

# INDEX

	PAGE
Notice of Appeal.....	1
Judgment Record.....	2
State of Demand.....	3
Motion for Non-suit.....	19
Verdict .....	25
Certificate of Judge.....	26
Specifications of Determinations.....	27
Supreme Court Opinion.....	28
Order of Reversal and Remittitur.....	30
Order of Substitution of Attorney.....	31
Notice of Appeal.....	31
Ground of Appeal.....	32
Order of Reversal and Remittitur.....	30

## TESTIMONY FOR PLAINTIFF.

Chester Ryerson,	direct examination .....	4
	cross " .....	7
	re-direct " .....	15
Dr. Thomas M. Pascall,	direct examination .....	16
	cross " .....	17
William Klump,	direct examination .....	17
William Haight,	direct examination .....	18
William Hart,	direct examination .....	19

## TESTIMONY FOR DEFENDANT.

Ella A. Carter,	direct examination .....	19
	cross " .....	21
Dr. Davis,	direct examination .....	23
Edwin P. Carter,	direct examination .....	23
	cross " .....	24

# INDEX

1	.....	Order of the
2	.....	Order of the
3	.....	Order of the
4	.....	Order of the
5	.....	Order of the
6	.....	Order of the
7	.....	Order of the
8	.....	Order of the
9	.....	Order of the
10	.....	Order of the
11	.....	Order of the
12	.....	Order of the
13	.....	Order of the
14	.....	Order of the
15	.....	Order of the
16	.....	Order of the
17	.....	Order of the
18	.....	Order of the
19	.....	Order of the

## CONTENTS

1	.....	Order of the
2	.....	Order of the
3	.....	Order of the
4	.....	Order of the
5	.....	Order of the
6	.....	Order of the
7	.....	Order of the
8	.....	Order of the
9	.....	Order of the
10	.....	Order of the
11	.....	Order of the
12	.....	Order of the
13	.....	Order of the
14	.....	Order of the
15	.....	Order of the
16	.....	Order of the
17	.....	Order of the
18	.....	Order of the
19	.....	Order of the

## CONTENTS

1	.....	Order of the
2	.....	Order of the
3	.....	Order of the
4	.....	Order of the
5	.....	Order of the
6	.....	Order of the
7	.....	Order of the
8	.....	Order of the
9	.....	Order of the
10	.....	Order of the
11	.....	Order of the
12	.....	Order of the
13	.....	Order of the
14	.....	Order of the
15	.....	Order of the
16	.....	Order of the
17	.....	Order of the
18	.....	Order of the
19	.....	Order of the

**Notice of Appeal.**

Filed September 4, 1918.

# Orange District Court.

10

CHESTER G. RYERSON,

*vs.*

ELLA A. CARTER,

*Plaintiff,*

*In Tort.*

*Notice of Appeal.*

*Defendant.*

20

TO CHESTER G. RYERSON  
OF EDWARD R. MCGLYNN,  
*Attorney.*

Sir: Take notice that the defendant, Ella A. Carter, hereby appeals to the New Jersey Supreme Court from the judgment of the Orange District Court rendered in the above stated action, on the sixteenth day of August, nineteen hundred and eighteen.

30

Dated, Newark, N. J., September 3rd, 1918.

JOSEPH M. DEGNAN,  
*Attorney for Defendant.*

Endorsed.

Service of a copy of the within notice of appeal is hereby acknowledged this 3rd day of September, 1918.

E. R. MCGLYNN,  
*Attorney of Plaintiff.*

40

50

**Judgment Record.**  
ORANGE DISTRICT COURT.

10	CHESTER G. RYERSON,  <i>vs.</i>  ELLA A. CARTER,	Plaintiff,   Defendant.
----	--	----------------------------------

Action in tort, summons issued July 26, 1918.

Returnable August 2, 1918. Demand \$500. Demand filed July 30, 1918.

20

E. R. McGlynn, plaintiff's attorney.  
 J. M. Degnan, defendant's attorney.

Plaintiff's Costs.

Summons .....	\$2.10
Mileage .....	.48
Listing fee .....	1.50
Attorney's fee .....	2.50
Total cost .....	\$6.58
Statement .....	.50
Appeal .....	1.00

30

Summons returned as follows:

I served this summons July 26, 1918, by reading the same to the defendant, and delivering to her a copy thereof.

John E. Gallagher,  
Sergeant-at-arms or Constable.

40

August 16, 1918. Trial had; Hattie Allen sworn as stenographer. Chester G. Ryerson, Dr. Thomas G. Pascal, William Clump, William Haight and William Hartwick sworn and testified. Plaintiff rests. Motion for non-suit denied. Ella A. Carter, Dr. George W. Davis and Edwin B. Carter sworn and testified. Defendant rests. Judgment was thereupon rendered for the plaintiff and against the defendant for fifty dollars damages and six dollars fifty-eight cents costs.

August 17, 1918, issued statement for docketing the above judgment in the Essex County Court of Common Pleas.

50

HAROLD J. TRABOLD,  
*Clerk.*

Notice of appeal and bond filed September 4, 1918.

TRUE COPY, Harold J. Trabold, Clerk

(SEAL)

*State of Demand.*

**State of Demand.**

Filed July 30, 1918.

ORANGE DISTRICT COURT.

10

CHESTER G. RYERSON,

*vs.*

ELLA A. CARTER,

*Plaintiff,*

*Defendant.*

*In Tort.*

*State of Demand.*

20

1. Plaintiff, residing at Watsessing avenue, Bloomfield, N. J., says that on or about July sixteenth, nineteen hundred and eighteen, the defendant, Ella A. Carter, with force and arms, made an assault upon the plaintiff and bruised, wounded and ill-treated him, giving and striking the plaintiff many severe and grievous blows in and upon, over and across his head, face, shoulders, mouth and other parts of his body, also biting his arm, and thereby greatly wounded, cut and bruised plaintiff's head, face, mouth, arm and other parts of his body.

30

2. By means of said several blows, cuts, bruises, bites and wounds, the plaintiff has greatly suffered great pain, anguish and torture both of mind and body.

3. Plaintiff demands damages of five hundred dollars.

E. R. McGLYNN,  
*Attorney of Plaintiff.*

40

50

*Chester Ryerson, direct.*

ORANGE DISTRICT COURT.

10 CHESTER RYERSON,

*vs.*

ELLA A. CARTER,

*Plaintiff,*

*Defendant.*

August 16, 1918.

20 Before Daniel A. Dugan, Esq., *J.*

Mr. Edward R. McGlynn for plaintiff.

Mr. Joseph M. Degnan for defendant.

Hattie H. Allen, designated by the Judge to act as stenographer, was sworn.

CHESTER RYERSON, plaintiff, sworn.

*Direct examination* by Mr. McGlynn.

30 Q Where do you live? A 32 Watson avenue, Bloomfield.

Q Married or single? A Yes, sir.

Q How old are you? A Thirty-two years old.

Q What is your occupation? A Fitter and inspector.

Q For what company? A Public Service Gas.

Q Where were you on July 16, 1918, on that morning? A At Verona.

Q What address? A Personette street.

Q Who did you call to see there? A Mrs. Carter.

40 Q Ella A. Carter the defendant in this case? A Yes.

Q What part of the house did you go to first? A The back door.

Q Did you see Mrs. Carter? A Yes.

Q What did you do at the back door? A Notified Mrs. Carter I wanted to go in the cellar to read the gas meter.

Q Who went down with you? A Mrs. Carter, and I presume Mr. Carter.

Q The gentleman who is with her this morning? A Yes.

50 Q What part of the cellar did you go to? A To the back part and opened the door and went directly to the front of the cellar.

Q The meter is located on the front wall, attached to the front wall? A Yes.

*Chester Ryerson, direct.*

Q The pipes come in from the street through the front yard?

A Yes.

Q You found the meter there? A Yes, two.

Q Are they close together? A Yes.

Q Is it all an open cellar there in the front? A No.

Q Just describe it briefly? A The cellar has an alleyway and a wall about 2 foot 4 and it has a wooden partition over the front side of the coal partition. 10

Q The front wall runs parallel with it, and there is a space of 2 foot 6; that wooden partition does not extend across the entire front of the cellar? A It is a two-family house and there is a wooden partition running along the center, and from the coal partition there is another little alleyway.

Q The cellar is first divided into half by a wooden partition?

A Yes. 20

Q Here is a diagram which Mr. Degnan has just given me—I ask you to look at that. This is supposed to be the front wall and here is the wooden partition? A Yes, that divides the two cellars.

Q And this is the other wooden partition which runs parallel with the front wall that makes a coal bin? A Yes.

Q And this is what you indicated as an alleyway, a place about 2 foot 4? A Two foot 4 or 6, I can't tell exactly.

Q And the meter was in this portion here? A Yes.

Q The diagram itself shows how the cellar is located? A Yes.

Q And here is where you come in the back? A Yes. 30

Q And this is the cellarway to the first floor? A Yes, to a landing.

Q There is an inside stairway? A Yes.

Q There are two meters? A In the alleyway.

Q Down which you went? A Yes.

Q Which is Mrs. Carter's meter? A To the left facing the street.

Q The second one in? A Yes.

Q The one which is marked Carter meter? A Yes.

Q When you got up near the meters where was Mrs. Carter?

A Standing right alongside of it. 40

Q Where was Mr. Carter? A If I recall it, over here (indicating on sketch) he was standing there.

Q How far away from where the meter was located? A Over close alongside of this wooden partition.

*By the Court.*

Q You say Mrs. Carter was alongside of Mr. Carter, where was he standing? A About 2 foot 6 back of this partition.

*Further direct.* 50

Q Over near the wooden partition which divides the cellar into half, close to the partition as he was to you? A Yes.

Q Was there anybody else down there at that time? A I saw no one else.

*Chester Ryerson, direct.*

Q Was the cellar light or dark? A The cellar was dark.

Q Did you use any light? A A few matches.

Q What did you start to do then? A Started to read the meters.

Q Did you finish or not? A Yes.

10 Q What did you do next? A Started to shut off the gas meter which I wanted to remove.

Q How did you do that? A Took the wrench and shut off the cock on the left of the gas meter.

Q That would be nearest the other foundation wall of the building? A Yes.

Q Did you succeed in doing that? A Yes.

Q What did you do next? A I found myself landed up against the brick wall.

20 Q What caused you to be up against the brick wall? A Mrs. Carter shoved me over.

Q What did she do then? A Hit me in the head.

Q With what? A With her arm, her fist.

Q What did she do then? A She grabbed my arm and bit me.

Q Which arm? A The right arm.

Q What portion of the right arm? A Between the wrist and elbow and also the knuckle of the little finger.

Q Did she draw blood? A She did on the knuckle.

Q Did you have your coat on? A My coat was on and sleeve was rolled up; it was a very loose coat. The coat arm was very loose.

30 Q You mean the sleeves of the coat was rolled up? A Yes, I always keep them rolled up on a short job.

Q Were your shirt sleeves rolled up, too? A Yes.

Q What happened next? A Mrs. Carter yelled not to take the meter out, she had paid her bill and I couldn't take the meter out, and I tried to argue with Mrs. Carter to let me take it, that if there was any mistake the Public Service would have to put it back for her, and Mr. Carter also tried to persuade Mrs. Carter to let me take it, and he also tried to get me not to bother with it.

40 Q Did she hit you anywhere else? A In the stomach and on the shoulder and over the left eye.

Q Did anybody else come down in the cellar then? A Mr. Klump came down with us, another man from the Public Service.

Q Where did you leave him when you went in the house? A In the automobile.

Q Where was the automobile? A Around the corner.

Q On the next street? A Yes.

50 Q What happened when he came down? A Mr. Klump said "Don't bother with it at all."

Q What happened then? A I said "All right, I can't get out," because she had me by the arm in between the pipe and meter, my elbow, she twisted it around in such a way and pressed against me so I couldn't get out.

