in his charge to the jury stated that they must find a verdict in some degree from one cent to $5,000 for the plaintiff.

The plaintiff was represented in court by attorney J. Van Valkenberg and F. N. Hendrix of Minneapolis, and the TIMES publisher retained attorney W. S. Forster to defend his interests. The judge's charge to the jury was preceded by the pleas of the counsel for both defendant and plaintiff. Attorney Foster made a plain, matter-of-fact talk to the jury covering the various points of the case. Attorney Hendrix made an able and eloquent plea for the plaintiff in which he served a thorough and enjoyable roast of the TIMES and its publisher.

[5] *Princeton Union*, October 8, 1903, at 2.

The jury remained out until nearly 12 o'clock and finally brought in a verdict in favor of the TIMES publisher and awarded no damages.[6]

4. Eight months later Judge Baxter denied a motion for a new trial, as reported in the *Princeton Union* on June 4, 1904:

MOTION FOR NEW TRIAL OVERRULED

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Judge Baxter Denies Motion for New Trial
in the Norton-Cravens Libel Case.

———

Judge Baxter has filed a decision with the clerk of court denying a motion of T. F. Norton for a new trial in the libel case of T. F. Norton against Fay Cravens, publisher of the Milaca Times. It will be remembered that at the term of the district court last fall the case was tried and the judge instructed the jury to bring in a verdict for plaintiff, but court adjourned while the jury was out and when it came in it brought in a verdict for defendant. A motion was made for a new trial some time ago but Judge Baxter after reviewing the case came to the conclusion that the jury's verdict was justified in rendering the verdict that it did, as the judge says that in charging the jury he over looked evidence of

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[6] *Milaca Times*, October 8, 1903, at 1. The *Minneapolis Journal* predicted that the verdict would be overturned.

INSTRUCTIONS IGNORED
Verdict In a Libel Case at Princeton
Will Be Set Aside.

PRINCETON, MINN.-The September term of court, Judge Baxter presiding has adjourned. . . . In the libel case of T. F. Norton vs. Fay Cravens, publisher of the Milaca Times, the court instructed the Jury to find for plaintiff, but after being out until 10 o'clock at night the jury brought in a verdict for the defendant. The verdict will be set aside. Norton sued for $5,000.

Minneapolis Journal, October 3, 1903, at 13.

> justification in the publication of the objectional (sic) articles in the Times.[7]

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The "justification" Judge Baxter saw in 1904 may have been an intervening decision of the Minnesota Supreme Court.

Two months after the *Norton-Cravens* libel trial, the Minnesota Supreme Court reversed a $250 judgment in a libel suit in favor of Eugene J. Herringer, the Norman County auditor who was seeking re-election. *Herringer v. Ingberg*, 91 Minn. 71, 97 N.W. 400 (December 4, 1903).[8] His conduct in office was the subject of a critical "Letter to the Editor" of the *Norman County Herald* from Peter O. Ingberg, a county resident. The Supreme Court, in an opinion by Calvin L. Brown, concluded:

> Again, plaintiff [Herringer] was a candidate for re-election as county auditor, and the rule is thoroughly settled that a citizen has the right to comment fairly and with an honest purpose on the conduct of public officers. . . . There has always been a distinction between publications relating to public and private persons as to whether they are libelous. A criticism might reasonably be applied to a public officer which would be libelous if applied to a private individual.

Perhaps jurors saw that County Commissioner Norton was being criticized, fairly or not, for his actions as an elected official during a political campaign and that led to their verdict for the newspaper publisher. Perhaps Judge Baxter, belatedly, recognized the same thing.

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[7] *Princeton Union*, June 30, 1904, at 1.

[8] The Supreme Court's decision in *Herringer v. Ingberg* is posted in the Appendix, at 24-32.

Afterword

> As usual Mr. T. F. Norton of South Harbor is on hand and has business with the grand jury.
> . . .
>
> An undesirable citizen is one who is continually at war with his neighbors and in constant litigation. He is not only undesirable but he is costly to the taxpayers.
>
> —Princeton Union,
> November 19, 1908.

The end of the Norton-Cravens suit did not end Thomas F. Norton's and Fay Craven's involvement in libel litigation. In the next six years they would be the complainant, plaintiff or defendant in at least six libel cases.

In the October 1906 term of Mille Lacs County District Court Norton was the defendant in two libel suits. [9] The jury found for him in the first; the second case was stricken from the calendar. From the *Princeton Union*:

> IN DISTRICT COURT.
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> ———
>
> Judge G. E. Qvale of Twelfth District
> Presides at October Term
> Now in Session.
>
> ———

[9] The *Princeton Union* listed the cases on the calendar, including:

> W. J. Eynon vs. T. F. Norton, libel.
> Wm. A. Wallace vs. T. F. Norton, libel.

