

Pickford Vs. Talbott

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Court : US Supreme Court

Decided On : Nov-30-1908

Appeal No. : 211 U.S. 199

Appellant : Pickford

Respondent : Talbott

Judgement :

Pickford v. Talbott - 211 U.S. 199 (1908)

U.S. Supreme Court Pickford v. Talbott, 211 U.S. 199 (1908)

Pickford v. Talbott

No. 13

Argued October 26, 1908

Decided November 30, 1908

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ERROR TO THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

Crime and credulity are not the same, and mere neglect on the part of a prosecuting officer to investigate the character of witnesses on whose testimony an indictment is based is not tantamount to deliberate design, and in a suit for libel brought by such an officer against the owner of a journal charging him with blackmail, evidence as to whether he had made such investigation was properly excluded as irrelevant, the court not having excluded evidence as to the plaintiff's character.

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In this case, the court below rightly held the defendant responsible for the publication of the libel.

28 App.D.C. 498 affirmed.

The facts are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

This is an action for libel, brought in the Supreme Court of the District of Columbia. The plaintiff in the action, defendant in error here, secured a verdict for \$8,500, upon which judgment was entered. It was affirmed by the Court of Appeals. 28 App.D.C. 498.

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The facts are set out at some length in the opinion of the Court of Appeals, and need not be repeated. It is enough to say that defendant in error, Talbott, was, at the time of the publication of the libel, state's attorney for the County of Montgomery, in the State of Maryland. During his incumbency of that office, an indictment was found upon the testimony of one Hudson charging plaintiffs in error

with the crime of arson, for having set fire, it was charged, to a building owned by them in Montgomery County. The building was insured for \$30,000, of which, after controversy, there was paid \$21,000. The libelous article was published in a paper published in the City of Washington, called the Sunday Globe, and copies circulated in the County of Montgomery, Maryland. The article was entitled, "History of a Crime in which District Attorney Talbott, of Maryland, Enacts a Leading Role." It accused Talbott of entering into a "criminal scheme" with Hudson and a man by the name of Hopp to blackmail Pickford and Walter, plaintiffs in error, which "culminated" in the "nefarious indictment," and, in order that the actors in it might be "unmasked," the facts were said to be stated as they were learned "after a thorough investigation." Certain facts and instances were detailed, among others, the association of Hudson and Hopp, an attempt by the latter to obtain money from Pickford to stop the prosecution of the indictment, the payment of Pickford to Hopp of certain marked bills, the arrest of Hopp, the advancement of money by Talbott to Hudson, the demand of Pickford's attorney for trial of the indictment, and motions to continue the same by Talbott, and the final dismissal of the same by him when the court peremptorily ordered him to proceed. The article concluded with these words: "The district attorney [Talbott] thereupon, by leave of the court, entered a *nol. pros.*, and the great conspiracy thus came to an inglorious end."

It appeared from the evidence that the predecessor in office of Talbott (Alexander Kilgour) had refused to prosecute plaintiffs in error, and to him, plaintiff in error Pickford, in his

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testimony, attributed the declaration that the "whole thing" was a "blackmailing scheme." Kilgour, in his testimony, stated that he did not recall using the word "blackmailing," but said that in all probability he had done so, and "that it was an effort on the part of the insurance companies to use his office for the purpose of collecting their money."

The declaration contained four counts, the first of which was taken from the jury. In all of them, however, Talbott alleged his incumbency of the office of state's attorney for the County of Montgomery, and that, as "such officer, he was always reputed amongst the citizens of said county" and of the United States,

"and deservedly so reputed, to be upright, honest, just, and faithful in the performance of the public duties imposed upon him by his oath of office and the laws of the State of Maryland."

Injury to his good name and credit was alleged. The defendants pleaded the general issue.

At the trial, Talbott, being on the stand, testified that he had investigated the crime for which Pickford and Walter were indicted, and that it had been brought to his attention by a man by the name of Thompson, "in a vague and indefinite letter," which was followed by another letter in which it was stated the crime was arson. He testified that Thompson was a newspaper man, whom he had never seen before and on whom he called in response to the second letter. He also testified that Thompson told him that Hudson would be a witness, but did not tell him who Hudson was, but that he (Hudson) was thoroughly in touch with the situation. Subsequently he went with Thompson to see Hudson, taking a stenographer with him. He further testified that he did not know whether he asked Thompson if the matter had been brought to the attention of Mr. Kilgour, and further testified that the fire occurred during Kilgour's incumbency, and that he had not inquired of Kilgour about it. He also testified that the fire occurred in September, 1897, two years and four months before he qualified. He testified further that both Thompson and Hudson were strangers to him. At this point,

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the court interrupted the examination, and the following occurred:

"The Court. On what line are you pursuing this inquiry?"

