

New Jersey Court of Errors and Appeals

MARIE STEFAN-VLADAR, Plaintiff-Respondent,	}	Action at Law on Appeal.	10
vs.			
LILLIAN KLOPMAN, Defendant-Appellant.			

BRIEF OF APPELLANT. 20

This case comes up on appeal from a judgment on the verdict of a jury in the Hudson County Circuit Court. On the first day of July, 1914, the appellant, Lillian Klopman, lived with her husband, William Klopman, at No. 34 Duer Place, Weehawken, New Jersey. On that day she was at Rye in the State of New York. Her son "Willie" Klopman, a boy about 12 years of age, his father, William Klopman, and the servant-girl, Emma Gross, were at home in the house. On the day previous "Willie" had been trying to make fireworks for the coming 4th of July, and had mixed some ingredients together in a keg which at night he placed in the cellar of their home. At about 4 o'clock on the following morning (July 1st) the keg exploded with such force that some of the plaster was jarred from the walls, the window-panes in the lower part of the house were broken, and other damage was done to the premises. The

appellant was notified and came home some time that day accompanied by her cousin, Fanny Gerson. Emma Gross, who had been in the employ of the appellant for a year and a half was obliged to go outside to sleep that night. She had a sister, Lena Gross, who was at that time stopping at Guttenberg, New Jersey, with Marie Stefan

10 Vladar, the respondent, and she went there to sleep. The appellant had told her when she left the house, to try and get a woman to come there the next day and help clear away the debris and clean up the house, so when Emma came home the next morning, July 2nd, she was accompanied by the respondent who had come to help work. The appellant had never known her before (71-35). On that day they worked downstairs from about 8

20 o'clock in the morning until between five and six o'clock in the afternoon (71-40 to 72-10), when the respondent went home. On the following morning, July 3rd, she returned and on that day she worked upstairs (72-18). At about noon, Mrs. Gerson went upstairs, and entered the front bedroom. Respondent stood at a bureau drawer which she had open, and was fumbling around it. When she noticed Mrs. Gerson she appeared to be greatly excited and said to her, "Go out lady, you must not come in here; you can't do any work here."

30 Her actions so aroused Mrs. Gerson that she went downstairs, told the appellant what she had observed, and advised her to lock up her belongings, and told her she intended to lock up her's. Appellant owned a silver mesh-bag (72-25, &c.) in which she kept her front door key (73-23). She also had in a creton case which was on a table (116-20) on the second floor in the very room where the respondent was at work, two heirlooms (72-35). One was a gold bracelet set with red coral rose-

40 buds. The other was a gold necklace with a coral and diamond pendant (72-33, &c.). At about 2

o'clock on that day the appellant had need to use the front door key (73-20, &c.), and when she looked for the silver mesh-bag it was missing. She then looked for the bracelet and necklace and they too were missing (73-40, &c.). She had seen all these things that morning (77-18). There was only one stairs leading from the first to the second floor of the house (117-25) and the front door was kept locked (73-23). Appellant, Mrs. Gerson, and the servant, Emma Gross, had been there all day and no other stranger had entered the house (102-5, &c.). Appellant suspected the respondent, but, as she had no proof against her, she merely told her at 4 o'clock that afternoon (113-24) that her services were no longer required. She thereafter sent the servant-girl to the respondent with some clothes to be washed, and told her to look about when at the respondent's house for the jewelry (78-6). 10 20

On July 9th, when the appellant's servant-girl, Emma Gross, returned home she had her sister, Lena Gross, with her. As before mentioned, Lena had up to that time boarded at the home of the respondent. The following morning Lena told the appellant that a few days before that time the respondent, Mrs. Vladar, had told her that a lady had given her a bracelet and necklace; that the bracelet had red stones in it and the necklace had a red stone in it (99-20), and some day she would show it to her. In the meantime, the wife of Doctor Hotwet, by whom the respondent had been employed, told the appellant that while the respondent worked for her a great many articles of jewelry and silverware had been stolen from her home (but the Court refused to allow the appellant to prove this, page 90), so she took Lena to the home of George Rander, a Justice of the Peace and Recorder for the Township of Weehawken (90-34, &c.) and laid all the facts before him (100-39, &c.), 30 40 whereupon he advised her it was a proper case

for a complaint. He then drew a complaint (page 167) setting forth that the jewelry in question and silver mesh-bag had been stolen from appellant's home on July 3rd, 1914, and that she had just cause to suspect and did suspect that the same had been stolen by the respondent. Upon this a warrant was issued and the respondent was
10 arrested and held in the Recorder's office and the lock-up for about 4 hours when she was released. On the following morning, the Magistrate heard the testimony and after holding her a little while discharged her because she begged so hard that the appellant withdrew the charge.

She thereafter commenced an action against the appellant, Lillian Klopman, and her husband, William Klopman, who died while the action was pending.

20 The complaint contained three counts, one for malicious prosecution, one for false imprisonment, and one for slander. All the evidence submitted seemed to be directed to the first count. Some testimony as to slanderous words was given by the respondent, but the words were not the words alleged in the complaint. Respondent testified that they were uttered in the presence of Mrs. Hotwet but that Mrs. Hotwet said she did not believe them, so there was not sufficient proof of publica-
30 tion upon which to rest a verdict for \$1,000 for slander.

The Court refused to non-suit at the close of the respondent's case, although no malice whatever had been shown, and no want of reasonable and probable cause had been shown.

The count for false imprisonment was actually abandoned, and when counsel addressed the Court as to a non-suit and the direction of a verdict at the close of the whole case, he was under the im-
40 pression that the count for slander had been abandoned. The case was tried on that theory.

The Court refused to decide the question of probable cause and left the whole matter to the jury, who returned a verdict in favor of the respondent for \$1,000.

Appellant has urged many grounds for reversal which will be argued by their numbers.

POINT I (Ground 1).

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The Court refused to non-suit the plaintiff-respondent when requested to do so by the defendant-appellant.

In moving for a non-suit counsel for the defendant among other things said: "There is nothing in the case so far as it has been presented to show that she (the defendant) swore to something that was false or malicious," &c. (66-37, &c.).

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The motion was also on the ground that the complaint before the magistrate had not been offered, and there was nothing before the Court to show just what the defendant had sworn to.

The Court said the defendant admitted the arrest and discharge, &c., in her answer, but the defendant had only stated in her answer that she had sworn to a complaint stating that she had good cause to suspect said goods and chattels had been stolen by the respondent (7).

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The Court refused to non-suit the plaintiff and gave the defendant an objection.

It will be observed that the Court refused to allow counsel for the defendant to state fully his reasons for a non-suit. There was such a continual "running fire" of interruption by the Court and counsel for the plaintiff, that counsel for the defendant could not get all his reasons on record. The Court finally shut off counsel for defendant by saying (page 69):

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"I will deny your motion for a non-suit at this time. I may change my mind whether a sufficient showing has been made in this case later on."

10 "To maintain the second proposition, the want of probable cause, it is not sufficient to show merely the rejection of the complaint by the Grand Jury; there must in addition be some evidence from which it may be inferred that the prosecution was without probable cause."

Apgar vs. Woolston, 14 Vr., 57.

20 "The existence of an illegal intention on the part of the defendant in this action is as essential to its support as were the falsity of the crimination, and the absence of a reasonable ground for a belief in its truth."

O'Brien vs. Frasier, 18 Vr., 349.

Magowan vs. Rickey, 64 L., 402.

30 When the plaintiff rested her case there was not one word of evidence to show that the articles in question had not been stolen, nor was there any evidence of malice. The defendant could not have had any malice against the plaintiff—she had never seen her before.

Marie Stefan Vladar (28-17) :

"Q. Now, did you know Mrs. Klopman or Mr. Klopman before July 1, 1914? A. No; I never see; I never know; I never see that lady."

40 The respondent may say that there could not have been a non-suit because of the count for slander. But the appellant's counsel was address-

ing the Court on the count for malicious prosecution. Besides that the words alleged in the count for slander had not been proven.

The record shows (page 35) that the words testified to by the respondent were: "She said you have stolen my wash, and sold my wash; she says I am a thief. You go around around, and steal around around."

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Counsel objected to this testimony on the ground that these words were not alleged.

Counsel for respondent then said the objection came too late. He also said, "And it is material on the question of malice."

The Court then said, "Go ahead."

The Court afterward said (page 36): "Of course it would be pretty hard for counsel to object to an answer until he had heard it."

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POINT II (Ground 14).

The Court refused to decide the question of reasonable and probable cause and to direct a verdict for the defendant-appellant at the close of the whole case, when requested by her to do so and left the question of reasonable and probable cause to the jury.

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When the whole case was closed there was uncontradicted evidence as follows:

Lillian Klopman (as to the loss of the jewelry, &c.) (72-25):

"Q. What did you have in your room at that time? A. I had in my room, my bag.

Q. What do you mean by that? A. A sliver bag.

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Q. That is the mesh bag? A. Yes, sir.

Q. Yes? A. My money I had with me. In my daughter's room was the bracelet and necklace.

10 Q. What kind of bracelet and necklace were they? Just describe them? A. Well, it was what you call gold and coral, coral rosettes; it was an antique and had been in the family many years.

Q. And a diamond pendant? A. A diamond pendant set in a rose.

Q. I see; and what kind of a bracelet did you have? A. The bracelet was the same, set with rosettes.

Q. Well, when you looked for these things were they gone? A. Yes, sir (75-32).

20 Q. Have you ever found them since that time? A. No.

(As to what Fannie Gerson told her.)

Q. Did anyone tell you anything; or did anyone tell you anything about them? A. Yes, sir. In the morning; it was before lunch, my cousin went upstairs (74-39).

Q. Don't say 'my cousin' say whom? A. Mrs. Gerson and she saw the woman at the bureau drawers.

30 Q. That is she told you this? A. Yes, with the drawers open. She said 'Lil,' I don't like this woman you have here.' She said, 'if you have anything of value go upstairs and lock the bureau drawers.'

Fannie Gerson (123-20): Q. And when you got upstairs what did you see her doing? A. She was standing in front of Mrs. Klopman's dresser; the dresser drawers were open, &c.

40 Q. When she stood in front of the bureau drawers did she say anything to you? A. 'Lady,' she said, 'Go out.' Naturally I walked

to the door. She said, 'Lady, go out.' 'I don't need you to work,' &c.

Q. After you saw her with these drawers open, and her hands around the drawer did you go down and tell Mrs. Klopman what you had seen? A. I did (123-37).

(As to a conversation several days after with Lena Gross, who had just prior to that time lived with the plaintiff.) 10

(86-35): Q. What did she say about jewelry resembling your jewelry, if anything? A. She said that this woman said she had a necklace and bracelet, that a lady had given her, and Lena said, 'Show it to me.' She said: 'Some day I will show it to you.'

(87-15): Q. Did she say the woman described what she had—the jewelry she had? A. She just said it was a bracelet with red stones in it. 20

Q. And what about the necklace? A. Just a gold necklace with red stones in it.

(87-31): Q. Did the description that she said the lady gave her of what somebody had given her tally with the articles that you had lost? A. It did."

Lena Gross was somewhere in Pittsburg, Pennsylvania, when the trial took place and her evidence could not be secured, but her sister, Emma Schultz, testified on top of page 137 that she heard Lena tell Mrs. Klopman the following: "She said Mrs. Vladar said to her she has a nice necklace and a nice bracelet; somebody gave it to her." 30

Emma could not speak English well enough, however, to describe anything.

Lillian Klopman, the defendant, became somewhat confused about the date on which she came home. It was not clear whether she arrived home on the first or second day of July. 40

(77-11): "Q. What was the last day that Mrs. Vladar worked for you? A. The third.

Q. On the third day of July? A. Yes, sir.

Q. Did you see it (the jewelry) on that day? A. In the morning I saw it.

Q. In the morning of the third? A. Yes, sir; in the morning of the third.

10 Q. What time in the morning of the third did you see it? A. Well, I could not just tell the time it was before lunch." The defendant, Fannie Gerson and Emma Schultz all said the plaintiff worked upstairs that day, but the plaintiff denied it.

Lillian Klopman (117-26): "Q. Is there a rear stairway in your house? A. No, sir."

20 The defendant says (page 109) that Judge Rander advised her at the hearing to have the plaintiff held for the Grand Jury. She says (page 110) that the plaintiff begged so hard that she withdrew the charge.

In spite of all the evidence submitted on the part of the defendant, the Court refused to direct a verdict in favor of the defendant although her evidence as to probable cause was not denied.

30 The Court also refused to pass upon the question of reasonable and probable cause, and when told that the question of reasonable and probable cause, was not for the jury but for the Court the Court said (page 160) "I never understood so."

We most respectfully request that the Court read the motion for the direction of a verdict. It appears from that that the argument of appellant's counsel was again cut off.

40 "It was reversible error in a suit for malicious prosecution, wherein the facts were undisputed to submit to the jury the question of the existence of probable cause."

Bell vs. Atlantic City R. R. Co., 58 L.,
227.

Miller vs. Lai, 77 N. J. L., 135.

“In an action for malicious prosecution, the question of probable cause is a question of law for the Court. If facts are in dispute or the question depends upon a chain of circumstances connected with the conduct of the parties, the facts and the inferences to be deduced from them must be found by the jury; *and when they are found by the jury the Judge is then to decide whether they establish probable cause or the want of it*; and the burden of proof being on the plaintiff, if at the close of the plaintiff’s case there is no evidence of the want of probable cause, it is the duty of the Judge to non-suit the plaintiff.”

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Apgar vs. Woolston, 43 L., 68.

“It has been held in a number of cases that if the facts are in dispute, or the question depends upon a chain of circumstances connected with the conduct of the parties, the facts and the inferences to be deduced from them must be found by the jury, *but when they are found by the jury the Judge is then to decide whether they establish probable cause or the want of it.*”

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McFadden vs. Lane, 71 L., page 762.

And cases therein cited.

“Where the facts are undisputed and but one inference can be drawn from them, the question of probable cause is that of law for the Court alone, *and it is erroneous to submit*

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any phase of the question to the determination of the jury."

Lane vs. Pennsylvania R. R., 78 L., 672.

POINT III (Grounds 3, 4, 5 & 6).

10 **The following questions and answers were admitted by the Court to the prejudice of the defendant-appellant.**

To the Witness, MARIE STEFAN VLADAR:

(Page 26.) "Q. Have you any children? A. Yes.

20 Q. How many? (To which she answered one.)

(Page 27.) Q. Did your husband work during the three years you have been working?

To which she answered, 'No; my husband no work; he is blind.'"

To all of these questions the defendant objected, but the objection to each was overruled, and to each ruling an objection was allowed.

30 There is no doubt but that the answers to these questions created a sympathy in the minds of the jurors. It would seem to us that the first two questions were prejudicial to the defendant, but when the question "Did your husband work during the three years you have been working?" was answered, it did not only aggravate the answers to the former questions but it was in itself legal error, especially so in view of the fact that when counsel for the defendant objected, plaintiff's counsel gave as a reason for asking it "that plaintiff

40 was the bread-winner of the family" (page 27),

while the husband, wearing dark goggles occupied a seat in the court-room.

Such comment was most highly improper and to overrule the objection and admit the question at that time must have prejudiced the minds of the jury.

“The plaintiff was permitted, against the objection of the defendant to give the number and ages of his children. * * * The court said: For this error alone the judgment is reversed and the cause remanded for a new trial.” 10

Penn Co. vs. Roy, 102 U. S., 141.

“It is urged as ground of reversal that the court below erred in admitting evidence that the defendant had a family and was unable to support them by his labor since his injury. * * * It is impossible for us to know what portion of the verdict in this case was allowed because appellee had a family. The evidence was before the jury for the purpose of enhancing the damages, and we have no doubt it produced that result. This was manifest error.” 20

Pittsburg &c. Ry. Co. vs. Powers, 74 Ill., 341. 30

Chicago vs. O'Brem, 65 Ill., 160.

Shaw vs. Boston &c. Ry. Co., 8 Grey, 80.

Penn. R. R. Co. vs. Brooks, 57 Penn. St. Rep., 390.

Crouse vs. Northwestern Ry. Co., 102 Wis., 196.

That the jury was prejudiced by this evidence is evidenced by the amount of the verdict. Plain- 40

tiff was only at the police station 3 or 4 hours, and the slanderous words were not proven. If they had been proven, the amount was excessive.

“A verdict for \$400 for oral words charging a felony was set aside as excessive.”

10 Vunck vs. Hull, 3 N. J. L., 380.

POINT IV (Ground 11).

The Court erroneously overruled the following question propounded to Lillian Klopman, the defendant.

20 (Page 91) “After Judge Rander had taken this girl’s statement, and her affidavit, did he give you any advice?”

Defendant had formerly said (page 88) “I went with Lena (Gross) and officer Quigley up to Judge Rander, &c.”

The record at page 99 shows that the defendant laid the facts before Judge Rander; she also gave the following testimony:

30 “Q. Did you have any malice against this woman? A. No.

Q. Did you tell anything to the magistrate excepting the exact truth? A. That is all.

Q. Now after you had told him the story and he had examined Lena did he give you any advice?”

At the bottom of page 100 the record shows that defendant had testified as follows:

40 “Q. Did you ask for the arrest of this girl or for a search warrant? What did you ask

the magistrate for? A. I didn't ask for anything; I merely stated the facts to him."

It is true that the court refused to permit the proposed amendment set forth on page 169 although it had been served on the counsel of the plaintiff some three weeks before the trial. This merely states the facts more fully than the answer filed and the defendant has assigned the court's refusal to permit the amendment as a ground for reversal. 10

Under the present practice act we believe defendant had a right to amend.

We also believe we were fully justified under the pleading as it stood to ask this question. In fact, the court below held that if it were a proper question it could be admitted under the answer as it stood and that was one ground for his refusing to permit the amendment. We submit that the above ruling on this question was error. 20

Before the question overruled had been asked, the defendant, Lillian Klopman, had been asked the following question, viz:

"Under what circumstances was the warrant issued?"

This question was intended to lead up to the inquiry as to whether the defendant maliciously swore to the complaint, or did so by the direction of the magistrate, but the question was overruled and an objection allowed. 30

We submit that both of the above questions should have been allowed. The plaintiff should have been allowed to tell in her own way what took place before the magistrate as bearing on the question of malice.

The question to George Rander, set out in ground 12, was also asked for the purpose of ascer- 40

taining whether the defendant made the complaint before the magistrate maliciously and of her own volition, viz:

10 (Page 151) "And in this case when you received these statements from Lena Gross and Mrs. Klopman did you make up your mind as to whether it was a proper case for a warrant or not?"

This question was overruled and an objection allowed. This last question should have been allowed and its exclusion was prejudicial error.

20 "As to the other defendant, all he did was to make his complaint on oath, before the justice, setting forth the facts truly, and for such an act he could not be held liable for the judicial action which ensued, even if such action had been extra judicial."

Grove vs. Van Duyn, 55 L., 661.

30 "Although the evidence might not be admissible conformable to the general principle that the defendant may prove that he proceeded in good faith upon the advice of counsel thereby showing probable cause, still upon the question of malice it was pertinent and relevant."

White vs. Tucker, 16 Ohio St. Rep., page 468.

R. vs. Stewart, 6 Manitoba L. Rep., 264.

Monohan vs. Cox, 155 Mass., 487.

Turner vs. Dinniger, 28 Hun, 465.

Morrow vs. Carnes, 118 Ill. App., 621.

40 At all events, the question was competent and material to the issue.

"The fact that the defendant consulted a justice of the peace before instituting the prosecution, bore upon the question of malice, and the defendant's bona fide intent, and presented a fact for the jury's consideration."

Sunderband vs. Shills, 82 Atl. Rep., 915.

In the Grove-Van Duyn case the Court decided the question as to whether or not his authority extended over the subject-matter before him; while in the case before the Court he decided that the facts laid before him by the defendant were sufficient upon which to base a complaint for larceny.

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POINT V (Ground 5).

It was error to admit the following question, viz: "Did you, in fact, steal anything, at any time, from Mr. Klopman or Mrs. Klopman?"

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The record on page 54 shows that when counsel for plaintiff proposed this question he said, "In other words, I want to show the falsity of the affidavit" (meaning the plaintiff-respondent's Ex. 2, page 167). He said he wished by this to show malice. On page 66 plaintiff was allowed to swear, over objection, that she did not steal anything from the Klopmans. The objection to the question was that it was "immaterial". The inquiry was not whether the plaintiff had stolen anything.

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In the argument, page 65, counsel for the defendant said to the Court:

"How could her swearing that she did not steal these things show malice on the part of

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Mrs. Klopman? How could it show that she made a false affidavit? It does not show she made a false affidavit. Her affidavit was absolutely true."

10 "The Court: I do not understand, it is urged for that particular purpose, but it raises an inference of malice, her counsel propounding the question, urges, if it be shown that the act complained of was in fact not committed."

20 *So the question was allowed, to show that the act was not committed, and that the defendant had sworn falsely when she made the complaint. The jury most likely interpreted this admission to mean that the defendant had falsely and maliciously made the complaint. The admission, therefore, of that question, for the purpose stated by the Court and counsel for the plaintiff, was prejudicial error.*

POINT VI (Ground 13).

The following question to George Rander was erroneously overruled, viz:

30 "Did she (Mrs. Hotwet) or did she not swear that the plaintiff in this case, Mrs. Vladimir, had worked for her, and she had missed articles of jewelry and silverware after the woman was there?"

Page 37 of the record shows that the plaintiff-respondent, on direct examination, testified as follows:

40 "Q. Did Mrs. Klopman say anything to you in front of the building? A. Yes, sir; she

said to Mrs. Hotwet, that I am the person and I stole the wash; that I had done everything.

Q. What did Mrs. Hotwet say to Mrs. Klopman at that time in your presence if anything?

A. She says she knows me too long, and she would not believe that of me."

Now it seems clear to us that if Mrs. Hotwet 10
said this outside of the station house she would not have gone directly into the building and sworn as a witness for the state, that the plaintiff had worked for her and that after she was there she had missed articles of jewelry and silverware.

Rander's testimony would have tended to contradict and discredit the evidence given by the plaintiff.

Plaintiff's counsel objected to the question on 20
the ground that it was "immaterial and irrelevant." The question was overruled and an objection allowed. A question of the same purport had been asked of the defendant, Lillian Klopman (page 102), viz.: "What did Mrs. Hotwett testify to?" This question was overruled and an objection taken. It is ground 10 for reversal.

POINT VII (Ground 7).

The Court permitted an irrespon- 30
sive answer to the following question, viz:

"Do you know whether they went there just to take you, or did they go on the request of Judge Rander?"

This question will be found at the bottom of 40
page 49.

Although Mrs. Hotwet was a witness for the state at the hearing before Justice of the Peace Rander, the plaintiff apparently endeavored to impress upon the minds of the jurors that Mrs. Hotwet was her friend and that she had been taken down to the police court in the doctor's automobile, because they sympathized with her, and believed her to be an honest woman.

10 Therefore, she was asked on cross examination this question, viz.: "Do you know whether they went there just to take you or did they go on the request of Judge Rander?"

The plaintiff commenced to narrate a conversation she had with Doctor Hotwet—she said "I went into Doctor Hotwet's and asked him why he had me incarcerated. He said he had not done so and does not know anything about it."

20 Counsel for the defendant did everything in his power to stop her, but she went right on. The Court then asked if the witness was not still answering the question.

The Court thereafter said (page 50), "I am going to permit the answer" and an objection was taken to the Court's ruling, and after another argument the Court said he did not understand what the witness said (bottom of page 51), but he was going to permit the answer so as to be in a position to pass on it. She then started in to tell a sort of rambling story which was clearly a self-serving declaration intended to show the jury that she was surprised; that she was innocent and really ignorant of the charge against her. She said "I told Mr. Hotwet that I was incarcerated and what for and what had been told to me," &c., thereby affirming what she had said before.

POINT VIII (Ground 15).

The Court erred in its instruction to the jury that it could find punitive damages against the defendant.

As above stated, the words alleged in the count for slander were not proven. At the close of the case counsel for the appellant was not sure just what words had been proven. But under the count for malicious prosecution no malice nor want of probable cause had been shown by the evidence and it was error to instruct the jury that

“There is one other element of damage, and that applies to all cases of this character,” &c.

Punitive damages do not apply to all cases of the character of the case before the Court. The Court, it would seem to us, should have charged the jury that if they found that the prosecution was commenced maliciously and without probable cause, that then they might add punitive damages.

POINT IX (Ground 9).

The Court erroneously overruled the following question to the appellant, viz.:

“During the year had you ever had reason to suspect her of dishonesty?”

Emma Gross had been employed by the appellant over a year (page 70). If during that time she had never had reason to suspect her of dis-

honesty, it was more natural to suspect a stranger than to suspect Emma Gross. The answer to this question bore upon the question of malice.

We most respectfully submit that the judgment of the Circuit Court should be reversed and a new trial ordered.

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WELLER & LICHTENSTEIN,
Attorneys for Appellant.

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New Jersey Court of Errors and Appeals

MARIE STEPHEN-VLADAR,
Plaintiff-Respondent,

vs.

LILLIAN KLOPMAN,
Defendant-Appellant.

Action at Law

BRIEF FOR PLAINTIFF-RESPONDENT.

I.

Statement of the Case.

This appeal brings up a judgment had by plaintiff at the Hudson Circuit for malicious persecution. Plaintiff, prior to July 10th, 1914, earned her living working by the day as a domestic. She was married and by her labor supported herself, her husband and a child. On July second, 1914, she was called to work at the home of the defendant, which had been seriously damaged on July first by an explosion. She worked there on July 2nd and July 3rd and when she left that evening, took with her some old clothes which defendant had given her and promised to do defendant's laundry on the then next Monday, July 6th. This was to be done at the home of the plaintiff and was to be sent to her by defendant.

Defendant had in her employ as a regular servant one Emma Schultz, whose married sister, Lena Gross, lived with plaintiff until she took sick

just prior to July 1st, 1914. When Lena Gross became ill, plaintiff took care of her, took her to a hospital in New York, expending money for her sickness and for coach hire to take her to the hospital. Lena Gross promised to repay these moneys as soon as she returned from the hospital.

On July 6th, Emma Schultz brought to plaintiff defendant's laundry and plaintiff and Emma Schultz started to wash and iron the same. Plaintiff attended to her housework at the same time and they made no effort to wash and iron defendant's laundry at one time. The work was, therefore, not yet completed on July 10th, 1914.

Some time after the explosion defendant missed from her home certain articles of jewelry.

On July 9th, 1914, defendant swore to a warrant before a Justice of the Peace charging plaintiff with the larceny of that jewelry and *requesting* her arrest. Upon this warrant plaintiff was arrested, received a hearing and was discharged.

Prior to the issuing of the warrant Lena Gross had returned from the hospital to the home of the plaintiff and there had had a quarrel with the plaintiff about money matters. Plaintiff charged Lena with having received money from her father to pay to her for the moneys expended by her on account of Lena. After the quarrel Lena Gross ran to the home of Mrs. Klopman, told her about the fight and also told her that plaintiff *had said* she had a necklace and a bracelet which a lady had given to her. When Lena Gross told this to defendant, she *knew* that defendant had missed *just such jewelry* because Emma had theretofore told her about it and defendant also knew that Emma had told Lena. It was apparently the telling of this story which induced defendant to seek the warrant.

