The Frontier

Published by D. H. CRONIN.

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CRONIN AND BOND LIABLE.

Supreme Court Holds them Liable to Editor of Frontier for Damages.

Last Saturday the Supreme court of Nebraska handed down a decision in the case of Cronin vs. Cronin, reversing the action of the lower court and remanding the case back to the district court for trial. Following is the opinion handed down by the court.

1. When the county board has designated the newspaper in which the notice and delinquent tax list and notice of tax sale shall be published under the provisions of the act of 1903 for the collection of delinquent taxes, the treasurer has no discretion in the matter. It is his duty to publish the notice and tax list in the paper so designated within the time and in the manner provided by the act.

2. When the treasurer refuses upon demand to furnish such notices and list to the proprietor of the paper so designated for publication and such proprietor is damaged by such refusal, the treasurer is liable for such damages, and the same may be recovered in an action upon his official bond.

SEDWICK, J.

The plaintiff alleged in his petition in the district court that Holt county was proceeding under the act of 1903 for the collection of delinquent taxes, commonly called the Scavenger Act, and in those proceedings the county board, pursuant to the statute, duly designated the "O'Neill Frontier" a newspaper then owned and published, by the plaintiff, as the paper in which the delinquent tax list should be published, and that the treasurer of the county refused to furnish the plaintiff with the copy of the list for publication but did furnish it to a rival paper in which it was published. The plaintiff in the action sought to recover damages from the treasurer and the sureties upon his official bond, who were made defendants, for the wrongful conduct of the treasurer in that regard. Each of the defendants seperately filed a general demurrer to the petition, which demurrers were sustained by the court and the action dismissed. The plaintiff has appealed.

The plaintiff does not set out at large the facts from which the damages which he claims should be estimated, but no objection is made to the petitions in the briefs upon this ground and we are therefore assuming that the allegations are sufficient to show that the plaintiff has suffered at least some damages. The contention of the defendants is that the plaintiff has shown no such interest in this publication as would entitle him to maintain this action; that his interest is too remote and contingent to be the basis of a right of which the law takes cognizance: that this act was not passed to enable Mr. Cronin to receive benefits from his paper; "That was no part of the design of the Legislature." It is said in the brief that the action of the county board designating the plaintiff's paper is not in any sense a contract; the contract is made by the treasurer and not by the county board; and that when there is no contract there can be no breach, and as Cronin was under no obligation to publish the tax list, there was no obligation on the part of the trersurer to furnish him with the list, since in order that there shall be a binding contract there must be a mutual obligation. The defendants have furnished us with an interesting brief in which they cite upon this proposition Smith v. Yoram, 37 Ia, 39; Iowa News Co. v. Harris, 62 Ia. 501, and Stong v. Campell, 11 Barbour (N. Y.) 135 Smith v. Yoram, supra. was a proceeding by certiorari to correct the proceedings of the board of supervisors of Jones county in the matter of selecting a newspaper in which the laws and proceedings of the board should be published. In the opinion, quoting from a former decision by that court, it was said: "No publisher has such a vested personal interest in enforcing its provisions, that he can thus resort to the courts, and compel the board to select his paper and have these laws published therein. The duty is imposed on the board; they are the custodians of the power, but no one can insist upon its performance or exercise because he happens to be at the time the owner of a newspaper." Strong v. Campbell, supra, which was the decision of a nisi prius court, was an action for damages by the proprietor of a newspaper against a postmaster for refusing to receive proof in regard to the circulation of the paper and refusing "to give them the publishing of the list of letters remaining in the postoffice." The court, by Johnson, J., said: "I have not deemed it necessary to examine the questions raised as to the sufficiency of the averments in the declaration conceding the action to be maintainable, because in my judgment there is no foundation whatever in law for an action, under any conceivable state of pleading, for such a cause." While these and other similar cases which we have examined are perhaps distinguishable from the case at bar, it must be said that much of the reasoning employed might be applied to this case also. The circumstances out of which this litigation arose have been already twice considered by this court. In state ex rel. Cronin, 75 Neb. 738, this plaintiff sought by mandamus to compel this defendant as county treasurer to furnish him with the notice in question for publication. The facts upon which this litigation depend were stated somewhat at length in that opinion. The principal qnestion to be decided was whether the county board had duly designated the plaintiff's paper as the one in which the notice was to be published. It seems to have been conceded or assumed that if the plaintiff's paper had been duly designated by the county board, the defendant as treasurer had no discretion in the matter, and indeed this would seem to be the effect of the legislation upon this subject. The right of the plaintiff as relator to maintain the action appears not to have been doubted or discussed. It was said that the trial court was justified in denying the writ "because it appears to be conceded that it would have been unavailing had it issued, the time being too short after the decision of the district court to take the steps and make the preparations necessary to enable the appellant to publish the list within the time required by law." It is also said that "The appellant's right to publish the list was mere abstract right. But the situation was different when this suit was begun. At that time, had the appellee moved promptly to the discharge of his duty, the appellant could have made the publication." While the writ was not awarded the costs of the proceedings were taxed against the defendant. This was done solely upon the ground that the relator was entitled to the writ at the time that the action was begun. This, then, was a determination by this court that the plasntiff in this case had such an interest in the matter as to enable him to maintain an action against the defendant. Again, in Miles v. Holt County, 86 Neb. 238, which was an action against the county by the publisher of the newspaper in which the notice in question was actually published by the treasurer, it is said that the publication was made in the paper; that the treasurer acted willfully in the matter, and former decisions in this court in which similar rights have been asserted were cited and quoted from without criticism. It would seem that this court is committed to the proposition that the plaintiff has such an interest to enable him to maintain the action. There are some considerations justifying this conclusion that perhaps cannot be found in the cases cited by the defendant. Under our statute the duty is in the first instance imposed upon the county board to designate the paper in which these publications are to be made. When the county board has acted and has designated the paper for that publication the treasurer has no discretion in the matter. It is his duty to furnish the notice for publication to the paper designated by the county board. The petition alleges that after this designation had been made this defendant was notified of that fact by the county clerk, and was personally notified by the plaintiff, and was informed by the plaintiff that he, the plaintiff, had made preparation to publish the list as directed by the county board and was ready to do so and demanded that the list be furnished to him by the treasurer for that purpose, which was refused by the treasurer. If it is conceded, as it appears to be in these briefs, that the plaintiff had accepted the proposition of the county board to publish the list in his paper, and that the treasurer deprived him of the legitimate profit by his unlawful act, we think that the petition states a cause of action for such damages as the plaintiff has sustained by the misconduct of the defendant. The general demurrer of the defendant and his sureties should be overruled.