September 27, 1906, at 1.

> Judge G. E. Qvale, of the Twelfth judicial district, presided at the October term of court which commenced in Princeton on Monday at 5:30 p. m.
>
> Judge Baxter is holding court in Morrison county we believe, and as Judge Searle is incapacitated the governor was obliged to appoint a judge from outside the district to preside at the present term of court in this county, and he sent an able substitute in Judge G. E. Qvale of Willmar, 12th district. Judge Qvale is a pleasant, unassuming gentleman, well versed in the law and dispatches business with promptness.
>
> After the customary formality of opening court by the sheriff and the appointment of deputies, etc., the judge instructed the grand jury in its duties and that body immediately thereafter organized and adjourned until Tuesday morning at 9 o'clock.
>
> . . .
>
> William A. Wallace vs. T. F. Norton. Action for libel. Foster & Burns for plaintiff, Carl F. J. Goebel for defendant. Tried by jury and verdict returned for defendant. A stay of 30 days was granted plaintiff pending a motion for new trial.
>
> . . .
>
> W. J. Eynon vs. Thomas F. Norton. Libel. T. H. Salmon for plaintiff, F. N. Hendrix for defendant. On motion of defendant's attorney the case was ordered stricken from the calendar.[10]

By 1905 Norton had become the publisher of the *Mille Lacs Pioneer*, and in that capacity was indicted for the crime of criminal libel by the grand jury during the March 1908 term of the district court. As recounted by the *Princeton Union*:

[10] *Princeton Union*, October 4, 1906, at 1.

District Court Proceedings Closed on
Wednesday After a Term of
Eight Days Duration.

...

After a session of eight days an exceptionally long one for Princeton the district court proceedings came to a close yesterday at 4 o'clock.

The grand jury was also in session for an unusually long period of time from Tuesday to Saturday and, in addition to the indictment returned against Geo. King for petit larceny, as announced in last week's Union, brought in a true bill against T. F. Norton of the Mille Lacs Pioneer for criminal libel and an indictment for publishing libelous matter against Fay Cravens of Milaca. R. C. Dunn and T. H. Caley signed Mr. Cravens' bonds, which were fixed at $200. [11]

Meanwhile Norton had published an article accusing County Treasurer K. H. Burrell of mishandling school funds, and for this he was indicted for the crime of criminal libel at the November 1908 term. [12] He had,

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[11] *Princeton Union*, April 16, 1908, at 1. Over a year later, at the November 1909 term, the criminal charges against Fay Cravens were dismissed:

> Upon motion of County Attorney Ross the case of State of Minnesota against Fay Cravens for criminal libel was dismissed

Princeton Union, November 25, 1909, at 1.

[12] The law provided:

> §4916. Libel defined—A misdemeanor—Every malicious publication by writing, printing, picture, effigy, sign, or other-wise than by men, speech, which shall expose any living person, Or the memory of one deceased, to hatred, contempt, ridicule, or obloquy, or which shall cause or tend to cause any person to be shunned or avoided, or which shall have a tendency to injure any person, corporation, or association of persons in his or their business or occupation, shall be a libel. Every person who publishes a libel shall be guilty of a misdemeanor.

Statute, c. 97, §4916, at 1038 (1905).

besides, filed a criminal libel complaint against George E. Sloan of the *Wahkon Enterprise* for an attack on him while he was a county commissioner. The *Princeton Union* described these developments in its November 19, 1908 issue:

> The November term of the district court convened at the court house in Princeton immediately after the arrival of the evening train, upon which Judge Myron D. Taylor was a passenger. His stenographer, P. M. Woodward, drove over from St. Cloud.
>
> In the absence of Sheriff Shockley, who had gone to Sandstone to secure a witness, Deputy Sheriff Kaliher opened court and Judge Taylor then called the calendar.
>
> Following this an adjournment was taken until Tuesday morning at 9 o'clock. Upon the reconvening of court the judge appointed the deputies and then read and explained to the members of the grand jury the law governing their proceedings, giving them explicit instructions as to the duties required of them. John Teutz was selected as foreman of the grand jury. Thereupon the body retired to its room, organized and proceeded to consider such matters as were brought before it.
>
> The grand jury returned indictments as follows:
>
> . . .
>
> Against Thos. F. Norton of Onamia for criminal libel. Norton is charged with publishing in his paper, the Mille Lacs Pioneer, unlawfully, maliciously and with intent to expose K. H. Burrell, treasurer of Mille Lacs county, to hatred, contempt, ridicule and obloquy, and to cause said K. H. Burrell to be shunned and avoided, false and libelous matter. The article at issue charges that K. H. Burrell withheld school funds of district 17 unlawfully and placed these funds on

deposit in the bank of which his son is interested, or otherwise, etc.[13]