Further facts appear in the argument.

II.

Argument.

Point I.

The court below correctly refused to direct a verdict for the defendant.

The appellant in her brief argues that the refusal to non-suit and to direct a verdict both constitute error.

The defendant having entered upon her defence, it becomes a matter of no consequence whether or not at the time the motion for non-suit was made and denied defendant was entitled to have prevailed, if it appears that there is evidence *anywhere in the whole case, from whatever source derived* which would have warranted the findings of the jury.

Lewis vs. National Cash Register Co.,
84 N. J. L. 598, and cases there cited.

The argument of respondent will, therefore, be confined to the proposition that at the end of the whole case plaintiff was entitled to go to the jury.

And since a motion to direct a verdict for the defendant for insufficiency of the evidence admits the truth of the plaintiff's evidence upon the whole case, and of every inference of fact which can be drawn therefrom but denies its *sufficiency in law* (*Fox vs. Great Atlantic & Pacific Tea Co.,* 84 N. J. L. 726) we purpose to state those facts under this point in the light most favorable to plaintiff under the evidence adduced.

In order to have the jury pass upon the case it was incumbent upon plaintiff to show that the prosecution was ended; that it was instituted by the defendant without reasonable or probable

cause; and that the defendant was actuated by a malicious motive.

Weisner vs. Hansen, 81 N. J. L. 601.

The fact that the proceedings were instituted by the defendant and that the prosecution was ended when suit was commenced was admitted in defendant's answer, paragraphs one and two, (Case p. 5-6) and was not disputed at the trial.

At the close of the whole case uncontradicted evidence had been offered which showed that the charge itself was false (Case, p. 66, fol. 20-30) and *that alone* was sufficient to justify an inference of *malice* and of *want of probable cause*.

Navarino vs. Dudrap, 66 N. J. L. 620.

Weisner vs. Hansen, 81 N. J. L. 601, at 603.

But in addition to these facts the evidence disclosed facts from which inferences of want of probable cause and of malice might properly be drawn by a jury. These facts are:

At the hour of 4 A. M. of July 1st, 1914, an explosion occurred in the home of the defendant, a detached single family house, which left that home all in pieces, foundations gone, walls gone, furniture destroyed (Case p. 70, fol. 20-30) and the cellar door and windows had been blown out (Case p. 106, fol. 10-20), so that any one could have entered there at any time (Case p. 116, fol. 1-20). The defendant was at Rye, New York, at the time, from whence she arrived at her home between one and two in the afternoon of July 1st, 1914, (Case p. 105, fol. 10-20). Defendant, prior to this explosion owned a silver mesh bag and her daughter owned a bracelet and necklace each of old gold and coral rosettes, the necklace having a diamond pendant set in the rose (Case p. 72, fol.

20-40). Defendant had seen the necklace and bracelet *the last time* on July 1st, *on the day when she came home from Rye* (Case p. 74, fol. 10-30). She had brought the mesh bag down with her from Rye; she saw it on the first day—that is July 1st; *it was gone on the second* (Case p. 74, fol. 20-30). Mrs. Vladar, the plaintiff, came on the second, she worked for defendant two days, July 2nd and 3rd, but defendant did not speak to her about the jewelry (Case p. 74, fol. 30-40). When defendant looked for these things they were gone and she has never found them since (Case p. 75, fol. 30-40). Emma Schultz, the maid, was the last to have the mesh bag. She took it from the defendant's bureau and put it in defendant's black bag. She does not know where the black bag was; *she does not know where she put it* (Case p. 134, fol. 1-20). Defendant did not ask this domestic if *she* had seen the bag; she merely asked her what *she* thought of Mrs. Vladar, the plaintiff, *without asking her whether she, the domestic, had seen the bag*. (Case p. 141, fol. 10-30). The necklace and the bracelet were last in a little cretonne case on top of a table upstairs (Case p. 116, fol. 20):

When plaintiff left after having worked the third of July—which was her second day—defendant asked her whether she would wash for defendant the following Monday, to which plaintiff agreed. Defendant then told plaintiff that Emma Schultz would bring the work to her on Monday, which Emma Schultz thereafter did. (Case p. 142, fol. 1-30) and when plaintiff left on the evening of the third of July defendant allowed her to take with her a bundle of old clothes which defendant had given her on July 2nd (Case p. 141, fol. 30-40).

On the day of the explosion many people were around the place and they came into the house

and the firemen came in with their machinery, and on the second day,—that is, July 2nd—lots of people were standing outside looking at the explosion, although none were seen to enter the house; the people were coming there for two or three days after the explosion looking at the house (Case p. 139, fol. 1-40).

The wash was brought to plaintiff as agreed because the domestic could not wash it at home; there was no other reason for taking it there and defendant did not tell the domestic to look for anything in plaintiff's home while up there (Case p. 147, fol. 120-130) although defendant had testified she sent the wash to plaintiff merely because she suspected the plaintiff and had told the domestic to look for her stuff at plaintiff's house when she took the wash up there (Case p. 78, fol. 1-10).

Emma Schultz had a sister, Lena Gross, who lived with plaintiff (Case p. 83, fol. 30-40, case p. 84). She had been ill while living with plaintiff and plaintiff had taken her to a hospital in New York, had paid for her carriage and had helped her financially (Case p. 143, fol. 20-30). Lena Gross became well in the hospital and returned to the plaintiff to live (Case p. 144, fol. 1-10) and then left the home of plaintiff because she had a fight with plaintiff. (Case p. 144, fol. 20-30). The father of Lena paid Lena to pay plaintiff for her services and aid to her and for the carriage hire, but plaintiff claimed that Lena had not paid her and thereupon a quarrel ensued between these two persons. (Case p. 144, fol. 20-40) and Lena ran to the home of Mrs. Klopman, the defendant, where her sister Emma was employed (Case p. 145, fol. 1-10). Defendant's maid had also been staying at the home of plaintiff after the explosion,

and Lena came to the home of the defendant late at night with her sister for protection (Case p. 86, fol. 1-10). Before this fight Emma had told her sister Lena about the jewelry which Mrs. Klopman had lost (Case p. 146, fol. 1-10) and when Lena arrived at the Klopman home defendant knew that her domestic, Emma, had theretofore told Lena about the jewelry (Case p. 146, fol. 20-30). When Lena arrived at the home of the defendant she told defendant about the fight with plaintiff and that it was about money matters (Case p. 145, fol. 10-20) and in that conversation told defendant that plaintiff had said she had a bracelet and necklace (Case p. 145, fol. 30-40). She told defendant that plaintiff had said that she had a necklace and a bracelet which a lady had given her and that she would show it to Lena some day; (Case p. 86, fol. 30-40). Lena said that plaintiff had described them as a bracelet with a red stone in it; and a gold necklace with red stones in it (Case p. 87, fol. 10-20). After Lena had told this to defendant she went with Lena and Officer Quigley to Judge Rander, the Justice of the Peace, who took the complaint (Case p. 88, fol. 10-20). The Recorder examined Lena, (Case p. 90, fol. 30-40) and defendant told the magistrate about the things she had lost (Case p. 99, fol. 30-40) and then signed a complaint (Case p. 107, fol. 10-20) in which she *requested* the arrest of the plaintiff (Case p. 168, fol. 10-20) knowing that a warrant would issue (Case p. 107, fol. 10-20). This occurred on July 10th, 1914 ((see jurat of complaint, Case p. 168) ten days after the loss was discovered.

On July 11th, 1914, in the morning, defendant appeared before the Justice of the Peace at the Police Station or Town Hall. Plaintiff had been

arrested the night before and was then given a hearing and defendant charged her with having stolen the articles mentioned in the complaint (Case p. 107, fol. 20-30).

After the hearing plaintiff was again put in a cell (Case p. 107, fol. 30-40) and while she was in the cell the Justice of the Peace, the defendant and a Mr. Kenney went back to the cell to see her and the justice of the peace asked plaintiff *if she would not admit that she stole the jewelry*, but she refused to do so. (Case p. 108, fol. 1-20).

Defendant then went upstairs, *leaving plaintiff in her cell* and not long after plaintiff was brought up again and the justice questioned her further; still insisting on telling her that she had stolen the goods (Case p. 109, fol. 10-20) and finally said to her, "*My woman, you are guilty. I am going to hold you*"; whereupon plaintiff grovelled on the floor, got down on her feet (knees) and begged so hard that defendant withdrew the charge (Case p. 110) whereupon the justice discharged her.

Defendant did not actually take part in any of the proceedings between the justice of the peace and the plaintiff, but she discussed the procedure with the justice before they went down to the cell and after they came back from the cell and the judge advised her to hold the plaintiff for the grand jury (Case p. 109).

From the foregoing facts we submit a jury was entitled to draw the inference

1. That the goods had not been stolen but had been lost.
2. That the goods had not been stolen by the plaintiff.
3. That there was nothing to warrant defendant in fastening suspicion upon plaintiff or in making the accusation against her.
4. That defendant acted maliciously.

5. That defendant acted recklessly in making her accusation.

6. That defendant acted maliciously for the purpose of helping Lena Gross in revenging herself against plaintiff.

7. That the conduct of defendant and the justice of the peace in trying to *force* a confession from the plaintiff and in subjecting her to torture for that purpose is evidence of malice towards the plaintiff.

Defendant in her brief says that there is nothing in the case to show that "she swore to something that was false or malicious." (Brief p. 5, fol. 10-20.)

Plaintiff swore that the accusation was false. (Case p. 66, fol. 20-30) and the evidence referred allows of the inference that it was false and malicious.

Defendant lays stress upon the fact that the complaint was not offered in plaintiff's direct case —It was offered during defendant's case as Exhibit P-2 and shows *that defendant requested the issuance of the warrant.* (Case p. 167.)

Defendant's main reason for the direction of a verdict seems to be the refusal of the court to find as a matter of law that there was reasonable and probable cause for the prosecution.

The court could not legally find that there was reasonable or probable cause for the arrest, because the evidence of the defendant did not, as a matter of law, amount to proof of reasonable and probable cause.

The defendant pleaded as a *first separate defence* certain facts as amounting to reasonable and probable cause for the arrest (Case p. 8, 9, 10). In addition to that, they had pleaded the truth of the charge in justification (Case p. 6, fol. 10-20).

A defendant may defend an action for malicious prosecution by showing probable cause for the arrest, but the *facts* constituting what in the books is called "probable cause" must be set out in the plea.

Spencer vs. Anness, 32 N. J. L. 100, p. 101.

And the facts thus pleaded must relate to the question of *the guilt of the party to be arrested* and must ordinarily come from sources entitled to credit.

French vs. Smith, 4 Vermont 363.

Jordan vs. Ala. Great Southern R. Co.
81 Ala. 220.

Hays vs. Blizzard, 30 Ind. 457.

And the test of the sufficiency of the resulting knowledge is whether it would have justified a *prudent, honest and strong* suspicion of the guilt of the accused.

26 Cyc. p. 28, and cases cited under Note 79.

It is the contention of the plaintiff that the first separate defence offered by the defendant *does not* meet these requirements *as a matter of law* and that the proof offered thereunder also falls short of those requirements as a matter of law.

The defendant by this answer and her proofs attempted, first, to show that plaintiff, while engaged in the upper floor of the building in cleaning a room had been seen at a bureau, in the language of the person who is supposed to have seen her "standing in front of Mrs. Klopman's dresser; the dresser had drawers open," and while

plaintiff was thus standing in front of said dresser, she is supposed to have said to the person giving the information to defendant, "Lady, go out. I don't need you to work." (Case p. 123, fol. 20-30.)

None of the jewelry is claimed to have been in this dresser. The necklace and bracelet had been last seen *upon a table* in that room, and that seems to have been their customary resting place. The mesh bag had been last in the custody of the defendant's maid, who put it in defendant's black bag and does not know what became of the black bag.

The information which this person (Fanny Gerson) conveyed to the defendant, according to the defendant, was: "Lil, I don't like this woman you have here; if you have anything of value, go upstairs and lock the bureau drawers"; whereupon defendant said, "Oh, Fanny, I have nothing *else* to lose." (Case p. 75, fol. 10-30). This information conveyed nothing more than a general suspicion. It is not information relative to the question of guilt of the plaintiff.

As a matter of law it does *not* furnish probable cause for the arrest of the plaintiff.

Spencer vs. Anness, supra.

Then, also, whatever may have been the value of this testimony, the credence to be given to it was seriously affected by the testimony of Fanny Gerson as to the date when she saw the defendant standing in front of the dresser.

Mrs. Klopman, the defendant, testified, first, that she discovered the loss of all of the articles mentioned in the complaint on July 1st, *prior to the hiring of the plaintiff*. This occurred before recess. It certainly weakened her case.

After recess she contradicted this testimony which had been given upon her direct examination upon the impartial interrogation of the Judge, and claimed that she had discovered the loss of her mesh bag upon the second of July and the loss of the bracelet and necklace upon the third of July.

She also testified that Fanny Gerson had seen the plaintiff in front of the dresser on the third of July shortly before or after defendant missed the last of her jewelry.

Fanny Gerson, in turn, upon her direct examination testified that she came to the Klopman home on the first of July *and left upon the second.* (Case p. 119-123). She *insisted* upon these dates in response to questions by her counsel, by the court and by counsel for the defendant and her original story is supported by the testimony of the domestic. Yet when she realized that her story did not fit in with that of Mrs. Klopman she promptly *extended her stay to cover the third of July and transferred the occurrences of the second to the third of July* (Case p. 127).

If Fanny Gerson *really* saw plaintiff at the bureau; if the drawers thereof were *really* open; if this happened on July second,—the first day plaintiff worked in the house—if she then *really* told defendant what she saw,—all of which is subject to inference pro and con,—and if defendant answered, “Oh, Fanny, I have nothing *else* to lose,”—is not the logical deduction to be drawn from the situation this: *That defendant had lost her mesh bag and jewelry or rather had missed them before plaintiff started to work for her and on July 1st, 1914, as she at first testified?*

So, also, what inferences of guilt can be drawn from the fact that a person engaged to clean up the debris in, and to put in order, a house wrecked

by an explosion is found in a room thus to be cleaned standing beside a bureau, the drawers of which are open?

Mrs. Klopman was asked by her counsel: "Q. In what condition did you find your house when you got home?" She answered: "All to pieces, foundation gone, walls gone, furniture destroyed." (Case p. 70, fol. 20-30.)

Was this bureau injured? If it was not injured had it not been covered with falling plaster and had not the plaster dust, if nothing else, penetrated into the same? Was it not a proper object for attention and examination by the plaintiff under the circumstances? We submit that it was and that it was perfectly proper and reasonable to find the plaintiff just where Fannie Gerson claims to have found her.

The defendant, by this answer, attempted, secondly, to show that she received certain information from Lena Gross which justified her, the defendant, in causing the arrest of the plaintiff.

The facts conveyed by Lena Gross to the defendant and the circumstances under which they were conveyed have been hereinbefore fully set out.

We submit that these facts taken in connection with *the circumstances* under which they were conveyed to the defendant as a matter of law do not amount to probable cause and do not justify the arrest of the plaintiff.

Lena Gross had known that Mrs. Klopman had missed her jewelry before coming to the home of Mrs. Klopman "for protection" as Mrs. Klopman claims. It is inconceivable to think that during the course of a quarrel plaintiff should convey to Lena Gross the information that she, plaintiff, had a necklace and bracelet with red stones in them which a lady had given to her and which she,

plaintiff, would some time show to Lena Gross. It is also inconceivable that Lena Gross, acting honestly, would withhold this information from Mrs. Klopman, with whom her sister was then employed, if she had it prior to the quarrel with the plaintiff. The natural inference, or the inference which any reasonable, prudent being would take from the communication delivered by Lena Gross at the time and in the manner in which it was delivered, is that it was founded upon spite, malice and a desire to injure the plaintiff in her reputation. The good faith of the communication is, therefore, seriously to be doubted and cannot be accepted as a question of law.

To constitute probable cause, a prosecutor need not necessarily have personal knowledge of the transaction of which he complains. He may rightfully act upon such information communicated to him in the *ordinary routine of business* where he honestly believes such information to be true and the information is of such a character, and is communicated *in such a manner* as under similar circumstances it would be acted upon by a business man of ordinary prudence.

Lane vs. Penna. Railroad Co., 78 N. J. L. 672, page 674.

The information received by Mrs. Klopman from Lena Gross was received ten days after the loss of the jewelry. It was not received in any routine of business. It was not received in such a manner as under similar circumstances would induce a business man of ordinary prudence to act upon it. The circumstances under which the information was received, were such as to put the defendant upon her inquiry as to the good faith of the communication.

26 Cyc. 28, Note 84.

We, therefore, respectfully submit that neither the presence of the plaintiff at the bureau, the information conveyed by Fannie Gerson, nor the information conveyed to her by Lena Gross, constituted probable cause for the arrest of the plaintiff as a matter of law; and that, on the contrary, this information did not, as a matter of law, constitute such probable cause.

The defendant seems to object that the court on the evidence adduced did not make a finding of law upon the question of probable cause in advance of the determination of the jury as to the facts. She relies in this respect upon *Apgar vs. Woolston*, 43 N. J. L. 57, where Mr. Justice Depew says on page 62:

“In an action for malicious prosecution the question of probable cause is a question of law for the court. If the facts are in dispute or the question depends upon a chain of circumstances connected with the conduct of the parties, the facts and the inferences to be adduced from them must be found by the jury; but when they are found by the jury, the judge is then to decide whether they establish probable cause or the want of it, and the burden of proof being on the plaintiff, if, at the close of the plaintiff's case there is no evidence of the want of probable cause, it is the duty of the judge to non-suit the plaintiff.”

We submit that in this case there was evidence at the close of plaintiff's affirmative case and more evidence at the close of the whole case of want of probable cause, and that, therefore, a non-suit was beyond the range of possibility.

We further submit that if by this objection defendant contends that it was the duty of the court to determine the question of probable cause as a question of law and to announce such determination, the defendant has not been injured by the failure to make such a finding because such finding can only be made by assuming the truth of all the facts most favorable to the plaintiff, and assuming these facts, the finding of necessity would be against the defendant that there was a want of probable cause for the arrest.

Defendant can only complain of errors injurious to him (Practice Act of 1912, Sect. 27).

Again we submit that if by this objection defendant contends that it was the duty of the court to determine the question of probable cause as a question of law *in advance* of the final determination of the whole case by the jury, that the objection entered to the refusal to non-suit and direct a verdict does not bring up that question.

It is undoubtedly true that the determination of probable cause or the want of probable cause upon *established facts*, whether admitted, undisputed or clearly proven from the evidence, is a pure question of law and one which should not be submitted to a jury. But if the facts are not admitted and do not appear undisputed, or clearly proven from the evidence, the determination of the question becomes a mixed question of law and fact and the jury must take part in the determination of the same. The jury then must find the existent facts upon which the court is to base its finding of the law.

If, then, the defendant desired the determination of the law question involved *prior* to the final determination of the case by the jury, or *separate and apart* from any general finding by the jury, that result could only be accomplished in three

ways. 1) The defendant might request the court at the close of the case to instruct the jury to make and return a separate finding as to the facts in the case, relative to the question of probable cause upon which finding thus had the court might then determine the legal question of the presence of absence of probable cause, withdrawing the case or sending it to the jury for final determination dependent upon the findings of fact by the jury and the determination of law thereon by the court; or 2) the defendant might request the court to instruct the jury upon the law applicable to the different facts, circumstances or inferences which they might find, in connection with the rendition of their verdict, by hypothetical instructions in advance of their findings of fact; or 3) the defendant might request the court to request the jury to return answers to written questions embracing the disputed facts in issue in relation to the question of probable cause as to their verdict.

We know of no practice which recognizes the procedure hereinbefore first indicated. The practice secondly referred to is the common practice of protecting one's rights by the submission of proper requests to charge, while the practice thirdly mentioned is that laid down in Section 70 of the rules of court appended to the Practice Act of 1912.

But no matter which practice is the correct practice, in the absence of a specific request for the adoption of a course of procedure, and a refusal by the court to adopt that course, the ordinary and orderly course of trial pursued in this case can certainly not be attacked.

Again, an objection of this kind goes to procedure and cannot be raised under an objection

reserved to a refusal to non-suit or direct a verdict.

And, an examination of this record will disclose that the defendant did not submit any requests to charge, nor did she reserve any objections to the charge excepting one which does not affect the merits of this argument (Case p. 167, fol. 1-10).

We, therefore, submit that the law as laid down in *Apgar vs. Woolston* and as hereinbefore quoted, deals with procedure and is not pertinent to the argument in hand. And that we are right in contending that this case deals with procedure, will appear from the opinion of Mr. Justice Pitney in *MacFadden vs. Lane*, 71 N. J. L. 625.

Apgar vs. Woolston was in that case urged upon the Court of Errors as holding that the question whether probable cause for the prosecution existed was a question of law to be decided by the court and ought not to have been left to the jury.

Mr. Justice Pitney, speaking of and dealing with this objection, says:

“We are not reminded that this court has as yet been called upon to pass upon the doctrine laid down by the Supreme Court with respect to disputed facts in *Apgar vs. Woolston*, supra. We are not at present required to pass upon it for the doctrine was not invoked by counsel for defendant in the trial court. The defence there proceeded upon the theory not that the jury were simply to pass upon the existence of the circumstances relied on to constitute probable cause; but that the general question of the existence of probable cause was for the jury's decision. As already observed upon the motions whose denial is

made the subject of the bills of exception, reliance was rested simply upon the absence of evidence to show want of probable cause. In our view there was such evidence. *It does not appear that the trial judge was requested to pass upon the question of probable cause as a matter of law upon conceded facts, nor to instruct the jury that upon a suggested state of facts if found by them probable cause existed.* The requests to charge dealt with the existence of probable cause as the jury question and no exception was taken, either to the instruction as given, or to the denial of such requests as were not complied with."

The italics in the foregoing paragraph are ours. And the correct practice seems to be indicated by the Court of Errors in *Sunderland vs. Shills*, 82 N. J. L. 700 at p. 703 when Mr. Justice Minturn speaking says:

"That question is always for the court in this class of cases, where there are *disputed* facts, the *actual* facts must be determined by the jury, and it is for the court to instruct as to probable cause or the want of it, according as the jury finds the facts one way or the other."

We, therefore, contend that the question as to the respective spheres of judge and jury attempted to be raised in this case was not presented to the trial court in proper manner and that it cannot be reviewed upon objection entered to a refusal to non-suit or direct a verdict.

POINT II.

It was not error to admit answers to the questions complained of under point III. of defendant's brief.

Defendant complains that it was error to admit answers to the following questions:

Q. Have you any children? A. Yes. Q. How many? A. I got one. Q. Did your husband work during the three years you have been working? A. No, my husband no work; he is blind. (Case p. 26-27.)

As a counter-objection we respectfully urge that no objection was entered to the question, "Have you any children?" and that the answer also went without objection. There is, therefore nothing presented for review so far as this question is concerned.

Kargman vs. Carlow, 85 N. J. L. 632.

Daly vs. Ewald, 96 Atl. Reporter, 391
and cases there cited.

If the fact that plaintiff has children has gone into the case without objection, the subsequent question of how many and the answer thereto that she has but one, cannot in any way have injured the defendant, and there can, therefore, be no reversal upon this score.

The question, "Did your husband work during the three years you have been working," was also peculiarly pertinent to the issues framed in this case.

Plaintiff had alleged that she was obliged to earn her living by domestic services rendered by her at the dwelling houses of her employers and that said false prosecution had injured her and had caused many persons to cease employing her

and that it had injured her reputation. (Case p 2, fol. 30-40).

The defendant had joined issue upon this point with the plaintiff (Case p. 6, fol. 30).

The defendant joining issue is precluded from objecting to evidence to maintain the affirmative thereof.

Stafford vs. M. J. Association, 142 N. Y. 598 and cases cited at page 599.

Any evidence tending to show the plaintiff was obliged to earn her living was pertinent to the issue thus framed. The fact that she was a married woman, which had been admitted without objection (Case p. 26, fol. 10-20) raised a presumption that she was entitled to look to her husband for support and maintenance, and the actual fact that her husband did not support her and the reason for such non-support therefore became pertinent to the attempt which plaintiff was making to prove that she was obliged to earn her living by domestic services and that said false prosecu-

tion had injured her and had caused many persons to cease employing her.

But even without relying upon the pleadings in this case and the counter-objections hereinbefore urged, we contend that these questions were properly admissible on the question of damages sustained by the plaintiff.

The party injured is entitled to adequate compensation covering *all the elements* of the particular injury. Such elements of damage include loss of time, peril to life and liberty, injury to fame, reputation, character and health, *mental suffering, general impairment of social and mercantile standing*, actual loss and injury of prop-

erty, interest and credit, decrease in earning capacity and all losses sustained in business.

26 Cyc 61.

The rule thus enunciated is but a specific application of the general rule for the assessment of damages in actions for tort, provides that the wrong doer is liable for all injuries resulting directly from the wrongful act, *whether they could or could not have been foreseen* by him; provided the particular damages in respect to which he proceeds are the legal and natural consequences of the wrongful act imputed to the defendant and are as according to common experience and the usual course of evidence might reasonably have been anticipated.

13 Cyc, 28, Note 66.

In an action for malicious prosecution it is not error to permit plaintiff to show that on his arrest *his mother fainted* or was prostrated by the shock and that *plaintiff* thereby suffered distress of mind.

Flam vs. Lee, 116 Ia. 289.

Parkhurst vs. Mosteller, 57 Ia. 474.

Wheeler vs. Hansen, 161 Mass. 370.

Harris vs. Thomas, 140 Chicago, 462.

Every circumstance of the act of arrest and prosecution and also every act by which plaintiff was injuriously affected, not only in his person, but also in his *individual business* and *peace of mind* may be considered by the jury in assessing damages.

Fisher vs. Hamilton, 49 Ind. 341.

And the loss of the *society of one's family* is an element of damage in malicious prosecution.

Hamilton vs. Smith, 39 Mich. 222.

Wilson vs. Bowen, 64 Mich. 133.

And mental suffering, although not arising directly from physical suffering, is an element of damage.

McKinley vs. Chicago, etc., R. R. 44 Ia. 314.

In an action for malicious imprisonment proof of the *circumstances* of plaintiff's *family* is admissible upon the question of mental anguish.

Fenelon vs. Butts, 53 Wis. 344, 10 N. W. 501.

Zebley vs. Seeley, 117 Pa. 478, 12 Atl. 569.

Davis vs. Seeley, 91 Iowa, 583, 51 Am. St. Rep. 356, 60 N. W. 183.

San Antonio & A. P. R. Co. vs. Griffin, 20 Tex. Civ. App. 91, 48 S. W. 542.

Drumm vs. Cessnum, 61 Kan. 467, 59 Pac. 1078.

