

STOCKS, BONDS, QUOTATIONS

YESTERDAY'S LOCAL MARKET QUOTATIONS Corrected For Every Wednesday and Saturday Issue

Table of stock prices for various companies including Am and F Power, Am Tel and Tel, and others.

JUDGMENT IN ALLEGED SLANDER CASE

Text of Judgment Entered in Defendant's Favor in Savidant-Day Case.

The following judgment was given by Chief Justice Mathieson in the case of Savidant versus Day: IN THE SUPREME COURT Leo Savidant—Plaintiff vs. Roland L. Day—Defendant.

ment of the defence. (His Lordship then read the statement of claim and statement of defence.)

These, summarized, are as follows: The plaintiff's claim is that at a City Council meeting in Charlottetown on the 13th of June last, on the plaintiff's application for permission to run a fruit and ice cream stand at Victoria Park the defendant falsely and maliciously spoke and published of the plaintiff the following words: "This man (meaning thereby the plaintiff) received his blindness by shooting himself on Rosebank Farm, but he (the plaintiff) was not very blind the night he came into my shop and stole a 2 1/2 lb. bag of flour and walked out with it, the defendant meaning thereby that the plaintiff shot himself and also stole a bag of flour from the defendant where by the plaintiff lost the profits that would have accrued to him by operating said fruit and ice cream stand, and was greatly injured in his character and reputation, and the plaintiff claims \$5000.

The defence states that the defendant never spoke any of the words set out in the statement of claim. 2. In the alternative, the defendant says that the said words are true in substance and in fact.

(a) On the 24th of March, 1931, the plaintiff was employed as janitor by Leo Frank in the dwelling house occupied by him, in which painters or workmen were at work. The plaintiff, without the permission or authority of Leo Frank, opened a drawer of a bureau in the house and showed certain of the contents belonging to Leo Frank to the painters, and the plaintiff or one of said painters, or workmen, without the authority of Leo Frank took from one of the drawers a small gun or tear gas bomb shaped like a fountain pen. While the plaintiff and workmen were examining it, the said gun or bomb exploded, from which cause the plaintiff's eyesight became affected and he has since suffered from blindness or partial blindness thereby.

(b) During the winter of 1929 the plaintiff entered the defendant's shop while the defendant was temporarily absent from the front part of the shop, and unlawfully carried away a bag of flour belonging to the defendant. The latter, on discovering the flour had been carried away, unlawfully sent his son to get it back. The defendant's son followed the plaintiff and intercepted him while carrying the flour a short distance from the defendant's shop, just what it means. Essentially, it is a division along the lines I have indicated, leaving cases that are properly tryable by the jury—that is, involving material questions of fact—leaving them where they were before, but in other cases assigning them definitely to the Court. As I have said, if I find at the present time that this is a matter that should be tried by the Court, your duties in this case will be done, without finding a verdict. Otherwise, if the decision is against this motion—if the finding is that the case is not withdrawn from the jury—we will proceed in the ordinary way.

Let us see just where we stand in this regard. The statement of the case and of the defence, the pleadings, are short, and I propose to read to you the statement of claim and the statement of defence.

N. Y. CURB

Table of New York Curb market prices for various commodities.

GRAIN

Table of grain market prices for various types of wheat and other grains.

SPECIALS TODAY ONLY GRAPE FRUIT 46c per doz. FRESH EGGS (First) doz. 19c FRESH BACON 2 lbs. 19c ORANGES (Sunkist) doz. 25c VEGETABLE SOUP, 3 tins 29c CHICKEN HADDIE, 2 tins 25c PEAS, CORN Tomatoes, 3 tins 29c COOKED HAM per lb. 29c Fresh Lamb, Pork, Beef Chicken and Butter Phone 1115 CASH and CARRY STORES Free Delivery

to operate a restaurant in Victoria Park should be granted. Mr. Day said certain things. I have read to you what was charged he said: "That the plaintiff was not very blind the night he came into my shop and stole a 2 1/2 pound bag of flour and walked out with it." It seems that one reason for having his appointment made was that he had lost his sight, and evidently Mr. Day was meeting that by the statement which involved two statements, "he was not very blind when he stole the bag of flour," and in the second place, that "he received his blindness by shooting himself on Rosebank Farm." It is in effect a statement that the plaintiff had stolen a bag of flour, and that in certain circumstances and conditions and under some qualifications, that he had shot himself.

Now, Mr. Day was a member of the City Council. The City Council, among its other duties, has the control over Victoria Park, having the power to grant or refuse permission to a person or persons to operate a fruit stand or restaurant there. They were considering this very question when Mr. Day made the remarks that are attributed to him. Those remarks, if untrue, and made upon an unprivileged occasion, would have been slanderous and an action could have been successfully brought and prosecuted, but Mr. Day's protection is that he was speaking in the line of his duty. As a City Councillor it was his duty to protect and guard the property and interests of the public, of the people of Charlottetown, and if in that position he made statements which were made in the public interest and in pursuance of his duty, and made them to those who were interested in the same matter, then a privilege would arise, and although the words might otherwise be slanderous, that privilege would be capable of safeguarding him from a prosecution for slander, even although the words he spoke were untrue, and even although they were slanderous and injurious, except for this protection, he could wrap that cloak around him and it would protect him from attack—that cloak of privilege.