*Chester Ryerson, cross.*

Q What did you do then? A If I could swing myself out I could get out.

Q What happened then? A Mrs. Carter called for her husband to hand her bottles several different times, and after I loosened myself to get out she grabbed the bottles from the shelf I spoke of before, and tried to hit me with them. 10

Q What do you mean? A She tried to throw them, and Mr. Klump was there and caught the bottles or caught her arm so that the bottles didn't fall on me, but on the floor and smashed.

Q Did they go through the air at all?  
Objected to.

Q Do you know whether any of the bottles left her hand? A I know four left her hand.

Q In what direction? A Three proceeded toward the floor and the fourth one went through the air and in passing glanced by my ear and struck something in front of me and I heard it smash. 20

Q Were you examined by a physician after that? A Yes.

Q What was his name, Dr. Pascall?  
Objected to as leading.

A Yes.

*Cross examination by Mr. Degnan.*

Q How tall are you? A Six foot one.

Q How much do you weigh? A 160 or about, I don't know exactly. 30

Q For whom do you work? A Public Service Gas Company.

Q What did you do before you worked for them? A I worked as a plumber.

Q How long did you say you have been working for the Public Service? A I think 16 years last May, probably it is only 15, I don't know.

Q What did you say your job was? A I act as fitter and inspector.

Q Inspector of what? A Whatever I am given to do, go around inspecting work that other men put in. 40

Q What kind of work? A Any kind that is given me.

Q Any particular line? A No particular line, anything that happens to come in for me to go and look up.

Q Gas stoves and gas meters and like that? A And water meters to see if work is done properly.

Q It is part of your job to remove meters too? A At times.

Q If the men are not successful in removing them? A If you call it such.

Q That is what you stated up at the Verona Police Court? A Probably gave it that way, looking up the installing of heaters and following it up and doing other work that other men are unsuccessful in doing. 50

Q And removing the meters if other men are unsuccessful? A That would cover a portion of it.

*Chester Ryerson, cross.*

Q You were sent up to this Carter job because other men had not been successful in taking the meter out? A I can't say why I was sent; I was given orders to go there.

Q Didn't you know that somebody else had been there previously?

A From hearsay.

10 Q Did you know? A From hearsay.

Q How did you know? A Common talk around the works.

Q You went up there with instructions to get the meter, did you? A To remove the meter.

Q In spite of all protests?

Objected to.

Q Did you get orders to go up there and remove the meter against all protests that might be made by Mrs. Carter? A I don't know that that just covered my orders.

20 Q What were your orders? A To go up and remove the gas meter.

Q That some other people had been unsuccessful in removing? A I knew from certain talk about the shop.

Q And you knew when you got the job it was to be a difficult job?

A I didn't know anything about that.

Q They don't usually send you on jobs that are unsuccessful? A Whatever work is to be done.

Q Didn't you say you removed gas meters if other people were unsuccessful? A I said that, and I also say I remove gas meters at any time or any work that may be given me.

30 Q Your job is inspector? A Not altogether inspector, a fitter or fitter and inspector.

Q When you were up to this house this morning, who did you see first? A Mrs. Carter.

Q Where did you see her? A At the back door of her kitchen.

Q Did you tell her what you wanted to do? A To read the gas meter.

Q Not to take it out? A Not at that time.

Q Did you see the little girl up there? A Not at that time.

40 Q The little girl did not see you before you saw Mrs. Carter? A Not to my knowledge.

Q Did you show Mrs. Carter a badge? A I don't know that I did show it to her, I had it here on me.

Q What does the badge say? A Public Service Gas Inspector.

Q You don't know whether you showed that to Mrs. Carter or not? A I had it on my coat in plain sight, I had it there in plain sight on my lapel.

Q Where is it now? A Home.

50 Q Did you tell Mrs. Carter, "I am from the Public Service Gas Company?" A I called out "gas man," as I went into the cellar.

Q Had you ever been up there before? A Had I ever been there?

Q Yes. A When Mrs. Carter had the house built.

Q Do you know when that was? A I can't exactly remember.

*Chester Ryerson, cross.*

Q When did you first tell Mrs. Carter you were going to remove the gas meter? A When I took the wrench out of my pocket and shut off the cock.

Q You did not tell her you were going to remove the meter until you actually shut it off? A Until I took the wrench out to shut off the cock. 10

Q Did you say to Mrs. Carter, "With this wrench I am going to shut it off?" A No details.

Q You simply took it out and said, "I am going to shut off the meter?" A I said, "I will have to cut the meter out, Mrs. Carter."

Q What did Mrs. Carter say to you? A She worked herself up in a rage.

Q I am not asking you how she worked herself up. A She said "You can't take the meter out," and then she pelted me.

Q What do you mean by that? A Came forward with her arms and threw herself against me to pull me away from the meter. 20

Q Is that what you call "pelted?" That is a technical word I do not understand, that is what you call pelting, what you describe? A With her arms and hands.

Q Is that what you mean by pelting? Answer yes or no. A That is the term I used.

Q That is what you mean by that? A Evidently.

Q That is all she said. Was there any discussion about her bills, did you tell her her bill was not paid? A No.

Q Did she tell you her bill was paid or not paid, did she mention the word bill at all? A She mentioned her bill had been paid and she mentioned also that she always paid her bills, and what she rambled along—I can't exactly remember but that is about all she did say. 30

Q While she was talking were you busy working there? A At different times.

Q You say that Mr. Klump was in an automobile outside down at the store, did you say? A Yes, sir, at the corner.

Q Did he sit in the automobile when you were up to the house or did he follow you up? A I concluded he sat in the automobile, I did not look up, so I am not sure now. 40

Q How many feet is that corner from the house? A I don't know.

Q 200 or 300 feet? A Why I should judge a couple or 200 feet, there is a lot or two in between.

Q Where was he, on the corner of Fairview avenue? A I think it is called Fairview avenue.

Q And all the time that Mrs. Carter was talking to you and rambling as you stated, you were working on the meter? A Not all the time—Mrs. Carter had me up against the wall. 50

Q Every time you got away you started to work on the meter? A When I had my hand up there to reach the couplings I worked.

Q You eventually got the couplings off? A Eventually I did.

Q In spite of Mrs. Carter's assaults upon you? A Yes.

Q Did Mrs. Carter bite you? A She did.

*Chester Ryerson, cross.*

Q Where did she bite you? A On the arm.

Q Any place else? A On the knuckle.

Q Whereabouts on the arm did she bite you? A Twice on the arm between the wrist and elbow.

10 Q Do you remember making a complaint up in the Verona Police Court? A I do.

Q Do you remember in that complaint whether or not you stated that Mrs. Carter had bit you on the arm? A I don't remember.

Q As a matter of fact you did not say anything about biting you, in that complaint? A I don't remember.

Q Will you say she did bite you, in that complaint?

Objected to as without any bearing.

Q Is Dr. Pascall your family physician? A No, sir.

20 Q Dr. Pascall is a physician for the Public Service Company? A I presume so.

Q This occurrence happened on July 16? A July 16.

Q You were examined by Dr. Pascall on the 22nd? A I can't remember.

Q It was 5 or 6 days afterward? A Several days afterward, I don't remember.

Q Would it refresh your memory any by hearing that the day the doctor saw you was the day that the complaint was made in the Verona Police Court, was it after or before that was served upon you that you had Dr. Pascall examine you? A Before.

30 Q How soon before? A A few hours.

Q Where did you go when you left Mrs. Carter's house that morning? A Up to Montclair.

Q On a job? A I started first to the Montclair office and reported it.

Q Then what did you do? A I went to—

Q You didn't go home because of the beating you got? A I didn't, I was told to go home but I did not go.

Q You were working right along? A I was not.

40 Q When did you lay off? A I simply went out in the automobile and kept myself quiet the remainder of that day and the next day.

Q But you did not see a doctor at all until Dr. Pascall saw you? A I went home at noon and bathed myself with alcohol.

Q But you saw no doctor at all until the 22nd or some days after when Dr. Pascall saw you? A Yes.

Q What did Dr. Pascall prescribe for you? A He didn't prescribe at all.

Q When Mrs. Carter, as you say, pelted you by throwing her arms about, you still insisted upon removing the meter, didn't you?

50 A That was my job.

Q You did not desist because she showed her objections in that forcible manner? A No.

Q Did you try to shake her off at all? A I simply put my arm up to protect myself so that the blows would not land on my face.

*Chester Ryerson, cross.*

Q You did not shake her off or anything like that? A I did not.

Q You simply stood there pushing her away? A I put up my arms so that she would not get close enough to me.

Q You were able with one arm to keep her off so that you worked with the other arm? A Not altogether.

Q You got the meter uncoupled? A Evidently. 10

Q How long were you working at it? A I guess probably 15 minutes from the time I went in the house until I came out.

Q In the meantime while you were working there Mr. Klump came up from the automobile that was standing on the corner? A Yes.

Q And didn't he tell you to leave off hitting Mrs. Carter? A He did not.

Q "That you would pay the penalty for your acts?" A He did not. 20

Q Didn't he tell you that was no way to treat a woman, the way you treated Mrs. Carter? A I don't think he did.

Q You will not say he didn't say it? A I will say he didn't say it.

Q You left the cellar with Mr. Klump? A No, sir.

Q You left before he did? A Yes.

Q Did you have your back to Mrs. Carter when she threw the bottles at you? A I did, the last one she threw.

Q Were you facing her when she threw the other 3? A Yes.

Q They did not hit you? A No. 30

Q None of them hit you? A They did not.

Q Was Mr. Klump trying to prevent Mrs. Carter from throwing any bottles at you? A Yes.

Q He was holding her hand? A I can't say he was holding her hand, he was trying to protect the bottles or brick wall or whatever it was, I don't know.

Q There was nothing said by you about the bill? A Except that if the bill had been paid and there was any mistake my orders was to remove the meter and why not let it be taken without any fuss, and if there was any mistake they would put it back. 40

Q And in the meantime she would be without gas?

Objected to.

(Question withdrawn.)

Q That was the only conversation you had with her regarding any claim that she might have against the Public Service about her bills?

A Yes.

Q I will show you this diagram, when you started to come out where was Mrs. Carter standing? A About there (indicating on sketch) I judge (marking same with an A). 50

Q How did she get out there, did you push her out there? A I did not.

Q She was standing alongside of you when you were uncoupling the meter? A She was at first.

*Chester Ryerson, cross.*

Q When did she go away from you? A She wiggled around back of me between me and the wooden partition.

10 Q Just explain that where you mean? A This is where she was standing—your diagram shows the meters a little far apart. I was standing here and she was standing there, and when she shoved me I was shoved over to this wall.

Q You were standing in front of Mrs. Carter's meter just where she was? A Sidewise at the edge of that meter, the other meter to my right.

Q And you say she squeezed herself around behind you? A Yes.

Q When did that occur? A After I had the meter closed, that is the cock closed.

Q Before you had the meter out? A Yes.

20 Q What did she do when she got behind you? A She shoved me and my arm was around the upright meter, the supply pipe that goes from the service into the meter, and she kept shoving me and I could not get loose, and that was the time Mr. Klump was there and said, "Come out of there, don't bother with the meter at all."

Q Then you disengaged your hand from behind the meter, did you? A Not entirely because Mrs. Carter had me pinned in there.

Q When did Mrs. Carter go out to the place indicated by A on this diagram? A She got around me again and walked out and got out ahead of me.

Q Before or after you had uncoupled the meter? A Before.

30 Q So that when you put the final uncoupling on the meter Mrs. Carter was not near you, but was outside at this place marked A on the diagram? A She got there after I had uncoupled the meter and she got out around in back of me again. Mr. Klump said, "Let go, don't break his arm and he will come out," and I said, "I can't come out, she has got my arm pinned fast."

Q Didn't you state that Mrs. Carter got out there before you took off this coupling? A There are 2 couplings on the gas meter.