Atchison, T. & S. F. R. Co. vs. Rice, 36 Kan. 593, 14 Pac. 229.

Joyce, Damages, sec. 437.

Clarke vs. American Dock & Improv. Co., 35 Fed. 478.

Driggs vs. Morgan, 10 Rob. (La.) 119.

Sedgw. Damages, Sec. 457.

It is the contention of the plaintiff that these questions were all admissible, first, on the theory that plaintiff was attempting to show and under the pleadings had a right to show that she was forced to earn her own living; secondly, on the

theory that she suffered mentally by loss of the society of her family and, third, that it gave some evidence of the social standing of the plaintiff in the community and thus afforded a guide for the admeasurement of damages.

The cases cited by defendant are not malicious prosecution cases, but are all cases involving questions of physical injury. It may be conceded that where a plaintiff seeks damages for a tort resulting in physical injury, that is, where the physical injury is the gist of the action, that evidence of family relationship and social standing is immaterial.

POINT III.

The court did not err in overruling the question propounded to the defendant and objected to under Point 4 of defendant's brief.

The question overruled is:

“Q. After Judge Rander had taken the girl's statement and her affidavit, did he give you any advice?” (Case p. 91.)

Judge Rander was not learned in the law, he was merely a Justice of the Peace.

In order properly to rule upon this objection the circumstances under which the court made its ruling and the reasons which actuated the court must be examined.

Probable cause or the absence thereof is of the gist of the action for malicious prosecution.

At common law a defendant may plead probable cause by way of confession and avoidance. But *the facts constituting the probable cause* must be set out in the plea.

Spencer vs. Anness, 32 N. J. L. 100.

The practice act of 1912, or rather the rules formulated thereunder provide that:

All pleadings must contain a plain and concise statement of the facts on which the pleader relies, (and no others).

Pract. Act, 1912, Rule 17.

And that:

"The answer must specifically deny such allegation of fact in the complaint as defendant intends to controvert, unless he intends in good faith to controvert all the allegations; in that case he may deny them generally. *It must specially state any defence which is consistent with the truth of the material allegations of the complaint and any defence, which if not stated, would be likely to cause surprise, or would raise issues not arising out of the complaint.*

Practice Act of 1912, Rule 40.

The defendant in due course pleaded a first separate defence (Case p. 8-10) which set up certain facts, and which concluded that "*she believed that she had just grounds to suspect the said Maria Stefan-Vladar of having taken the jewelry aforesaid, and that she had just, reasonable and probable cause to complain of the same.*" etc.

This answer was plainly the equivalent of the common law plea of probable cause referred to in *Spencer vs. Anness*, supra. It was also proper practice under Rules 17 and 40 of the Practice Act of 1912.

This first separate defense gave as the *only* facts by which the arrest was to be justified, the story told defendant by Fanny Gershon and the story told to defendant by Lena Gross, both referred to under a preceding point of this brief.

At the opening of the trial counsel for defendant proposed an amendment to the answer filed by adding a proposed "Second separate defence." The proposed new defence is found at Case p. 169-171.

This proposed "second separate defence" repeats the facts constituting the defence set out in the "first separate defence" filed in due course, adding the following: "That thereafter (after discovery of jewelry loss) and prior to her making said complaint, Mrs. Hotwett told the defendant that the said plaintiff had been employed by her and many articles of value had been stolen from her home." And also the following: "That the said George Rander, who was then and there a Justice of the Peace in the aforesaid county of Hudson and Recorder of said Township of Weehawken and qualified to take oaths and make examinations under oath, talked with the said Lena Gross about what the said plaintiff had told her; that the said George Rander then swore the said Lena Gross and she swore to the same statement that she had made to the defendant, Lillian Klopman, and the said George Rander being then and there duly qualified to give legal advice on such subjects, advised the defendant, Lillian Klopman, to swear out a warrant for the arrest of the said plaintiff and advised the said defendant to swear to said complaint, and fully believing that said Justice, as such Magistrate, was advising her according to law, and believing that she had a reasonable and probable cause to do so, and it was public duty to obey the law of the land, she executed the complaint aforesaid."

The trial court refused to allow the proposed amendment because it would not then pass upon the sufficiency of the proposed new matter as a

defence and because of possible surprise to the plaintiff arising out of the new matter.

The right to amend is governed by section 123-126 of the Practice Act of 1903. The matter rested entirely in the discretion of the court and is not reviewable here.

Ten Eyck vs. Del. & Rar. Canal Co., 19 N. J. L. 5.

When the motion to amend was made counsel for plaintiff objected to the portion thereof which sets out the advice given by the justice of the peace and concludes with the allegation of probable cause because the defendant "set up *by way of justification* of the arrest advice given by a recorder, a committing magistrate, a justice of the peace, and our cases hold that such advice *is not justification*, and cannot be such in any way, shape or form (Case p. 19, fol. 10-20).

To which counsel for defendant replied: "Well, it sets up what I intend to prove, and I disagree entirely with Mr. Walscheid on the law. Here it *is Gross (Grove) vs. Van Duyn* settles the question of advice (Case, p. 19, fol. 20-30).

A colloquy thereupon ensued between court and counsel. Counsel for plaintiff cited *Potter vs. Casterline*, 41 N. J. L. 22, for the proposition that advice by a justice of the peace was not justification for the arrest. Counsel for the defendant cited *Grove vs. Van Duyn*, 44 N. J. L. 654 as holding that advice of the justice was justification therefor and the court finally said:

"It all goes to this point—that I shall have to decide now whether an advice by a recorder or justice of the peace *is in fact justification*" (Case p. 23, fol. 30-40).

The court thereupon examined the two cases offered (Case p. 24-25) evidently solely for the purpose of deciding in disposing of the proposed amendment to the pleadings,—whether advice by a justice of the peace amounted to a defence,—to a justification of the arrest,—and thereupon refused to allow the amendment.

The salient fact which we desire to call to the court's attention in all this is that the court considered the admissibility of advice by a justice of the peace only from the standpoint of an excuse, a justification, or a probable cause for the arrest and from no other.

The occurrence happened at the morning session (Case p. 76).

During the afternoon session the question now under discussion was asked and the following discourse took place.

MR. WALSCHEID: I object to that as immaterial and irrelevant.

THE COURT: I think that objection is well taken.

MR. WELLER: Your Honor will allow me an objection.

THE COURT: Yes. Let me state to you what I conceive to be the situation. Of course, it is not for me to pass upon the wisdom of holding to this effect, but I do not understand the Courts have held in cases of this character that one who makes a complaint *is excused* in doing so from the effects of such an action as this because the magistrate may have advised the doing of a thing. I understand that that excuse is only available when the advice comes from one authorized by our courts to advise in legal matters, and then whether his advice be good, bad or indifferent is of no consequence. The thing is whether or not

the person seeking the advice properly stated the facts to him and then his advice was given and that advice was acted upon. I think I have noticed in your pleadings some contest as to whether or not this warrant was issued by authority of this defendant. Now, it seems to me that this would be the situation: If I go to a police magistrate, a justice of the peace or recorder, or whatever title his office may be known by, and I make a criminal complaint against another, that sets in motion the criminal machinery, does it not?

MR. WELLER: Yes.

THE COURT: And I do not think *I would escape the result of that if I said that I was advised to have a warrant issued by the magistrate himself*. But it seems to me that you have raised some question as to whether or not this warrant was issued by authority of the defendant in this action. Now, I don't know but what it may be that I might make a complaint, I might swear to a complaint, and I might direct the officer not to issue a warrant, and if he did so over my instructions, there might then be some cause of action shown; but where I go to him and give him no instructions at all, but simply swear to the complaint, and he in the furtherance or the carrying out of the duties of his office issues the warrant and the party is apprehended and dealt with, I am quite certain that I would be responsible for the results of making that affidavit or complaint. Or, if I had his advice on the subject and his advice was to issue the warrant, *I think I would still be bound by the results of that*. I do not think that that result of that situation is in this case—that there was a direction to withhold the warrant. *It seems to me that what the advice of the magistrate was does not go to an excuse*. The cases we went over this morning, you see, went up

to that point—not the class of case we are trying now.

MR. WELLER: *I think the case of Gross against Van Duyn goes exactly to the point.*

THE COURT: Is that the case we talked to this morning?

MR. WALSCHEID: Yes.

THE COURT: That is a case of false arrest.

MR. WELLER: Now, your Honor, just listen here one moment. The difference between false arrest and malicious prosecution, as I said before, is that one is commenced by process, the other is commenced without process. If I state to John Smith, "Arrest that man; I think he picked my pocket," and he arrests John Smith and he proves to be innocent, that is false arrest. But if I go to a Judge on this same complaint and swear out a warrant, that is malicious prosecution. Now, here in this case the defendant went before the Justice of the Peace; all he did was to make his complaint on oath before the Justice of the Peace, setting forth the facts truly, *and for such an act he could not be held liable for the judicial action which ensued, even if such action had been extra-judicial. Now, it is a case of malicious prosecution.*

MR. WALSCHEID: That was not malicious prosecution.

MR. WELLER: Why, your Honor, he went there and made his complaint.

THE COURT: What does the case say, if we can read? Doesn't it say it was for false arrest?

MR. WELLER: Well, he swore to a complaint.

THE COURT: I know, but the action grew out of and was a case of false arrest, not of malicious prosecution—the case you are reading from.

MR. WELLER: If he went there and swore to a complaint, it must have started by process; therefore, must it not have been a case of malicious prosecution—isn't that the distinction between false imprisonment and malicious prosecution—that the one is commenced by process and the other not.

THE COURT: *Well, assume that it was, and assume that all you say is true, yet where do you find authority, Mr. Weller, for this proposition that because the magistrate advised the issuance of the warrant that would exculpate the affiant in making the complaint?*

MR. WELLER: *That is what this case holds, your Honor; that is it exactly.*

THE COURT: I cannot read it that way; you see, here is what was before the Court in this case—you will find this in the opinion:

“Nevertheless, it must be conceded that it is also plain that in many cases a transgression of the boundaries of his jurisdiction by a Judge will impose upon him a liability to an action in favor of the person who has been injured by such excess. If a magistrate should, of his own motion, without oath or complaint being made to him, on mere hearsay, issue a warrant and cause an arrest for an alleged larceny, it cannot be doubted that the person so illegally imprisoned could seek redress by a suit against such officer. It would be no legal answer for the magistrate to assert that he had a general cognizance over criminal offenses, for the conclusive reply would be that this particular case was not, by any form of proceeding, put under his authority.

“From these legal conditions of the subject in inference is that the true general rule with respect to the actionable responsibility of a judicial officer having the right to exercise general powers

is that he is so responsible in any given case belonging to a class over which he has cognizance, unless such case is by complaint or other proceeding put at least colorably under his jurisdiction. Where the Judge is called upon by the facts before him to decide whether his authority extends over the matter, such an act is a judicial act, and such officer is not liable in a suit to the person affected by his decision, whether such decision be right or wrong. But when no facts are present, or only such facts as have neither legal value nor color of legal value in the affair, then, in that event, for the magistrate to take jurisdiction is not in any manner the performance of a judicial act, but simply the commission of an unofficial wrong. This criterion seems a reasonable one; it protects the Judge against the consequences of every error of judgment, but it leaves him answerable for the commission of wrong that is practically wilful. Such protection is necessary to the independence and usefulness of the judicial officer, and such responsibility is important to guard the citizen against official oppression.

“The application of the above stated rule in this case must, obviously, result in a judgment affirming the decision of the Circuit Judge.”

Now, here is what was there in that instance:

“There was a complaint under oath before this Justice presenting for his consideration a set of facts too which it became his duty to apply the law. The essential things there stated were that the plaintiff, in combination with two other persons, ‘with force and arms,’ entered upon certain lands and ‘with force and arms did unlawfully carry away about four hundred bundles of cornstalks, of the value,’ etc., and were engaged in carrying other cornstalks from said lands. By a

statute of this State it is declared to be an indictable offence, 'if any person wilfully, unlawfully and maliciously' set fire to or burn, carry off or destroy any barrack, cock, crib, rick or stack of hay, corn, wheat, rye, barley, oats or grain of any kind or any trees, herbage, growing grass, hay or other vegetables. Now, although the misconduct described in the complaint is not the misconduct described in this act, nevertheless the question of their identity was colorably before the magistrate, and it was his duty to decide it; and under the rule above formulated he is not answerable to the person injured for his erroneous application of the law to the case that was before him.

"As to the other defendant all he did was to make his complaint on oath before the Justice, setting forth the facts truly, and for such an act he could not be held liable for the judicial action which ensued, even if such action had been extrajudicial. But as the case was, as we have seen, brought within the jurisdiction of the judicial officer, neither defendant nor any other person could be treated as a trespasser for his co-operation in procuring a decision and commitment which were valid in law, until they had been set aside by a superior tribunal."

I do not see that the case goes to the question you went to—that the officer advised that the action be taken, or that upon his advice it was taken.

MR. WELLER: It does not, but the magistrate upon the setting forth of those facts—of course, there they went further; there they swore that these people did take them. Here this lady only swore to a state of facts and said she had reason to believe—to suspect that this defendant—

THE COURT: I cannot see it.

MR. WELLER: Upon that this judicial officer issued his warrant. Now, I say that our case is a much stronger case than that.

This lengthy conversation between court and counsel is again offered *solely* for the purpose of showing to the court *the extent of defendant's* offer of proof on the subject of advice by the Justice of the Peace or at least the interpretation which the court placed upon this offer of proof.

The defendant now comes into the appellate court and says that the refusal to admit of an answer to the question in hand is error (1) because advice by a Justice of the Peace is an excuse, justification and probable cause for the arrest; and (2) because the fact that defendant consulted a Justice of the Peace before instituting the prosecution bore upon the question of malice and the defendant's bona fide intent and presented a fact for the jury's consideration.

We think that the first of these propositions is bad law.

Potter vs. Castiline, 41 N. J. L. 22.

Sunderbrand vs. Shills, 82 N. J. L. 700,
at p. 703.

We also think that under the case of *Sunderbrand vs. Shills* just quoted, the second of these propositions appears to be good law.

We maintain, however, that the question raised upon appeal, of the relevancy of advice by a Justice of the Peace upon the question of malice and defendant's bona fide intent, *was not taken into consideration by the trial court in ruling the question*; and that on the contrary the trial court *distinctly informed* counsel for defendant that it was ruling the question *solely* upon the authority of the cases which hold that such advice will not ab-

solve defendant from the legal consequences of his acts, and does not constitute excuse, justification or probable cause for the arrest of the plaintiff.

An examination of the language used by the Judge in dealing with this proposition will amply sustain this position.

Thus the Judge says:

“But I do not understand the courts have held in cases of this character that one who makes a complaint *is excused* in doing so from the effect of such an action as this, because the magistrate *may have advised* the doing of a thing.” (Case p. 91, fol. 30.)

And again:

“And I do not think I would *escape* the result of that if I consider that *I was advised* to have a warrant issued by the magistrate himself.” (Case p. 92, fol. 20.)

And again:

“Or if I had his advice on the subject and the advice was to issue the warrant, I think I would still be bound by the results of that * * * It seems to me that what the advice of a magistrate was *does not go to an excuse.*” (Case p. 93, fol. 1-20.)

And right at this point counsel for defendant, evidently under the impression that the *only relevancy* of the proposed testimony went to the question of excuse, interrupted the court and said: “I think the case of *Gross (Grove) vs. Van Duyn goes exactly to the point.*”

Counsel for defendant thereupon argued *this*

very question of excuse with the court and in that argument, among other things, said as to advice by a Justice of the Peace: "And for such an act *he could not be held liable* for a judicial action which ensued, even if such action had been extrajudicial. Now, it is a case of malicious prosecution." (Case p. 92, fol. 30-40.)

Counsel for defendant in making this argument relied upon the case of *Grove vs. Van Duyn* and the court, in replying to the argument, said:

"Well, assume that it was and assume that what you say is true, yet *where do you find authority for this proposition that because the magistrate advised the issuance of the warrant that would exculpate the affiant in making this complaint.*"

To which Mr. Weller replied:

"That is what this case holds, your Honor, that is it exactly." (Case p. 94, fol. 20-40.)

Whereupon the court read to Mr. Weller the opinion from the case of *Grove vs. Van Duyn* beginning upon page 660 of the report and continuing through to the end of that opinion.

At no point in this colloquy will you find *any claim by counsel for defendant that the evidence in question is admissible because it bears upon the question of malice, and the defendant's bona fide intent and therefore presents a fact for the jury's consideration.* On the contrary, it is manifest that the *only reason* urged upon the court for admitting answer to the question was the fact that *advice by a Justice of the Peace constituted exculpation, justification, excuse and probable cause for the arrest.*

The court, in order to be certain of its position, had explained to counsel for defendant that it was ruling the point *solely* upon the proposition of excuse or probable cause. Counsel for defendant had joined issue with the court upon this legal proposition without calling the attention of the court to any error in the ruling arising out of the fact that the evidence might be admissible as bearing upon the question of malice and defendant's bona fide intent.

The objection which was noted does not state any reasons for grounds for objection.

The objection must be considered in connection with the reason advanced by the court for its action.

Under the practice as it existed prior to the Practice Act of 1912 an objection to which an exception was sealed which did not disclose the ground of objection was of no value upon appeal.

No rule of practice and procedure is better settled than that in taking exception to the decision to the court in *over-ruling the offer of evidence* or excluding a defence, *the exception must state the grounds upon which the offer was made*. Litigants who have excepted to the court's refusal to rule that a certain state of facts, if proven, would amount to a complete defence in law, *cannot insist* in a court of review that the facts offered to be proved would have been competent evidence *upon an issue of fact not definitely presented*.

Dale vs. See, 51 N. J. L., 378, p. 384.

It must be clear beyond discussion that an exception to what the Judge had said upon one subject had no tendency to except to what he has failed to say on a totally different subject. The

rule that require an exception to be specific and that counsel in asking for its allowance *shall point out* to the trial court the error into which counsel thinks he has fallen has for its prime object, the *correction* of such error *then and there*. The correction of such error by an appellate court at some future time is a secondary consideration that grows out of the refusal of the trial court to correct its own errors.

The rule therefore is based on no technical or captious grounds, but on the contrary is essential to the administration of justice with due regard to private interests and the public policy against needless litigation. Common sense and common fairness alike require that if counsel notices a slip in judicial language, *or what he deems the commission of legal error in the conduct of the trial, he shall call the Judge's attention to it at a time and in a manner conducive to its correction at the trial*. It is solely upon the assumption that this has been done that the right of review rests, appellate courts uniformly, refusing to give to the unsuccessful litigant the benefit of a trial error that he himself could have had corrected at the trial for the *mere asking*.

Upon this assumption to satisfy the appellate court that an error has been committed, is to satisfy it that it would have been corrected if brought to the attention of the trial court, hence, where this was not done, the abiding presumption is that the correction of the error at the trial was not desired by the party who now complains of it."

Benz vs. Central R. R. of N. J., 82 N. J. L., 197, at p. 198.

See also *D., L. & W. R.R. Co. vs. Daly*, 37 N. J. L., 526.

We insist that if counsel for defendant had urged upon the trial court the propriety of answer to the question in hand *upon the ground that the fact bore upon the question of malice and the defendant's bona fide intent*, and had argued that proposition as strenuously as he did the other, and had perhaps submitted to the court the case of *Sunderbrand vs. Shills*, which he now *submits to the appellate court*, that the result would have been that the error would not have been committed and that the fact of advice by the justice being given would have been submitted to the jury under proper limitations and instructions as to the law.

We have called the attention of the court to the practice as it existed before the Practice Act of 1912. The practice in this respect has not been changed by the enactment just referred to.

Kargman vs. Carlow, 85 N. J. L., 632, p. 636.

Under the new practice, grounds of objection or exception should be stated as heretofore, the only difference being that the bill of exceptions, which is abolished, and which rested in the discretion of the Judge, is by that act turned into an objection as of right.

In dealing with the propriety of this question up to this point, we have dealt with it irrespective of the conditions of the pleadings.

In view of the fact that the pleadings as they stand before the court do not contain an averment that the arrest was made upon the advice of a Justice of the Peace, we deem the objection and ruling well founded.

While at common law it was proper to plead specially the existence of probable cause, and

perhaps, the want of malice, yet we also believe that both of these defences might have been interposed under a plea of general issue.

1 *Chitty Pl.*, 490.

But under our new practice, general issues are abolished and the defendant is supposed to deny specifically the allegations of the complaint and state specifically any defense which is consistent with the truth of the material allegations of the complaint and any defence which, if not stated, would be likely to cause surprise.

Practice Act, 1912, Rule 40.

Under this practice we contend that it was the duty of the defendant to plead advice by a Justice of the Peace as a matter of defence and that in the absence of an allegation to that effect in the answer, the evidence was not in the issues framed and was therefore inadmissible.

The judgment must be confined to the issues presented by the parties.

Reynolds vs. Stockton, 140 U. S. 254.

The evidence also must be thus confined.

Marsh vs. Newark Heating Machine Co., 57 N. J. L., 36.

Crosby vs. Wells, 73 N. J. L., 790, at p. 805.

For these reasons do we contend, that there was not reversible error in refusing to permit answer to the question under review.

But if there was error, was it such error as under the Practice Act of 1912 will justify a judgment of reversal?

If there was error, it was only because the evidence was material on the question of malice and intent and ought to have been considered by the jury.

The uncontradicted evidence in this case is that the Justice of the Peace who is supposed to have given the advice, acted in the capacity of a friend and co-adjutor in the institution of this malicious prosecution. This appears from the testimony of the defendant herself, where she testifies about sending the plaintiff back to her cell and consulting with the Justice about proceedings to bring about a concession of guilt. The advice, if any was given, was therefore not unbiased or impartial.

Smith vs. King, 62 Connecticut, 515.

Watt vs. Corey, 76 Maine, 87.

And the fact that the Justice was not unbiased or impartial would seem to destroy any benefit which might be claimed from advice given by him.

At all events, the probative force of this testimony, if taken in connection with the testimony as to bias which was given, would be so remote as to warrant the court in excluding it.

Schenck vs. Griffin, 38 N. J. L., 362.

Point IV.

It was not error to admit the question: Did Klopmann or Mrs. Klopmann? you in fact steal anything at any time from Mr.

The charge made against plaintiff was larceny from Mrs. Klopmann.

The answer to the question denying any such theft was evidence of the untruthfulness of the

fact stated in the affidavit which constituted the complaint and from such untruthfulness malice and want of probable cause could be inferred.

Navarino vs. Dudrop, 66 N. J. L., 620.

It showed that the charge itself was false.

Weisner vs. Hausen, 81 N. J. L. 601.

Point V.

It was not error to overrule the question "Did she (Mrs. Hotwet) or did she not swear that the plaintiff in this case Mrs. Vladar had worked for her, and she had missed articles of jewelry and silverware after the woman was there?"

The swearing by Mrs. Hotwet refers to the time of hearing of the complaint against plaintiff.

It referred to a time after the making of the complaint.

The testimony then given, if given, could not bear upon the defence of malice or probable cause in causing the arrest of plaintiff.

It was not proper evidence of the bad reputation of plaintiff because it referred to particular act.

O'Brien vs. Frazie, 47 N. J. L. 349, p. 356.

The proximity of plaintiff to the loss of any goods of Mrs. Hotwet would not constitute probable cause for action of Mrs. Hotwet against plaintiff much less by defendant.

Spencer vs. Anness, 32 N. J. L. 100.

It was not within the issues presented by the pleadings or tried in the cause.

The proposition advanced by counsel for defendant that Mrs. Hotwet could not or would not say that she did not believe plaintiff had stolen defendant's jewelry and then testify that she had missed articles of jewelry and silverware after plaintiff had worked for her is a *non sequitur*.

Point VI.

The court did not err in dealing with the question: "Do you know whether they went there just to take you, or did they go on the request of Judge Rander?"

The question was asked by counsel for defendant (Case p. 49, fol. 30). The court said it would permit it to be answered to which counsel prayed objection and the court said: "You may have it. If the answer is not proper it will be stricken out. There was no motion to strike the answer as irresponsible and the question was finally answered: "That I do not know; that I cannot say." (Case, p. 52, fol. 10-20.)

The whole matter is trivial and unimportant.

Point VII.

The court did not err in instructing the jury that it could find primitive damages against the defendant.

The record shows that Mr. Weller excepts to the charge of the judge wherein he said the jury could award primitive damages, and did not tell the jury that that could *only* be done as to slander and *not* as to the malicious prosecution (Case, p. 167, fol. 1-10).

It needs no citation of case to show that primitive damages may be awarded for malicious prosecution.

Point VIII.

It was proper to overrule the question: During the year had you ever had reason to suspect her (the domestic Emma Schultz or Gross) of dishonesty?

The honesty of Emma Schultz or Gross was not at issue. She had not been accused of larceny. Her innocence was presumed, so was that of the plaintiff. It was merely an attempt to create an atmosphere of suspicion arising out of the proximity of the plaintiff to the place where the jewelry was last seen by eliminating Emma Gross from consideration.

Spencer vs. Anness, supra.