In its next issue the weekly *Union* continued its account of the session:

> On Monday at 4:30 p. m. the district court proceedings drew to a close after a duration of one week. In addition to the indictments enumerated last week's Union the grand jury also indicted Geo. E. Sloan of the Wahkon Enterprise for libel, the complaint having been made by T. F. Norton. The alleged libel, according to the indictment, consists in the printing and distributing by Mr. Sloan of a circular relating to the actions of said Norton while he was a member of the board of county commissioners.[14]
>
> . . .
>
> The case of the State of Minnesota against Fay Cravens for libel was continued by consent of parties.
>
> . . .
>
> T. F. Norton, who was indicted by the grand jury for criminal libel at the last term of court [March], was tried and the jury returned a verdict of not guilty. County Attorney Ross was assisted in the prosecution by C. H. MacKenzie of Onamia and Geo. W. Stewart of the firm of Stewart & Brower, St. Cloud, was of counsel for defendant.
>
> This case grew out of an article printed in the Mille Lacs Pioneer, a paper published by Norton, in which he commented on the cutting of telephone wires at the lake and the character of the manager of the telephone line, H. F. Mann of

[13] Princeton Union, November 19, 1908, at 1.

[14] Six months later, at the March 1909 term, these charges were dismissed:

> Upon motion of County Attorney Ross the libel suit brought against George E. Sloan of the Wahkon Enterprise by Tom Norton was dismissed.

Princeton Union, April 8, 1909, at 1.

> Cove. The article referred to, under the caption, “Telephone Line Butchered—Main Wires Cut in Forty-four Places," etc., said, among other things, that a bitter feeling toward Manager H. F. Mann was thought to be the cause of destruction that there existed a bitter feeling on the part of frozen-out stockholders and abused patrons of the line; that Mann and others assumed unwarranted management, took people's money for stock and used it to suit themselves; that no intelligent statement had ever been made to the stock-holders, and there was a missing link of about a year and a half of the company's business which Mann has made no statement for at all: that many stockholders had been charged high tolls and rent for using the line they had helped to build that Mann had recently purchased a touring car and cuts quite a swath scorching through the country with a long Havana in his mouth and a French plate glass set up in front to keep the bugs out of his eyes: that this display of apparent wealth and luxury, coupled with arrogance flaunted in the face of frozen-out stockholders, heavily-taxed patrons of the line and others has served to bring forth much bitter denunciation of Mann and his methods and is no doubt in a measure the cause for the raid on the company's lines, etc.
>
> And the jury, after reading the article published in Norton's paper, of which the above is a part, and hearing the evidence, returned a verdict of not guilty! [15]

The criminal libel case against Thomas Norton for his article on County Treasurer Burrell (for which he was indicted in November 1908) was set for trial in the April 1909 term of the district court. At that time, on the

[15] *Princeton Union*, November 26, 1908, at 1. It also complemented a young prosecutor:

> Attorney C. H. MacKenzie of Onamia represented the state in an excellent manner in the Norton libel suit. He demonstrated that he well understands the intricate points of law. Mr. MacKenzie gives every indication of being one of the coming legal lights of this county.

motion of Norton's attorney, Judge Myron Taylor certified the question of whether Norton's article was libelous to the state supreme court. From the *Princeton Union* on April 8th:

METING OUT JUSTICE.

Regular Term of District Court Convened on Monday With Judge Taylor on the Bench.

On Monday evening the regular April term of the district court convened in Princeton with Judge Myron D. Taylor on the bench and Philip M. Woodward stenographer. Both arrived here on the 5 o'clock train and proceeded to the court house, where Harry Shockley, in a stentorian voice, opened court and started the mill to grinding. No grand jury was impaneled at this term.

Judge Taylor called the calendar, appointed the deputies and disposed of other preliminaries, and an adjournment was taken for supper, after which court reconvened and proceeded with the hearing of cases as follows:

The first case which came on for hearing was that of the State of Minnesota vs. Thos. P. Norton for criminal libel. Joseph A. Ross, county attorney, and E. L. McMillan, appeared for the prosecution, and Stewart & Brower for the defendant.