Q You are making distinctions?

40 Objected to.

Q There are 2 couplings there, at which coupling did she go out, before or after which coupling did she leave you and go out to that position A, before or after removing the coupling? A I don't understand.

Q Didn't you state a moment ago there were 2 couplings there? A 2 couplings on each gas meter.

50 Q In order to straighten these out—let me ask you this question, when did Mrs. Carter go to the position marked A on this diagram? A When did she go out—she was around in the rear of me and had my arm fastened to the meter, and I had my arm up in such shape (illustrating), and previous to that I had the coupling loosened—I gave it one turn so I could turn on the swivel, and at one time in some way she got around me again, and then she was standing in front of me at the same point where she was standing at first.

*Chester Ryerson, cross.*

Q Was that the first uncoupling you made or the second uncoupling? A The first.

Q When did you leave your position there at uncoupling the meter? A Just as soon as I found space to get out so I could go out through the shower of glass.

Q When Mrs. Carter went out to that position marked A after you had the coupling unscrewed, why didn't you leave the meter then? A She didn't go to that point marked A, she got around me and stood in front of me or at the side of me, or you might say in front of me because I was standing sidewise right back where she was when I first went in. 10

Q She did not go to that point A? A Same as I stated before.

Q Let me hear it again? A I said before—you can asked me the question again.

Q You said she was at the position A when you made the first uncoupling? A You have misconstrued it. 20

Q Far be it from me to misconstrue you? A You try to double cross me or mix up the question. If you will let me state it in my own way probably it will be easier for you; as I said when I first went in the cellar Mrs. Carter was standing on my right and I was facing the meter, and when I put my wrench on the cock of the meter, she threw herself against me and hit me with her hands or fist and threw me up against the wall, that is the side wall of the house which is probably three feet from her own meter, and then she was in front of me because she kept backing me up against that meter. I had the meter shut off at that time, and then she kept talking and raving and all my hand could do was to just reach the coupling on the end of the meter, and I judged the distance that I could just reach that, although I had to loosen it with the wrench, from the one on the left facing the meter, and in some way Mrs. Carter got to the rear of me then when I loosened that coupling, and then a little later she got around in front of me again, and it was during that space of time I had given the wrench a turn so as to loosen the coupling with my finger, and after she got in front of me, then she stood in front of the other meter before she went on out. 30 40

Q Then she went on out then, did she? A Yes.

Q Why didn't you leave off then and go away, you had disconnected the meter? A I had disconnected one turn, but not removed the meter, my orders were to remove the meter and I had to carry it out.

Q So then you started to uncouple the second connection, did you? A Yes.

Q What did Mrs. Carter do then? A She just simply kept on talking and rambling and worked herself up to such a pitch that I don't know what she said—that she always paid her bills to the grocers or butchers or what, I don't know. 50

Q Then she didn't push you any more? A Why, yes, she came to me—it was all done in such a short time I can't tell you just what time she kicked me in the stomach.

*Chester Ryerson, cross.*

Q When did she bite you? A She bit me just at the time I was shutting off the cock, she bit me twice then, she came against me and caught my arm and bit me again after that.

Q That was three times she bit you? A Yes.

10 Q You said awhile ago she only bit you twice? A I did not.

Q Where was your knuckle when she bit you? A In her mouth, I presume.

Q Where was your hand, I suppose she had to put her mouth down to bite you? A She had to grab my arm.

Q Where was your arm when she grabbed it? A Out, trying to protect myself, simply holding up my arm so she couldn't hit me in the face.

Q Did she bite you on the outside of the arms? A On the arm, yes, on the outside.

20 Q She bit you how many times on the arms? A Twice on the arm.

Q Whereabouts? A Between the wrist and elbow on the right arm.

Q Did she bite you on the shoulder? A She did not.

Q You say you had your sleeves rolled up? A Sleeves rolled back and turned back once and they are very loose, and if I shove them above my elbows they stay there as I don't like to take off my coat off on a short job.

30 *By the Court.*

Q Did you shut it off and take it away? A Yes.

Q Who owned it? A Public Service Gas Company.

*Further cross.*

Q You remember testifying before you had your coat on? A Yes.

Q Did she bit you through the coat? A Yes.

Q Do you remember testifying to that? A I do not think so.

40 Q You don't remember testifying to that? A The question was not asked me in just that way; in the Verona Court I was asked, "Did she bite me," and I said "Yes."

Q And the question was "Did you have your coat on"? A No, sir.

Q You say that question was not asked you? A As near as I can remember.

Q Have you seen the testimony written up? A I have never seen it. I spoke to Mr. Klump afterwards if the lawyer had asked the question, and I don't know whether the impression was she bit me through the coat or not.

50 Q Did Mr. Carter do anything to you up there? A No.

Q Did he tell you to stop choking his wife? A He did not.

Q Did he grab hold of your coat and try to pull you out from choking his wife? A He did not.

Q Did you throw her up against the wall and put your knee against her? A I did not.

*Chester Ryerson, re-direct.*

Q All you did when she was pelting you as you say was just to put your arm up and hold her off and work with your other hand?

A Yes, sir, exactly.

Q Right or left? A Right hand.

Q Which hand did you work with? A Left hand until I got around on the side. 10

Q You finally uncoupled the meter at both connections? A Yes.

Q In spite of Mrs. Carter's protests? A Yes.

*Re-direct.*

Q Did you notice any effect as the result of these blows and bites, as far as you were concerned? A Yes, at my stomach, it knocked me out for the rest of the day, and the next day I felt in such condition I didn't feel like doing anything, I felt as though I—I felt weak in the stomach. 20

Q What did you do, if anything? A I rubbed it with alcohol because the doctor had previously told me that was good stuff to put on the stomach, I had a feeling there that was not comfortable.

*By Mr. Degnan.*

Q When did Mrs. Carter strike you in the stomach? A When I was inside.

Q During the time you were attempting to shut off the cock? A No, I was facing the meter, then she could not very well strike me in the stomach at that time; after I was up against the side wall then she did that. 30

Q Were you working on the meter when she hit you in the stomach? A I don't think I was, I couldn't quite reach the meter at that time, there was a little distance between me and the meter.

Q As a matter of fact this diagram states this little alley to be two feet? A I am not a judge of distance to a few inches, as near as I could remember I would say 2 foot 4; the meter is set up against the wall and takes up probably 12 inches because the meter is 11½ inches wide and I can stand in front of the meter and there is a little space between me and the meter, and I judge by that it is 2 feet 4 wide. 40

Q Was it while you were standing up against the meter that Mrs. Carter hit you in the stomach? A She could not then because I was facing the meter at that time.

Q You remember testifying in the Verona Police Court while you were shutting it off that she hit you in the stomach—"she also hit me in the face and hit me in the stomach and clawed me in the stomach?" A Something to that effect, it only takes just down to the minute—if you want to get down to the moment I was shutting off the valve, it would be impossible to say when she did this or did that. 50

*The Court.* Answer the questions yes or no.

Q Do you recall testifying to this: "Q You were standing pretty close to the meter, were you (referring to this blow in the stomach)?"

*Dr. Thomas M. Pascall, direct.*

A Just so I could work ordinarily for myself." Do you remember testifying to that? A Yes.

Q While you were standing close so as to work conveniently she hit you in the stomach? A You would have to see it to know, it is what I would call conveniently, yes.

10 Q Do you remember testifying to that? A Yes.

Q Which is true, she struck you while you were facing the meter or she struck you while you were facing out towards the entrance?

A That is kind of hard for me to answer yes or no. As I tried to state before, it is only an instant between the time I was facing the meter and she threw me against the side wall, and it was at that time—it was all while I was trying to get the meter, it is unreasonable to answer that.

20 Q As a matter of fact she could not have struck you in the stomach while you were up close to the meter, as you stated it would be impossible for her to do it? A Just at that very instant.

Q Then you were mistaken when you testified at the Police Court in Verona?

Objected to as repetition.

Q You say your hand became caught in there, how did it become caught there? A Between the meter and pipe there is a space and I had my arm up in there and my hand was on the nipple and I couldn't get the nipple loose as she was right behind, shoving me.

30 Q (*By Mr. McGlynn.*) Did you suffer any pain in your right arm by reason of the bites? A Yes.

DR. THOMAS M. PASCALL, called by plaintiff, sworn.

*Direct examination by Mr. McGlynn.*

Q Did you examine Chester Ryerson? A Yes, sir.

(The doctor's qualifications are admitted.)

40 Q Do you remember when? A 22nd day of July, 1918.

Q Do you remember what time? What did you find as a result of your examination? A On the middle third of the right lower arm he had a double—semi-lunar, on the third joint of the right little finger and one at the edge of the left humerus, one on the inner ball of the left.

Q These scars were visible to the eye? A They were at that time.

50 Q Could you tell from the condition of these marks on the right arm between the wrist and elbow as to whether or not they were bites? A I suspected from the s

Q The semi-lunar was on the middle third of the right lower arm? A Yes.

Q From the condition of that scar you think it was caused by a bite? A I think so.

*William Klump, direct.*

Q Would any of these injuries be likely to cause any pain, were they slight, severe or otherwise? A Cause uneasiness, uncomfortableness.

*Cross examination by Mr. Degnan.*

Q Did you cauterize the wound? A That was not necessary. 10

Q What treatment did you prescribe? A I did not think there was any need.

Q He told you, of course, that he had been bitten? A No, he did not, I asked him.

Q You could not tell whether that was a bite by a human being or by an animal? A It is pretty hard, but I don't know of any animal that causes a semi-lunar scar. On the medium of the right lower arm, right there (indicating on his arm); he had some other scars.

Q You don't know what they were caused by? A No, I do not.

Q You are not on the staff of the Public Service medical department? A I treat the employees that are injured on duty. 20

Q Did Mr. Ryerson tell you when he had been injured? A Yes, I asked him.

Q What day have you got a notation there? A July 22nd.

WILLIAM KLUMP, called by plaintiff, sworn.

*Direct examination by Mr. McGlynn.*

Q Where do you live? A 277 North Park.

Q You are employed by the Public Service Gas Company? A Yes. 30

Q How long have you been employed by the Public Service? A 20 years with an intermission of 3 years.

Q Have you ever been to Mrs. Carter's house? A Yes.

Q The first time you went up, did you go with Ryerson or someone else? A I went up alone the first time.

Q Did you go up again with anybody else? A Yes, Mr. Haight, the second time.

Q Did you go over her bills then? A Yes.

Q Did you tell her you were coming back again? A Not when I went up with Mr. Haight, this was the understanding— 40

Q Never mind unless Mrs. Carter was there? A This was the understanding that I would go up, and if Mr. Haight wanted the meter removed after I went up with the bills, I would remove the meter.

Q You went up again with Ryerson? A Yes.

Q Did you go in the house first or did Ryerson go in first? A No.

Q When did you go in? A About, I should judge 12 or 15 minutes after. 50

Q What part of the house did you go in? A Down cellar, right to the cellar wall.

Q Where was Ryerson? A Well, I will tell you, I sent Ryerson in there to read the meter and remove a section of the meter; I had a bad tire on the automobile and thought I would fix that, and Ryerson

*William Haight, direct.*

son was gone about 12 to 15 minutes and I felt kind of funny and I thought I would run down and see what was the matter, and just as I went in the cellar door someone called out, "He is killing me, he is killing me," and I heard Ryerson's voice say, "Stop biting me, stop biting me," and I went to the front of the cellar, and in a close place Mr. Ryerson and Mrs. Carter were in there, and I said, "What is the matter Jack," and he said, "I can't get out of here," and I said, "Let it go, go out of there," and he wanted to go out and he couldn't go out, he was fast, there was no way of getting out then, and he kept wiggling and wiggling and he did get out, and Mrs. Carter came out ahead of him and she grabbed a bottle and tried to bring it down on his head, and she grabbed another and then she grabbed another and that was caught, and I said to Ryerson to beat it, and he started to run and she threw a bottle at him and another at him and he missed it, he was too quick, and Ryerson got out after that, and Mrs. Carter acted as though she was dying, and I said to her husband, "You better get her upstairs; it would be better to pay a bill; before having such trouble as this, I would pay it myself." That was my very words.