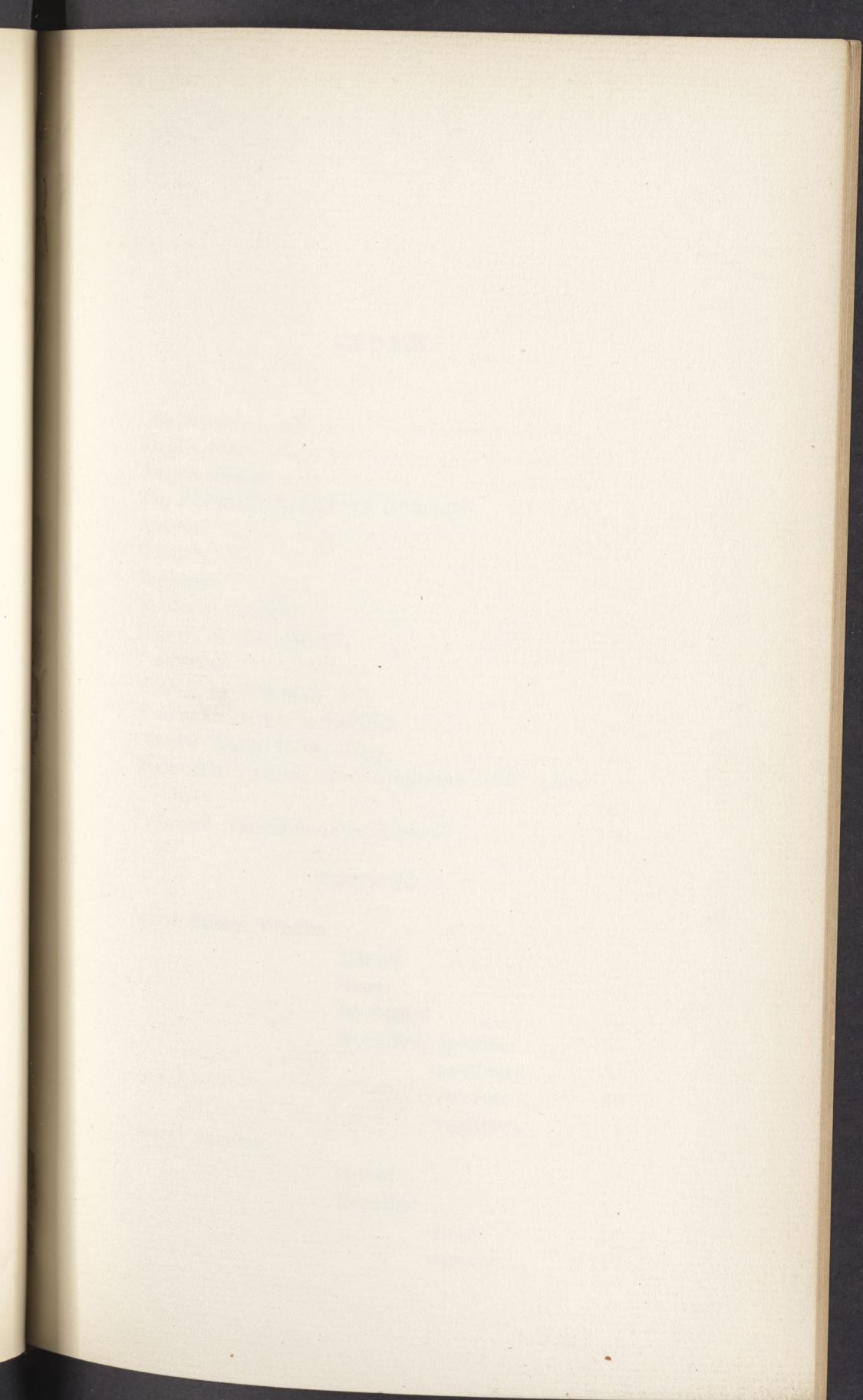
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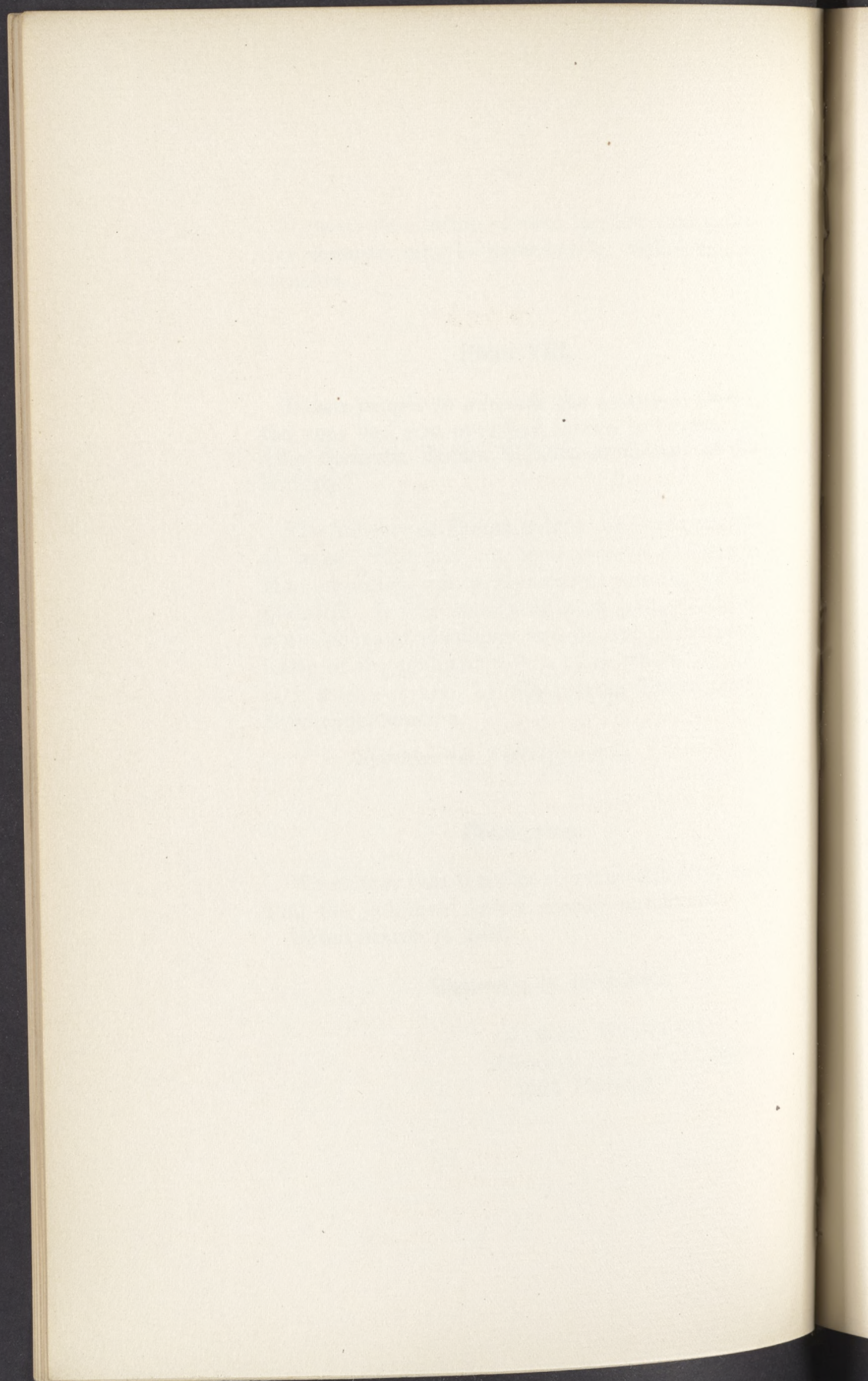
We submit that there is no reversible error and that the judgment below should be affirmed.

Dated March 7, 1916.

Respectfully submitted,

J. EMIL WALSCHEID,
*Attorney for and of Counsel
with Plaintiff.*





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Hudson County Circuit Court 10

MARIA STEFAN VLADAR, Plaintiff,	}	Action at Law.
vs.		
LILLIAN KLOPMAN and WILLIAM KLOPMAN, Defendants.		

20

The defendant was summoned to answer unto the plaintiff.

Complaint.

The plaintiff, who resides at No. 12 Adams Street, Guttenberg, County of Hudson and State of New Jersey, says:

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First Count.

1. On July 10th, 1914, at the Township of Weehawken in the County of Hudson, the defendant, Lillian Klopman, made a complaint of larceny in due form to George Rander, Justice of the Peace

40

First Count.

10 and Recorder of the Township of Weehawken in the County of Hudson, thereby charging the plaintiff with stealing one gold and coral necklace of the value of Twenty (\$20.00) Dollars, one silver bag of the value of Ten (\$10.00) Dollars and one gold and coral bracelet of the value of Fifteen (\$15.00) Dollars on July 3rd, 1914, or thereabouts, at No. 34 Duer Place in the Township of Weehawken; and the said Justice at the request of the defendant, Lillian Klopman and of the defendant, William Klopman, who is the husband of Lillian Klopman, issued a warrant in due form upon said complaint for the arrest of the plaintiff.

20 2. On July 11th, 1914, plaintiff was arrested upon said warrant and brought before the said George Rander as Justice of the Peace and Recorder at the Township of Weehawken, and upon hearing the testimony of the said defendants, he thereupon discharged the plaintiff from custody and exonerated her.

3. Said charge was in fact false.

30 4. Defendants made said charge from motives of malice.

5. There was no reasonable or probable cause for said prosecution.

40 6. The plaintiff is and has been obliged to earn her living by domestic services rendered by her at the dwelling-houses of her employers, and said false prosecution has injured her and has caused many persons to cease employing her; it has injured her reputation.

Second Count.

1. That on July 10th, 1914, the said defendants did accuse the plaintiff of feloniously taking and carrying away one gold and coral necklace of the value of Twenty (\$20.00) Dollars, one silver bag of the value of Ten (\$10.00) Dollars and one gold and coral bracelet of the value of Fifteen (\$15.00) Dollars from the premises No. 34 Duer Place, in the Township of Weehawken, on July 3rd, 1914, or thereabouts, and that said charge was made to one George Rander, Justice of the Peace and Recorder of the Township of Weehawken aforesaid, and that by reason thereof, the said defendants did induce the said George Rander, Justice of the Peace and Recorder as aforesaid, to issue a warrant directing the arrest and taking into custody of the plaintiff.

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20

2. Said charge was in fact false.

3. That the said defendants, at the time and place mentioned in Paragraph No. 1 illegally and by their malice did imprison the said plaintiff, and cause her to be taken from the Town of Guttenberg where she resides, to the Town Hall of the Township of Weehawken against her will and in the custody of a police officer of said Township of Weehawken.

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4. That upon the hearing before the said George Rander, Justice of the Peace and Recorder as aforesaid, said plaintiff was discharged from custody and exonerated.

5. The plaintiff is and has been obliged to earn her living by domestic services rendered by her at the dwelling-houses of her employers, and said

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Third Count.

false prosecution has injured her and has caused many persons to cease employing her; it has injured her reputation.

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Third Count.

1. On July 10th, 1914, and at various other times prior thereto, at the Township of Weehawken, in the County of Hudson, the defendants did say of and concerning the plaintiff, "She stole one gold and coral necklace, one silver bag and one gold and coral bracelet belonging to us."

2. Said words were false and malicious.

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3. The plaintiff is and has been obliged to earn her living by domestic services rendered by her at the dwelling-houses of her employers, and said false prosecution has injured her and has caused many persons to cease employing her; it has injured her reputation.

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The Plaintiff Claims for Damages.

1. On the first count \$5,000.00.
2. On the second count \$5,000.00.
3. On the third count \$5,000.00.

EMIL WALSCHIED,
Attorney of Plaintiff.

Filed Clerk's Office—Dec. 10, 1914—Hudson
County, N. J.—JOHN F. CROSBY, Clerk.

40

Answer.

The defendants answer as follows:

Defendants, Lillian Klopman and William Klopman, who reside at No. 34 Duer Place, Highwood, in the Township of Weehawken in the County of Hudson and State of New Jersey, answering the complaint of the plaintiff say:

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ANSWER TO FIRST COUNT.

1. They admit that on the tenth day of July, 1914, in the Township of Weehawken and County of Hudson, the defendant, Lillian Klopman, made a complaint of larceny in due form before George Rander, Justice of the Peace and Recorder of the Township of Weehawken, in said County of Hudson, but deny that she thereby charged the plaintiff with stealing one coral and gold necklace of the value of \$20.00; one silver bag of the value of \$10.00, and one gold and coral bracelet of the value of \$15.00, on July 3rd, 1914, or thereabouts, but say that in and by said complaint, the said Lillian Klopman said she had good cause to suspect the said goods and chattels were stolen by the said Maria Stefan Vladar; that said defendants did not request the issuance of a warrant for the arrest of the said plaintiff, but the said Lillian Klopman made said complaint because she believed it to be a public duty.

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2. Defendants deny that on July 9th, 1914, plaintiff was arrested on said warrant and brought before said George Rander, Justice of the Peace and Recorder of the Township of Weehawken, but say that when she was notified of the warrant being issued against her, she went before the nearest Justice of the Peace, Charles Bischoff, in the Town

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Answer.

10 of Guttenberg, and entered into a recognizance for her appearance before George Rander, Justice of the Peace and Recorder, at the Township of Weehawken on the following day; they admit that upon the hearing of the testimony of the said plaintiff, the said George Rander discharged the plaintiff from custody for lack of evidence, but deny that he exonerated her, unless said discharge amounted to an exoneration.

20 3. Defendants deny that said charge was in fact false, but say that the defendant, Lillian Klopman, had reasonable and probable cause to suspect that the goods and chattels mentioned in said complaint had been taken by the said Maria Stefan Vladar.

4. Defendants deny that William Klopman made any charge against the said plaintiff and they also deny that the defendant, Lillian Klopman, had motives of malice.

5. Defendants deny that there was no reasonable cause for said prosecution.

30 6. Defendants have no knowledge of how said plaintiff has been obliged to earn her living, but deny that said prosecution has injured her, or that it has caused many persons to cease employing her, or that it has injured her reputation.

ANSWER TO SECOND COUNT.

1. Defendants deny that on the tenth day of July, 1914, they accused the plaintiff of feloniously taking and carrying away a gold and coral neck-
40 lace of the value of \$20.00; one silver bag of the

Answer.

value of \$10.00 and one gold and coral bracelet of the value of \$15.00, from the apartments, No. 34 Duer Place, in the Township of Weehawken, on July 3rd, 1914, or thereabouts, but they say that the said defendant, Lillian Klopman, said that she had good reason to suspect that the articles above mentioned were stolen, and made a charge before one George Rander, Justice of the Peace and Recorder of the Township of Weehawken, aforesaid to that effect, but they deny the defendants had induced the said George Rander to issue his warrant directing the arrest and taking into custody the said plaintiff, but say that the said defendant, Lillian Klopman, made said complaint because she believed it to be her public duty to do so.

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2. Defendants deny that said charge was in fact false.

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3. Defendants deny that at the time the plaintiff mentioned in paragraph one they did illegally and by their malice imprison the plaintiff, and cause her to be taken from the Town of Guttenberg, where she resides, to the Township Hall in the Township of Weehawken, against her will and in the custody of a police officer of said Township of Weehawken, but say that at the time she was notified that a warrant had been issued for her arrest, namely, on the ninth day of July, 1914, she went before Charles Bischoff, a Justice of the Peace of the Town of Guttenberg, and gave bond for her appearance before George Rander, Justice of the Peace and Recorder of the Township of Weehawken, on the following day, where she appeared.

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Answer.

4. Defendants admit that at the hearing before the said George Rander, aforesaid, the plaintiff was discharged from custody for lack of evidence, but deny that she was exonerated, unless said discharge amounted to an exoneration.

- 10 5. Defendants have no knowledge as to how the said plaintiff has been obliged to earn her living, but deny that said alleged false prosecution has injured her and has caused many persons to cease employing her; they also deny that it has injured her reputation.

ANSWER TO THIRD COUNT.

- 20 1. Defendants deny that on the tenth day of July, 1914, and at various other times prior thereto, in the Township of Weehawken and County of Hudson, they did say of and concerning the plaintiff "she stole one gold and coral necklace, one silver bag and one gold and coral bracelet, belonging to us."

2. Defendants deny that they or either of them uttered the words that are alleged to be false and malicious.

- 30 3. Defendants have no knowledge sufficient to form a belief as to how the plaintiff has been obliged to earn her living, but deny that said false prosecution has injured her, or that it has caused many persons to cease employing her, or that it has injured her reputation.

FIRST SEPARATE DEFENSE.

- 40 These defendants allege that on the third day of July, A. D. 1914, there was stolen from the

Answer.

home of the defendants at 34 Duer Place, in the Township of Weehawken, in the County of Hudson and State of New Jersey, one gold and coral necklace of the value of \$20.00; one silver bag of the value of \$10.00 and one gold and coral bracelet of the value of \$15.00, the property of the said Lillian Klopman and mentioned in the complaint filed in this cause; that at that time the said Lillian Klopman had in her employ as a domestic servant one Emma Gross, and on or about the second day of July, A. D. 1914, she employed the said plaintiff to assist her regular servant girl; that said plaintiff worked in the part of the house in which she kept her said jewelry, which was on the second story of said house; that on the third day of July, A. D. 1914, a cousin of the defendant, Lillian Klopman, namely, Mrs. Fanny Gerson, went upstairs and reported to the defendant, Lillian Klopman, that she had seen the said plaintiff with her hand in one of the bureau drawers in defendant's, Lillian Klopman's, room, and told the said defendant, Lillian Klopman, that she did not like the actions of the said plaintiff and advised the defendant, Lillian Klopman, to lock up her valuables; that she was going to do so; that on that evening the defendant, Lillian Klopman, discharged the said plaintiff and thereafter learned that said jewelry had been stolen; that thereafter, and prior to defendant's making the complaint hereinbefore mentioned, one Lina Gross, a sister of the defendant's servant girl, who at that time was living with the plaintiff at No. 12 Adams Street, in the Town of Guttenberg, Hudson County, New Jersey, told the defendant, Lillian Klopman, that on or about the sixth day of July, A. D. 1914, the plaintiff, Maria Stefan Vladar had told her that she had a nice bracelet

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40

Answer.

and necklace which had been given to her as a present by a lady; that she had told the said Lina Gross that she would show her the bracelet, but had never done so; that said Lina Gross also told the defendant, Lillian Klopman, that on or about the sixth day of July, A. D. 1914, she, the said Lina Gross, had asked the plaintiff for a silver bag which belonged to her, but that said plaintiff had refused to give up said bag and that a friend, who was with her at the time, tried to get a policeman to have the plaintiff arrested, and when he went out of the house for an officer, the plaintiff had torn a neck chain and charm from the neck of the said Lina Gross and retained it until Judge Rander ordered her to give it up, and the defendant, Lillian Klopman, knowing that the said plaintiff had been in her home and in the various parts of the house in which she kept her jewelry, and having heard that she had her hand in the bureau drawer and having heard that she told the said Lina Gross that she had a bracelet and charm and having heard that she had forcibly taken a necklace and charm from the said Lina Gross, she believed that she had just grounds to suspect the said Maria Stefan Vladar of having taken the jewelry aforesaid, and that she had just, reasonable and probable cause to complain of the same to George Rander, Justice of the Peace as aforesaid, believing that it was her public duty to bring said facts to the attention of the proper authorities.

WELLER & LICHTENSTEIN,
Attorneys for Defendants.

Filed Clerk's office, Dec. 31, 1914.
Hudson County, N. J.

JOHN F. CROSBY,
Clerk.

Reply.

Replying to the first separate defense filed by the defendants herein, this plaintiff says:

1. She has no knowledge or information of the fact that on July third, 1914, there was stolen from the home of the defendants the jewelry named in said first separate defence. She admits that she was employed in the household of the defendant, but has no knowledge of the facts which the defendant says were told to her by Mrs. Fannie Gerson and Miss Lean Gross, and further denies that the defendants had just, reasonable and proper cause to complain against this plaintiff as they have done. 10

J. EMIL WALSCHEID,
Attorney for Plaintiff. 20

Filed Clerk's office, Feb. 9, 1915, Hudson County, N. J.

JOHN F. CROSBY,
Clerk.

Judgment.

This action was tried before Judge Luther A. Campbell with a jury at the Hudson Circuit November 24th, 1915. 30

The cause having been heard and submitted to the jury they returned their verdict as follows:

They say they find for the plaintiff, and against the defendants and they assess the damages of the plaintiff on occasion of the premises at the sum of One Thousand Dollars (\$1,000.00).

Notice of Appeal.

Whereupon it is adjudged that the plaintiff recover of the defendants the sum of One Thousand Dollars damages and his costs which are taxed at Sixty Dollars and Five Cents (\$60.05) making in the whole the sum of One Thousand Sixty Dollars and Five Cents (\$1,060.05).

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Judgment entered this 24th day of November, 1915.

LUTHER A. CAMPBELL,
Judge.

Attest:

JOHN J. MCGOVERN,
(Seal) Clerk.

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Notice of Appeal.

HUDSON COUNTY CIRCUIT COURT.

MARIE STEPHAN VLADAR,
Plaintiff-Respondent,

vs.

LILLIAN KLOPMAN,
Defendant-Appellant.

} Action at
} Law.

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To J. EMIL WALSCHEID, Esq., Attorney for Plaintiff-Respondent.

Sir:

TAKE NOTICE that the defendant-appellant
appeals to the Court of Errors and Appeals from

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Notice of Appeal.

the whole of the judgment entered in this case on the following grounds, viz. :

1. The Court refused to non-suit the plaintiff-respondent at the close of her case when requested to do so by the defendant-appellant.

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2. The Court refused to permit the defendant-appellant to amend her answer so as to set up that before she made the complaint before George Rander, a Justice of the Peace and Recorder for the Township of Weehawken, she had heard from a Mrs. Hotwet that the plaintiff-respondent had worked for her, the said Mrs. Hotwet, and that many articles of value had been stolen from her home, and that after she had laid all the facts within her knowledge before said George Rander, Justice of the Peace and Recorder as aforesaid he advised her to make a complaint.

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3. The following question was admitted, viz. :

To the witness, Marie Stephan Vladar.
 "Q. Have you any children? A. Yes."

4. The following question was admitted, viz. :

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To the witness, Marie Stephan Vladar.
 "How many"?

5. The following question was admitted, viz. :

To the witness, Marie Stephan Vladar.
 "Did you in fact steal anything at any time from Mr. Klopman or Mrs. Klopman?"

6. The following question was admitted, viz. : 40

Notice of Appeal.

To the witness, Marie Stephan Vladar.

“Did your husband work during the three years you have been working?”

10 7. The Court permitted the following irresponsible answer by the witness, Marie Stephan Vladar, to defendant-appellant’s question, “Do you know whether they went there just to take you or did they go on the request of Judge Rander?”, viz.: “I told them everything. Of course Mrs. Klopman had told me when I was in a cell that I had stolen at Mrs. Hotwet’s also and that is the reason I asked it.”

8. The following question was overruled, viz.:

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To the witness, George Rander.

“Under what circumstances was the warrant issued?”

9. The following question was overruled, viz.:

To the witness, Lillian Klopman.

“During the year had you ever had reason to suspect her of dishonesty?”

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10. The following question was overruled, viz.:

To the witness, Lillian Klopman.

“What did she testify to?”

11. The following question was overruled, viz.:

To the witness, Lillian Klopman.

“Now, after you had told him the story and he had examined Lena, did he give you any advice?”

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Notice of Appeal.

12. The following question was overruled, viz. :

To the witness, George Rander.

“And in this case when you received these statements from Lena Gross and Mrs. Klopman did you make up your mind as to whether it was a proper case for a warrant or not?”

10

13. The following question was overruled, viz. :

To the witness, George Rander.

“Did she or did she not swear that the plaintiff in this case, Miss Vladar, had worked for her and she had missed articles of jewelry and silverware after the woman was there?”

14. The Court refused to decide the question of reasonable and probable cause, and to direct a verdict for the defendant-appellant at the close of the whole case when requested so to do by the defendant-appellant, and left the question of reasonable and probable cause to the jury.

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15. The Court charged the jury “There is one other element of damage, and that applies to all cases of this character, and that class or element of damages is what we know as punitive damages. Those are damages which may form a portion of your verdict in cases of this character, not so much because the plaintiff is entitled to them or that it goes to measure his or her actual damage; but they are given and permitted to be given as a punishment to those who have committed the acts complained of—to punish them for having done so, and as a deterrent to others not to do so. That element of damages is what we call punitive damages or smart money. The amount thereof, and as to whether or not you should include in your verdict

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Notice of Appeal.

10 anything therefor, is very largely, gentlemen of the jury, in your discretion. It is a matter very largely under your control, to be determined, first, as to whether or not you will include anything, as to how you may find the facts and circumstances of the particular case to warrant or not to warrant the adding or assessing of a sum for that purpose; and if you find that you are warranted, and the facts and circumstances of the case do warrant that you should add something to your verdict for that purpose, then as to what shall be added, as to what amount shall be added is also to be determined by you from the facts and circumstances of the particular case that is before you"—and did not charge them that on the count for slander the words alleged had not been proven; and did not charge 20 them when requested to do so that under the facts proven in this case there could not be any punitive damages on the count for malicious prosecution.

16. At the close of the plaintiff-respondent's case she had not sustained the burden of proof of malice and want of probable cause, and should therefore have been non-suited.

17. At the close of the whole case the plaintiff-respondent had not shown either malice or want of probable cause, and therefore a verdict should have 30 been directed for the defendant-appellant.

18. The Trial Court erred in that it refused on the application of the defendant-appellant to direct a verdict against the plaintiff-respondent in favor of the defendant-appellant, for the reasons and on the grounds set out at length and stated to the Trial Court.

Respectfully,

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WELLER & LICHTENSTEIN,
Attorneys for Defendant-Appellant.

Return of the Court.

The answer of Luther A. Campbell, Esquire, Judge of the Circuit Court holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made with all things touching the same I send to the Judges of our Court of Errors and Appeals in the last resort of all causes at Trenton, N. J., at the day and year within contained, in a certain schedule to this appeal annexed as within I am commanded. 10

LUTHER A. CAMPBELL,
Judge.

Testimony.

HUDSON COUNTY CIRCUIT COURT. 20

MARIE STEFAN VLADER

vs.

LILLIAN KLOPMAN, et al.

At Law.

APPEARANCES: 30

J. EMIL WALSCHEID, for the plaintiff.
WELLER & LICHTENSTEIN, for the defendants.

The above-entitled case was tried on November 23, 1915, before Hon. Luther A. Campbell, Judge, and a jury.

The Court: I understand you have a motion to make to amend the answer, Mr. Wel- 40

ler. I do not know what the case is yet. I have not seen the papers. I can imagine about what it is. What was the original answer?

10 (Mr. Weller reads answer, beginning with the words "that it has prevented her from pursuing her occupation.")

Mr. Weller: Those are the facts upon which to show probable cause. She specified some facts upon which she founded her suspicion.

The Court: Does the plaintiff find fault that your plea of probable cause is short and not sufficient? Do you, Mr. Walscheid?

20 Mr. Walscheid: I have found no fault with his pleadings whatsoever.

The Court: So you are entitled in your testimony to go to that point.

30 Mr. Walscheid: What I desire to call your attention to and what I do object to is in one of the amended portions—I believe he furnishes two—no, he furnishes one new one. This proposed new second defense is virtually a repetition of what he has already pleaded, with the exception of two matters, one of which is information which he is supposed to have derived from Mrs. Klopman. That information was undoubtedly in the possession of these parties at the time when this plea was filed. If it was not in their possession at that time, and if it was not in their possession at the time when they made the arrest, it certainly can not act as a justification. That is the first proposition, as to that.

40 Mr. Weller: It was in their possession at that time.

Testimony.

The Court: You should have pleaded it.

Mr. Walscheid: That is my contention.

Mr. Weller: I didn't, because I didn't draw the pleading and I didn't know that fact before. I think I can put it in the evidence, anyway, on the probable cause.

Mr. Walscheid: My second proposition is this: That they set up by way of justification of this arrest advice given by a recorder, a committing magistrate, a justice of the peace; and our cases hold that such advice is not justification, and can not be such in any way, shape or form. 10

The Court: Don't we come back, anyway, gentlemen, to what the original answer is, and is it not sufficient where there may be testimony that would otherwise be relevant —is it not sufficient to admit such testimony to show probable cause, or reasonable cause? As I glance over the amendment it seems to set up a lot of supposed facts. 20

Mr. Weller: Well, it sets up what I intend to prove, and I disagree entirely with Mr. Walscheid on the law. Here it is. Gross against Van Duyn settles the question of advice. (15 Vroom.)

Mr. Walscheid: Advice by whom? 30

Mr. Weller: A recorder, justice of the peace.

Mr. Walscheid: Well, so does Potter versus.

Mr. Weller: That is 55 Law, is it not?

Mr. Walscheid: It is 41 Law.