Norton's counsel demurred to the indictment and the court, upon request, certified the case to the supreme court to rule upon the sufficiency of such indictment. Judge Taylor, however, held that the indictment was good.

In case the supreme court decides that the indictment is good which in all probability it will the action will come up for trial at the next term of court in Princeton.

This is the case in which Thos. F. Norton was indicted by the grand jury at the November term of court for publishing in

his paper, the Mille Lacs Pioneer, unlawfully, maliciously and with intent to expose K. H. Burrell to hatred, contempt, ridicule and obloquy, and to cause said K. H. Burrell to be shunned and avoided, false and libelous matter. Among other things the article at issue charged that K. H. Burrell withheld school funds of district 17 and placed them on deposit in the bank in which his son is interested.[16]

On November 12, 1909, the Minnesota Supreme Court issued its decision in the *Norton* case and, as expected, held that his article criticizing the county treasurer was libelous per se.[17] The *Princeton Union* reported the ruling:

Held Libelous Per Se.

The state supreme court handed down its decision in the T. F. Norton libel case last week and found that the newspaper article published in Norton's paper pertaining to K. H. Burrell is libelous per se. The syllabus is as follows:

A newspaper article stating in effect that a county treasurer, with knowledge that he had no right to do so, withheld as such county treasurer for two years school funds belonging to a school district, during which time he "had the use of the school district's money either on deposit in the bank in which his son is interested, or otherwise," charges malfeasance in office, and is libelous per se.

Order affirmed. O'Brien, J. [18]

A week later the district court concluded its November term. The clerk of court had not yet received the file in the criminal libel case against Tom

[16] *Princeton Union*, April 8, 1909, at 1. This article also noted that "Tom Norton's Suit for Alleged Libel Against George E. Sloan is Thrown Out of Court." See note 14.
[17] *State v. Norton*, 109 Minn. 99, 123 N.W. 59 (1909), is posted in the Appendix, at 19-23.
[18] *Princeton Union*, November 18, 1909, at 6.

Norton from the Supreme Court, and so the case was continued to the spring 1910 term. From the *Princeton Union*, November 25, 1909:

ITS WORK CONCLUDED.

The District Court Proceedings Ended
Yesterday After a Grind of
Eight Days Duration.

. . .

Yesterday morning at 10 o'clock the district court proceedings drew to a close after a duration of eight days with several night sessions, and every case on the calendar received attention.

A synopsis of the cases not disposed of at the time the Union was printed last week is given: hereunder:

. . .

Upon motion of County Attorney Ross the case of State of Minnesota against Fay Cravens for criminal libel was dismissed.

. . .

State of Minnesota against Thos. F. Norton. Criminal libel. J. A. Ross for state, Stewart & Brower for defendant. Files not returned from supreme court. Case will be tried at next term.[19]

At the April term of the district Court, the *Norton* case took an unexpected turn. From the *Princeton Union*, April 7, 1910:

The April term of the district court convened on Monday immediately after the arrival of Judge Myron D. Taylor and his stenographer on the evening train.

Court was formally opened by Sheriff Shockley and Judge

[19] *Princeton Union*, November 25, 1909, at 1.

> Taylor called the calendar, after which a recess was taken until 7:30 o'clock.
>
> Upon the reconvening of court at that hour a number of motions were heard and during the evening several cases were disposed of.
>
> . . .
>
> State of Minnesota vs. T. F. Norton. Criminal libel. J. A. Ross for the state, Stewart & Brower for defendant. On motion of the county attorney the case was dismissed. [20]

County Attorney Joseph Ross must have explained his puzzling decision to Burrell, the victim of Norton's libel, and other lawyers. He had in hand a favorable decision of the Supreme Court. What he lacked, it seems, was trust in the jury. Today our speculation about his motives very quickly turns to the stark results of jury verdicts in Mille Lacs County in the late 19th century and first decade of the 20th. It was extremely difficult to get a plaintiff's verdict in a civil suit for defamation or a guilty verdict in a criminal libel prosecution. Ross recognized this. Jurors read the local press—the *Princeton Union*, *Milaca Times*, *Mille Lacs Pioneer*, *Wahkon Enterprise* and others—and may have concluded that well known men in public office or business were not using libel law suits to clear their reputations but to settle scores or retaliate for a hostile newspaper article. Ross may have foreseen the jury verdict if he prosecuted Tom Norton: Not Guilty.