The judgement of the district court is reversed and the cause remanded.

It will be seen by the above that once again the supreme court of the state has sustained the contention of The Frontier and its attorney, R. R. Dickson, that this paper is entitled to damages from D. J. Cronin, late treasurer of this county and his bondsman, for failure to deliver to it the Scavenger delinquent tax list for publication in July, 1905, after the same had been awarded to it by the board of supervisors, that body having the authority to decignite the paper in which this notice should be published.

As this is the second time The Frontier has won in the supreme court cases growing out of the failure of Cronin to deliver to this paper the Scavenger tax list for publication, a brief resume of the facts in the case might not be out of order, in order that our readers may thoroughly understand the case.

In January, 1905, the county board elected to collect the delinquent taxes of the county under the act known as the Scavenger Act, and ordered the county treasurer, at that time, D. J. Cronin, to prepare and publish the notices as provided by law. On April 21, 1905, the county board designated The Frontier as the newspaper in which the treasurer should publish the notices required under this act. This designation the county board had the authority to make the law clearly stating that the county board should designate the paper in which the notices should be published. The county treasurer ignored the action of the county board and gave the notice to the Holt county Independent for publication and the first notice was published in that paper in July, 1905. The Frontier brought mandamus proceedings against the county treasurer to compel him to give the copy of the notice to the Frontier for publication The mandamus proceeding was tried before Judge Harrington who held that the mandamus would not lie because the designation as made by the board was not a legal designation of the Frontier.

The mandamus case was appealed to the supreme court. It holding the designation sufficent and that it was the duty of the treasurer to have published the notice in the Frontier. The court in its opinion severally censured Treasurer Cronin for his action in ignoring the orders of the county board.

On January 23, 1908, Dennis H. Cronin, proprietor of The Frontier, brought suit against Daniel J Cronin and his bond, The United States Fidelity & Guarrantee Company of Baltimore, Maryland, for $4,019 50 and interest on $2,669.50 at 7 per cent from July 1, 1905, and interest upon $1,350.00 from October 27, 1905 The amount claimed was damages for the treasurer failing to perform his duty as required by law in delivering the Scavenger tax notice to The Frontier for publication The amont involved was the legal rate for publishing the notices as reuqired by law.

The defendants filed a demurrer to the petition, alleging among other things that the petition of plaintiff did not state facts sufficient to constitute a cause of action The cause came up for hearing upon the demurrer before Judge Westover on December 14, 1908, and the court sustained the demurrer, dismissed the case and taxed the the costs to the plaintiff. This is the case cited above that the supreme court reverses and sends back for trial.

After the lapse of five years and a half it seems as if The Frontier was now in position where it would get justice and that D. J. Cronin once treasurer of this county, and his bondsmen would have to pay this paper for the profits upon the tax list which was stole from it in July, 1905 Honesty is always the best policy and we wonder if the ex-treasurer of this county does not sometimes think it would have been better for him to have conducted his office as by law provided instead of allowing A. F Mullen to tell him what to do and then blindly follow instructions.

By winning this case Attorney R. R. Dickson has added another feather to his cap and won a decision of far reaching importance. Pitted against him in this case was one of the leading law firms of Omaha and few members of the bar in this section believed that he would be able to win the case. But Mr. Dickson was always confident that the case would be won. Fighting against one of the greatest political acts of piracy ever commited in the history of the state he was positive that the laws of Nebraska were never intended that a public official and a gang of political pirates could wilfully rob a man of his just rights and get away with it. Knowing that right and justice were upon his side he fought the case ably, fearlessly and energetically and defeat in the district court only spurred him on to greater efforts in the supreme court. It was a great victory and R. R. Dickson is entitled to congratulations upon his successful conduct of the case up to date.

The Frontier fails to see what kind of politics Governor-elect Aldrich is playing when he appoints a political hypocrite like W. R. Jackson to one of the best offices at his disposal, that of pure food commissioner. Mr. Jackson was a candidate upon the democratic ticket at the last election for the office of state superintendent and outside of Jim Dahlman was defeated by the biggest majority of any man on the ticket. In this county, in which Mr. Jackson lived for about ten years and served four years as county superintendent, he received less votes than any man upon the democratic ticket which does not speak very well for his standing among the people where he is well known. For our part we believe Mr. Aldrich made a mistake in this appointment. If he wished to hand the appointment to a democrat he could easily have selected some one whose political record was not tainted with hypocrisy to accept the plum, and no republican would have found fault with the selection. But when he selects a man who has been repudiated by the people of the state, and a man who has a backbone as stiff as a rubber doll, to this important position, people of the state regardless of politics have a kick coming.

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