The Court: You perhaps saw 41 Law and he is quoting from 65 Law.

Mr. Weller: 65 Law, is it? 40

Testimony.

The Court: Yes; I have it here. Well, your one point raised, Mr. Walscheid, that he should have pleaded this originally, is not fatal to the granting of an amendment.

10 Mr. Walscheid: Oh, no; it is absolutely not fatal. It simply appeals to the discretion of the Court.

The Court: I take it from Mr. Weller that it was information that was in his possession at or prior—in the possession of the defendants at or prior to the time of the making of the complaint. It was not in his possession.

Mr. Walscheid: No; he says he did not draw the pleadings.

20 The Court: He said he did not draw the pleadings. Now, the other contention is that what he sets up as a matter of law is not a defense?

Mr. Walscheid: Is not a defense.

Mr. Weller: The second syllabus settles it.

The Court: We are dealing with the situation of a committing magistrate himself. (Refers to law submitted by Mr. Weller.)

30 Mr. Weller: It does, but towards the end it says either magistrate or any one else.

The Court: That whole matter resolves itself into this: He says there was ground for the issuance of the warrant; that alone ought to settle the issue.

Mr. Weller: I think it would.

The Court: Still, whether they had reasonable and probable cause for making the complaint—

40 Mr. Weller: There are two defenses.

Testimony.

The Court: Well, gentlemen, why isn't the easiest way to dispose of this, this: To permit the amendment and deal with the matter as a matter of law and fact, as the facts come to me?

Mr. Weller: I am satisfied with that.

10

The Court: It may be as they are they will be perfectly relevant, and it may be when they are offered they will not be relevant.

Mr. Walscheid: The only legal objection I can see to that is this: having the surprise in the testimony which is introduced on the scope of advice or under the head of advice. Of course, your Honor will deal with it.

20

The Court: If you anticipate now that you are going to be surprised it is very evident that we are not going to get very far in the case before the surprise arises. If so, the attorney ought to be relieved of that condition.

Mr. Weller: They have had that about three weeks.

The Court: But don't you see, Mr. Weller, the difficulty is—I don't suppose it makes any difference—the difficulty would be to know what you are going to prove, but that difficulty always happens in every case. I think I will permit the amendment at this time.

30

Mr. Walscheid: Allow me to enter an objection. I think I would have that right in view of the fact that I contend that you are allowing the objection.

The Court: I won't do that now. I will hear you out now. I am not going to start

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Testimony.

with a possible error at the beginning of the case. Now, gentlemen, why wasn't this thing brought up before? We ought not to be delayed in the trial of a case by amendments or applications to amend.

10 Mr. Weller: Well, our new practice act is very liberal. It says we can amend at any time. Now, the only difference between my pleading that in the beginning and pleading it three or four weeks ago would have been to apprise Mr. Walscheid of what I was going to prove.

The Court: And the other benefit would have been that you had applied it on motion day, and your issues would have been settled before the case was moved for trial.

20 Mr. Weller: But the statute says we can amend at any time and the offering at that time wouldn't help Mr. Walscheid any.

The Court: It would help this Court, because all the argument on the question of law would have been heard, and the Court would have decided it in due time before the moving of the issue.

30 Mr. Weller: I thought that that would be done in time for the Court to move—something that could be done on the day of trial. He can not be possibly surprised. There are no witnesses that he could have gotten six months ago that he could not have gotten three weeks ago or at any time since that.

40 The Court: It also seems to me, Mr. Weller, by your previous answers you have put yourself in that position where you may use any relevant testimony that may go to justification. Your opponent has made no objection to your answer upon that score.

Testimony.

Mr. Weller: Well, if I have then this amendment can not hurt him at all.

Mr. Walscheid: I have objected to the proposed introduction of Mrs. Hotwett. I have objected to that on the ground that it ought to have been inserted in the pleadings. 10

The Court: His answer as it was originally pleaded—

Mr. Walscheid: Covers the ground—

The Court: —covers the ground for justification. Now, you have placed no objection in the way of his using that at all.

Mr. Walscheid: Using the original plea.

The Court: Using the original plea.

Mr. Walscheid: Oh, no; I have not. 20

The Court: In that it was not sufficiently pleaded.

Mr. Walscheid: No.

The Court: Therefore, it seems to me that any matters which would be relevant to that issue may be urged under that issue as you have already framed it, without your amendment.

Mr. Walscheid: So that your Honor may understand me before we go into the trial, my contention is that a plea of justification must set up the facts to support the justification. If it does not set up the facts for the justification it is a mere conclusion and not a plea; so that I would attempt to eliminate the contents of that plea. 30

The Court: It all goes to this point—that I shall have to decide now whether an advice by a recorder or justice of the peace is in fact a justification. 40

Testimony.

10 Mr. Walscheid: Yes. Your Honor will bear a moment with me. In Potter against Casterline, and Gross against Van Duyn—I can show that Gross against Van Duyn does not hold what Mr. Weller says it shows. I think it is one of the first cases on that subject in this state, and the action was for false arrest, and the party who brought the complaint and the justice of the peace were arrested for false arrest. Now, it is a well known fact that at this time where a warrant is issued no action for false arrest lies; and if your Honor will read the last paragraph of that opinion you will find that neither the justice of the peace for issuing a warrant, nor the person who instigated the issuance of the warrant can be held for the issuance of the warrant in an action for false arrest. That is all that it amounts to. It was never intended to convey from that opinion the idea that any professional advice given to a person is a justification for a malicious prosecution, because there the malice is the gist of the case. In Gross vs. Van Duyn the arrest is the gist of the case. Your Honor has the Potter against Casterline.

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30

The Court: Yes.

Mr. Weller: Are you through?

Mr. Walscheid: Yes.

Mr. Weller: Why, if your Honor please—

40 The Court: Wait a minute till I read this case (refers to book) (Potter vs. Casterline). Well, in this, Mr. Weller, which is an action similar to the one we are about to inquire into, malicious prosecution, it

Testimony.

deals to a large extent with another point. Still this same point is dealt with. The Court says: (Reads beginning with the words "At the close of the case the Court was requested to charge the jury * * *.")

Mr. Weller: This is a later case and it is a Court of Errors opinion. 10

The Court: It goes to a different point.

Mr. Weller: I do not think it does. The only difference between malicious prosecution and an action for false arrest is that one is commenced by process; the other is not commenced by process. Now, malice is the gist of both these cases.

The Court: Is that so?

Mr. Walscheid: No. False arrest only lies in the absence of a warrant, absence of a legal writ. 20

Mr. Weller: But there must be malice in either case.

Mr. Walscheid: No.

Mr. Weller: Now, this would dispel the idea of malice if a justice of the peace gave such advice, and he had a right to give advice. If he has the right to advise in one case he has in every case. 30

The Court: Has he a right to advise?

Mr. Weller: The Court of Errors case says he has.

The Court: I think I am going to put an end to this in this way: I am going to decline to permit you to make the amendment.

Mr. Weller: Will your Honor grant me an objection?

The Court: Yes. 40

MARIE STEFAN VLADER—Direct Examination.

Mr. Walscheid opened the plaintiff's case to the jury.

Mr. Weller opened the defendants' case to the jury.

10 MARIE STEFAN VLADER sworn (examined through interpreter).

Direct Examination by Mr. Walscheid:

Q. Mrs. Vlader, where do you live? A. Number 12 Adams Street, Guttenberg.

Q. Are you married? A. Yes, sir.

Q. How long have you lived there? A. Six years in the same house.

20 Q. In the same house? A. Yes, sir.

Q. With your husband all the time? A. Yes, sir.

Q. Have you any children? A. Yes, sir.

Q. How many?

Mr. Weller: I object to the question on the ground that it is not relevant.

The Court: What is the purpose of it?

30 Mr. Walscheid: Why, I think the standing and relationship of the person is an element in malicious prosecution.

The Court: That was the purpose I supposed that you were offering it for. Why is it not relevant, Mr. Weller?

Mr. Weller: That has not anything to do with her standing.

The Court: I will overrule the objection.

Mr. Weller: Your Honor will allow me an objection.

40

The Court: You may have it.

MARIE STEFAN VLADER—Direct Examination.

Q. How many? A. I got one.

Q. And two are dead? A. Yes, sir.

Q. How old is that child? A. Sixteen.

Mr. Weller: I object to the question on the ground that it is incompetent, irrelevant and immaterial. 10

The Court: I will overrule the objection.

Q. Do you work? A. Yes.

Q. How long have you been working? See whether you can get along in English. Have you been working for your living? A. Yes; I work for my living.

Q. How long? A. How long? Three years.

Q. Three years? A. Yes, sir. 20

Q. And during those three years has your husband also worked? A. What do you mean?

Q. Did your husband also work during the three years that you have been working?

Mr. Weller: I object to the question on the ground that it is incompetent, irrelevant and imaterial.

A. No; my husband no work; he is blind. 30

The Court: Wait a minute. What is the relevancy?

Mr. Walscheid: To show she is the bread winner of the family and that her standing is more seriously affected.

The Court: I will overrule the objection.

Mr. Weller: Allow me an objection.

The Court: Yes.

Q. What work have you been doing, Mrs. Vlader? A. Anything what I can have it. I go 40

MARIE STEFAN VLADER—Direct Examination.

out and I go in embroidery shop and take work from, and everything that I can do.

Q. You mean you do embroidery work? A. Now I work in embroidery, yes; I do embroidery.

10 Q. Up to July 1, 1914,—up to that time what kind of work had you been doing? A. Well, I go out in housework.

Q. Going out and doing housework? A. Yes, sir.

Q. Had you been doing housework for three years? A. Housework—three years? Yes. Three years I work all the time for me and for my house.

Q. Now, did you know Mrs. Klopman or Mr. Klopman before July 1, 1914? A. No; I never see; I never know; I never see that lady.

20 Q. When did you first meet them? A. On the second of July.

Q. 1914? A. Yes, sir.

Q. And where did you first meet them? A. In Mrs. Klopman's house.

Q. And how did you happen to go there to Mrs. Klopman's house? A. Mrs. Klopman sent a girl to me the first of July after ten o'clock night; and he told me that something was happen to the house.

30 Q. Something happened to the house? A. Yes; and Mrs. Klopman sent the girl to me, she can sleep in my house.

Q. To sleep in your house? A. Yes, sir; she sleep in my house. And then she tell me if I no go to Mrs. Klopman's and help the work.

Q. To do the general work in the house? A. Yes, sir; I have to work.

40 Q. And did you go down? A. And I go next morning; I go down with the girl and help two days; two days I work in Mrs. Klopman's house.

MARIE STEFAN VLADER—Direct Examination.

Q. You went there on the second of July? A. The second and the third of July; Thursday and Friday.

Q. Those were the only two days you worked in the house? A. Only two days; yes, sir.

Q. And what did you do in the house in those two days? A. We go in the cellar and take the plaster all out, in the kitchen, and we take the wash all out and take it upstairs in the back room and shake it out and hang it out on the grass. 10

Q. Had anything happened in the house just before you got there? A. What is that?

Q. Had anything happened in the house just before you got there, sometime before you got there? Had there been an explosion in the house? A. Yes; the girl told me there was a big explosion. 20

Q. So that the wall plaster was down in various rooms? A. Yes, sir.

Q. And in the cellar? A. No.

(Further examination through interpreter.)

Q. From now on you will speak German only. A. Yes.

Q. When you got to the house on July 2, 1914, describe how the house looked? A. Everything was exploded and everything turned topsy-turvy. 30

Q. And did you meet Mrs. Klopman that morning? A. I met Mr. Klopman that morning.

Q. And did you receive any directions on that day as to what you were to do? A. Yes, sir.

Q. What were you told to do? A. They told us to clean—to collect the plaster and take it outside.

Q. And what else were you to do besides that? A. We collected the plaster and took it outside. 40

MARIE STEFAN VLADER—Direct Examination.

Q. And what next were you to do? A. To sweep the yard and pick up all the glasses.

Q. And did you do that? A. Yes, sir.

Q. And did the servant girl help you? A. Yes, sir; yes, sir; she did help me.

10 Q. What else were you to do besides these things? A. We tok out the wash down the cellar, out of the dirt.

Q. And what did you do with the wash? A. We rinsed it out and dried it on the grass.

Q. Anything else that you did there on the second? A. That is all we did during the two days.

Q. During the two days? A. Yes, sir.

20 Q. Where is this house located? A. 34 Duer Place, Weehawken.

Q. And at the end of the two days what next did you do? A. It was then fourth of July came. We went home, and the next day, the fifth, was a Sunday.

Q. The fifth was a Sunday? A. Yes, sir.

Q. And did you take anything home with you from the Klopman house?

30 Mr. Weller: I object to the question on the ground that it is irrelevant and immaterial.

Mr. Walscheid: I withdraw the question.

Q. Did Mrs. Klopman come home before you left on the night of the third? A. She was at home.

Q. When did you first see Mrs. Klopman? A. The second of July.

Q. The second of July? A. Yes, sir.

40 Q. Then you saw Mrs. Klopman first and then Mr. Klopman? A. Yes, sir. I saw Mr. Klopman sitting in the front room and afterwards I noticed Mrs. Klopman in the kitchen room.

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Q. Yes. Now before you left on the night of the third to go home did Mrs. Klopman give you any instruction as to any further work that you were to do for her? A. Mrs. Klopman told me I should do up the wash with the girl in the house.

Q. When were you to do up the wash? A. She said she would send the wash Monday to the house, and then we should finish it. 10

Q. Now when did she say that to you, on what date? A. On the Friday evening.

Q. That is Friday evening, the third day of July? A. Yes, sir.

Q. And then did you go home? A. Yes, sir.

Q. And did she send up the wash? A. Yes, sir, on Monday.

Q. On Monday she sent up the wash? A. Yes, sir; on Monday morning the girl brought the wash. 20

Q. That girl sitting there? A. Yes, sir; and her name is Emma.

Q. Her name is Emma. And what did you do with the wash on Monday? A. Some of the wash was cleaned on Monday, or washed on Monday, the rest of it on Tuesday.

Q. After the wash was washed what next did you do? A. I ironed the wash.

Q. On what day did you iron the wash? A. On Tuesday afternoon, and during Wednesday and Thursday. 30

Q. Well what happened after that? A. Three policemen came in after this and asked if my name was—

Mr. Weller: Well, I object to what they asked.

Q. Three policemen came in. What time of day was it when the three policemen came in? A. After six in the evening. 40

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Q. And what were you doing at the time? A. I iron the rest of Mrs. Klopman's wash.

Q. Are any of these policemen here? A. Yes, sir; the one gentleman here.

10 Q. Did they show you any papers? A. No; they first asked me if I was Mrs. Vlader and I said yes.

Mr. Weller: I object.

Mr. Walscheid: I think it is material as part of the *res gestae*.

20 The Court: Is there anything harmful one way or the other as to asking her whether her name was so and so? The only thing she has answered is that they asked her whether her name was so and so. I will leave that stand as it is.

Q. Did you tell them that your name was Mrs. Vlader? A. Yes, sir; I told them "I am Mrs. Stefan Vlader."

Q. And what did they do then? A. They asked me where my husband was, and I told them outside in the yard.

Q. What next happened? A. Then they asked me "Where is Mrs. Klopman's wash? and I said "Right here" (indicating).

30 Q. Go ahead.

Mr. Weller: I object to it as hearsay, your Honor.

40 A. Then he told me I should enter—I should go into the room. I entered the room or went into the room. Then he asked me if I didn't take Mrs. Klopman's jewelry along amongst the wash. Then he told me I should dress myself and should go

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with him, and I asked him: "Where are you going to lead me to?" He took me out. He told me after a short while I could go home again.

Q. Did he show to you or read to you a warrant?

Mr. Weller: I object to it as leading, your Honor. 10

Mr. Walscheid: You admit the arrest and I just—

The Court: That is the reason I am not bearing down very strictly, because I understand this is practically all admitted.

A. Yes; he showed me a paper and said I should go with him and I could be back in a short time, and should not be afraid.

Q. How many policemen did you say were there? 20
A. Three.

Q. What time of night was it? A. After six o'clock; before seven.

Q. Between six and seven? A. Yes, sir. I know certain that it was after six o'clock.

Q. And what date was it? A. On a Thursday evening.

Q. On the Thursday following the fourth of July? A. Yes, sir.

Q. Well, did they take you out of the house then? 30

Mr. Weller: Well, now, I object then, if your Honor please. Let her tell what happened.

Mr. Walscheid: Strike out the question.

Q. After they showed you the paper and asked you to come along, what next happened? A. He got me in the car and took me quite a ways.

Q. "He took me in the car"? A. Yes; he took 40
me in the car and took me to a far place.

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Q. And how many went with you in the car?
A. One; to the car two went with me, but into the car one.

Q. Were any of these men in uniform? A. No, sir; they were in plain clothes.

10 Q. Then when they got you into the car where did they take you? A. They took me far away and then told me to go out of the car, leave the car.

Q. Did you know where you were? A. No; I didn't know where I was until I entered; then I knew where I was.

Q. Where were you when you first knew where you were? A. I knew I was in a court.

Q. And what happened to you there? A. They asked me what I had done with Mrs. Klopman's wash.

20 Q. And what else? A. I told them I had Mrs. Klopman's wash at home and they asked me if I didn't have any gold. I told them no, I had not seen any gold.

Q. And what happened next? A. Then he took me into another room and locked me up.

Q. In what did they lock you up? A. In an arrest.

Q. In an arrest? A. In a cell, in an iron rail.

30 Q. "I was locked up in a cell"?

The Interpreter: And she describes an iron railing.

Q. How long did you stay behind that iron railing? A. Near up to twelve o'clock that night.

Q. And then what happened to you? A. My husband had found out where I had been and he got me home.

40 Q. Did you have to go back there? A. Yes; next morning I had to return, at ten o'clock in the morning.

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Q. And what happened the next morning? A. The next morning I had to go to court.

Q. While you were in this cell did you see anything of Mr. and Mrs. Klopman? A. No, Mrs. Klopman.

Q. Mrs. Klopman? A. Yes, sir.

Q. Did Mrs. Klopman go to the cell? A. Yes, sir. 10

Q. Did she talk to you? A. Yes, sir.

Q. What did she say? A. She said I stole her wash and sold her wash.

Q. Stole the wash and sold the wash? A. Yes, sir.

Q. Well, tell us the conversation that took place at that time? A. Mrs. Klopman said to me: "Where is my wash?" I told her: "The wash is still at home." She asked me: "Why didn't you bring the wash back?" I told her: "Because it has not been ready yet." She said: "You have stolen my wash and sold my wash." Then she told me I had stolen that, and that, and her jewelry. She says I am a thief; "You go around, around, and steal around, around." 20

Mr. Weller: Well, I object to that, if your Honor please. I don't think there is anything of that kind alleged. 30

Mr. Walscheid: Well, there is a slander charge.

Mr. Weller: I know; but those are not the words used.

Mr. Walscheid: Then it is too late. You cannot take the benefit of the answer and then object to it. And it is material on the question of actual malice.

The Court: Go ahead.

Q. What did you say to her when she said you had stolen her wash and had stolen her jewelry?

A. I told her I had not stolen it, and the wash is not ready yet. "But the jewelry I don't know anything about it. I don't know what you are talking about."

10 Q. Now, what happened the next morning? A. During the time Mrs. Klopman was in front of the iron bar she told me I had stolen something at Doctor Hotwett—I can't pronounce it very good. I think it is Hotwett.

Mr. Weller: Well, now, I object to this, if your Honor please.

20 Mr. Walscheid: I didn't bring it out, but I object to counsel objecting after he has the benefit of the answer.

The Court: Let me hear the question and answer.

(Question and answer repeated by the stenographer.)

30 The Court: Of course, it would be pretty hard for counsel to object to the answer until he had heard it. You asked her what happened the next morning. Naturally, counsel on the other side would expect the answer would be—

Mr. Walscheid: Your Honor is right as to that.

The Court: Therefore, in that position counsel is entitled to the answer, and after it comes if it is not responsive he is entitled to object.

Mr. Walscheid: I move to strike it out.

40 The Court: Yes; it will be stricken out and the jury will disregard anything that is stricken out of the testimony.

MARIE STEFAN VLADER—Direct Examination.

Q. The next morning from your house where did you go? A. To Doctor Hotwett's house.

Q. To Doctor Hotwett's house? A. Yes, sir.

Q. And from Doctor Hotwett's house where did you go? A. I went to the court. Doctor Hotwett took me to the court.

Q. How did you go to the court? A. Doctor Hotwett took me to the court in his automobile. 10

Q. In Doctor Hotwett's automobile? A. Yes; in Doctor Hotwett's automobile.

Q. And who went with you? A. Doctor Hotwett, Mrs. Hotwett and the little boy.

Q. And when you got to the court in Doctor Hotwett's machine what happened to you there? A. When I left the car there stood Mr. Klopman and Mrs. Klopman. Mr. Klopman said to me— 20

Mr. Weller: Mr. Klopman?

A. Yes, sir.

Mr. Weller: Mr. Klopman is dead now.

Mr. Walscheid: I don't care to have it.

The Court: You won't press it. All right.

Q. Do not tell us what Mr. Klopman has said because Mr. Klopman is dead and is no longer defending this case. Tell us what Mrs. Klopman said. Did Mrs. Klopman say anything to you in front of the building? A. Yes, sir; she said to Mrs. Hotwett that I am the person and I stole the wash; that I had done everything. 30

Q. What did Mrs. Hotwett say to Mrs. Klopman at that time in your presence, if anything? A. She said she knows me too long and she would not believe that of me.

Q. Mrs. Hotwett said that? A. Yes, sir. 40

MARIE STEFAN VLADER—Cross Examination.

Q. And then you went into the courtroom? A. Yes, sir.

Q. Was there a hearing there? A. Yes, sir.

Q. And were you discharged? A. Yes, sir.

Q. Cross examine.

10 Cross Examination by Mr. Weller:

The Court: So I may have it exactly in mind, Mr. Walscheid, you have three counts. The first is for malicious prosecution.

Mr. Walscheid: The first is malicious prosecution. I imagine the next is assault and battery—not assault and battery, but false arrest, which amounts to technical assault and battery; then the third is—

20 The Court: Slander.

Mr. Walscheid: Slander.

Q. How long did you say you have been in this country?

Mr. Walscheid: If you will allow me to interrupt, if your Honor please, in view of the admission that there was a warrant and there was a complaint, the count for assault and battery naturally falls.

30

The Court: Or, as I have termed it, false arrest. That was the thought I had in mind when I asked you to make known your exact intention.

Mr. Weller: Then under the point Mr. Walscheid made at the time that I applied for this amendment it should have been allowed.

40

The Court: No. The amendment should be allowed? No, I think the failure of his—

MARIE STEFAN VLADER—Cross Examination.

Mr. Walscheid: I cannot prove it.

The Court: His failure to substantiate the second count was directly because of the authorities which you offered to me on the motion to amend; that is, assuming the magistrate who issues the warrant has no authority over that. It is out in the consideration of this case. That leaves it stand, then, for malicious prosecution and slander. 10

Mr. Walscheid: Yes.

A. Ten years.

Q. Where did you come from? A. From Austria-Hungary.

Q. I thought you said you had been here only six years? A. I live in one house only six years. 20

Q. You speak English, don't you? A. Not so very good.

Q. Haven't you been speaking English right along for years? A. No; I speak very little English.

Q. Didn't you speak English to Mrs. Klopman and all of the household there, and speak English very well? A. I haven't spoken hardly anything to Mrs. Klopman; I have done the work.

Q. Didn't you speak there in the house—didn't you speak good English? A. With Mrs. Klopman? 30

Q. Yes; in her home.

Mr. Walscheid: May it please the Court, I have no objection to counsel examining this witness in English and taking such English as he gets from her.

The Court: Is that satisfactory?

Mr. Weller: Yes; I would rather she would speak English. 40

MARIE STEFAN VLADER—Cross Examination.

Examination continued without interpreter.

Q. Where did you live before you lived in Guttenberg? A. In New York.

Q. What part of New York? A. 94th Street.

10 Q. Now, what day of the week was it when you were arrested? A. What?

Q. (Through interpreter.) A. The 9th of July.

Q. And didn't you go before Justice Bishop? A. No, sir.

Q. Did you go down to Weehawken that same night? A. Yes, sir.

Q. Is it not a fact that Justice Bishop bailed you out for hearing before Judge Rander the next day?

20 A. Mr. Bachman stood good. Mr. Hoffman and my husband took me home—Mr. Bishop.

Q. Where was it that you saw Justice Bishop?

A. In the court house where I was incarcerated in Weehawken.

Q. What time of day was it that Justice Bishop bailed you out? A. Between eleven and twelve.

Q. What time was it when you got down there? A. After six o'clock; but it had not reached the hour seven yet.

30 Q. And when you got down there how long did you sit outside and talk with the people? A. I don't think it lasted ten minutes.

Q. Now, the next morning you went from your home down there, did you? A. Yes, sir. I didn't go directly to the court; first I went to Doctor Hotwett's.

Q. Why did you go there? A. Because when I was arrested Mrs. Klopman said that I had stolen off Mrs. Hotwett.

40 Q. Did she say that Mrs. Hotwett had told her

MARIE STEFAN VLADER—Cross Examination.

so? A. No; she only told me that I go around the work—go around to steal.

Q. Now, the day you went down there first was the 2nd day of July—to Mrs. Klopman's home to work? A. Yes, sir.

Q. What time did you get there on that second day of July? A. I think it was already ten o'clock. First I went to my boy to the shop. 10

Q. And how long did you work there that day? A. Until about five or six o'clock.

Q. That day you worked downstairs all day, didn't you? A. Yes, sir.

Q. You worked in the parlor and the dining-room and the cellar? A. Yes, sir.

Q. And you cleaned up the plaster that had been jarred down by this explosion? A. Yes, sir. 20

Q. Miss Emma Gross worked with you there? A. Yes, sir.

Q. Now, the next day, the third of July, what time did you get down there? A. It was late; it may have been after eight o'clock.

Q. And what time did you quit that afternoon? A. About the same time, between the hours of five and six.

Q. The second day you worked upstairs, did you not? A. No; I didn't work upstairs. 30

Q. Were you upstairs the second day? A. No, sir.

Q. Weren't upstairs at all? A. I think I was upstairs on the first day arranging the washroom—in the bathroom.

Q. Will you say that you were not up there on the second day that you were there; that is on the third day of July? A. No, sir; I have not been upstairs. I think I was not upstairs. I do not know, but I do not think I was upstairs. I think I was not upstairs. 40

MARIE STEFAN VLADER—Cross Examination.

Q. Is it not a fact that you went upstairs and cleaned three rooms on the second day that you were there? A. No, sir; she only had attended to us the wash, the plaster and the glass.

10 Q. Is it not a fact on the second day you were there, which was the third day of July, you cleaned Mrs. Klopman's bedroom? A. No, sir.