The rash of civil and criminal libel suits in Mille Lacs County seems to have declined about this time. Thereafter the *Princeton Union* published numerous stories about libel suits in other towns and cities in Minnesota and other states, even England, but few homegrown lawsuits.[21]

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[20] *Princeton Union*, Thursday, April 7, 1910, at 1.

[21] Using a key word ("libel") search on the Minnesota Digital Newspaper Hub, a technique similar to counting court case citations, 311 issues of the *Princeton Union* are posted. Within each issue the word "libel" is used at least once. The first issue of this newspaper in which "libel" is used is 1877, a squib about a criminal libel indictment of the San Francisco *Examiner*, the last 1922, the last year the Hub has digitalized newspapers.

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Appendix

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MINNESOTA REPORTS

VOL. 109

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF MINNESOTA

JULY 23, 1909—JANUARY 21, 1910

HENRY BURLEIGH WENZELL
REPORTER

LAWYERS' CO-OPERATIVE PUBLISHING CO.
ST. PAUL
1910

JUSTICES

OF

THE SUPREME COURT

OF MINNESOTA

DURING THE TIME OF THESE REPORTS

Hon. CHARLES M. START, Chief Justice.
Hon. CALVIN L. BROWN.
Hon. CHARLES L. LEWIS.
Hon. EDWIN A. JAGGARD.
Hon. CHARLES BURKE ELLIOTT.[1]
Hon. THOMAS D. O'BRIEN.[2]

CARL A. PIDGEON, Esq., Clerk.[3]
IRVING A. CASWELL, Esq., Clerk.[4]

ATTORNEY GENERAL:
Hon. GEORGE T. SIMPSON.

[1]Resigned on July 28, 1909; resignation to take effect on September 1, 1909.
[2]Appointed on July 28, 1909; appointment to take effect on September 1, 1909.
[3]Resigned December 2, 1909.
[4]Appointed December 2, 1909.

STATE v. T. F. NORTON.[1]

November 12, 1909.

Nos. 16,252—(29).

Words Libelous Per Se.

A newspaper article, stating, in effect, that a county treasurer, with knowledge that he had no right to do so, withheld as such county treasurer for two years school funds belonging to a school district, during which time he "had the use of the school district's money, either on deposit in the bank in which his son is interested or otherwise," charges malfeasance in office, and is libelous per se.

Defendant was indicted in the district court for Mille Lacs county and charged with the crime of criminal libel. Defendant demurred to the indictment on the ground it did not state a public offense, the demurrer was overruled, and on defendant's request the trial court, Taylor, J., certified the case to this court for its decision of the following question "Is the article quoted in said indictment libelous per se within the meaning of the statute defining criminal libel?" Affirmed.

George T. Simpson, Attorney General, *Joseph A. Ross,* County Attorney, and *E. L. McMillan,* for the State.

Stewart & Brower, for defendant.

O'BRIEN, J.

The defendant was indicted by the grand jury of Mille Lacs county upon a charge of criminal libel, which consisted in the publication in a newspaper published by defendant of the following article:

"BURRELL TURNS OVER $1,300.
"COUNTY TREASURER PAYS OVER SCHOOL FUNDS OF DISTRICT 17 TO CHARLES BRANT."

King Burrell, who as county treasurer of Mille Lacs County has withheld school funds belonging to District No. 17 for the past

[1]Reported in 123 N. W. 59.

two years, last week turned over $1,300 to Charles Brant, the lawful treasurer of the district. Just how Mr. Burrell justifies his action in having withheld this money from the district all this time is something that the taxpayers of the district would like to have him explain. There was no question but that Mr. Brant was the lawful treasurer of the district at the time Burrell refused to turn the money due to the district over to him, and in so far as any question of his bonds is concerned there is no change in the least. If Mr. Burrell had any legal or moral right to withhold the funds of the district from Mr. Brant at any time there is as much excuse for it now as there ever was.

"The fact is that Mr. Burrell had no right to withhold these funds from Mr. Brant at any time, and apparently no one knows that better than himself. Mr. Burrell has had the use of the school district's money either on deposit in the bank in which his son is interested, or otherwise, and he should be compelled to pay interest for its use and also such damage as he has caused the district and Mr. Brant through his failure to turn over the money when it should have been."

A demurrer to the indictment was overruled, and the district judge certified to this court the question: "Is the article quoted in said indictment libelous per se, within the meaning of the statute of the state of Minnesota defining criminal libel?"