Q Who was yelling, "He is killing me?" A It sounded like Mrs. Carter's voice.

Q Who else was in the cellar? A Mr. Ryerson and Mr. Carter.

Q She was the only woman in the cellar and it was a woman's voice, "He is killing me, he is killing me?" A Yes.

30 NOT CROSS EXAMINED.

WILLIAM HAIGHT, called by plaintiff, sworn.

*Direct examination by Mr. McGlynn.*

Q Have you ever been to Personette street? A Yes.

Q Who did you see there? A Mrs. Carter.

Q What did you talk to her about? A Her bill.

Q Did you go over it with her?

40 Objected to as immaterial.

Objection sustained.

Q How long were you at her house before this assault? A July 15.

Q As a result of what happened at her house on July 15, what did Mrs. Carter do?

Objected to.

Objection sustained.

50 Exception granted to Mr. McGlynn.

*Motion for Non-suit—Ella A. Carter, direct.*

WILLIAM HART, called by plaintiff, sworn.

*Direct examination* by Mr. McGlynn.

Q Were you in Mrs. Carter's kitchen on July 15 on the day that Mr. Haight was there?

Objected to.

Objection overruled.

10

A Yes.

Q What happened on July 15, 1918, when you were there with Mr. Haight?

Objected to.

Objection sustained.

Exception granted to Mr. McGlynn.

20

PLAINTIFF RESTS.

*Mr. Degnan.* I move for a non-suit on the ground that any assault which was made by Mrs. Carter was done in the protection of property which was in her peaceable possession, and I have some authorities which will tend to substantiate my motion that a person is justified in using force to protect any property which is in their possession peaceably, and which another person tries to take away by force of arms.

*The Court.* This is a case where she assaulted him not where he assaulted her. I will admit a person has no right to enter a house and take property against the will of the person in charge of a house, but where he has entered by the owner's permission and takes possession of property of the owner or his principal, then she has no right to assault him. He was going in there for property belonging to his principal; she commits assault and battery while he is trying to regain possession. It does not necessarily follow because she paid her bill his principal did not have a right to remove the meter; that is not the issue, it may be wrong, require readjustment or broken down, and there may be a dozen other reasons why the meter should be removed, they may have wanted to put in another kind; she may have taken the attitude because she having paid her bill they had no right whatever to remove that meter. I will deny the motion for non-suit.

30

40

Mr. Degnan prays an exception to the ruling of the Court.

Exception allowed.

ELLA A. CARTER, defendant, being sworn, testifies as follows:

50

*Direct examination* by Mr. Degnan.

Q Mrs. Carter, you are the defendant in this case? A Yes.

Q Did you see the plaintiff, Chester Ryerson, on the day in question on the 16th of last July? A Yes.

*Ella A. Carter, direct.*

Q Where did you see him? A In my house.

Q Whereabouts in your house? A At the door.

Q Where did you go? A Down in the cellar.

10 Q When you saw him, what did he say to you? A My little girl came in, she was out in back and told me there was a man at the cellar and wanted the key to open the door.

Q When did you show Mr. Ryerson in? A When he was at the door and wanted the key.

Q When you let him in, did he say anything to you? A He wanted to read the meters, he wanted to get the key to read the meters.

Q What did he do then? A He went down in the cellar and I went after him down in the cellar and I just opened the door and he went in and I went in and my husband after him.

20 Q Where was your husband standing? A By the cellar door.

Q Why did you go down there? A I went down about it when he said he was going to read it.

Q Did you hit Mr. Ryerson over the head at all? A No, sir.

Q Did you grab his arm and bite him? A No, sir.

Q Did you bite him at all? A No, sir.

Q Did you commit an assault and battery at all on him while he was there? A No, sir.

Q Just tell us what happened? A I was going down in the cellar and he went first to this little dark place—

30 Q Do you see this diagram? A Yes.

Q Do you recognize it? A Yes.

40 Q Tell us how you went in the cellar? A The first meter is Mrs. White's and the next one is Mrs. Carter's, and he went in and stood right there to my left and I stood right there (indicating on sketch), and he read our meter first and he returned—then went to Mrs. White's meter and he returned and looked at our meter, and he took out a wrench out of his pocket and said he was going to take this meter, and I said, "No, nothing doing," and I put out one hand, and this hand I put on the cock and I stopped him using it, and he took the handle and turned over this way, and I said, "You are not going to have that meter," and I put my hand on the cock and stopped him, and he took the hand and turned it around and I came back again, and he took me by the shoulders this way and turned me around this way (illustrating) and shoved me against the wall, and I came back again and put my left hand on again, and he said, "You get away from the meter." He couldn't work it with his right hand, and he grabbed me this way, right this way (illustrating), and with his knee to my stomach, and then I hollered, "He is choking me, he is choking me," and he came to my rescue.

50 Q Who came to your rescue? A Mr. Carter, and I was against the wall and he said, "Let go of her, what are you doing?" And then he said to my husband, "What are you doing?" and he said, "I am going to have this meter," and he said it is paid for, and he said, "I am going to have this meter, making a grab at it," and I came back again with the hand and stopped him, and he grabbed

*Ella A. Carter, cross.*

me by the throat again the second time and he put his knee to my stomach and to my neck and shoved me against the wall, and I hollered and my husband came down and he said he is going to have that, and I said, "No, you won't," and in the meantime he got it loose, and then he was ready when Mr. Klump came in—

Q That was the man on the stand? A Yes, he said to him, "What are you doing? You let it alone and come out or you will pay the penalty," and he hollered that four times, and my husband grabbed him, and I said, "he is taking the meter and I paid for it," and he put his arm around that way and it was all loose, and when he did it the third time Mr. Klump hollered to him and he had his elbow caught in the pipes and he said, "If I can get my arm loose," and I said, "I will help you," and he got loose and immediately went to the front and he went out, and I took a bottle and I went this way (illustrating) with a bottle in my left hand, and he put up his hand, and then he made a run down towards our heater as you come in the other door, and I took another bottle, and that was two bottles, one when he left the place and one when he was at the heater, I picked up two bottles, and I took sick after that and Mr. Klump and my husband took me upstairs and said, "This is no place for Mrs. Carter, take her upstairs and get her a drink of water," and he took it down and he said, "Take her up out of the cellar," and they both took me up in the kitchen, and he ordered me to bed and have a doctor, and he said he would put his own hand in his pocket and pay the money, he would not do such a trick for the Public Service.

Q Did you send for a doctor after that? A Yes.

Q Who was it? A Dr. Davis.

Q Is he in court this morning? A Yes, he is right there.

Q Mrs. Carter, what is your physical condition?

Objected to.

(Question withdrawn.)

Q Can you use your right hand? A He caught me by that hand.

Q Is there anything the matter with that hand? A The left hand was broken and the doctor treated it.

Q Is there anything the matter with your right hand? A The right hand was broken.

Q When was it broken? A Three months ago; I have not used it since; I can't use those fingers, the doctor knows that.

Q Have you suffered from any other injuries?

Objected to.

Q Are you able to stand on your feet well? A This side was hurt about 2½ years ago.

*Cross examination by Mr. McGlynn.*

Q That was an accident where you fell off a trolley car?

Objected to.

*Ella A. Carter, cross.*

Q You have been in courts quite a lot, haven't you?

Objected to.

Objection sustained.

10 Q Now you say, Mrs. Carter, that Mr. Ryerson without your doing anything at all, grabbed hold of you, pushed you up against the wall, grabbed you by the throat, choked you and put his knee to your stomach? A Yes.

Q You did not make a move, never touched him, except pushing him away? A Yes.

Q And your husband stood within two or three feet of you? A No, sir.

Q Where did he stand? A Up by the steam heater.

20 Q Did he stay there all the time. The steam heater is not shown on this diagram—where is the steam heater? A In back of the cellar.

Q That is where your husband stood? A Yes.

Q And you yelled "He is choking me"? A Yes.

Q And was he still choking you when your husband came? A No, sir.

Q I thought your husband had to pull him off? A He asked him what he meant.

30 Q Your husband never touched him? A No, he never touched him.

Q And you never touched him? A No, he was striking me.

Q I don't suppose you did any loud talking before that? A Yes, he was hollering.

Q You were very much excited? A No.

Q Why did you grab the bottles? A I wanted to get rid of him.

Q You wanted to get rid of him, he was leaving the cellar when you were throwing the bottles? A Yes.

Q You wanted to hurry him a little more? A Yes.

40 Q You would have been glad to hit him? A I had a right to but I didn't, I had to take my own part.

Q You never touched him before that? A I pushed him away when he was choking me.

Q Your elbow is all right, you can move your arm? A Yes.

Q You can move your whole arm, can't you? A I can't close my hand for a thousand dollars.

Q But you can move your arm? A Oh, yes.

Q And your left hand is all right? A No.

Q It is not now? A No.

50 Q You paid this gas bill since this thing happened, didn't you?

Objected to.

Objection sustained.

Q Do you remember, Mrs. Carter, when you applied for service with the gas company you signed a contract with them?

*Edwin P. Carter, direct.*

Objected to as immaterial.

Objection sustained.

(Question withdrawn.)

DR. DAVIS, called by defendant, sworn.

10

*Direct examination* by Mr. Degnan.

(The doctor's qualifications are admitted.)

Q Doctor, do you know Mrs. Carter, the defendant in this suit?

A I do.

Q Did you treat her sometime ago for an injury to her fingers on her right hand? A I should judge about three or four months ago.

Q What was the trouble?

Objected to.

20

Q What did you treat her for, Doctor, what was the condition of her hand?

Objected to.

(Question withdrawn.)

EDWIN P. CARTER, called by defendant, sworn.

*Direct examination* by Mr. Degnan.

Q You are the husband of the defendant in this case? A Yes.

30

Q Were you present at this melee or scuffle on July 16th last?

A Yes.

Q You happened to be home at the time? A Yes.

Q Now, Mr. Carter, tell us in your own words what happened, when did you first see Ryerson? A At the back door, he wanted a key to get in the cellar, and I went down and got it and he went down in the cellar first, he went in.

Q Where did you stand? A Right inside of the door by the furnace.

Q What happened? A I was there awhile and I heard someone holler, after he was in there awhile, "He is choking me," and I went in to see what the trouble was, and I went in there and she was on the left of him.

40

Q Explain on the diagram where she was? A She was right here and he was right back here.

Q What position were they in? A By the back partition.

Q What did you do when you went in there? A I asked him what he was doing there and he said he was going to take the meter out and I said "No."

Q What did he say then? A He said there was two or three there, and they went away and didn't come back again.

50

Q I asked you what he said then? A He said "We are going to take this meter," and I said "I don't think you will," and he looked at it and put his hand in his pocket, then he put his knee up against

*Edwin P. Carter, cross.*

her stomach and was choking her, and I said "Leave go," and pulled him by the coat like that.

Q Did he desist then? A He stopped then. She put her hand over the top where he went to unscrew the meter and he caught hold of her and jumped over back of the meter.

10 Q Indicate where on this diagram? A Right in there in back.

Q He shoved her to the left of the meter? A Yes.

Q Then what did he do to her then? A He put his hand up to her throat again and with his knee on her stomach then.

Q And was he using his right hand? A Yes, to unscrew the nut, and I took hold of him then and pulled him out, and just after that, this gentleman, Mr. Klump, came in pretty quick.

*Cross examination by Mr. McGlynn.*

20 Q That is the first thing you heard said, the very first thing you heard said, she yelled "He is choking me"? A Yes.

Q And all I understand you did was to walk up to the place where they were standing, you did not run? A Went pretty lively.