Q. Is it not a fact that the same day you cleaned her daughter's bedroom? A. No, sir.

Q. Is it not a fact that you cleaned the sitting room on that day, upstairs? A. That is not true.

Q. That is not true? A. No.

Q. Lena Gross worked with you on the second day, didn't she? A. Lena Gross?

20 Q. Emma Gross. A. Yes, sir; we were working out on the street the second day.

Q. Will you say that you and Emma Gross together didn't work upstairs and clean these three rooms? A. No, sir.

Q. Is it not a fact that Mrs. Gerson, the lady on this side (indicating) was there on that day? A. I do not know her.

30 Q. Is it not a fact that that woman came upstairs while you were at the bureau and you said: "Lady, don't come in here. Go out!"? A. No, sir; that is not true. That is a common lie.

Q. What day of the week was the third day of July? A. On a Friday.

The Court: May I interrupt for a minute to inquire whether you gentlemen can say whether or not your case will be finished before one o'clock.

Mr. Weller: It is not possible.

40 The Court: No further cases will be moved before two o'clock.

MARIE STEFAN VLADER—CROSS EXAMINATION.

Q. At what time of the day did you quit on that third day of July? You did tell me and I have forgotten. A. Between five and six, on Friday.

Q. And you say it was on the following Monday when the wash was brought up? A. Yes, sir; it was on a Monday.

Q. Now, let me see. On this third day of July you said you were upstairs for something. What were you up there for? A. I was not upstairs. I don't think I was upstairs. Of course, we worked in the yard and on the streets.

Q. Well, don't you know that you were upstairs? A. I think I was not upstairs. Of course, we worked downstairs.

Q. And you were not upstairs at all in Mrs. Klopman's house? A. I was upstairs in the first day in the bathroom to arrange the wash.

Q. That was on the first day; that is, on the second of July? A. Yes, sir.

Q. You said that wash was sent up to your house the following Monday, didn't you—wait; she can understand this. You said that wash was sent up to your house the following Monday, didn't you? A. Yes, sir.

Q. Why did you arrange it, then, on the second of July? A. Because it was all full of mud and jelly, and it was full of dirt and we just rinsed it out a little bit and dried it on the grass.

Q. What part of the house were you in on that day? On Monday—no, on the second of July; that was not Monday; the second of July? A. In the front room, on the street, and on the porch to pick up all the glass.

Q. No; I mean where you arranged the wash. What room was that in where you arranged this wash? A. In the bath room.

MARIE STEFAN VLADER—Cross Examination.

Q. Where is that, right at the head of the stairs?

A. Yes; right when you come upstairs there is a small room; that is where the bath tub is, and we put it in the bath tub.

10 Q. You were in no other room except this one room? A. I was in the hall. I do not know about it. I was in the hall and the bath room, and I went downstairs and worked down in the room.

Q. Were you in the house on the third of July when Mrs. Klopman was hunting for her front door key? A. No, sir.

Q. Did you know that the mesh bag—the stolen mesh bag was missing on that day? A. No, sir.

Q. You didn't know anything about it? A. No, sir; nothing at all.

20 Q. On the third of July when you went home was everything cleaned up around the house? Was all the dirt taken up or not? A. The plaster was all swept up; it was not washed up; but all the plaster was taken away, swept away, but not washed up.

Q. Mrs. Klopman told you you need not come back to work, did she? A. Mrs. Klopman asked me if I wanted to do her wash on Monday in my house.

30 Q. I did not ask you that, lady. Didn't Mrs. Klopman tell you that you didn't need to come back to do any work in the house? A. No. The next day was the fourth of July and the following day was a Sunday, and she told me that she would send up the wash to my house on Monday morning.

Q. Now, you say when you were arrested you were taken in an automobile down to the Weehawken police station? A. Yes.

MARIE STEFAN VLADER—Cross Examination.

Interpreter: She said in the trolley car, excuse me.

A. The policeman took me up in trolley car.

Q. You say the policemen were not in uniform?

A. No; they were in civilian clothes. The three were in that.

10

Q. You simply dressed; they put no chains or anything on you? A. No, sir.

Q. And you rode along in the car? A. Yes, sir.

Q. Nobody in the car seemed to know you were under arrest?

Mr. Walscheid: I object to that as calling for a conclusion from this witness.

The Court: Well, how would she know?

Mr. Weller: Well, that is what I am asking her, if she does know.

20

The Court: You didn't ask her that.

Mr. Weller: Well, I will change it.

Q. Do you know whether anyone in the car knew you were under arrest? A. That I do not know.

Q. Now, when you were in this cell down in the police station you say Mrs. Klopman came there?

A. Yes, sir.

Q. Who was with her when she came to the cell? 30

A. She was alone, and the policeman, Mr. Nichols, stayed next to her.

Q. Is it not a fact that Mr. Rander was with her—Justice of the Peace Rander? A. That may be. I stood next to the door so I could not see; I haven't seen anyone else.

Q. You know Mr. Kenney, Gilmore Kenney there? A. Yes, sir; I know him. He lives there—I had worked for these people.

40

MARIE STEFAN VLADER—CROSS EXAMINATION.

Q. Wasn't he down there that morning? A. The next morning when I was in the court room?

Q. Yes. A. The next morning when I was in the court room; yes.

10 Q. I didn't ask anything about any court room. I asked if he did not go down to the cell.

The Court: That is it, whether it was at the time at the cell.

Mr. Weller: I didn't say the time at the cell first.

A. Which was it, the first day or second day? The second day I was also arrested.

20 Interpreter: Now the witness wants to know whether it was the first or second day when those two gentlemen were there.

Q. Were you in the cell twice? A. Yes, sir.

Q. Who had you arrested the second time? A. I do not know; but somebody had me arrested and they told me that they would send there to have my house searched. The little gentleman who sits there.

30 Mr. Walscheid: The Judge?

A. Yes, sir.

Mr. Walscheid: He sent you back into the arrest?

A. Yes, sir.

40 Q. Then he arrested you twice? A. I don't know whether I was arrested or what they did with me. I know I was under arrest again.

MARIE STEFAN VLADER—Cross Examination.

Q. The second time was on the complaint of Lena Gross, wasn't it?

Mr. Walscheid: I object because it is immaterial.

Mr. Weller: Well, now, she brought it out herself, or I would not have known about it. 10

The Court: How is it of any materiality in this case?

Mr. Weller: She has brought it out. I want to show—as it stands now the jury would be under the impression that Mrs. Klopman did it. Of course, that might give the jury the idea that there was malice.

The Court: Do I understand the witness to testify a second time she was put in this cell? 20

Mr. Walscheid: No; she testified in the morning the Judge sent her back into the cell and he kept her there, pointing out this individual, the Judge here, as having sent her back.

The Court: Well, find out about that first. I am free to say I do not understand the situation of this second morning. 30

Q. The next morning you were brought before the Judge? A. Yes, sir.

Q. Then you say after that you were arrested again? A. Yes; I was brought again in the cell, but for what I don't know. (She means the cell.) That is the room behind the irons bars.

Q. That was after your case had been tried? A. Yes; first we had a hearing, and then afterwards. 40

MARIE STEFAN VLADER—CROSS EXAMINATION.

Q. Is it not a fact that you were arrested at that time on complaint of the woman named Gross? A. No, sir.

Q. Didn't the Judge then send you home and make you give up the goods which belonged to one Lena Gross?

10

Mr. Walscheid: I object to that as irrelevant and immaterial.

Mr. Weller: I think it is very relevant.

Mr. Walscheid: This is merely cross examination of the witness collaterally, and collaterally he asked her whether she was arrested on complaint of so and so, and she says no. He is bound by that at this point, anyhow. It is collateral to this issue.

20

The Court: The only reason I can see why he might go into this issue further is this: that as it stands he may say that the jury may have in mind that this second arrest, if you wish to call it that—

Mr. Walscheid: He is not asking about arrests now. His question does not go to arrest. Will you read the question?

Q. (Repeated by the stenographer) Didn't the Judge send you home and make you give up goods that belonged to one Lena Gross?

30

Mr. Weller: That is to clear her of the second arrest.

Mr. Walscheid: That is what I object to as not relevant.

The Court: Well, there is no contending as to whether the second arrest even did take place, is there, Mr. Walscheid?

40

Mr. Walscheid: There is nothing in this case about it.

MARIE STEFAN VLADER—Cross Examination.

The Court: It seems to me that this is the way this matter can be settled and put at rest: that there is no contention in this case of this second arrest of this plaintiff on the part of this defendant; that if she were twice arrested the jury is not to take into consideration anything regarding the second arrest, because you are not contending that. 10

Mr. Walscheid: Oh, no.

Mr. Weller: I understand that, but, your Honor, she brought this out, and I think I have a right to find out everything about it.

The Court: What purpose can it serve in your matter?

Mr. Weller: Well, it will show the disposition of the woman. 20

The Court: She has shown that upon her examination up to that point; that the case was heard by the recorder, whatever title he had; that it was disposed of and she was discharged. Now it seems she has said that she was arrested and put in the cell the second time; that is, after that.

Mr. Weller: All right. I won't press it any further.

The Court: I will instruct the jury that that matter has no bearing in this case at all; that is, this second so-called arrest. 30

Q. Now, you say you went the next morning down to Mrs. Hotwart's house? A. Yes, sir.

Q. And Mr. Hotwart and his wife took you in the auto down to the police station? A. Yes, sir.

Q. Do you know whether they went there just to take you or did they go on the request of Judge Rander?

MARIE STEFAN VLADER—Cross Examination.

Mr. Walscheid: I object to that as immaterial.

Mr. Weller: The whole thing was immaterial. The other side put it in to show that Hotwart had perfect faith in her.

10 Mr. Walscheid: How is her knowledge of the reason which induced the Hotwarts to drive her down material to this issue? But they drove her down. I withdraw the objection to save time.

A. I went into Mr. Hotwett's and asked him why he had me incarcerated. He said he had not done so, and does not know anything about that,—

Q. Wait; don't answer any more.

20 The Court: Isn't she still answering your question?

Question and answer repeated by the stenographer.

A. I told him then my story.

Mr. Walscheid: "I told him what had happened the day before in the cell."

30 The Court: Well, you have asked her if she knows. Doesn't that open the door for the answer?

Question again repeated by the stenographer.

The Court: I am going to permit the answer.

Mr. Weller: Your Honor will allow me an objection.

40 The Court: You may have it. If the answer is not proper it will be stricken out.

MARIE STEFAN VLADER—Cross Examination.

A. I told him everything. Of course, Mrs. Klopman had told me when I was in a cell that I had stolen at Mrs. Hotwett's also, and that is the reason I asked it.

Q. I didn't ask for any reason.

Mr. Weller: I think your Honor didn't get the question. I asked if they took her down just to accommodate her or because Judge Rander sent her; if she knew which. She could have answered that by "yes" or "no," or she might have said that it was one or the other. I didn't call for her story. This is irresponsive. 10

The Court: Mr. Stenographer, you give the question again to the interpreter, and you (meaning the interpreter) put the question to her again. 20

Interpreter: I have the question.

A. I told him that I had been incarcerated, and then he said—

Mr. Weller: I object to this—

Mr. Walscheid: All right. "And then he said." 30

A. Then he said—

Mr. Weller: One moment! One moment!

The Court: Do you understand what she says? I don't. How am I going to pass upon it? I will hear the answer and I will determine what it is. If I could understand the answer I would be in position to pass upon it without her answering it in English. 40

MARIE STEFAN VLADER—Re-direct Examination.

A. I told Mr. Hotwett that I was incarcerated and what for and what had been told to me. Then I told him that Mrs. Klopman had told me when I was in the cell that I had stolen—

10 The Court: Well, now, Mr. Interpreter, you may stop there, because that is not in answer to the question. Now, listen, Mr. Interpreter, tell her to answer only the question put to her. Now read the question, Mr. Stenographer.

Q. (Repeated by the stenographer) Do you know whether they went there just to take you or did they go on the request of Judge Rander? A. That I do not know; that I cannot say.

20

Mr. Weller: Your Honor, I think that is all I contended for.

Q. Where were you when she told you that you had stolen something? A. She told me on the street, and when I was in the cell.

Q. Who was on the street when she told you this? A. Doctor Hotwett and Mrs. Hotwett.

Q. That is all.

30

Re-direct Examination by Mr. Walscheid:

Q. Mrs. Vlader, you said nobody knew you were arrested? A. I don't know, but next day the papers brought it twice.

Q. The newspapers had your arrest in them the next day?

40

Mr. Weller: I object unless she produce the paper. Even then I do not think that that is evidence in this case.

GEORGE RANDER—Direct Examination.
 MARIE STEFAN VLADER—Recalled, re-cross.

Mr. Walscheid: All right I will do that.

Q. Are these the stories that you saw in the paper the next day? A. Yes, sir; yes, sir.

Mr. Walscheid: I offer them in evidence. 10

A. That is what I have saw. My boy had shown it to me.

Q. Your son showed it to you? A. My son was crying and said: "I can't go out on the street."

Mr. Walscheid: I offer these newspaper clippings in evidence.

The papers were received in evidence and marked Plaintiff's Exhibit 1. 20

Witness excused.

GEORGE RANDER, sworn.

Mr. Weller: There is one question I forgot to ask of the complainant.

Witness excused for the present.

MARIE STEFAN VLADER, recalled: 30

Re-cross Examination by Mr. Weller:

Mr. Weller: I will ask one question now, your Honor, of the plaintiff for the purposes of contradiction.

Q. Did you say while you were under arrest in the court house, in the presence of Mr. Gilmore 40

MARIE STEFAN VLADER—Recalled, Re-direct

Kenney: "I can tell Mrs. Klopman who has her things?" A. No, sir.

Q. That is all.

Re-direct Examination by Mr. Walscheid:

10 Q. Mrs. Vlader, did you in fact steal anything from Mr. and Mrs. Klopman?

Mr. Weller: One moment. I object to the question on the ground that it is immaterial.

The Court: Why is it immaterial?

Mr. Walscheid: The case of Dewdrop—

The Court: The burden is on the plaintiff to show that this was done without probable cause.

20 Mr. Walscheid: Rudolph vs. Dewdrop, is the reason why I ask this question. (Referring to case.)

The Court: That is for false arrest.

Mr. Walscheid: No; this is malicious prosecution. "From falsity of the affidavit on which an arrest was procured malice and want of probable cause may be inferred." (66 New Jersey Law.) In other words, I want to show the falsity of the affidavit.

30 The Court: To save time suppose I withhold that ruling until I look this up. You can call your witness back.

Mr. Walscheid: All right.

The Court: Now, what is the case?

Mr. Walscheid: 66 Law, 620.

The Court: Let the witness stand aside for the present and go on with your next witness.

40 Witness withdrawn for the present.

MARIE STEFAN VLADER—Recalled, re-cross.

GEORGE RANDEK, recalled.

Mr. Weller: One more question.
Witness excused for the present.

MARIE STEFAN VLADER, recalled:

10

Re-cross Examination by Mr. Weller:

Q. Is it not a fact that Mrs. Hotwett was a witness in the police court before Judge Rander against you? A. I do not know.

Q. Is it not a fact that she swore there in your presence—Mrs. Hotwett? A. Mrs. Hotwett swore that she knew that I didn't take the things.

20

Q. Didn't she swear that she had missed things after you had been working there for her?

Mr. Walscheid: I object to that as immaterial and irrelevant and not within the range of cross examination.

Mr. Weller: This is cross-examination, of course. She has gone on the stand and sworn that Mrs. Klopman said to her in the presence of Mrs. Hotwett: "You stole my clothes and sold them;" and Mrs. Hotwett answered: "No, that is not so; I have known her too long for that. I don't believe that."

30

The Court: And you are using this testimony for what purpose?

Mr. Weller: For the purpose of contradicting this woman, of shaking her testimony, discrediting her. She has a count in here for slander. She swore that we ac-

40

MARIE STEFAN VLADER—Recalled, re-cross.

cused her outside of stealing clothes and that Mrs. Hotwett struck up and said: "I don't believe that. I have known this woman too long."

The Court: Let me hear the question.

10 Q. (Repeated by the stenographer) Didn't she swear that she had missed things after you had been working there for her?

Mr. Walscheid: Now, that is after the arrest, after the cause, whatever it may have been, has accrued.

Mr. Weller: No, it is not after the cause of slander, your Honor.

Mr. Walscheid: It doesn't go to slander.

20 Mr. Weller: It does go to slander; it goes to the credit of this witness.

Mr. Walscheid: I withdraw the objection.

The Court: All right.

Q. (Repeated by the stenographer) Didn't she swear that she had missed things after you had been working there for her? A. Mrs. Hotwett swore that I did not know them and had never stolen anything in the house.

30 Q. I didn't ask you that.

Mr. Walscheid: That is the answer.

Q. Didn't she swear on the stand that she had missed things after you had worked there? A. That—I don't know anything about that.

Q. Well, did she swear so or didn't she? A. I know that she had sworn—

40 Mr. Walscheid: "I only know," she said; "I only know."

GEORGE RANDER—Recalled, direct.

A. Mrs. Hotwett said that even if she missed anything I had not taken it, and she has sworn to it.

Q. The question was, didn't she swear that she had missed things from her house while you were working there? A. No, sir; that she did not swear to this; she has sworn to it that I was no thief.

10

Witness excused.

GEORGE RANDER, recalled.

Direct Examination by Mr. Walscheid:

Q. Mr. Rander, where do you live? A. 32 Clifton Terrace, Weehawken.

20

Q. And do you hold any official position in the Town of Weehawken? A. Yes, sir; Justice of the Peace or acting recorder for the township.

Q. How long have you acted as such? A. Really two years the last term.

Q. Did you on the 9th day of July, 1914, issue a warrant for the arrest of Marie Stefan Vlader? A. I did; yes.

Q. And did you issue such warrant upon the complaint of Lillian Klopman? A. Yes, sir.

30

Q. Have you the warrant and the complaint with you? A. No. I am exceedingly sorry; I took the wrong book with me. I thought I had it packed in and it seems somebody packed in another book.

Q. You brought the wrong book with you? A. No; I have them all.

Q. But you have the wrong book with you? A. I brought the wrong book over; but I know the whole—

40

Q. Was that warrant given to an officer of the township of Weehawken for execution? A. The warrant was issued in my house.

Q. Was it given to an officer of the township of Weehawken for execution? A. It was given to Officer Quigley, of the Weehawken police force.

10 Q. And was the warrant executed? A. I believe it was.

Mr. Weller: Of course, this is all a matter of record.

A. I presume it was, but the party was arrested the next day.

Q. And was there a hearing had before you? A. Yes, sir.

20 Q. And was the defendant in that hearing discharged? A. Yes, sir.

Mr. Walscheid: Cross Examine.

Cross Examination by Mr. Weller:

Q. You say this warrant was issued at your house? A. Yes, sir.

Q. Where is that, Judge? A. My house?

Q. Yes. A. 32 Clifton Terrace, Weehawken.

30 Q. Under what circumstances was this warrant issued? A. It was—

Mr. Walscheid: I object as to the circumstances, being immaterial.

The Court: By "what circumstances" do you mean was there a sworn complaint, etc.?

Mr. Walscheid: That is in evidence.

40 Mr. Weller: Well, that is one thing that I mean; yes, sir. I want to show there was reasonable, probable cause why he issued it.

GEORGE RANDER—Recalled, cross.

The Court: Well, reasonable, probable cause for this Magistrate to issue it?

Mr. Weller: Yes.

Mr. Walscheid: The complaint is the cause of that.

The Court: I do not see how that goes to— 10

Mr. Weller: If the Magistrate had reasonable, probable cause, under that one case there then the—

The Court: That is, for false arrest, Mr. Weller, and where the action was brought against the Magistrate as one of the parties chargeable with the false arrest. But that count in this action has been abandoned. We are standing now upon the count of malicious prosecution. 20

Mr. Weller: I say the question of probable cause is just the same in one as in the other.

The Court: No; I do not. I do not understand that is what the cases hold. If you say you propose to show probable cause for this Magistrate to issue this warrant—

Mr. Weller: Yes.

The Court: I do not think, then, it is relevant in this case at all. I suppose his probable cause would be that he had a complaint in proper form, and setting up those facts which would constitute a crime; he would then be warranted in having issued a warrant for the apprehension of the party charged, wouldn't he? 30

Mr. Weller: Yes, he would; it is according to what that warrant is. That warrant is not before your Honor. It ought to be 40

here. The warrant is simply that she has reason to suspect; that is all that warrant is, and I ask that that warrant be produced here, and the complaint be produced.

The Court: Well, that does not settle this question.

10

Q. (Repeated by the stenographer.) Under what circumstances was this warrant issued?

The Court: I do not see how that question can be put. I do not see how it goes to the point of your situation, if I understand it. I will sustain the objection to it in its present form.

20

Mr. Weller: Your Honor will allow me an objection. I may be wrong but I want the record to be straight.

The Court: You may have it.

Q. Who was at your house at the time the warrant was issued?

Mr. Walscheid: That is immaterial. It is another effort to produce the same matter.

30

The Court: What is the purpose of it? Same as before?

Mr. Weller: Same as before.

The Court: How do you intend to proceed then, after finding out who was present? What was said?

Mr. Weller: Yes, sir; what he did, whether he inquired into the facts, whether or not he took affidavits, or an affidavit of one witness, at least, this Mrs. Klopman, before he issued the warrant. You see, if your Honor please—

40

GEORGE RANDE—Recalled, cross.

The Court: That goes really to justifying the act on the part of the Magistrate only, doesn't it?

Mr. Weller: No, no.

The Court: As a basis for his determination as to whether or not he should issue a warrant in his official capacity; to determine whether or not it was right or proper for him to issue a warrant. 10

Mr. Weller: No, your Honor.

The Court: The justification or reasonable cause upon the part of the complainant?

Mr. Weller: That is just exactly what I want to show, probable cause on the part of the complainant.

The Court: But how can you get that from this witness? 20

Mr. Walscheid: And isn't it an affirmative defense?

Mr. Weller: That may be. Of course, I didn't want to keep Judge Rander here, and I will have to do it.

The Court: It does not strike me that it is relevant, not at present.

Mr. Weller: At present it may not be.

The Court: Then I guess you would better keep it in proper order and proper sequence, Mr. Weller, otherwise we are going to be confounded. I will sustain the objection at this time because I do not think it is relevant at this time, in this shape. 30

Mr. Weller: Well, I won't ask the Judge any questions, then; no questions now. You must not go away.

Witness excused.

CHRISTAIN BRADT—Direct Examination.

CHRISTAIN BARDT, sworn.

Direct Examination by Mr. Walscheid :

10 Q. Mr. Bardt, on July 9th and 10th, 1914, were you a police officer of the Town of Guttenberg? A. Yes, sir.

Q. Did you at that time know Officer Quigley of the township of Weehawken? A. I didn't know him until that night, he came with the warrant.

Q. And where did he come to? A. He came to the Captain of Police.

Q. Captain of Police at the station house? A. No; the captain's house.

20 Q. Yes. And how did you happen to meet him? A. I was with the captain at the time, in his house.

Q. Then did you go with Officer Quigley? A. Yes, sir.

Q. Where to? A. To Mrs. Stefan's house.

Q. Where was that? A. No. 12 Adams Street.

Q. And what time did you get there? A. Well, between six and seven; I think it was about a quarter after six.

Q. And who else was with you? A. Officer Bostwick.

30 Q. Officer Bostwick of the Guttenberg police? A. Yes, sir.

Q. Both of you men at that time were generally known to be policemen in that town? A. Yes, sir.

Q. And tell us what happened after you got in to the house. A. When we got there we asked—Mrs. Stefan Vlader was there ironing some wash—

40 Q. (Interrupting) She was ironing some wash? A. Yes, sir; and I asked her was her name Mrs. Stefan, something like that, and she said yes. So I told her that Officer Quigley from Weehawken

CHRISTAIN BRADT—Cross Examination.

had a warrant for her, and she was so surprised she didn't know what to make of it.

Mr. Weller: I object to that.

Mr. Walscheid: It may be stricken out.

The Court: It may be stricken out.

10

Q. Go ahead. A. I took the warrant off Officer Quigley and read it to her, and told her she was under arrest, and she said she would get dressed. She went into another room and dressed herself, and Officer Bostwick was there at the time, and Officer—I went away; I had to go home, and I left Officer Bostwick and Mr. Quigley.

Q. And that is the last you know of it? A. That is the last I know of it.

20

Mr. Walscheid: That is all.

Cross Examination by Mr. Weller:

Q. You treated her very kindly while you were there, officer? A. Yes, sir.

Mr. Weller: That is all.

Witness excused.

30

Mr. Walscheid: That is the case with the exception of the one question I want to ask.

The Court: Now, Mr. Weller, I think there is the one question left open; that is the question you put to the plaintiff as to whether or not she had taken the goods in question.

Mr. Walscheid: I urged that because in the case I referred to, there is a want of probable cause and malice.

40

MARIE STEFAN VLADER—Recalled.

10 Mr. Weller: Before that can be put in I think the complaint should be put in. It does not show the falsity, because all this woman swore to in that complaint was that she had reason to suspect. How will this show what she said was false—if this woman didn't steal or did steal these things? She has sworn that she had reason to suspect.

The Court: I am inclined to permit the question to be answered.

Mr. Walscheid: I will recall the plaintiff.

Mr. Weller: Now, what will you rule about the complaint coming in here?

The Court: I am not ruling on that at all; it has not come to me yet.

20 Mr. Weller: The other side should put in that complaint, then.

The Court: Wait till they close their case.

 MARIE STEFAN VLADER, recalled.

Re-direct Examination by Mr. Walscheid:

30 Q. Did you in fact steal anything at any time from Mr. Klopman or from Mrs. Klopman?

40 Mr. Weller: Now, I object to the question on the ground that the complaint in this case actually shows that on or about the third day of July somebody stole a diamond necklace with a coral setting—I mean a gold rope necklace with a coral setting, a gold bracelet set with corals, and that she had reason to suspect that the defendant—the

plaintiff in this case—was the person who had taken them.

The Court: Well, even so, Mr. Weller, would that change the situation?

Mr. Weller: Why, yes. How could her swearing that she did not steal these things show malice on the part of Mrs. Klopman? How could it show that she made a false affidavit? It does not show that she made a false affidavit. Her affidavit was absolutely true.

10

The Court: I do not understand, it is urged for that particular purpose, but it raises an inference of malice, her counsel propounding the question urges, if it be shown that the act complained of was in fact not committed.

20

Mr. Weller: Now, if this woman had sworn that this woman had stolen them—

The Court: Then do you think that one can protect himself by simply saying that he has reason to believe that John Smith did so and so?

Mr. Weller: No. It is not a question of protecting himself. It is a question of whether or not Mrs. Klopman swore truly when she swore that she had reason to suspect her. Now, if she did swear truly, then they are not going to show by her swearing that she did not take them, that Mrs. Klopman swore falsely. Therefore, they are not going to raise any question of malice as against—

30

The Court: Well, how is the question, therefore, whether or not the defendant in this action swore truly to be determined, by

40

Motion to Non-Suit.

the workings of her own mind? That is, that she did have a belief, whether it was founded on anything in fact or not; that she did have a belief?