But the privilege is not an absolute privilege. It is what is called a "qualified privilege," and it only protects him in the absence of malice. If Mr. Day stated what he did, if what he did and what he said represented actual malice springing from a malicious feeling and intent, then that privilege would not protect. Now, malice in such a case as this has the common meaning of a bad state of mind. It has the same quality of meaning as its derivative "malicious." If the case were not clear, it might frequently happen that the Court or Judge might find that it was a case of qualified privilege, and yet would leave to the jury the decision as to whether or not that privilege was lost because of malice of the defendant, so that we come to this point in this particular case; should the Judge decide upon the point of malice or leave it to the jury? I am going to review shortly the law as laid down in such a case as this, and although the jury are not concerned with the law, I would like that you should have the opportunity of hearing just what it is, because it seems a pity that in any circumstances a jury apparently so competent and intelligent should not be used to their fullest capacity, and I would very much rather if the case were clear—any Judge would prefer—that the burden of deciding upon the verdict should be put upon the jury.

I am reading from a recognized authority on the law of torts, Salmond on Torts, p. 523, Sec. 143. The headnote reads: "Statements in Performance of Duty. 'A statement is conditionally privileged if it is made in the performance of any legal or moral duty imposed upon the person making it. The hard rule of absolute liability for error is applicable only to those persons who, without any just call or occasion, venture to attack the reputation of others. But where a defamatory statement is made in the fulfillment of a duty, there is no liability in the absence of malice. . . . The question is, what is the defendant's duty, not what he thinks to be his duty.' It is for the Judge, and not for the jury, to decide whether on the facts as proved such a duty existed." Now this has a very direct application to the present case: "The members of borough councils and other public bodies are privileged in respect of communications made to one another in the honest fulfillment of their functions." The reason for this privilege, Lord Justice Lindley lays down thus: "The reason for holding any occasion privileged is for the common convenience and welfare of society, and it is obvious that no definite line can be drawn as to the particular thing that comprises those occasions which are privileged and separate them from those which are not." The value of this statement is that the reason for holding any occasion privileged is for the common convenience and welfare of society. In the present case there can be no question that this was a privileged occasion, the meeting of a City Council, the deliberations of a City Council, upon a matter affecting the administration of the City. Every member of that Board came within the privileges of speaking—of saying what was necessary to be said in the interests of the City, even though it might involve the character of a third person or any number of persons. The only limit upon what they might say to one another in their meeting would be that what was said should not be said maliciously, should not be spoken with malice, with ill-will. If there is no such evidence of ill-will, there is no question about the privilege being absolute. Now this, however, so far as we have gone, is a case of qualified privilege, not an absolute privilege, because that privilege is qualified by the duty of the person claiming it, to speak without malice, to say or do what he does without malice, and he must be able to satisfy the Judge. If the Judge decides that the case is one of qualified privilege, the plaintiff must then satisfy the Judge that there is evidence of malice on the part of the defendant to go to the jury. If the plaintiff has given no such evidence, it is the duty of the Judge to direct a verdict for the defendant. If he has given any evidence of malice, sufficient to go to the jury, then it is a question for the jury whether the defendant was or was not actuated by a malicious motive in speaking the words. If the evidence adduced is equally consistent with either the existence of malice or the non-existence of malice, if it is doubtful, simply hanging in the balance, the Judge should stop the case, for there is nothing to rebut the presumption which has arisen in favour of the defendant on a privileged occasion. Mr. Day, the defendant, was speaking from his place in the Council as a privileged person. He would lose that privilege if he spoke with malice, with actual malice, with ill-will, if what he said was maliciously said. Otherwise there is no malice. That can be applied in reduction of his privilege. That the words are strong is no evidence of malice. If on the defendant's view of the facts, strong words were justified, (if it was the defendant's duty to volunteer the statement), it is no evidence of malice. And here the rule goes very far. Even if the statement made is proven to be untrue, that is no evidence of malice. But if the defendant knew it was untrue, that would be conclusive proof of malice. In this case, if the defendant knew that the statement he was making was untrue, there would be no chance but to find him guilty. His privilege does not go so far as to allow any persons to utter slanders against others, to make statements which he knows are untrue. His protective mantle in such cases falls away and leaves him exposed as any ordinary man would be, to answer to the full consequence of the words that he had used. "Now the question of malice or no malice is for the jury." I am reading now from "Odgers on Libel and Slander," a standard authority. "But there is always the prior question, is there any evidence of malice to go to the jury? And this is for the Judge. The presumption in favour of the defendant arising from the privileged occasion remains till it

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A PERSONAL SERVICE Trust company executor service on your behalf and that of your family is personal inasmuch as the individual attention of many experts is given to the carrying out of wishes expressed in your will. It, however, transcends the personal in that it is not subject to the frailties or limits of the individual. The EASTERN TRUST Company

Table of Miniature Rifle Shoot results for Class 'A' and Class 'B'.

Table of Miniature Rifle Shoot results for Class 'A' and Class 'B' (Feb. 6-8 Total).

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RATE—2c per word, three insertions for the price of two, strictly payable in advance.

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Table of Produce prices for various items like Cabbage, Carrots, Lettuce, etc.

Table of Meat prices for items like Roast Lamb, Beef, Pork, etc.

Table of Fish prices for items like Haddock, Mackerel, etc.

Table of Montreal Stock Market prices for various stocks.

Table of Exchange rates for various currencies.

GOLD MINING STOCKS Bought - Sold Quoted - Reported on Orders executed on all exchanges. JOHNSTON AND WARD Phone 1308 or 1309 CHARLOTTETOWN B. ROGERS, Jr., Manager. Members: Montreal Stock Exchange, Montreal Curb Market.

Table of M.T.L. CURB prices for various commodities.

Table of MINING prices for various mining stocks.

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Table of Exchange rates for various currencies.

Table of GOLD MINING STOCKS prices.

Table of UNLISTED prices for various stocks.