Q And when you got there how were they standing? A She was at his left.

Q What did you do? A I asked him what he was doing.

Q Just like that? A Yes.

Q What did he say? A "I am going to take this meter."

Q What did he do then, what did he do next? A He put his hand up to her throat and landed on her chest here.

30 Q Her stomach? A Yes.

Q You stood right alongside of them. When you got there first you asked him what he was doing and he said he was going to take the meter out. Your wife stood to the left, he didn't have his hands on her then? A Yes.

Q After that you asked him what he was doing, and without your wife making one single move, he immediately turned to the left and grabbed her by the throat with his left hand and put his knee against her stomach? A She had her hand on the meter.

40 Q How did she do that if she stood to the left? A Here is the meter and here is where she stood.

Q Where is the cock? A One on each side.

Q Which did she put her hand on? A One nearest to him, on the lefthand side of the meter.

Q That is all she did? A That is a fact.

Q In order to do that didn't she have to turn her body toward the meter a bit? A She stood right by the meter.

50 Q And without her doing anything more except putting her hand on that gas meter he deliberately put his hand up by her throat and put his knee in her stomach? A I don't know.

Q You were in back of him, didn't you hit him? A No, sir.

Q You didn't punch him? A No, sir.

Q Although he had your wife by the throat and his knee in her stomach you only pulled him by the coat to take him away? A Yes.

*Verdict.*

Q You didn't push him out of the cellar or throw him out of the cellar or anything? A No, sir.

Q What did he do next, what did Ryerson do then after you pulled him away from your wife? A He stood there. I said, "What are you doing anyhow, what are you trying to do," and he said "I am going to take that meter." 10

Q Then what did he do? A Done the same thing over again.

Q That is twice? A Twice after I went in.

Q And your wife did nothing to him in the meantime after you asked him the second time? A No, sir, he said he would go when he got caught.

Q When was that? A After the meter was loose.

Q And that was after he had choked your wife twice? A Yes.

*By Mr. Degnan.*

Q Why didn't you hit him? 20

Objected to.

Objection overruled.

A Because the man was too big for me to tackle; chances are it would be a great deal worse if I did start in, and I think there is a law governing all of those things.

DEFENDANT RESTS.

CASE CLOSED. 30

Mr. Degnan sums up.

Mr. McGlynn sums up.

*The Court.* As to whether there was an assault or not—the defendant denies any assault. The weight of the evidence is that there was an assault committed. The plaintiff was admitted in the house, and after he had announced that he was going to take the meter out, Mrs. Carter maltreated him and was assailed; that is the way it was established. It does not appear the man was seriously injured, he might have been, he might have been killed. The defendant admits that she threw a bottle after she says she helped free his arm. I don't understand her moods of compromise and then trying to hit a man with a bottle, so there is insufficient in the defense. 40

The question that concerns the Court is the amount of damages, of course the defendant is entitled to some amount. The ways of aggressiveness and quarrelsomeness and assault and battery are ways that lead to punishment, unhappiness, bad health and everything else. There were ways to have remedied this. In the first place, she need not have admitted the man. Her husband did. After he is admitted she need not have committed an assault upon him; in the second place she could have obtained her rights at least by law. I find the plaintiff 50

*Certificate of Judge.*

underwent pain and suffering and is entitled to damages for that. I will render a verdict of \$50 for the plaintiff.

Mr. Degan prays an exception.

Exception allowed.

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I DO HEREBY CERTIFY the foregoing transcript of said proceedings and said testimony as the state of the case to be used on the hearing of said appeal.

DANIEL A. DUGAN,  
*Judge.*

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*Specification of Determinations.*

**Specification of Determinations.**

Filed Oct. 23, 1918.

# New Jersey Supreme Court

10

CHESTER G. RYERSON,

*Plaintiff-Appellee,*

*vs.*

ELLA A. CARTER,

*Defendant-Appellant.*

*In Tort.*

*Specification of*

*Determinations*

*with which Ap-*

*pellant is dissat-*

*isfied in point of*

*law.*

20

The following is a specification of the determinations of the District Court with which the appellant is dissatisfied in point of law:

1. At the close of plaintiff's case appellant's attorney made a motion for a non-suit on the following grounds: that any assault which was made by the defendant-appellant was done in the protection of property in her peaceable possession and that a person is justified in using force to protect any property which is in their possession peaceably and which another person tries to take away by force of arms. The Court denied the motion and appellant asked for an exception and the same was granted. The Court erred in this determination and appellant is dissatisfied therewith in point of law.

30

2. The Court held that appellee was admitted to appellant's house after he had announced that he (appellee) was going to take the meter out. The Court erred in this determination because there was nothing in the evidence to support such a determination and appellant is dissatisfied therewith in point of law.

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3. The Court rendered a verdict in favor of the appellee. The Court erred in this determination and in the application of the law to the facts and the appellant is dissatisfied therewith in point of law.

JOSEPH M. DEGNAN,

*Attorney for Defendant-Appellant.*

50

## Supreme Court Opinion

(Filed January 31, 1919.)

NEW JERSEY SUPREME COURT.

No. 441, November Term, 1918.

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CHESTER G. RYERSON,

*Plaintiff-Respondent,*

*vs.*

ELLA A. CARTER,

*Defendant-Appellant,*

*On Appeal.*

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Submitted November Term 1918 — — Decided January 31, 1919.

Before Justices, BERGEN, KALISCH & BLACK.

1. A Gas Company, which has installed a gas meter in the cellar of a householder cannot forcibly remove the same, against the protest of the householder, without proof of the contract under which the gas meter was installed, giving the company the right to enter the premises and remove the gas meter.

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2. A gas meter being in the defendant's possession, the presumption is that it is rightfully so, until something is shown, which justifies the forcible removal of the gas meter. The possession may be defended.

3. If the possession of a gas meter from a householder, where it has been installed by the Gas Company, cannot be regained peaceably, resort should be had to a legal remedy, possession cannot legally be regained by force. The remedy lies in the courts.

For Appellant, JOSEPH U. DEGNAN, Esq.

For Respondent, EDWARD R. MCGLYNN, Esq.

The opinion of the Court was delivered by BLACK, J.

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The suit in his case was brought to recover damages, for an alleged assault and battery made by the defendant. The case was tried by the Court, without a jury, resulting in a judgment in favor of the plaintiff. The defendant appeals, on the ground that the court erred, in refusing the defendant's motion to non-suit, in rendering a judgment against the defendant without evidence.

The defendant is a householder, living on Parsonette Street, in the Borough of Verona and was using gas supplied by the Public Service Gas Company, measured by a meter, located in defendant's cellar.

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On July 16, 1918, the plaintiff came to defendant's house and met the defendant, at the back door of her kitchen, he told her he wanted to read the gas meter, that he was the "gas man", and then went into the cellar, there he took a wrench out of his pocket and shut off the gas cock; the plaintiff did not tell the defendant he was going to remove the meter until he took the wrench out of his pocket to shut off the gas cock, he then said, I will have to cut the meter out. Mrs. Carter

*Supreme Court Opinion.*

she said you can't take the meter out. He did not tell her, the gas bill was not paid; she said her bill had been paid and she always paid her bills. The plaintiff then said she pelted me, my orders were to go up and remove the gas meter. It was owned by the Public Service Gas Company. This is from the Plaintiff's testimony and it is substantially all the evidence in the record on which the plaintiff alleges liability, except further details somewhat amplified. From this evidence, the Court could infer, that the Public Service Gas Company had installed a meter in the defendant's cellar; that a dispute existed over the payment of the gas bill; that the company had sent the plaintiff to shut off the gas and take the meter away; and while he was doing so, the defendant assaulted him or to use the plaintiff's words pelted him. 10

In this situation, the fundamental difficulty, with the plaintiff's case is, that there was no evidence whatever of any contract, between the Public Service Gas Company and the defendant, Ella A. Carter; or that the company or the plaintiff had the right to enter the premises and remove the meter. Surely the plaintiff's testimony, that his orders were to go up and remove the gas meter would not supply the deficiency. We fail to see by what authority in law, the plaintiff had to remove the gas meter. It was in the defendant's possession and the presumption is rightfully, until something is shown, which justifies the forcible removal of the meter. We know from common knowledge, that the contract for installation usually provides for removal of the gas meter, at the will of the Gas Company, so, it was a simple matter to prove and if there is a dispute about the facts, the law provides a simple and adequate remedy, by which the facts can be determined and settled. If the possession of the gas meter could not be regained peaceably resort should be had to a legal remedy, possession cannot be regained by force, the remedy is in the Courts. The law does not favor settling disputes by force. Under the facts shown, in the record in this case, no right of removal of the gas meter existed, as the meter was in the defendant's possession, she had the right to defend it on her own premises. This leads to a reversal of the judgment on the ground, that the defendant was entitled to have the direction of a verdict in her favor, for want of proof of a right to remove the gas meter. The underlying principle of law applicable to the facts of this case, clearly stated is, if one attempts to deprive another of his goods, the latter is justified in laying hands on him to prevent him from so doing, and, if he persists with violence, may use force to cause him to desist, provided he uses only such force as is reasonably necessary, 3, 40  
CYC 1070, 5 Cor. Jur. 631, 2 R. C. L. p. 555, Par. 35.

Illustrative cases in our Courts are

*Slingerland v. Gillespie* 70 N. J. L. 720;

*Moore v. Camden &c. Trenton Ry. Co.* 74 ib. 498;

*Lehigh &c. Ry. Co. v. Antalics* 81 ib. 685;

In other courts

*Newark v. Sabler* 9 Barb. 652;

*Singer &c. Machine Co. v. Phipps* 49 Ind. App. 126.

The judgment of the District Court is reversed.

**Order of Reversal and Remittitur**

NEW JERSEY SUPREME COURT.

10	CHESTER G. RYERSON,  <i>Plaintiff-Respondent.</i>	}	<i>On Appeal. Order of Reversal and Remittitur</i>
	<i>vs.</i>		
	ELLA A. CARTER,  <i>Defendant-Appellant.</i>		

20 This cause having been duly submitted on briefs at the November Term of the Court, by Joseph M. Degnan, of Counsel for Defendant-Appellant, and Edward R. McGlynn, of Counsel for Plaintiff-Respondent; and the Court having inspected the record and judgment below and considered the specification of errors,

ORDERED, that the judgment of the Orange District Court be in all things reversed, set aside and for nothing holden, and that the record and proceedings be remitted to the said Orange District Court to be proceeded with in accordance with the judgment and the practice of this Court.

Entered March 6, 1919.

On motion of

30 style="text-align: center;">JOSEPH M. DEGNAN,  
*Atty. for Defendant-Appellant.*

A TRUE COPY,  
ENOCH L. JOHNSON,  
Clerk.

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## Order of Substitution of Attorney

The following was entered in the minutes of the Supreme Court:—  
It appearing to the court that E. R. McGlynn, attorney of the plaintiff-appellee has consented to the substitution of Lefferts S. Hoffman, as attorney in his place and stead, it is on this twenty-fifth day of February, nineteen hundred and nineteen.

ORDERED that Lefferts S. Hoffman be and he is hereby substituted as attorney of the plaintiff-appellee. 10

### Notice of Appeal

NEW JERSEY SUPREME COURT.

CHESTER G. RYERSON,

*Plaintiff-Respondent.*

*vs.*

ELLA A. CARTER,

*Defendant-Appellant.*

*In Tort  
Notice of Appeal.*

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To

JOSEPH M. DEGNAN,

*Attorney of Defendant-Appellant.*

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SIR:—TAKE NOTICE that the plaintiff-respondent appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of reversal and remittitur entered in the New Jersey Supreme Court in the above entitled cause.

Dated, March 18, 1919.

Yours truly,

LEFFERTS S. HOFFMAN,

*Substituted Attorney of Plaintiff-Respondent.*

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ENDORSED.—“Service acknowledged March 19, 1919, Joseph M. Degnan, Atty. of Defendant-Appellant.”