To render a printed article libelous, it is not necessary that it accuse a person of wrongdoing with the particularity and exactness to be expected in a well-framed indictment. The test is: What does the language naturally import? How will the language be understood by the ordinary reader? If the language used will convey to the reader's mind a charge that the person referred to in the article has been guilty of conduct which naturally exposes him to hatred, contempt, ridicule, or obloquy, or tends to injure him in his business or occupation, it has the same effect as though it were couched in the technical language of a pleading.

The article in question charges in effect that Burrell, as county treasurer, withheld from school district No. 17 the sum of $1,300,

to which it was entitled, that this action upon his part was to his knowledge without justification, and that during those two years Burrell had the use of the money, either by depositing it in the bank in which his son was interested or in some other way. The article must be understood to charge that Burrell, knowing he had no right to do so, for his own individual use or gain, improperly retained possession, in his official capacity, of public funds which it was his duty to pay over to the proper officer of the school district. If the charge is true, he was guilty of malfeasance in office, which would justify his removal. Sections 2668–2673, R. L. 1905; State v. Peterson, 50 Minn. 239, 52 N. W. 655; State v. Megaarden, 85 Minn. 41, 88 N. W. 412, 89 Am. St. 534; State v. Wedge, 24 Minn. 150; State v. Coon, 14 Minn. 340 (456).

There is no doubt that the official conduct of public officers is a proper subject for public discussion and fair criticism. Their position deprives them of the right to suggest that no public interest attaches to their conduct. Proper discussion and criticism of their acts is not idle gossip, but is, upon the contrary, beneficial to the public service. The only question presented by this record is the one certified by the district court, and it must be answered in the affirmative; for an article charging a public officer with conduct which would constitute malfeasance in office and render him liable to removal under the laws of the state is libelous per se. Larrabee v. Minnesota Tribune Co., 36 Minn. 141, 30 N. W. 462; State v. Shippman, 83 Minn. 441, 86 N. W. 431; Craig v. Warren, 99 Minn. 246, 109 N. W. 231.

Order affirmed.

MINNESOTA REPORTS

VOL. 91

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF MINNESOTA

NOVEMBER 27, 1903—APRIL 8, 1904

HENRY BURLEIGH WENZELL
REPORTER

ST. PAUL
FRANK P. DUFRESNE
1904

E. J. HERRINGER v. PETER O. INGBERG.[1]

December 4, 1903.

Nos. 13,649—(104).

Libel.

In an action for libel it is *held*: (a) That an alleged defamatory publication must be taken and construed in the light of the ordinary signification and import of its language; (b) that the natural and ordinary meaning of the language or words cannot be enlarged, extended, or restricted by innuendo; and (c) that the article complained of in this action is not libelous.

Comment on Public Officer.

A citizen has the legal right to comment fairly and with an honest purpose upon the conduct of public officers; and the publication of such comments, fair and temperate in tone, will not subject the author to an action for damages.

Appeal by defendant from an order of the district court for Norman county, Watts, J., denying a motion for judgment notwithstanding the verdict for $250, or for a new trial. Reversed.

M. A. Brattland and *Ole J. Vaule,* for appellant.

John M. Hetland and *F. H. Peterson,* for respondent.

BROWN, J.

Action for libel, in which plaintiff had a verdict, and defendant appealed from an order denying his alternative motion for judgment notwithstanding the verdict or for a new trial.

The facts are as follows: In 1900 the authorities of Norman county entered into contracts for the construction of what is called the "Hendrum-Hegne Ditch," which extends through the county from east to west for a distance of sixteen miles. The contracts were entered into in July, and by their terms the ditch was to be completed by January 1, 1901. Some of the contractors completed portions of the ditch covered by their separate contracts, but others failed to do so, and the matter ran along, the ditch uncompleted, until 1902. The failure fully to complete it was the cause of much discontent on the part of farmers affected

[1] Reported in 97 N. W. 460.

thereby, and it attracted considerable public attention. Plaintiff was county auditor at the time, and was charged with certain duties in respect to the contracts and the completion of the ditch, and was a candidate for office at the fall election of that year. On October 10, 1902, there appeared in one of the newspapers published in the county the following item:

> "Bondsmen of Contractors Will be Asked to Pay.
>
> "Auditor Herringer and Clerk of Court Ward was here Saturday, looking up matters in regard to the unfinished portion of the Hendrum-Hegne ditch, with a view to commencing proceedings against the bondsmen of the contractors who did not fulfil their contract.
>
> "The county has been somewhat lenient with them, owing to the difficulties encountered in the work, but they seem to have abandoned it entirely, and it has been decided to have it finished at once. Lenahan & Scribner are the contractors and C. W. Smith, subcontractor."