"Mr. Maddox. I am going to show, if I can, the absence of good faith in this indictment on the part of the district attorney."

Thereupon, after discussion and explanation on the part of counsel for defendants, the following occurred:

"The Court. I think I have heard enough to know what your proposition is. I cannot see but that it is an attempt to prove the truth without pleading it. . . . You may prove anything Pickford heard the witness say before the article was published."

"Mr. Maddox. I want to prove by this witness, first by his own testimony in connection with the transaction complained of in this article, that he is not a man of good character, which he says he is."

"Mr. Lipscomb. I do not object *by our* [to your] asking him that, Mr. Maddox."

"Secondly. I want to show that Mr. Pickford, from what he heard the plaintiff say, had reasonable grounds to believe that he was mixed up in some way with this conspiracy."

"The Court. You may prove anything Pickford heard the witness say before the article was published."

"Mr. Maddox. I understand the court will not let me go into the inquiry as to whether or not the plaintiff knew the man Hudson before he made this presentment to the grand jury, and whether he investigated the character of the man."

"The Court. Under your statement that you propose by that line of testimony to prove that the district attorney acted in bad faith, I will not hear it, because I do not think it is relevant for that purpose."

This ruling is assigned as error here, as it was in the Court of Appeals, and it is attacked on the ground that "*the good faith' of the defendant in error in procuring the Rockville indictment went to the very heart of the action.*" *And counsel*

supplement this by saying that

"if it could have been made to appear by the admission of the witness, testifying in his own behalf, that, while state's attorney, he was in league with the man Hudson and the insurance companies in a scheme which his predecessor denominated 'blackmailing,' the jury would have made short work of the case when they retired to consider their verdict, and it was impossible to do this except by probing the conscience of the witness through the medium of cross-examination."

It is obvious, by "good faith," counsel mean the truth of the charge. But, in the subsequent discussion, they seem to make it equivalent to good character, and contend that the examination was in rebuttal of the allegation of the declaration that defendant in error "was upright, honest, and just" in the performance of his official duties.

For the right to show the character of the witness, counsel adduce many cases, and assert besides the freedom that may be exercised in cross-examination. But the counsel who tried the case marked a distinction between the character of the witness and his good faith, and on that distinction the court made its ruling. It will not do now to identify them and claim a right that was not denied. The attorney for defendants (plaintiffs in error) was careful to say that he made no objections to questions directed to character, and the final purpose, as declared, had no reference to that. But what is the testimony and what is the argument built upon it? Counsel who conducted the defense said:

"I understand the court will not let me go into the inquiry as to whether or not the plaintiff knew the man Hudson before he made this presentment to the grand jury, and whether he investigated the character of the man."

It is now argued that this was an inquiry of a specific fact affecting the character of Talbott, showing that he exhibited a "reckless disregard of the rights of others," and this, taken in connection with certain facts mentioned, "shows," it is said,

"a readiness on the part of the defendant in error to smirch the character of plaintiffs in error amounting to recklessness such that, if the defendant in error were at

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bar for his conduct in the premises, would be held to show malice of the degree calling for punitive damages."

And it is urged after considerable discussion that

"the interrupted attempt was to show that the defendant in error, by reason of his conduct in the very matter in controversy, was not entitled to and did not have the peculiar character in respect to which he claimed to have been injured; namely, a character for probity in office. . . ."

We are not able to concur in the conclusion. A charge of using an office to procure an indictment as part of a conspiracy to blackmail could not be justified or in any degree excused by the facts offered to be proved. One might be a careful and zealous officer, and not stop to investigate the characters of prosecuting witnesses. Besides, the charge was not of careless credence of an accusation of crime against innocent men, but of a scheme deliberately planned, through a "nefarious indictment," to use the words of the libel, to extort money from innocent men. We think, therefore, that the trial court was right in rejecting the proffered evidence as irrelevant. We could not hold otherwise unless we should hold that crime and credulity are one and the same thing, and we repeat that the mere neglect to investigate the character of witnesses is not equivalent to such disregard of the rights of others as to be tantamount to deliberate design, certainly not a deliberate design to blackmail. We say "mere neglect" because this was all the offer amounted to. It was already in evidence, for what it was worth, that Hudson was a stranger to Talbott.

The second assignment of error is based upon the contention that the court erroneously instructed the jury in regard to the responsibility of the plaintiffs in error for the libel.

It is not necessary to give the testimony. We will assume that it might have been contended plaintiffs in error were not connected with either the printing or publishing of the first article or the second (there were two), or with either. The instruction asked and the instructions given by the court

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are too long to be copied and difficult to summarize. They are set out in the opinion of the Court of Appeals, and it will be seen from them that those given by the court, which were not objected to, embodied all, as the Court of Appeals held, that was contained in the instruction refused, adapted to the testimony and the consideration which the jury might give to its various phases.

Judgment affirmed.

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