## Ground of Appeal

### NEW JERSEY COURT OF ERRORS AND APPEALS.

10	CHESTER G. RYERSON,  <div style="text-align: center;"><i>vs.</i></div> ELLA A. CARTER,	<div style="text-align: center;"><i>Plaintiff-Appellant.</i></div> <div style="text-align: center;"><i>Defendant-Respondent.</i></div>	<i>On Appeal from New Jersey Su- preme Court Grounds of Appeal.</i>
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To JOSEPH M. DEGNAN,  
Attorney of Defendant-Respondent.

20 Sir: TAKE NOTICE that the following is the ground of appeal which the defendant-appellant will urge in the above entitled cause:

1. Because the New Jersey Supreme Court reversed the judgment of the District Court of the City of Orange instead of affirming the same.

Dated March 27, 1919.

Yours truly,

LEFFERTS S. HOFFMAN,  
Attorney of Plaintiff-Appellant.

30 Endorsed.—“Service acknowledged March 28, 1919. John M. Degnan, Atty. of Defendant-Respondent.”

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## New Jersey Court of Errors and Appeals.

CHESTER G. RYERSON,  
*Plaintiff-Appellant,*

vs.

ELLA A. CARTER,  
*Defendant-Respondent.*

On Appeal  
from the  
New  
Jersey  
Supreme  
Court.

### Brief of Plaintiff-Appellant.

Ryerson, an employe of a gas company, entered the cellar of the house occupied by Ella A. Carter, the defendant-respondent, such entry being with the consent of the said Ella A. Carter; and after such peaceful entry he attempted, as agent of the gas company, to remove from the cellar a gas meter belonging to the gas company. Mrs. Carter thereupon objected to the removal of the meter, and defended with force what she claimed to be her possession of the same. Ryerson alleged an assault by Mrs. Carter against him, and sued her for damages in the District Court of the City of Orange, recovering there a court judgment for Fifty dollars and costs. The Supreme Court, on appeal, reversed the judgment, and it is from that reversal that this appeal is taken, the sole ground of appeal (P. 32) being that the Supreme Court reversed the judgment of the District Court of the City of Orange.

The Supreme Court opinion is on Page 28 of

the State of case. It is based upon the assumption that Mrs. Carter had some property in or right of possession of the meter, which property or right she could defend. The opinion on this point says,—“We fail to see by what authority in law, the plaintiff had to remove the gas meter. It was in the defendant’s possession and the presumption is rightfully, until something is shown, which justifies the forcible removal of the meter. \* \* \* Under the facts shown, in the record in this case, no right of removal of the gas meter existed, as the meter was in the defendant’s possession, she had the right to defend it on her own premises. \* \* \* The underlying principle of law applicable to the facts of this case, clearly stated is, if one attempts to deprive another of his goods, the latter is justified in laying hands on him to prevent him from so doing, and, if he persists with violence, may use force to cause him to desist, provided he uses only such force as is reasonably necessary.”

We believe that the principles enunciated by the Court are not applicable to a gas meter. They doubtless apply to the case of a sewing machine sold on conditional-sale agreement, and an effort of the vendor to recover the machine after default in the installment payments. In such a case, even though the conditional-sale agreement specifically reserves the title to the vendor, and specifically provides for a right of possession in the vendor on the vendee’s default, there remains something, if it be only a bailment, which the vendee could defend to the point of making the vendor resort to legal means for the recovery of the chattel. But we submit that a gas meter is a different proposition. The householder has no title to it, is not bailee of it, and has not even possession of it. Mrs. Carter had no possession to defend. The gas company is a licensee. permit-

ted by the householder to place its meter in the householder's cellar. The meter is there solely for the benefit of the gas company, in order that it may measure the amount of gas used by the householder. The meter is not a necessary medium for the supply of gas. It is merely an instrument of convenience, and the convenience is solely the gas company's convenience. The license to put the meter in the cellar is undoubtedly coupled with an implied license to enter the cellar and retrieve it; and the license both to put it in the cellar and to remove it is undoubtedly coupled with an interest, so that the license to remove it cannot be revoked by the householder while the meter still remains in the cellar. It would be absurd to say that the license to place the meter was not coupled with a license to remove it; and it also would be absurd to say that the license to remove it could be revoked while the meter was still on the premises. And the right to remove would not be limited to the time when the relations of the parties were brought to an end by mutual agreement. As the trial court, on the motion for a non-suit, well said,—“It does not necessarily follow because she paid her bill his principal did not have a right to remove the meter; that is not the issue. It may be wrong, require readjustment or broken down, and there may be a dozen other reasons why the meter should be removed. They may have wanted to put in another kind.”

The case of *Consolidated Gas Company of Baltimore vs. Blondell*, 43 Atlantic Reporter, 817, and 46 L. R. A., 187, is much in point. The suit was for an injunction to prevent the defendant from placing, on the meters of the plaintiff company, a governor intended to reduce the amount of gas consumed by a customer. The court held that,—

“No bailment is created by placing a gas meter on the premises of the consumer to fulfill the requirements of the law, for the purpose of measuring the gas consumed by him and connecting his pipe with the supply pipe of the gas company.”

The court said,—

“But \* \* \* it is very apparent from the testimony, and, indeed, is well known independent of the testimony, that, as alleged in the bill, illuminating gas is an agent dangerous to life, health, and to property. Therefore, inasmuch as the law requires the plaintiff to keep the apparatus in proper working order, it will hold the plaintiff responsible for damage to property or loss of life caused by a failure on its part to perform its duty. Along with this legal responsibility must necessarily be conceded to the plaintiff sole control; for it would plainly be as unjust as it would be absurd to impose such a responsibility, and withhold the right of protecting itself from loss caused by interference on the part of others. \* \* \*

“But the argument of the defendants is that, assuming for the sake of the argument, the meter and connections to be the property of the plaintiff, yet there is a bailment of some kind in relation to them, and, that being so, the consumer has the right to use them for any reasonable purpose; contending that the affixing of the governor to them is such a reasonable use. *It is apparent from what we have already said that the apparatus in question is not delivered to the consumer for any purpose whatever.* It is true, it is placed, as the law required it to be placed, temporarily in his house, for the purpose of measuring the gas consumed, and at the same time to convey the gas from the supply pipe of plaintiff to the pipe of the consumer. It is, while thus in use, connected with, and forms a part of, the means by which the

plaintiff sells and delivers the gas to the consumer, and while so in use cannot, in our opinion, be fairly considered as a separate chattel, subject to a bailment of any kind. In order to effect a bailment, there must be a delivery, either real or constructive. Here there is neither. Hale, *Bailm & Carr*, 12. But, surely, if it be conceded that, because the apparatus is placed in the house of the consumer, he thereby becomes a bailee, he would be bound to respect the terms of the bailment provided by the law under which it is created, namely, that it is to be used as a measure, for the consumption of gas, under the care and control of the plaintiff. But being of opinion that, under the peculiar facts of this case, there is no room for the application of the law relating to bailments, we will not further consider this contention of the defendant."

The possible responsibility of a gas or electric company for damage arising through a defective meter is exemplified in New Jersey by the case of *Hoboken Land and Improvement Company vs. United Electric Company of New Jersey*, 42 Vroom, 430. It is true that in that case the defect was in the original installation of the apparatus; but undoubtedly the same principle is applicable to the case of a meter which becomes dangerously defective through age, or rust, or kindred causes. The gas company is under a duty to make reasonable inspections, to repair, to replace when necessary, &c., and the power to remove a meter, and, in fact, to exercise absolute control over its meters, is a necessary adjunct of the duty to keep them in order. A bailment to the householder would defeat such absolute control. We believe that the doctrine enunciated in *Consolidated Gas Company of Baltimore City vs. Blondell* is the law, and that no bailment in the householder exists.

In the absence of a bailment, the theory of the opinion of the Supreme Court in the case at bar (Page 28 of State of Case), so far as it concerns the supposed right of Ella A. Carter to defend her supposed "possession" of the meter, fails.

Another element of the Supreme Court opinion (P. 29, lines 15 to 20) is the assertion that "there was no evidence whatever \* \* \* that the company or the plaintiff had the right to enter the premises \* \* \* ." The court says,—  
 "Surely the plaintiff's testimony that his orders were to go up and remove the gas meter would not supply the deficiency." But we submit that such testimony on the part of the plaintiff justified his course *if the company had a right to remove the meter*. And the company's right to remove it, especially after an absolutely peaceable entry into the premises, is a necessary result of the company's ownership of, and absolute control over it. The entry of the plaintiff was peaceable. The motion for a non-suit (Page 19 of State of Case) is not based upon an unlawful entry. It is as follows:—

"Mr. Degan, I move for a non-suit on the ground that any assault which was made by Mrs. Carter was done in the protection of property which was in her peaceable possession, and I have some authorities which will tend to substantiate my motion that a person is justified in using force to protect any property which is in their possession peaceably, and which another person tries to take away by force of arms."

In reply, the Court said,—

"The Court. This is a case where she assaulted him, not where he assaulted her. I will admit a person has no right to enter a house and take property against the will of the person in charge of a house, but where he has entered by the owner's permission and taken possession of property

of the owner or his principal, then she has no right to assault him. He was going in there for property belonging to his principal; she commits assault and battery while he is trying to regain possession. It does not necessarily follow because she paid her bill his principal did not have a right to remove the meter; that is not the issue, it may be wrong, require readjustment or broken down, and there may be a dozen other reasons why the meter should be removed, they may have wanted to put in another kind; she may have taken the attitude because she having paid her bill they had no right whatever to remove that meter. I will deny the motion for non-suit."

The plaintiff testified (P. 4, l. 40), as follows:—Q. Who did you call to see there? A. Mrs. Carter. Q. Ella A. Carter, the defendant in this case? A. Yes. Q. What part of the house did you go to first? A. The back door. Q. Did you see Mrs. Carter? A. Yes. Q. What did you do at the back door? A. Notified Mrs. Carter I wanted to go in the cellar to read the gas meter. Q. Who went down with you? A. Mrs. Carter, and I presume Mr. Carter. Q. The gentleman who is with her this morning? A. Yes. Q. What part of the cellar did you go to? A. To the back part and opened the door and went directly to the front of the cellar. Q. The meter is located on the front wall, attached to the front wall? A. Yes. \* \* \* Q. There are two meters? A. In the alleyway. Q. Down which you went? A. Yes. Q. Which is Mrs. Carter's meter? A. To the left facing the street. Q. The second one in? A. Yes. Q. The one which is marked Carter meter? A. Yes. Q. When you got up near the meters where was Mrs. Carter? A. Standing right alongside of it. \* \* \* Q. Was the cellar light or dark? A. The cellar was dark. Q.