On October 22, following, defendant wrote and caused to be published in the Norman County Herald the following article:

> "Editor Herald: The Hendrum Review of October 10, has an announcement that County Auditor Herringer and Clerk of Court Ward were out looking over the Hendrum-Hegne ditch and stating that proceedings will be instituted to prosecute the bondsmen of the negligent contractor who failed to complete his contract and that it has been decided to have the ditch completed at once. I hope very much that such will be the case as the Hendrum-Hegne ditch has been the biggest failure that the county has undertaken to do from the letting of the contract up to the present date, and I hope that Herringer can for his own sake prove that he has had nothing to do with the management of said ditch, as those county officials that have proven their incapability to manage the county affairs should not be re-elected to continue similar failures.
>
> The ditch was let out on stations from the Red river east, through Hendrum, Hegne and McDonaldsville, and if I am correctly informed the price paid in Hendrum was 11 cents per

square yard or from three to four cents more than the state pays for the digging of ditches. Why should the poor farmers along the ditch be compelled to pay more than the state does for such work? Are they more able than the whole state? It looks as though the county officials who were in charge of the matter had that opinion. If Mr. A. C. Tvedt, backed by J. C. Norby and others, had not come in on the day the contracts were made and bid the price down to 6, 7 and 8 cents per cubic yard, the whole ditch would probably have been let out at 11 cents per cubic yard, causing an additional cost of several thousand dollars. Thanks should be given to those who caused the saving in constructing the ditch. When the bidding was over, the contractors took off Tvedt's hands all the stations that he did not want at 6, 7 and 8 cents, thereby proving that the ditching could be done for less than eleven cents per yard. The contract was let so that the ditch should be ready in the fall of 1900, which was partly done in Hendrum from the Red river three or four miles east and completed in Hegne-McDonaldsville seven or eight miles, leaving three miles in Hendrum not dug at all so in the spring of 1901 all the water tributary to the ditch flooded the land in Hendrum and destroyed the crops of the farmers along the unfinished ditch.

Why has not the ditch been dug? It was to have been ready in about four months; now two years and four months have elapsed and no ditch finished. Why have not those in charge of the ditch hired some one else to do the work as they certainly have not paid for the work that has not been done? What makes the statement in the Review doubtful about finishing the ditch at once is that Herringer and Ward who are credited with that statement know that it cannot be done at once. The season is too late for ditching and it is most too late if anything is to be done to the bondsmen to get it in at the fall term of court, but it is good enough to put the ditch taxpayers at rest just now before election to be able to get their votes, knowing that the suffering ditch taxpayers got to pay the ditch tax or else lose their land. Ditch or no ditch, flooded or not flooded.

"Peter O. Ingberg."

On the contention that this article was libelous, intended by defendant as a reflection upon the honesty and integrity of plaintiff as county auditor, this action was brought for damages. The complaint alleges that the statements and inferences of the article are false; that the publication was malicious; and that defendant intended thereby, and was understood to mean by readers of the paper, that plaintiff's action as county auditor in respect to said ditch and the management of the same was corrupt and dishonest, and that he connived with the ditch contractors to defraud the farmers out of thousands of dollars. Two particular portions of the article are selected and made the basis of the cause of action. They are as follows:

> (1) "I hope that Herringer can for his own sake prove that he has had nothing to do with the management of said ditch as those county officials that have proven their incapability to manage the county affairs should not be re-elected to continue similar failures."
>
> (2) "Why should the poor farmers along the ditch be compelled to pay more than the state does for such work? Are they more able than the whole state? It looks as though the county officials who were in charge of the matter had that opinion, if Mr. A. C. Tvedt, backed by J. C. Norby and others, had not come in on the day the contracts were made and bid the price down to 6, 7 and 8 cents per cubic yard the whole ditch would probably have been let out at 11 cents per cubic yard, causing an additional cost of several thousand dollars."

Defendant answered, admitting that he wrote and caused to be published the article complained of, and that he had reasonable cause to believe, and did believe, at the time of its publication, that it was true; that it was published in good faith, without bias, and, so far as plaintiff was concerned, published for the sole purpose of commenting upon his fitness for the office for which he was a candidate; and denying that the article was intended to charge plaintiff with corruption or dishonesty of any kind. The cause was submitted to a jury, who returned a verdict for plaintiff.