10 Mr. Weller: No. We can show whether this woman took them or whether someone else took them. If she had reason to believe that this witness took them then she had reasonable, probable cause to make the arrest. Mrs. Klopman was only a state's witness. It does not matter who took them, if they were in fact stolen. We can show beyond any question of doubt that they were stolen by somebody.

20 The Court: I will overrule the objection, however.

Mr. Weller: Your Honor will allow me an objection.

Q. (Repeated by the stenographer.) Did you in fact steal anything at any time from Mr. Klopman or from Mrs. Klopman? A. I didn't steal anything, nothing at all, not a piece.

Witness excused.

30 Mr. Walscheid: I rest.

MOTION TO NON-SUIT.

40 Mr. Weller: If your Honor please, I ask at this point for a non-suit on the ground that the record in the case has not been put in by the plaintiff. There is nothing in the case to show what it was that Mrs. Klopman swore to. There is nothing in the case so far as it has been presented to show that she

Motion to Non-Suit.

swore to something that was false or malicious, and there is nothing before the Court, and I ask for that reason for a non-suit.

Mr. Walscheid: Excepting the pleadings.

The Court: That is what I had in mind all the way through.

Mr. Walscheid: That is what I am trying my case on. 10

Mr. Weller: I don't know whether the complaint issued by Judge Rander, justice of the peace, was the complaint set forth in our pleadings or not.

Mr. Walscheid: He says so.

The Court: The plaintiff says that on a certain day a certain complaint was made and a warrant issued, and this plaintiff was apprehended and arrested. 20

Mr. Weller: What is there here to show that is the same one?

The Court: (Reads answer.)

Mr. Walscheid: And they admit the hearing, the testimony and the discharge.

Mr. Weller: No. There is nothing to show that that is the same warrant. They say that it was a warrant for stealing in due form of law. 30

Mr. Walscheid: So do you.

Mr. Weller: No. We say it was a warrant issued on suspicion, and that we made the complaint; and we didn't tell the justice of the peace to issue the warrant; he issued it himself.

Mr. Walscheid: Of course, he did. He swore it was issued at their request.

The Court: I do not quite see the distinction you are trying to draw. I tried to get 40

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10 it from you before. What do you conceive is the distinction, or would be a legal distinction between a positive statement in a complaint affidavit that John Jones did steal certain goods and chattels, and a statement that you had taken from your possession or stolen from you certain goods and chattels and you have reason to believe that John Jones did steal and carry them away? What is the difference?

20 Mr. Weller: There is this difference: If I go and swear that John Smith stole something and I don't know whether he did steal it or whether he didn't steal it, and on my own volition set the law in motion, that is one thing. But if I go before a justice of the peace who is clothed with power to issue a warrant, as it is the public duty of every one of us when a crime has been committed—if I go before him and swear that I have had certain articles stolen from me; that I have reason to suspect so and so, and lay before him the facts, then it is for the magistrate to say. In one case the party may be malicious; in the other case he is merely doing a public duty upon which the officer acts of his own volition.

30 The Court: So then according to your own definition all he need to do to perform his public duty and his duty to himself would be to use the language which you say is used in this complaint, and thereby he automatically shifts the burden of responsibility from himself to the officer issuing the warrant.

40 Mr. Weller: To the State. That is done

LILLIAN KLOPMAN—Direct Examination.

every day. Your Honor wouldn't say if this woman lost these jewels—and we will show that she did—your Honor wouldn't say that it was not her duty to go to a magistrate and disclose this theft. If somebody had robbed your Honor's house you would do that. You would go before a magistrate; you would report it to the police. The police then would take such action as they saw fit. If they arrested a man on your statement that you thought someone had them; that this man had been in your house and just after he went away you missed them,— why, the police would go and arrest this man on suspicion. They should not be held. You should not be held. If a party were making an arrest for himself, that would be one thing; but the party is only a witness for the state.

The Court: I have never so understood it, Mr. Weller. I will deny the motion for non-suit at this time. I may change my mind as to whether a sufficient showing has been made in this case later on; but at present I will deny your motion to non-suit.

Mr. Weller: Your Honor will allow me an objection.

DEFENDANT'S CASE.

LILLIAN KLOPMAN, sworn.

Direct Examination by Mr. Weller:

Q. Mrs. Klopman, where do you live? A. 34
Duer place. 40

LILLIAN KLOPMAN—Direct Examination.

Q. Did you live there on the third day of July, 1914—last year? A. Yes, sir.

Q. Whom were you living there with? A. My family.

Q. Consisting of whom? A. A son and my daughter and husband.

10 Q. Your son and daughter? A. And my husband.

Q. I see. How old are your son and daughter? A. One is seventeen and the other is fifteen.

Q. On the first day of July, where were you? Were you at home? A. No; I was at Rye; Rye, N. Y.

Q. And did you come home on that day or the next day? A. I don't remember whether I came back on the first or the second; I think the second.

20 Q. What time did you get home? A. Why, I think before lunch time.

Q. In what condition did you find your house when you got home? A. All to pieces.

Q. What do you mean by that? A. Foundation gone, walls gone, furniture destroyed.

Q. Had you a servant girl in your employ at that time? A. Yes, sir.

Q. Who was that servant girl? A. Emma Gross.

30 Q. How long had she been with you? A. Over a year.

Q. During that year had you ever had reason to suspect her of dishonesty?

Mr. Walscheid: I object to it as immaterial.

Mr. Weller: I think it is very material.

The Court: Why?

40 Mr. Weller: It shows if this girl was honest the reasonable, probable cause to suspect the only other person in the house.

LILLIAN KLOPMAN—Direct Examination.

Mr. Walschied: If your Honor will look at the case of Spencer versus Anness, 32 N. J. Law, page 100, it absolutely settles this point. If it is necessary—

Mr. Weller: What does it say?

Mr. Walschied: What he is trying to produce now is an inference of probable cause from the proximity of this plaintiff to the scene of supposed event by eliminating others and bringing this person into the proximity of it. That is not evidence. 10

The Court: For the present I will sustain the objection.

Mr. Weller: Your Honor will allow me an objection.

The Court: I will pass upon it later. Just keep it in mind. 20

Q. When you came down from Rye who came with you? A. My uncle, Mrs. Gerson and Mr. Kenney and myself.

Q. Mr. Gilmore Kenney? A. Yes, sir.

Q. Is the lady here, Mrs. Gerson? A. Yes, sir.

Q. You say you found the house in a very bad condition? A. Yes, sir.

Q. Did you ask your servant girl to employ someone to assist in cleaning the house? A. Yes, sir. 30

Q. Did she get someone? A. Yes, sir.

Q. Who did she get? A. Mrs. Marie Stefans.

Q. Had you ever seen Mrs. Stefans before? A. No.

Q. And she came there on the morning of the second; that is true, is it not? She says she did. A. Yes.

Q. And where did she work the day of the second? A. Downstairs. 40

LILLIAN KLOPMAN—Direct Examination.

Q. What did she do that day? A. Why, she was not allowed to touch any of the furniture or move anything; just swept up the plaster and the glass.

Q. Anyone assist her? A. I think Emma helped her.

10 Q. And what time did she quit that day? A. At the usual time, between five and six.

Q. Did she come back the next morning? A. Yes, sir.

Q. What time did she get there that day? A. Why, I don't know exactly the time; perhaps before I came downstairs.

Q. And where did she work that day? A. Upstairs.

20 Q. What did she do upstairs that day? A. She cleaned my room; she cleaned my daughter's room, and she cleaned the sitting-room.

Q. Did you at that time have any valuables or jewelry in your room,—your daughter's room? A. Yes.

Q. What did you have in your room? A. I had in my room my bag.

Q. What do you mean by that? A. A silver bag.

Q. That is the mesh bag? A. Yes, sir.

30 Q. Yes? A. My money I had with me. In my daughter's room was the bracelet and necklace.

Q. What kind of bracelet and necklace were they? Just describe them. A. Well, it was what they call old gold and coral, coral rosettes; it was an antique, had been in the family many years.

Q. And a diamond pendant? A. A diamond pendant set in the rose.

Q. I see. And what kind of a bracelet did you have? A. The bracelet was the same, set with rosettes.

40 Q. What time of the day was it that this Mrs.

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Vlader worked upstairs? A. She started in the morning upstairs.

Q. What time did she quit there? A. The second day I discharged her at four o'clock.

Q. At four o'clock? A. At four o'clock.

Q. Now, did you have occasion—well, I withdraw that question. 10

Q. When did you last—I withdraw that one.

Q. When did you miss your mesh bag and your bracelet and coral necklace; what time of day? A. I didn't miss the bag, I think, until after lunch early.

Mr. Walscheid: When?

A. After lunch between one and two o'clock.

Q. How did you happen to look for the bag? A. Because my front door key—my husband had gone to the fire house and the front door key—at least, my door was closed and I had to frequently open the door, and my son asked for my key which was in the silver bag. I went to look for the silver bag. It was gone. 20

Q. Then did you look for the other jewelry? A. Not just at that time.

Q. Why? A. Because I thought—

Mr. Walscheid: I object. 30

A. Because I thought I had misplaced it.

The Court: What is the materiality?

Mr. Weller: It is not very material.

The Court: Well, if it is not material—

Mr. Weller: It may be somewhat material.

Q. Did you afterwards look for your bracelet and necklace? A. Yes. 40

LILLIAN KLOPMAN—Direct Examination.

Q. What time of day was that, do you recall? A. That was after lunch.

Q. What? A. After lunch.

Q. What time after lunch? A. Well, between one and two.

10 Q. Did you find it? A. No.

Q. When had you seen the bracelet and the necklace before that? A. The morning that I came home from Rye, the 1st.

The Court: That was July 1st?

A. Yes, sir.

Q. Had you seen it on July 2nd? A. No.

Q. Had you seen it on July 3rd? A. (No answer.)

20 Q. When had you seen the mesh bag before? A. Why, I brought it down with me from Rye; I had it with me. I saw it on the first day; it was gone the second day.

Q. The second day or the third day? A. The second day I came home.

Q. Mrs. Vlader, the plaintiff, worked for you two days? A. Yes, sir.

Q. Those were the second and the third days of July? A. Yes, sir.

30 Q. It was the third of July that you discharged her? A. Yes, sir.

Q. It was the third day that you missed the bag? A. Yes, sir.

Q. That is the second day that you were home? A. That is the second day that she was there.

Q. That she was there? A. Yes, sir.

Q. Did you ask her anything about them? A. No.

40 Q. Did anyone tell you anything; or did anyone tell you anything about them? A. Yes, sir; In the

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morning—it was before lunch. My cousin went upstairs—

Q. (Interrupting) Don't say "my cousin;" say whom. A. Mrs. Gerson; and she saw this woman at my bureau drawers.

Mr. Walscheid: I object.

10

Q. That is, she told you this? A. Yes. With the drawers open—

Mr. Walscheid: I object.

Mr. Weller: This goes to reasonable, probable cause, absolutely.

The Court: Why, do you object?

Mr. Walscheid: I withdraw the objection at this time.

20

A. She said: "Lil, I don't like this woman you have here." She said: "If you have anything of value go upstairs and lock the bureau drawers." I said, "Oh, Fanny, I have nothing else to lose."

Mr. Walscheid: I object to what she answered to what was told her.

The Court: Isn't it of inconsequence as far as the case is concerned?

30

Q. Well, when you looked for these things were they gone? A. Yes, sir.

Q. Have you ever found them since then? A. No.

Q. What did you do that afternoon as to Mrs. Vlader? A. You mean the first or the second?

Q. The second day that you missed these things?

A. I dismissed her.

40

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Q. What did you say to her? A. I merely told her not to work any more that day—do no more work.

Recess to two o'clock p. m.

AFTER RECESS.

10

Q. You say that you came home from Rye July —on the 2nd? A. Yes, sir—no, I came home on the first, I think.

Q. In the afternoon? A. Yes, sir; in the afternoon.

Q. And this woman came there to work on the second? A. Yes, sir.

20 Q. Now, you said in answer to a question I asked you that when you came home from Rye you saw this jewelry. A. Yes, sir.

Q. That is the bracelet and necklace. When did you last see it, the last time? A. The next day was the last day. The second day that I was home.

Q. The second day that you were home? A. Yes.

The Court: Now, you mean that was on the second of July or third of July?

30

A. The second of July.

The Court: You came home on the first and therefore the second day you were home would be the second?

A. Yes.

Q. Now, she worked there on the third. Did you see it there on that day? A. No.

40

Q. Are you sure of that?

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Mr. Walscheid: I object to that.

The Court: She has answered the question.

Mr. Weller: She is a very nervous woman, your Honor.

Q. What was the last day that Mrs. Vlader worked for you? A. The third. 10

Q. On the third of July? A. Yes, sir.

Q. Did you see it on that day?

Mr. Walscheid: I object. The witness has answered that question.

A. In the morning I saw it.

Q. In the morning of the third? A. Yes, sir; in the morning of the third. 20

Q. What time in the morning of the third did you see it? A. Well, I could not just tell the time; it was before lunch.

Q. You say Mrs. Vlader was working upstairs that day? A. Yes, sir.

Q. Who was working up there with her? A. Emma.

Q. The servant girl? A. Yes, sir.

Q. You told me how long— 30

Mr. Weller: I have proved that, haven't I, Mr. Walscheid?

Mr. Walscheid: I don't know what you proved.

Q. How long had Emma worked for you at that time? A. Over a year.

Q. Now, it has been testified that after this time you sent clothing up there to be washed. A. After I discharged her? 40

LILLIAN KLOPMAN—Direct Examination.

Q. Yes. A. I had a reason for it.

Q. What was the reason of it? A. I suspected the woman and I told Emma to look for my stuff at her house and she took the wash up there.

10 Q. Did you tell her down at the police station in front of Mrs. Hottwett that she was a thief; that she had stolen your wash and sold it? A. No, I wasn't thinking of the wash.

Q. She says you did tell her that in the presence of Mrs. Hottwett and Mrs. Hottwett said to you: "Oh, I don't believe that. This woman worked for me and I always found her honest." A. Mrs. Hottwett didn't tell me that.

Q. Well, did she say that in your presence? A. She did not.

20 Q. Or to you? A. She did not.

Q. Did she go on the stand as a witness? A. Who, Mrs.—

Q. Hottwart? A. Yes; she testified.

Q. What did she testify to?

30 Mr. Walscheid: I object to that as immaterial. Counsel has before attempted to get some information upon that point from the plaintiff and the plaintiff answered. It is collateral to this issue and he is bound by that answer.

The Court: Well, the only purpose of the testimony as it was first asked of the plaintiff witness was to lay a foundation for contradiction, wasn't it?

Mr. Weller: No, sir.

The Court: And what has she answered—

Mr. Weller: No, not this. There was a question I asked before—

40 Mr. Walscheid: Her answer, as I remember it, ran along these lines—

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Mr. Weller: His Honor is asking me.

The Court: Anybody that knows.

Mr. Walscheid: Go ahead; you tell it.

The Court: I don't want to go into testimony on that score. I want to know distinctly and plainly from you whether your offer of that testimony wasn't for the purpose of laying a foundation to contradict the witness? 10

Mr. Weller: No.

The Court: What was it? I mean then, when you were cross examining the plaintiff.

Mr. Weller: No; it was not on cross examination that she said this. She said it on her direct examination. 20

Mr. Walscheid: I haven't asked her about it.

Mr. Weller: Yes, your Honor. She tried to prove a case of slander also.

The Court: That is true.

Mr. Weller: She said Mrs. Hottwett took her down there—

Mr. Walscheid: That is in the street.

Mr. Weller: Took her down to the police station. 30

The Court: I remember all that. You have asked this witness regarding that. There has been no objection and there could be none. Now you are going back to the question of what this same woman, Mrs. Hottwett, or whatever the name is, testified to in the hearing before the recorder. Now, as I remember it, you asked on cross examination of the plaintiff witness something on that same point. 40

Mr. Weller: Yes, I did.

The Court: Wasn't the purpose of that cross examination to lay a foundation to contradict the plaintiff?

Mr. Weller: Certainly.

10 The Court: Now what did the plaintiff witness say? Did she say "I don't remember what she said?"

Mr. Walscheid: No; the plaintiff witness gave her recollection of what she did say; namely: that she had not heard this—heard Mrs. Hottwett say what Mr. Weller was asking her; but that she had heard her say something else, words to the effect that she had been with her so long in her employ that she, Mrs. Hottwett, was satisfied that she was
20 not a thief.

Mr. Weller: And finally came right down to answering the question in the negative.

Mr. Walscheid: My contention is this on my objection, if your Honor please: that whether she said yes or no, or whether Mr. Weller desires to contradict her or not, it is irrelevant to the issues in this case.

Mr. Weller: May it be relevant—

30 The Court: Well—

Mr. Weller: Well, now, just wait, if your Honor will hear me through. She said after she came out of the police court, this woman accused her of being a thief.

The Court: True.

Mr. Weller: She said Mrs. Hottwett then spoke up and said: "I don't believe that; this woman has worked for me and I have found her honest," or words to that effect.
40 Now, if just prior to that Mrs. Hottwett

went on the stand and swore she had missed things when this woman was there and suspected her, it would contradict her, would it not? Would it be likely that Mrs. Hottwett would come right off the witness stand where she had sworn derogatorily to the character of this woman, if she had—come right out of the court house and say the other thing? 10

The Court: I don't know. But that is not the direct way of proving or contradicting it. You have asked her on that point and she has testified as to that condition. I presume the lady you refer to could be produced and she could be asked about it.

Mr. Weller: Well, she is ill and that is why she was not produced. 20

The Court: I will sustain the objection.

Mr. Weller: I ask you not to sustain the objection now, because I asked that woman that direct question. I asked her if Mrs. Hottwett had not been on the stand and said under oath that after she worked there she had missed things from the house. She answered no to that.

The Court: Well, what was your purpose in that testimony, to lay a foundation to contradict the witness? 30

Mr. Weller: I had a double purpose.

The Court: Well, what were the purposes?

Mr. Weller: I had a purpose of laying a foundation to contradict her.

The Court: Yes.

Mr. Weller: And the purpose of contradicting the other testimony she had given as 40

LILLIAN KLOPMAN—Direct Examination.

to what Mrs. Hottwett had said to her in the presence of Mrs. Klopman.

10 The Court: It seems to me it would only be available for the one purpose, if you were laying a foundation for the purpose of contradicting the witness, or going to the question of her truthfulness.

Mr. Weller: Well, I will put it in for that.

The Court: You may use it for that, but not for anything else.

Mr. Walscheid: Then it must be material to the issues.

The Court: True; it ought to be; it must be.

20 Mr. Walscheid: If we are going to open up side-issues on truthfulness as to everything under the sun we can go "all over the lot."

The Court: I think I will stand on my first ruling, sustain the objection.

Mr. Weller: Your Honor will allow me an objection.

The Court: Yes.

30 Q. Now, we will go back. You say on Friday you discharged her; that was the third day of July, it seems; that is right, is it not? A. Yes.

Q. The complaint was made on the ninth day of July, six days later? A. Yes.

Q. Now, what cause had you, if any, to make this complaint six days later?

Mr. Walscheid: I object to that on the ground that it is too broad and prevents me from properly protecting the interests

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of my client. I think that he should ask the specific question, because he is not getting into the want of probable cause, and under the Lane case the evidence must come to this woman in the regular course of business dealings.

The Court: Well, is that the only way that that is applicable, to a business company or to a business association, Mr. Walscheid? In the case of Spencer against Anness, which you called my attention to, the Court said if the defendant had been informed by eye-witnesses to the scene—

Mr. Walscheid: Oh, of the crime.

The Court: —that they saw the wife of the plaintiff take the money or do any act of an extremely suspicious nature an entirely different case would have been presented.

Mr. Walscheid: Exactly. I am willing to go that far; that is perfectly proper; but under this question there would be answers given—

The Court: I think myself that question is an omnibus one and she can answer almost anything to it and it would be almost impossible for counsel to protect himself as to it. It seems to me you ought to particularize by your question the source of the information and what you are really reaching for by each particular question.

Q. You have said that you had this servant girl at work over a year and her name was Emma Gross? A. Yes.

Q. She has a sister, Lena Gross? A. Yes.

Q. And where did Lena Gross live?

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Mr. Walscheid: I object unless this witness knows.

The Court: Well, do you know, madam, where she lived?

10 A. She was living with this woman.

Mr. Walscheid: How do you know?

A. Her sister told me.

Mr. Walscheid: I ask that it be stricken out.

Mr. Weller: I think the plaintiff admitted that on the stand, too; didn't she, Mr. Walscheid?

20 The Court: I don't remember it. I think the answer to the last question should be stricken out because admittedly it is not within the knowledge of this witness. It may not be necessary for the rest of your questions at all.

A. Why, I knew it from this witness herself that she was living there.

30 The Court: Who is this, the plaintiff?

A. Yes.

Mr. Walscheid: That is perfectly proper.

Mr. Weller: Well, now, she was only swearing to her knowledge.

40 The Court: There is no use quarelling over it, because now she has put it in proper shape; that this plaintiff herself told her she was living in the house with her.

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Q. Emma afterwards came home with her? A. Yes.

Q. Did she after that time go home with her? A. Yes.

Q. When was that? A. After I had discharged her. I think it was the same night that I discharged this woman. 10

Q. What did she tell you, if anything? A. Nothing that night.

Mr. Walscheid: I object.

A. Nothing that night; I didn't see her.

Q. What did she tell you the following night?

Mr. Walscheid: I object to that as immaterial and irrelevant. 20

The Court: I don't see how I can pass upon that now, Mr. Walscheid, until I hear what it is. It may be entirely irrelevant when I hear it—

Mr. Walscheid: I withdraw the objection.

Q. When was that, the next week; what time?

A. Not the next week; the next day. 30

Q. That she came there, but you didn't speak to her; but when she came back the next week what did she say to you? A. Oh, Emma?

Q. The sister, Lena. A. She came there, the same night I discharged this woman.

Q. I know, but you said you said nothing to her that night. A. I don't remember.

The Court: When did you see her?

A. The next morning. 40

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Q. What conversation did you have with her then? A. Why, she came to my house for protection; she came there late at night with her sister.

Q. Emma? A. Yes; and she said that this woman had taken her bag—

10

Mr. Walscheid: One moment. I don't think that this witness ought to be allowed to say what this girl said unless it has direct bearing—

Mr. Weller: I don't want her to say that.

Mr. Walscheid: —on the question, and the question should be properly framed to bring it out.

20

The Court: All you are really asking her for and all you have a right to ask her to narrate of this conversation is what may have been said, if anything, by Lena regarding these articles which are in this controversy.

Mr. Weller: Yes.

The Court: Not with regard to any other matter.

Q. What did she say—

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The Court: If she said nothing about the matters in this particular controversy, why, then, of course we don't need to care what she said.

Q. What did she say about jewelry resembling your jewelry, if anything? A. She said that this woman said she had a necklace and a bracelet that a lady had given her, and Lena said: "Show it to me." She said: "Some day I will show it to you."

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Mr. Walscheid: Now, one moment. I ask that that be stricken out.

The Court: I do not see how it has any bearing.

Mr. Weller: Well, your Honor, I can not put in all the testimony at once.

The Court: Well, I will hold your motion till we get to the end of this particular matter. 10

Q. Did she say that the woman described what she had—the jewelry she had? A. She just said it was a bracelet with red stone in it.

Q. And what about the necklace? A. Just a gold necklace with red stones in it.

Q. The lady had told her that she had a gold bracelet with red stones in it and a necklace? A. Yes. 20

Q. What else did she tell you about it? A. She told me that she had taken her things from her.

Mr. Walscheid: One moment. I ask that that be stricken out.

The Court: Yes. Your only inquiry can be as to the matters concerned in this case, Mr. Weller. 30

Q. Did the description that she said the lady gave her of what somebody had given her tally with the articles that you had lost? A. It did.

Mr. Walscheid: I object. I object to that on the ground that the description as given by this witness is absolutely too meagre to tally with anything, as a matter of law—"gold bracelet with a red stone." 40

The Court: It is very hard to tell whether it tallies or not, because I haven't in mind

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that description which would let me make a comparison between the two.

Mr. Weller: Well, your Honor, we are not trying a replevin case.

10 The Court: Well, for the present I will hold the motion until I have the whole matter before me.

Q. After Lena told you this what did you do?

A. I went with Lena and Officer Quigley up to Judge Rander; in the meantime I had 'phoned to Mrs. Hottwett.

Q. What did Mrs. Hottwett tell you about this woman?

20 Mr. Walscheid: I object to that on the ground that it is irrelevant and immaterial.

The Court: Does it apply to the matters in issue here, Mr. Weller?

Mr. Weller: Yes, it applies. It does not apply to this same circumstance, but applies to what she thought of the character of the woman, and it was enough to make her suspect that the woman was guilty of taking her things.

30 The Court: I don't think that is permissible. For instance, a plea was not sustained in the case of Spencer against Anness for this reason: because these facts only were set up: That the plaintiff's wife was near the wife of the defendant at the time the larceny was discovered, and certain bystanders, amongst them a police officer, considered there were grounds of suspicion. Now, is what you are trying to show any or much different from that situation?

40 Mr. Weller: I think it is a great deal.

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The Court: Do you think that because anybody else had any suspicion regarding the person, it was sufficient to put a probable—

Mr. Weller: It was in this case. It is not like the Spencer case. In the Spencer case it was one act. In this case it was a great many acts going over a long period of time.

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Mr. Walscheid: May it please the Court, if that were the proper line of indication, this or any other witness could go upon the stand and say that he or she had stepped to a telephone and had telephoned to "Tom," "Dick" and "Harry," and "Mike" and "Jack," and inquired about this person and her reputation and in each instance had received advice which led her to believe that she was entitled to form a suspicion. I do not think that there is anything like that in our law.

20

The Court: Suspicion is not sufficient, anyway.

Mr. Walscheid: Even though that person had gone further and had reported back specific acts.

30

The Court: Mere suspicion is not sufficient to excuse.

Mr. Weller: Suspicion standing alone, of course, is not; but suspicion and suspicious conduct, coupled with the larceny of articles from a home, when there were only one or two people in that home, is enough, it seems to me.

The Court: I shall sustain the objection, however. I think I have in mind what you

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are attempting to show by the question. I will sustain the objection.

Mr. Weller: Now, if your Honor please, I want to offer to prove by this woman that Mrs. Hottwett told her that the—

10 Mr. Walscheid: I object to any statement of her conversation.

The Court: No, no; that is only another way of getting it to the jury, Mr. Weller.

Mr. Weller: Well, I would like to get it before your Honor. I would like to have my record straight.

Q. (Repeated by the stenographer) What did Mrs. Hottwett tell you about this woman?

20 The Court: I will let you straighten your record, but it will be done in the absence of the jury. If the stenographer will hold the place, mark it in his minutes, I will let you make your formal and specific offer, but not in the presence of the jury.

Mr. Weller: All right; that is all I ask as to that, your Honor.

The Court: And you will keep me in mind of it.