Did you use any light? A. A few matches. Q. What did you start to do then? A. Started to read the meters. Q. Did you finish or not? A. Yes. Q. What did you do next? A. Started to shut off the gas meter which I wanted to remove. Q. How did you do that? A. Took the wrench and shut off the cock on the left of the gas meter. Q. That would be nearest the other foundation wall of the building? A. Yes. Q. Did you succeed in doing that? A. Yes. Q. What did you do next? A. I found myself landed up against the brick wall. Q. What caused you to be up against the brick wall? A. Mrs. Carter shoved me over. Q. What did she do then? A. Hit me on the head. Q. With what? A. With her arm, her fist. Q. What did she do then? A. She grabbed my arm and bit me. Q. Which arm? A. The right arm. Q. What portion of the right arm? A. Between the wrist and elbow and also the knuckle of the little finger. Q. Did she draw blood? A. She did on the knuckle. Q. Did you have your coat on? A. My coat was on and sleeve was rolled up; it was a very lose coat. The coat arm was very loose. Q. You mean the sleeves of the coat was rolled up? A. Yes, I always keep them rolled up on a short job. Q. Were your shirt sleeves rolled up, too? A. Yes. Q. What happened next? A. Mrs. Carter yelled not to take the meter out, she had paid her bill and I couldn't take the meter out, and I tried to argue with Mrs. Carter to let me take it out, that if there was any mistake the Public Service would have to put it back for her, and Mr. Carter also tried to persuade Mrs. Carter to let me take it, and he also tried to get me not to bother with it. Q. Did she hit you anywhere else? A. In the stomach and on the shoulder and over the left eye. \* \* \*

“(P. 9, l. 1) Q. When did you first tell Mrs. Carter you were going to remove the gas meter? A. When I took the wrench out of my pocket and shut off the cock. Q. You did not tell her you were going to remove the meter until you actually shut it off? A. Until I took the wrench out to shut off the cock. Q. Did you say to Mrs. Carter, ‘With this wrench I am going to shut it off.’ A. No details. Q. You simply took it out and said, ‘I am going to shut off the meter?’ A. I said, ‘I will have to cut the meter out, Mrs. Carter.’ Q. What did Mrs. Carter say to you? A. She worked herself up in a rage. Q. I am not asking you how she worked herself up. A. She said, ‘You can’t take the meter out,’ and then she pelted me. Q. What do you mean by that? A. Came forward with her arms and threw herself against me to pull me away from the meter.”

So the plaintiff’s entrance to the cellar, and to the meter, was peaceful. It was apparently obtained by guile, by a pretense that his errand was to read the meter, but it was not by force. That part of the Supreme Court opinion, therefore, which states that there was no evidence of “the right to enter the premises” seems to have no bearing. The plaintiff had entered, and had entered peacefully, and was simply about to take the property of his company. Mrs. Carter did not dispute his right to represent his company. It was the company’s right that was in question.

The Trial Judge, in giving judgment (P. 25 of State of Case) said,—

“The weight of the evidence is that there was an assault committed. The plaintiff was admitted in the house, and after he had announced that he was going to take the meter out, Mrs. Carter maltreated him and was assailed; that is the way it was established.”

So we have a finding of fact by the trial court that the plaintiff was admitted to the house.

The Supreme Court opinion comments on the fact that there was no evidence whatever of any contract. The Court said,—

“We know from common knowledge, that the contract for installation usually provides for removal of the gas meter, at the will of the gas company, so, it was a simple matter to prove and if there is a dispute about the facts, the law provides a simple and adequate remedy, by which the facts can be determined and settled.”

It is true, that no written contract between the parties was proved, as in the cases of *Hitchcock vs. Essex and Hudson Gas Company*, hereinafter cited. We here claim the right of entry to the meter as a license, coupled with an interest, such license being necessarily incident to the license given to the company to put the meter in. But as a matter of fact, it is quite unnecessary for the plaintiff to rely on any right of entry, as he obtained peaceable entry anyway.

The case of *Hitchcock vs. Essex and Hudson Gas Co.*, 41 Vroom, 493, 57 Atlantic Reporter, P. 135, in the New Jersey Supreme Court, was one involving a specific written agreement between the parties for access to and right to remove the meter. The Court said,—

“The defendant company had the right to remove the meter within reasonable hours by any proper means short of the use of force. It was the property of the defendant, set up upon the property in the possession of the plaintiff, and at his request, and under a contract which gave the defendant liberty to take it away at will for any violation of the rules; failure to pay for gas consumed being one. It was not a trespass to go upon the premises of the plaintiff and take the meter under the license proven in the case to have

been given by the plaintiff to the defendant. \* \* \* Such a license is coupled with an interest. In such a case the authority conferred by the license is not merely a permission; it amounts to a grant."

It is perhaps worth noting that the court's statement in the foregoing opinion that the contract "gave the defendant liberty to take it away at will for any violation of the rules" is unnecessarily limited. The contract, as set forth in the case, specifically says that the company "may remove the same," and that privilege is not limited by the subsequent part of the contract which gives the company, on failure of the customers to comply with any of the rules of the company, the right to sever the connection with the service pipe and discontinue the service. The removal of a meter is not necessarily a discontinuance of the service. For discontinuance of service, if done without just cause, there is of course a legal remedy in a suit for damages and perhaps an injunction. But the mere removal of the meter, perhaps to clean it, or repair it, or to put in a newer type, is on an entirely different footing. The written contract referred to in the Hitchcock case gave the company the absolute and unqualified right to remove the meter.

In the case at bar, no written contract of right to enter and remove the meter was shown; but our contention is that such a license necessarily springs from the license given to the company to place its meter on the property. The right of access, and the right of removal, are such necessary incidents of the duty to maintain, that no written contract setting out such rights was necessary. And such implied license, we maintain, was coupled with an interest and therefore irrevocable as long as the meter remained on the premises.

Added to which, of course, is the fact that in the case at bar the plaintiff below entered peacefully, and therefore had no need to depend upon a license to enter; and had possession of his employer's property, and therefore did not need to depend upon any person's permission to remove it. If the removal of the meter turned out to be a discontinuance of service, Mrs. Carter had her legal remedy; and if she proceeded to enforce it, the company, if it was able, could defend by showing that she did not pay her gas bills.

The case of *Hitchcock vs. Essex and Hudson Gas Company* reached the New Jersey Court of Errors and Appeals, (42 Vroom, page 565, and 61 Atlantic Reporter, page 397). Here the court assumes that the company's agent "told the plaintiff's wife, the plaintiff not being home, that he was authorized by the plaintiff to remove the meter, but Mrs. Hitchcock refused to allow him to have access to it; in the afternoon the agent came again, and finding the outside door of the cellar locked he forced it, entered the cellar and removed the meter; at that time no one else was present or knew of his acts."

The Court said,—

"It must be noticed that at a reasonable time the defendant's agent applied to the person in charge of the plaintiff's house for permission to do the very things authorized by the plaintiff—to have free access to the meter and to remove the same; that such permission being refused, he subsequently, at a reasonable time, exercised the authority thus given, without using any more force than was necessary and without causing in the slightest degree any personal disturbance. Unless the application sanctioned this conduct, it is impossible to ascribe to its terms any effect whatever, and in our judgment it must be deemed suf-

ficient for the purpose stated. Although the premises entered constituted the plaintiff's dwelling, and the law regards a home as peculiarly inviolate, yet the plaintiff had the same right to authorize the defendant's agent to enter there as if the place had been an open field."

In the case at bar, we claim that the implied license to enter, which arose as a necessary incident of the license under which the company placed the meter on the premises, was fully as broad as the written license referred to in the Hitchcock case; and we submit that the plaintiff below, in peaceably entering the cellar, and in thereupon proceeding to take his employer's property, was at all times acting within his rights, and that the defendant below had no property in or possession of the meter, and therefore had no right which she was justified in attempting to defend.

Our position therefore is, that while we recognize that our right of entry could not be exercised under circumstances that would create a personal disturbance, our entry was entirely devoid of personal disturbance, and was in fact with the acquiescence of the defendant below; that the pretext of reading the meter, which the plaintiff below resorted to, and which was apparently due to the failure of other agents of the gas company to obtain the meter (P. 8, lines 1 to 23) did not change his legal status as a person who had reached the meter peacefully; and that when he proceeded to disconnect the meter he was in possession of the property of his principal, a property of which the defendant below had neither the ownership nor the possession. She had no right to attempt (as she admits. p. 20, lines 30 to 40. that she did) to prevent his taking the meter. We admit that the plaintiff below could not carry off the meter by an assault upon the defendant

below; but the trial court has found as a fact that the assault was the other way about, to wit, that Mrs. Carter assaulted Ryerson. When Mrs. Carter attempted, by force, to prevent the agent of the gas company from taking away the gas company's property, that force was an assault upon the plaintiff below. The District Court Judge (P. 25) found as a fact that "The plaintiff was admitted in the house, and after he had announced that he was going to take the meter out Mrs. Carter maltreated him—." This was in effect a finding that he had entered the house of the defendant below with the latter's permission, and had taken possession of the property belonging to his principal, and that it was after he had taken possession that the defendant below had assaulted him.

The assault continued even when the plaintiff below was leaving. William Klump said (P. 18, l. 15), "and he kept wiggling and wiggling and he did get out, and Mrs. Carter came out ahead of him and she grabbed a bottle and tried to bring it down on his head, and she grabbed another and that was caught, and I said to Ryerson to beat it, and he started to run and she threw a bottle at him and another at him and he missed it, he was too quick, and Ryerson got out after that—."

The absence of testimony concerning unpaid gas bills is due to the objection of the defendant below to the testimony of William Haight (P. 18) and William Hart (P. 19). Mr. Haight's relation to the subject is pretty well shown by the testimony of William Klump (P. 17). Mr. Hart testified to having been with Mr. Haight. Mr. McGlynn, attorney of the plaintiff below, took exception to the barring out of the testimony of Haight and Hart.

But we claim that the matter was not important. Failure to pay a gas bill was not a condition precedent to the right of the gas company to remove the meter. As the plaintiff below had gained peaceful entry, and had reached the meter, which his principal owned and *in which the defendant below had no property right of possession*, the defendant below had no right to interfere with the plaintiff below in the removal of his principal's property. The weakness in the cases cited in the Supreme Court brief of the defendant below, is that they refer to circumstances in which Ella A. Carter, as it were, was the bailee, or the possessor under a conditional sale, of the chattel. In the case at bar, the person who was in possession and entitled to possession of the gas meter when the assault began, was Chester G. Ryerson, the plaintiff-appellant.

The relations between the plaintiff's principal and the defendant are recognized in the Supreme Court opinion (P. 28, l. 46 of the Printed Case) as follows:—

‘The defendant is a householder, living on Parsonette Street, in the Borough of Verona, and was using gas supplied by the Public Service Gas Company, measured by a meter, located in defendant's cellar.’

As to the meter, Ryerson said, (P. 14, l. 32): “Q. Who owned it? A. Public Service Gas Company.” Ella A. Carter said (P. 21, l. 13) “and I said, ‘he is taking the meter and I paid for it’.” We do not believe that there was any dispute intended as to the actual ownership of the gas meter, but if such a dispute did exist, it was resolved by the Trial Judge in favor of the plaintiff's principal, the Gas Company, and was therefore finally disposed of as a question of fact.

It was alleged in the Supreme Court that the Trial Judges' finding (P. 25) that "an assault" had been committed only meant that a threat had been made; but we do not so understand the word "assault." And even if this word is technically weak to imply a battery, the fact that the Trial Judge intended it to carry its broader meaning is apparent from the Trial Judge's subsequent statement (P. 25, l. 43): "I don't understand her moods of compromise and then trying to hit a man with a bottle, so there is insufficient in the defense."

All the cases cited by the present defendant-respondent in her brief in the Supreme Court, relate to forcible interference with a peacefully obtained *possession*. In the present case, that peacefully obtained *possession* was in Mr. Ryerson and his principal. It never had been in Ella A. Carter, for no *possession* had ever been hers.

One of the authorities cited in Mrs. Carter's brief in the Supreme Court says (5 C. J. 631):

"If one attempts to deprive another of his goods, the latter is justified in laying hands on him to prevent him from so doing, and if he persists with violence, may use force to cause him to desist, provided he uses only such force as is reasonably necessary."

In the case at bar, it was Mr. Ryerson, representing his principal, who had a possession thus to defend, and not Mrs. Carter.

Respectfully submitted,

LEFFERTS S. HOFFMAN,  
LEONARD J. TYNAN,

*Attorneys of and of Counsel  
with Plaintiff-Appellant.*

## New Jersey Court of Errors and Appeals

CHESTER G. RYERSON,

*Plaintiff-Appellant,*

*vs.*

ELLA A. CARTER,

*Defendant-Respondent.*

*In Tort on  
Appeal.*

### BRIEF FOR DEFENDANT-RESPONDENT.

#### Statement of Facts.

This case was tried in the Orange District Court before Judge Dugan without a jury. The defendant is the wife of a householder living in the Borough of Verona and was using gas supplied by the Public Service Gas Company, measured by a meter located in defendant's cellar. On July 16, 1918, the plaintiff came to defendant's house, stating that he was an employee of the Public Service Gas Company, and requested admittance in order that he might read the gas meter (p. 4, l. 43). His real mission, however, was to remove the meter (p. 8, l. 20; p. 13, l. 42).