The principal question presented in this court is whether the article complained of is libelous, and whether the complaint states facts suf-

ficient to constitute a cause of action. It was said in Davis v. Hamilton, 85 Minn. 209, 88 N. W. 744, that the law of libel is that any written or printed words are libelous which tend to injure the reputation or good standing of a person, and thereby expose him to public hatred, contempt, or ridicule; or which tend to degrade him in society, lessen him in public esteem, or lower him in the confidence of the community, even though the words do not impute to him the commission of a crime or immoral conduct. This was taken from the previous decisions of the court, as well as the statutes of the state, and is an accurate statement of the general rule on the subject.

But it is not every false and malicious charge against an individual, though reduced to writing, and published maliciously, that will sustain an action for damages. "It must appear," as said by Justice VANDERBURGH in Stewart v. Minnesota Tribune Co., 40 Minn. 101, 41 N. W. 457, "that the plaintiff has sustained some special loss or damage, following as a necessary or natural and proximate consequence of the publication; or the nature of the charge itself must be such that the court can legally presume that the party has been injured in his reputation or business, or in his social relations, or has been subjected to public scandal, scorn, or ridicule, in consequence of the publication." And as said by Justice MITCHELL in McDermott v. Union Credit Co., 76 Minn. 84, 78 N. W. 967, 79 N. W. 673: "Any discommendatory language used of and concerning a person is liable to do him injury, although such injury is often inappreciable in law. But nothing is better settled than that much discommendatory language, whether written or spoken, is not actionable per se, because not calculated to do the person of whom it is published any injury appreciable or cognizable by the law. The courts have, for practical reasons and considerations of public policy, to draw the line somewhere, and this has often to be done by a gradual process of exclusion and inclusion, depending upon the particular facts of each case as it arises."

In determining whether a given publication is libelous, the language thereof must be taken in its ordinary signification, and construed in the light of what might reasonably have been understood therefrom by the persons who read it. The question is, how would persons of ordinary intelligence understand the language? In this view we are of opinion that the article complained of is not libelous. The matters par-

ticularly complained of impute to plaintiff neither dishonesty or corruption, nor that he had connived to defraud the farmers out of thousands of dollars. It does not matter that the complaint so charges, for alleged defamatory words cannot be made broader, nor their natural meaning extended, enlarged, or restricted, by innuendo. Such is not the office of an innuendo. State v. Shippman, 83 Minn. 441, 86 N. W. 431; 13 Enc. Pl. & Pr. 49, et seq., and cases cited. The first portion of the article complained of simply expresses a hope that plaintiff can prove that he had nothing to do with the management of the ditch, for, if he had, his incapacity to manage the same would not warrant his re-election to office. The second portion complained of, giving it the broadest and most comprehensive construction, cannot be said to charge plaintiff with any misconduct in office. It merely suggests that the contracts were let at a price greater than was necessary, and that, if it had not been for certain persons appearing before the county officials at the time the contracts were let, and bidding the price down, they would probably have been let at eleven cents per cubic yard, thus causing an additional cost to the farmers of several thousand dollars. The article, in this respect, is doubtless true. If there were no bids except at the price of eleven cents per cubic yard for removing the earth from the ditch, the officials would have been required to let the contracts at that price, but, if others came in and bid a lower price, the officials would have been required to let to the lowest bidder. Taking the language in its ordinary meaning and import, it does not charge plaintiff with any wrongdoing whatever; nor does it expose him to public hatred, contempt, or ridicule, or tend to degrade him in society, or lessen him in public esteem.

Again, plaintiff was a candidate for re-election as county auditor, and the rule is thoroughly settled that a citizen has the right to comment fairly and with an honest purpose on the conduct of public officers. Wilcox v. Moore, 69 Minn. 49, 71 N. W. 917. As said in Odgers, Slander & Libel, 34, 40, every person has a right to discuss matters of public interest. All persons holding public positions are subjects for public discussion, and when a citizen, whether a newspaper editor or not, publishes an article of public interest, fair and temperate in tone, he may express his opinion on the conduct of such officers, and not be subject to an action for libel. Whoever fills a public office renders

himself open to public discussion, and, if any of his acts are wrong, he must accept the attack as a necessary, though unpleasant, circumstance attaching to his position. There has always been a distinction between publications relating to public and private persons as to whether they are libelous. A criticism might reasonably be applied to a public officer which would be libelous if applied to a private individual. A broad view of the article in question, and one that will give force only to the natural meaning of its language, satisfies us that it is not beyond the bounds of the law in this respect, and, whether maliciously published or not, gave rise to no cause of action in favor of plaintiff.

Order reversed.

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Afterword

This article is part of a series of studies of defamation lawsuits in the late 1800s and early 1900s, particularly against newspapers.

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