Defendant admitted him into the cellar at the back door and accompanied him to the front of the cellar, where her meter and the meter of the tenant on the second floor were located. The meter was attached to the front foundation wall of the house. There was a narrow alleyway about 2 feet 5 inches wide and about 6 feet long between the wall and the coal bins.

The plaintiff was permitted to read the gas meters (p. 6, l. 17), and after accomplishing this, plaintiff abruptly took his wrench out of his pocket and shut off the cock on the left of defendant's meter (p. 6, l. 12), saying, "I will have to cut the meter out, Mrs. Carter" (p. 9, l. 14).

Although a crippled woman (p. 21, ll. 42 to 49), the defendant attempted to prevent plaintiff from removing said meter, but against a young and vigorous man 32 years of age (p. 4, l. 32), 6 feet 1 inch tall, and weighing 160 pounds (p. 7, ll. 28 to 30), she was unsuccessful (p. 14, l. 30; p. 15, l. 11).

At the close of plaintiff's case a motion for non-suit was made and was denied (p. 19, l. 23, *et seq.*).

The defendant put in her case, denying specific acts of assault and battery, but admitting that she resisted the plaintiff's efforts to carry away the meter.

The learned Trial Judge found in favor of the plaintiff and assessed his damages at \$50.

The defendant appealed to the Supreme Court and the judgment of the District Court was reversed.

### Argument.

An analysis of the brief of plaintiff-appellant divides it into four divisions, viz: First, that Mrs. Carter had no property in the meter; second, that Ryerson's alleged principal had a license to enter the Carter cellar and that said license was coupled with an interest; third, that the gas company might remove the meter for the purpose of inspection as a protective measure, and fourth, that Ryerson obtained peaceable possession of the gas meter.

In support of the first proposition, plaintiff-appellant relies on the case of *Consolidated Gas Co. of Baltimore v. Blondell*, 43 Atlantic Reporter, 817, a Maryland case, which is the only authority supporting the view of plaintiff-appellant. This was a suit for an injunction and the question decided therein was the right of the consumer to use a meter contrary to the regulations of the gas company, and only involved the question of possession incidentally.

In the Blondell case, the decision seems to rest upon the fact that the meter was placed in accordance with a statute, for the statement is made "That no bailment is created by placing a gas meter on the premises of a consumer to fulfill the requirements of the law." There is no statute in this State that compels a gas company to install a measuring device. The only provision in our statute regarding gas meters is Com. St. 3147, Sec. 19. And this is evidently for the protection of the consumer and provides that the meter shall register accurately and that the amount of gas used may readily be ascertained by the consumer, and further provides that no meter shall be used that may confuse or deceive the consumer.

It will be seen, therefore, that under the law of this State a gas company is under no obligation to use meters when supplying consumers, but is free to contract by the term, season or make any other arrangements for the sale of its commodity.

Whatever relation existed between Mrs. Carter and the gas company must necessarily have been created by contract; in this case, however, no contract is in evidence, and until some other relationship is proved, Mrs. Carter has the right to defend her actual possession of the fixture located in her cellar.

The question in this case is much more serious than an attempt to find a caption for the status of Mrs. Carter's possession. It is not disputed that she was in control of the cellar, where the meter was located, and our system of jurisprudence is very jealous of an individual usurping the prerogative of its established courts, and has ever discountenanced a resort to force of arms by individuals to settle their disputes.

In *Newkirk v. Sabler*, 9 Barb., 652 (N. Y. Sup. Ct., 1850), a leading case, wherein the facts were that plaintiff, who had been forbidden to cross defendant's lands, sent his servant with a team across it; the servant entered by taking down bars, which on his return he found defendant had nailed up; whereupon he left the team and went after plaintiff, who came and commenced tearing down the fence to take away his team, and refusing to desist on plaintiff's demand, a fight ensued, but plaintiff succeeded in getting down the fence and taking his team away. For injuries received plaintiff brought suit, and judgment was entered for the plaintiff, and on appeal it was reversed. The Court said, page 656:

"The plaintiff attempted to enter upon the lands of the defendant and against his will, for the purpose of taking away his property. This he had no right to do, *even though his property was unlawfully detained there*. If the plaintiff could not regain the possession of his property peaceably he should have resorted to his legal remedy, by which he could, after demand, and refusal, have recovered the property itself or its value. He had no right to redress himself by force." Citing 3 Bl. Comm., 4.

Surely, Mrs. Carter's position is much stronger than was that of the defendant in the above case, and the Court there did not stop to consider whether the relation of the bailor and bailee had been established, but was concerned with the wrongfulness of a person taking the law into his own hands, so to speak.

The second contention of the plaintiff-appellant that the gas company had a license coupled with an interest is met with the assertion that a license coupled with an interest cannot be created in this situation by a *mere inference*, or even by parol testimony, if there were any such testimony in this case, because an interest in real property can only be created by a grant.

The classic on this question is the English case of *Wood v. Leadbitter*, 13 M. & W., 838, in which Baron Alderson, after reviewing the previous cases, at page 845, said:

“But where there is a license by parol coupled with a parol grant or pretended grant, of something which is incapable of being granted otherwise than by deed, there the license is a mere license; it is not an incident to a valid grant, and it is therefore revocable. Thus a license by A. to hunt in his park, whether given by deed or parol is revocable; it merely renders the act of hunting lawful, which without the license would have been unlawful.” \* \* \*

“But suppose the case of a parol license to come on my land and there to make a water course to flow on the land of the licensee. In such case there is no valid grant of the water course and the license remains a mere license, and therefore capable of being revoked. On the other hand if such a license were granted by deed, then the question would be on the construction of the deed, whether it amounted to a grant of the water course, and if it did then the license would be irrevocable.”

This case has been repeatedly cited with approval in our courts, the citations being gathered by Mr. Justice Parker in *Shubert v. Nixon Amusement Company*, 83 N. J. L., 101; 83 At. Rep., 369.

The only exception to the rule laid down in *Wood v. Leadbitter*, *supra*, is stated by Vice-Chancellor Van Fleet, in *East Jersey Iron Co. v. Wright*, 32 N. J. Eq., 248, at page 254:

“These rules do not, however, apply when an interest is coupled with the license, or an interest is created by an execution of the license. To illustrate: If A. sells a chattel, situated on his land, he may, by express words, authorize the purchaser to enter and remove it, or permission to do so will be implied necessarily from the transaction. In either case the license to the purchaser to go and remove his property is irrevocable, otherwise the vendor might, by simply exercising his power of revocation, defeat a title he had just made. And so a license, giving the licensee the right to cut a tree on the land of the licensor, and carry it away, or to dig ore in his mine and remove it, becomes irrevocable after the tree is cut, or the ore is dug, otherwise the licensor might practice a ruinous fraud upon his licensee, by exercising his power of revocation at that point in the transaction where he would derive the most advantage himself and inflict the greatest injury upon his licensee. Except in these cases, and other like them where it appears that the authority or privilege given has been so far executed that its withdrawal would amount to a fraud, a license, whether created by parol or by writing under seal, is always subject

to be revoked in either of the modes already indicated. Under our system of real property law, no other rule can be tolerated. Even when this Court interferes to prevent the revocation of a license, partially executed, it gives relief only upon equitable terms."

The case of *Hitchcock v. Essex & Hudson Gas Co.*, 60 N. J. L., 493; 57 Atl. Rep., 135; Af'd 61 N. J. L., 565; 61 Atl. Rep., 397, cited by plaintiff-appellant, is based upon an agreement in writing and hence cannot govern this case.

The third contention that the gas company might remove the meter for the purpose of inspection may be disposed of by a reference to the testimony in the case, but was undoubtedly suggested by the Trial Court's remarks (p. 19, l. 38). The record lacks any testimony as to reasons for wanting to remove the meter except that the gas company claimed a bill was due.

The question whether a gas company could cut off the supply of gas to a consumer because of a dispute regarding a bill, has been considered by our Board of Public Utility Commissioners, in the case of *Murphy v. Coast Gas Company*, 1 Public Utility Reports, page 380; and the Board quotes with approval the remarks of the Court in *re Albert L. Hatch v. Consumers' Company, Ltd.*, 17 Idaho Rep., 207, which were as follows:

"A regulation that in case a consumer is in default his supply will be cut off is reasonable and may be enforced. But such a regulation cannot be made the instrument by which the Water Company can become the judge in its own case, or shut off water to enforce payment of a disputed bill."

It is, of course, absurd for plaintiff-appellant to say that the removal of the meter does not necessarily mean shutting off the supply.

Equity has restrained the taking away of a water meter where a dispute exists over the payment of a water bill. *McDowell v. Avon-by-the-Sea Land & Improvement Association*, 71 N. J. Eq., 109; 63 Atl. Rep., 13.

The fourth point made by the plaintiff-appellant that he had obtained peaceable possession of the gas meter is not supported by the evidence. Mrs. Carter used all the power she could muster in a vain attempt to prevent plaintiff's forcible taking away the meter; she surely could do no more than she did. After testifying that he had read the meter, he was asked (p. 6, l. 16): "What did you do next?" A "I found myself landed up against the brick wall," and on cross examination (p. 9), he said that

after reading the meter he took the wrench out of his pocket and said that he would have to cut the meter out; he was asked what Mrs. Carter said, and he replied (p. 9, l. 18: A "She said 'You can't take the meter out,' and then she pelted me."

Plaintiff may contend that such feeble efforts as this woman could make did not amount in his estimation to a disorder; then it would seem that some other motive lies behind the bringing of his suit than the simple action in tort, for an assault and battery.

The Trial Court found as a fact that there had been an affray, for he said (p. 25, l. 39): " \* \* \* Mrs. Carter maltreated him and was assailed."

It is hardly believable that it is seriously contended that because a man obtains admission to a home by any foul means short of violence that he may escape liability for any act that he may commit thereafter.

"The owner of an article of personal property, the possession of which another party has rightfully and peaceably obtained from such owner, cannot regain possession by force *whether such possession at the time is lawful or not*. His remedy lies in the Courts."

*Singer Machine Co. v. Phipps*, 49 Ind. Appeals, 116; 94 N. E. Rep., 793.

*Saber v. Mott*, 88 Fed. Rep., 780.

*Riffel v. Letts*, 31 Cal. App., 416; 160 Pac. Rep., 845.

*Gage v. Bewley*, 160 N. Y. Sup., 1111.

The case of *Hitchcock v. Essex & Hudson Gas Co.*, *supra*, cited by plaintiff-appellant, in the Supreme Court opinion, contained the following:

"The defendant company had the right to remove the meter within reasonable hours by any proper means *short of the use of force*."

Not having established any special or peculiar circumstances, the case made out in this suit simply resolves itself into a case where a man claiming to represent a gas company obtained entrance to a home by a deliberate subterfuge, and after gaining access to the cellar proceeds to take the law into his own hands and by brute strength and force of arms accomplishes his design. He then has the temerity to sue a woman, whose home he violated and whom he brutally injured, for damages. It is preposterous, and it would not be done except for some ulterior motive.

In the last analysis, as the Supreme Court said in this suit, "The fundamental difficulty with plaintiff's case is that there was no evidence whatever of any contract between the Public Service Gas Company and Ella A. Carter or that the company or the plaintiff had the right to enter the premises and remove the meter."

Respectfully submitted,

JOSEPH M. DEGNAN,  
*Attorney for and of Counsel with Defendant-Respondent.*

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