30 Mr. Weller: I will try.

Q. When you got up to Judge Rander's office who was there? A. Just the judge.

Q. Well, you said— A. (Interrupting) Oh, I went with Lena and myself and Officer Quigley.

Q. Did Judge Rander issue the warrant right away? A. He examined the witness that I had with me—Lena.

40 Q. Did he examine her under oath? A. Yes.

Mr. Walscheid: I object to that as immaterial.

The Court: I think it is, Mr. Weller. Just what purpose are you going to now—just what point?

Mr. Weller: I am going to show what precaution was taken. The next question will show what I want. 10

Mr. Walscheid: It is not a question of what precaution was taken. It is a question of probable cause.

The Court: Let me hear your next question.

Q. After Judge Rander had taken this girl's statement and her affidavit did he give you any advice as to what to do? 20

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: I think that objection is well taken.

Mr. Weller: Your Honor will allow me an objection.

The Court: Yes. Let me state to you what I conceive to be the situation. Of course, it is not for me to pass upon the wisdom of holding to this effect, but I do not understand the Courts have held in cases of this character that one who makes a complaint is excused in doing so from the effects of such an action as this because the magistrate may have advised the doing of a thing. I understand that that excuse is only available when the advice comes from one authorized by our courts to advise in 30
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10 legal matters, and then whether his advice be good, bad or indifferent is of no consequence. The thing is whether or not the person seeking the advice properly stated the facts to him and then his advice was given and that advice was acted upon. I think I have noticed in your pleadings some contest as to whether or not this warrant was issued by authority of this defendant. Now, it seems to me that this would be the situation: If I go to a police magistrate, a justice of the peace or recorder, or whatever title his office may be known by, and I make a criminal complaint against another, that sets in motion the criminal machinery, does it not?

20 Mr. Weller: Yes.

The Court: And I do not think I would escape the result of that if I said that I was advised to have a warrant issued by the magistrate himself. But it seems to me that you have raised some question as to whether or not this warrant was issued by authority of the defendant in this action. Now, I don't know but what it may be that I might make a complaint, I might swear to a complaint, and I might direct the officer not to issue a warrant, and if he did so over my instructions, there might then be some cause of action shown; but where I go to him and give him no instructions at all, but simply swear to the complaint, and he in the furtherance or the carrying out of the duties of his office issues the warrant and the party is apprehended and dealt with, I am quite certain that I would be responsible for the results of

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making that affidavit or complaint. Or, if I had his advice on the subject and his advice was to issue the warrant, I think I would still be bound by the results of that. I do not think that that result or that situation is in this case—that there was a direction to withhold the warrant. It seems to me that what the advice of the magistrate was does not go to an excuse. The cases we went over this morning, you see, went up to that point—not the class of case we are trying now. 10

Mr. Weller: I think the case of Gross against Van Duyn goes exactly to the point.

The Court: Is that the case we talked to this morning?

Mr. Walscheid: Yes. 20

The Court: That is a case of false arrest.

Mr. Weller: Now, your Honor, just listen here one moment. The difference between false arrest and malicious prosecution, as I said before, is that one is commenced by process, the other is commenced without process. If I state to John Smith, "Arrest that man; I think he picked my pocket," and he arrests John Smith and he proves to be innocent, that is false arrest. But if I go to a Judge on this same complaint and swear out a warrant, that is malicious prosecution. Now, here in this case the defendant went before the Justice of the Peace; all he did was to make his complaint on oath before the Justice of the Peace, setting forth the facts truly, and for such an act he could not be held liable for the judicial action which ensued, even if such action had been extrajudicial. Now, it is a case of malicious prosecution. 30 40

Mr. Walscheid: That was not malicious prosecution.

Mr. Weller: Why, your Honor, he went there and made his complaint.

10 The Court: What does the case say, if we can read? Doesn't it say it was for false arrest?

Mr. Weller: Well, he swore to a complaint.

The Court: I know, but the action grew out of and was a case of false arrest, not of malicious prosecution—the case you are reading from.

20 Mr. Weller: If he went there and swore to a complaint, it must have started by process; therefore, must it not have been a case of malicious prosecution? Isn't that the distinction between false imprisonment and malicious prosecution—that the one is commenced by process and the other not?

30 The Court: Well, assume that it was, and assume that all you say is true, yet where do you find authority, Mr. Weller, for this proposition that because the magistrate advised the issuance of the warrant that would exculpate the affiant in making the complaint?

Mr. Weller: That is what this case holds, your Honor; that is it exactly.

The Court: I cannot read it that way; you see, here is what was before the Court in this case—you will find this in the opinion:

40 “Nevertheless, it must be conceded that it is also plain that in many cases a transgression of the boundaries of his jurisdiction by a Judge will impose upon him a liability to an action in favor of the person who has been

injured by such excess. If a magistrate should, of his own motion, without oath or complaint being made to him, on mere hearsay, issue a warrant and cause an arrest for an alleged larceny, it cannot be doubted that the person so illegally imprisoned could seek redress by a suit against such officer. It would be no legal answer for the magistrate to assert that he had a general cognizance over criminal offences, for the conclusive reply would be that this particular case was not, by any form of proceeding, put under his authority. 10

“From these legal conditions of the subject my inference is that the true general rule with respect to the actionable responsibility of a judicial officer having the right to exercise general powers is that he is so responsible in any given case belonging to a class over which he has cognizance, unless such case is by complaint or other proceeding put at least colorably under his jurisdiction. Where the Judge is called upon by the facts before him to decide whether his authority extends over the matter, such an act is a judicial act, and such officer is not liable in a suit to the person affected by his decision, whether such decision be right or wrong. But when no facts are present, or only such facts as have neither legal value nor color of legal value in the affair, then, in that event, for the magistrate to take jurisdiction is not in any manner the performance of a judicial act, but simply the commission of an unofficial wrong. This criterion seems a reasonable one; it protects the 20 30 40

10 Judge against the consequences of every error of judgment, but it leaves him answerable for the commission of wrong that is practically wilful. Such protection is necessary to the independence and usefulness of the judicial officer, and such responsibility is important to guard the citizen against official oppression.

“The application of the above stated rule in this case must, obviously, result in a judgment affirming the decision of the Circuit Judge.”

Now, here is what was there in that instance:

20 “There was a complaint under oath before this Justice, presenting for his consideration a set of facts to which it became his duty to apply the law. The essential things there stated were that the plaintiff, in combination with two other persons, ‘with force and arms,’ entered upon certain lands and ‘with force and arms did unlawfully carry away about four hundred bundles of cornstalks, of the value,’ etc., and were engaged in carrying other cornstalks from said lands. By a

30 statute of this State it is declared to be an indictable offense, ‘if any person shall wilfully, unlawfully and maliciously’ set fire to or burn, carry off or destroy any barrack, cock, crib, rick or stack of hay, corn, wheat, rye, barley, oats or grain of any kind or any trees, herbage, growing grass, hay or other vegetables. Now, although the misconduct described in the complaint is not the misconduct described in this act, nevertheless the

40 question of their identity was colorably be-

fore the magistrate, and it was his duty to decide it; and under the rule above formulated he is not answerable to the person injured for his erroneous application of the law to the case that was before him.

“As to the other defendant, all he did was to make his complaint on oath before the Justice, setting forth the facts truly, and for such an act he could not be held liable for the judicial action which ensued, even if such action had been extra-judicial. But as the case was, as we have seen, brought within the jurisdiction of the judicial officer, neither defendant nor any other person could be treated as a trespasser for his co-operation in procuring a decision and commitment which were valid in law, until they had been set aside by a superior tribunal.”

I do not see that the case goes to the question you went to—that the officer advised that the action be taken, or that upon his advise it was taken.

Mr. Weller: It does not, but the magistrate upon the setting forth of those facts—of course, there they went further; there they swore that these people did take them. Here this lady only swore to a state of facts and said she had reason to believe—to suspect that this defendant—

The Court: I cannot see it.

Mr. Weller: Upon that this judicial officer issued his warrant. Now, I say that our case is a much stronger case than that.

The Court: Now, Mr. Victory, have we a question pending?

Q. (Repeated by the stenographer.) Did he examine her under oath? 40

10 The Court: Suppose that this were the situation: (Of course, I can only guess what the further questions are going to be, Mr. Walscheid.) Suppose upon that examination, if one did take place under oath, facts were stated by the affiant, Lena, which would otherwise have been relevant and have been proper facts for this defendant to base a reasonable and probable cause upon; wouldn't that be relevant coming in this way?

20 Mr. Walscheid: The taking of the oath would not be material. The statement of those material facts may be. You see, the taking of the oath may impress itself upon the jury as something solemn or important, where as it is absolutely immaterial. If there are any specific material facts which she stated to Mrs. Klopman or to the Justice of the Peace before Mrs. Klopman signed her complaint, those facts as facts I concede to be material. But until we have those facts we should not have the trimmings.

30 The Court: I think I will not permit the answer to this question at the present time, until we go to the point, Mr. Weller, where you will show what statements, if any, were made by Lena at that time, because if what she said had no relevancy, or it is not legal, the question whether she was under oath is immaterial.

Mr. Walscheid: Lena is the one, as I understand it, who said to Mrs. Klopman that the plaintiff said she had a bracelet.

40 The Court: I will sustain the objection to the question, at least until I hear what statements, if any, were made by Lena be-

LILLIAN KLOPMAN—Direct Examination.

fore the magistrate in the presence of the defendant.

Q. Well, tell us what statements Lena made to the magistrate in your presence? A. She told the magistrate that this woman had taken part of her clothes, and pocketbook and jewelry from her. 10

Mr. Walscheid: Now I ask that that be stricken from this record.

Mr. Weller: I don't want that.

Q. What did she say about your own things?

The Court: These articles of yours.

A. That this woman had told her a lady had given her a bracelet with red stones in it, and a necklace with a red stone. 20

The Court: That is the same story.

Q. She told that to the magistrate?

Mr. Walscheid: That also is subject to my motion to strike out.

The Court: Yes. 30

Q. And did you tell the magistrate about having lost stones of that description from your house?

A. I did.

Q. Did you have any malice against this woman?

A. No.

Q. Did you tell anything to that magistrate excepting the exact truth? A. That is all.

Q. Now, after you had told him the story and he had examined Lena, did he give you any advice? 40

LILLIAN KLOPMAN—Direct Examination.

Mr. Walscheid: I object for the reasons before stated.

The Court: I will sustain the objection.

Mr. Weller: Your Honor will allow me an exception.

10 Q. I will ask you another question. After you had given this story to the magistrate, and he had examined Lena, what did the magistrate say to you, if anything?

Mr. Walscheid: I object to that as immaterial and irrelevant, and as another attempt to bring in advice. The only thing it could be material for would be—

20 The Court: Wouldn't it bring about the same reply as would have come from your previous question, which was, "Didn't he advise you?"

Mr. Weller: I thought that your Honor said that would be relevant after we laid the proper foundation.

The Court: No, I haven't said so.

Mr. Weller: I misunderstood you possibly.

30 The Court: If this question is to bring the same reply as would have come from the previous question I overruled—

Q. Now I will ask her a question. I know what I want to bring out, but I don't want to lead; I don't want to tell her.

Q. Did you ask for the arrest of this girl or for a search warrant? What did you ask the magistrate for? A. I didn't ask for anything; merely stated the facts to him.

40

LILLIAN KLOPMAN—Direct Examination.

Q. You stated the facts? A. Yes, sir.

Q. Did you speak to him about a search warrant? A. He said he didn't know—no; I didn't speak to him.

Q. Well, what did he say? A. He said he didn't know which was best, a search warrant—

10

Mr. Walscheid: I object and ask that it be stricken out.

The Court: Well, I do not see that it is of particular importance one way or the other.

Mr. Walscheid: I know, but it opens the door.

The Court: It all goes to the question of his advising her what to do. If that is the purpose of it I will sustain the objection.

20

Mr. Weller: Your Honor will allow me an objection?

The Court: Yes.

Q. Now, at the time these things were stolen from your house—

Mr. Walscheid: I object to the statement that the things were stolen. There is no proof that any things were stolen.

30

The Court: That is properly so, Mr. Weller. They are gone. She can't find them, she said.

Mr. Weller: Well, I think that is evidence from which any jury would find evidence of stealing.

Mr. Walscheid: I object to that statement of counsel.

The Court: I think your question is not in the proper form.

40

LILLIAN KLOPMAN—Direct Examination.

Q. Who was at your house working there, and who was at the house at the time these things were missing from you on the third of July? A. Just my maid and my cousin.

Q. And Mrs. Vlader? A. Yes.

10 Q. The plaintiff? Was anybody else working there at that time? A. No one working.

Q. Were you at home all that forenoon? A. Yes.

Q. Was you counsel, Mrs. Gerson, there all the forenoon? A. Yes.

Q. And Lena was there all that forenoon—

Mr. Walscheid: Lena or Emma?

Q. I mean Emma? A. Yes.

20 Q. I understood you to say that you never had known Mrs. Vlader before? A. No, sir.

The Court: Is that a question and was it an answer?

A. I said no.

Q. Now, will you tell us just what took place in the station house the next morning when this plaintiff was down there? A. I testified; Lena testified; and Mrs. Hottwett testified.

30 Q. Yes. A. And the Judge said there was ground enough to hold her for the Grand Jury.

Q. What did Mrs. Hottwett testify to?

Mr. Walscheid: I object to that as immaterial.

The Court: Are you going into that trial again?

Mr. Weller: I think I did ask her that. I forgot whether it was this witness or not. I have my exception on that.

40

LILLIAN KLOPMAN—Direct Examination.

Q. Mrs. Vlader says that you came to the cell alone— A. (Interrupting) I did not.

Q. —and that you there told her that she was a thief; she had stolen your wash and stolen other things from you. Did you go to the cell? A. I did not.

Q. Did you go there at all? A. With Mr. Rander. 10

Mr. Walscheid: With whom?

A. Judge Rander.

Q. Why did you go there? A. When he told her to go back to the cell, when he took her back to the cell after the testimony, he took me down with him to ask her for the last time if she would tell where my jewelry was. I did not speak to her. 20

Q. Did you tell her or anyone in her presence that she had stolen your wash and sold it? A. I did not.

Q. Did you tell her that she had stolen something from Mrs. Hottwett's? A. No.

Q. And did Mrs. Hottwett answer and say in your presence—

Mr. Walscheid: One moment. I object. She said she did not tell her that. 30

Mr. Weller: Pardon me. If I have been over that I do not want to go over it again.

The Court: Yes, you were over that. What was the plaintiff's testimony on the question of that conversation?

Mr. Walscheid: The testimony was that Mrs. Klopman had come to the cell and had accused her of theft, and she thought she was alone, although somebody else might 40

LILLIAN KLOPMAN—Cross Examination.

have been there, because she could not look around the corner of the cell.

The Court: I remember. I remember.

10 Mr. Weller: Now, your Honor, here was a question I asked the plaintiff—if Mrs. Hottwett did not swear on the stand that she had missed things after Mrs. Stefan worked for her. She answered no.

Mr. Walscheid: I object to that.

Mr. Weller: Have I the right now to contradict that?

The Court: I have already ruled on it. It goes to the same point that you were reaching for before.

Mr. Weller: Take the witness.

20 Cross Examination by Mr. Walscheid:

Q. Were you at Rye alone? A. What is that?

Q. Were you at Rye, N. Y., alone? A. No.

Q. Your husband with you? A. No.

Q. You were there for the summer, were you?

A. No; just for a few days.

Q. Just for a visit. When did you go there? A. Two or three days before the first of July.

30 Q. Before the first of July? A. Yes, sir.

Q. And then while you were away an explosion occurred in your home? A. Yes, sir.

Q. Do you know on what date that occurred? A. I think on the first.

Q. On the first of July. And do you know what caused the explosion? A. Not exactly.

Q. Do you know what caused it? A. Not exactly.

40 Q. Well, don't you know it was a gunpowder explosion? A. No; I don't.

LILLIAN KLOPMAN—Cross Examination.

Q. What time of the day is this explosion supposed to have occurred? A. 4:30.

Q. 4:30 in the afternoon? A. No; in the morning.

Q. 4:30 in the morning of July 1st. And then you got home what time of day? A. It was before lunch, because I had my lunch with Mr. Kenney.

10

Q. So that you got home—arrived home at one o'clock on the first of July, anyhow; is that right? A. Yes, sir.

Q. Because you went to look at your home? A. No, not until after lunch.

Q. Not until after lunch. Who was in your house at that time? During your absence, who was living there? A. My son was there and my husband.

20

Q. Well, your husband had gone to work, hadn't he? A. No.

Q. Hadn't gone to work? A. No.

Q. Wasn't your daughter there? A. No.

Q. Where was your daughter? A. In Rye.

Q. So that you took her up there with you on the visit to Rye? A. Yes.

Q. And you came back without your daughter? A. Yes, sir.

30

Q. Left her up there? A. Yes.

Q. And the bracelet and necklace belonged to your daughter? A. To my daughter; yes.

Q. Exactly. And how long a visit did you intend to make at Rye? A. Why, I went up to fix the furniture; to rent it.

Q. How long a visit did you intend to make at Rye? A. I don't know; I went up there to fix it up for the summer.

40

Q. It is your own private place? A. Yes; it is my own place.

Q. Your summer home at Rye? A. Yes, sir.

Q. Did you intend leaving your daughter right up there when you started out? A. Only for a few days.

10 Q. Did you take your silver mesh bag with you to Rye? A. Yes; I did.

Q. Did you bring it back? A. I did.

Q. Now, when you got back to your house the doors were blown out, weren't they? A. Not the front doors.

Q. But the back doors? A. Not the back doors.

Q. What doors were blown out? A. Only the cellar doors and windows.

20 Q. The cellar doors and windows were blown out. Upstairs, too? A. No.

Q. And the plastering on the wall had been shaken down throughout the house? A. Yes, sir; only downstairs.

Q. Downstairs. Did you find a crowd there? A. No; not when I got home.

Q. Not when you got home, twelve o'clock? A. Nobody there; no.

30 Q. Did the place look as though a crowd had been there?

Mr. Weller: I object. It is impossible to tell.

A. The firemen.

By Mr. Weller:

Q. What? A. The firemen.

Q. Had there been a fire, too? A. No.

40 Q. There had not been any fire? A. No.

LILLIAN KLOPMAN—Cross Examination.

Q. Do you know whether the firemen had been there? A. Yes.

Q. And had they used any water on the premises? A. No.

Q. Used axes that you could see? A. No.

Q. Did the place look trampled down as if lots of people had been in there? A. No. 10

Q. Now, you did sign the complaint, didn't you? A. I did.

Q. And when you signed the complaint you know that a warrant would issue? A. I knew that it would be issued.

Q. Yes. And right after you signed the complaint the Judge told you to appear the next day, didn't he? A. That I don't remember.

Q. Well, how did you receive notice to go to the town hall or police station the next day? A. I don't know whether Officer Quigley informed me or not. 20

Q. But you did expect to appear? A. Of course.

Q. And you did appear? A. I did appear.

Q. And you there charged this woman with theft, didn't you? A. I certainly did.

Q. You certainly did. Charged her with theft in open court, didn't you? A. Yes.

Q. Charged her with having stolen this mesh bag? A. No; I said that I had missed it and I thought that she had it. 30

Q. Well, what do you mean? You say you charged her with theft, a moment ago. Now you say "I had missed it and thought she had it." A. I told the Judge I thought she had it, yes.

Q. Then there was a hearing, was there? A. Yes.

Q. And after the hearing Mrs. Vlader was again put in the cell? A. Yes. 40

LILLIAN KLOPMAN—Cross Examination.

Q. And while she was in the cell you and the Judge went back to see her in the cell? A. Yes. I went down—Mr. Kenney went with us—Mr. Kenney, Judge Rander and myself.

Q. To the cell? A. Yes.

10 Q. Where this woman was? A. Yes.

Q. And in your presence, Judge Rander spoke to her? A. Why, he asked her if she would not admit that she had the jewelry.

Q. Asked her if she wouldn't admit that she had the jewelry? A. Yes.

Q. After the hearing, and while she was again locked up? A. Yes.

Q. And she refused to admit? A. Yes.

20 Q. Did you ask her to admit? A. I didn't speak to the woman alone.

Q. Did Mr. Kenney ask her to admit? A. No.

Q. Did the judge make her any promises for such admission?

Mr. Weller: I object to the question.

A. No.

The Court: Well, the answer is no.

30 Q. And how long after she then refused to admit was she then kept in that cell? A. That I don't remember.

Q. Did you go away? A. I went away.

Q. Leaving her in the cell? A. I went upstairs.

Q. You went upstairs? A. Yes.

Q. And did you wait upstairs? A. Yes.

40 Q. And were you present when she was brought up again? A. Yes.

LILLIAN KLOPMAN—Cross Examination.

Q. How long after that was it? A. Oh, not very long; perhaps—

Q. Half an hour, three quarters of an hour? A. No; less than that.

Q. Less than that? A. Yes.

Q. An then she was discharged? A. No.

Q. Wasn't discharged? A. Not right away. 10

Q. How long was she held after that? A. The judge question her further and she—

Q. (Interrupting) The judge still questioned her further? A. Yes.

Q. Still insisted on her telling that she had stolen the goods; is that right? A. Yes, sir.

Q. Were you present? A. I was.

Q. Taking part in it? A. I didn't have anything to say; I merely listened to the judge. 20

Q. Well, did you advise with the judge about it? A. We talked it over, yes. 20

Q. And did you talk it over before you went down to the cells the first time, as to whether you should go down there or not? A. Yes.

Q. And you both decided to go down? A. He was going to hold her for the grand jury.

Q. I didn't ask you that. A. All right.

Q. You both decided to go down, didn't you? A. Yes. 30

Q. Then when you came up again and she had refused downstairs to admit that she was a thief, you had a further consultation—you and the judge, didn't you? A. Yes. 30

Q. And you decided to call her up and ask her again, didn't you? A. No; not right away.

Q. Not right away. Well, what did you decide between you then? A. The judge advised me to hold her.

Q. The judge advised you to hold her? A. To hold her for the grand jury, yes. 40

Q. Then you finally decided to call her up again and ask her again, didn't you? A. Yes.

Q. Whose idea was that, your idea? A. I suppose the judge brought her up; I don't know.

Q. Well, it was your idea to ask her again? A. I didn't ask her.

10 Q. Then you brought her up again, didn't you? A. I didn't bring her up.

Q. I know; but you were there? A. I was there.

Q. And he again brought her in the court room? A. Yes.

Q. And he again questioned her in the same manner? A. No; said he was going to hold her.

Q. And then having said that he said to her—he asked her again whether she would not admit? A. He did not.

20 Q. I thought you said he again asked her when she came upstairs whether she had not stolen the jewelry. A. He was going to hold her, he said: "My woman you are guilty. I am going to hold you."

Q. That is what he said? A. Yes.

Q. That is the way he said it? A. Yes, sir.

Q. Then, and after having said that, he further asked her to admit that she was guilty, didn't he?

30 A. He said no more.

Q. He said nothing more? A. No.

Q. And he didn't hold her? A. No, because she grovelled on the floor, got down on her feet; and because she begged so hard I withdrew the charge.

Mr. Weller: You withdrew the charge?

A. Yes.

40 Mr. Walscheid: One moment. I ask that that be stricken from the record as not responsive to any question that I asked.

LILLIAN KLOPMAN—Cross Examination.

The Court: It is not in response to the question. The question is did he hold her?

A. He held her for some time, yes.

Q. And then he discharged her? A. Yes.

Q. Do you know what working the "third degree" means? A. No. 10

Q. Do you think the "third degree" was worked on this woman? A. It ought to have been.

Q. You haven't any sympathy at all, have you? A. Yes; a great deal.

Q. Now, when did you see the necklace and the bracelet last? A. The last time I saw it?

Q. Yes. A. It was the morning of either the first or second day.

Q. You don't know? A. Not positively; no.

Q. No. And you had never known this woman before, had you? A. No. 20

Q. You had no reason in your mind so far as anything that had occurred between you and her, to suspect her of any wrongdoing? A. I did have; yes.

Q. So far as anything that had occurred between you and her? A. No, only—not that I had really seen her doing.

Q. Then you say that on the second day that she was there, which was the third of July— A. (Interrupting) Yes. 30

Q. Your cousin was with you? A. Yes.

Q. A Mrs. Gerson? A. Yes, sir.

Q. And she was upstairs and came downstairs and said what to you? A. No; she was downstairs.

Q. Mrs. Gerson was? Who was downstairs? A. She was downstairs and I was downstairs.

Q. Who was? A. Mrs. Gerson. 40

LILLIAN KLOPMAN—Cross Examination.

Q. Mrs. Gerson was downstairs and you were downstairs? A. Yes.

Q. And what did she say to you? A. She went upstairs and saw this woman at the bureau.

Q. She went upstairs and came back? A. She came back.

10 Q. What did she say to you when she came back? A. She said: " 'Lil,' go upstairs and don't change the bureau drawers. I saw that woman with her hands in the drawers. Lock up your things. I am going to lock up mine." And she did.

Q. That was on the third? A. Yes.

Q. What time of day? A. Well, that was after lunch.

20 Q. What time after lunch? A. Well, I can't tell just exactly.

Q. What did you do next? A. After she told me that?

Q. Yes. A. Well, I didn't go upstairs right away.

Q. You didn't go upstairs? A. Not right away.

Q. Well, what did you do next in relation to the matter? A. Well, I didn't think very much of it until I went to look for my key.

30 Q. Didn't do anything about it, did you? A. Not just then.

Q. And you looked for your key between one and two o'clock? A. Yes.

Q. So that this must have happened in the morning? A. Yes.

Q. Between about one and two o'clock; that is right, isn't it? A. Well, I missed the bag in the afternoon; I went to look for the key.

40 Q. Well, you missed the bag after Mrs. Gerson had told you this? A. Yes.

- Q. And you missed the bag about two o'clock.
A. Yes.
- Q. And you allowed this woman to continue to work upstairs all afternoon, didn't you? A. Yes.
- Q. Until four o'clock in the afternoon? A. Yes.
- Q. She was to go home that time, anyhow, wasn't she? A. Oh, no. 10
- Q. What time was she to go home? A. Six o'clock.
- Q. Then what did you say to her? A. I said nothing to the woman.
- Q. Just let her go? A. Not just then.
- Q. What did you say when you let her go on that Friday, I think it was? A. After a while I went upstairs to look for other things when I missed my key— 20
- Q. I didn't ask you that, madam. What did you say to Mrs. Vlader when you dismissed her or discharged her that afternoon? A. I told her that I didn't want her services any longer.
- Q. That is what you told her? A. Yes, sir.
- Q. And at that time you had already missed your bag? A. I had.
- Q. And you had hunted high and low for it?
A. No; I didn't have a chance to hunt while she was in the room. 30
- Q. How would she stop you from hunting? A. She was cleaning the room.
- Q. That didn't stop you from looking around.
A. Well, I didn't look around then.
- Q. But you missed it? A. I missed it.
- Q. And your cousin told you to be on guard?
A. Yes.
- Q. And you missed this bag? A. Yes.
- Q. And you discharged this woman and let her go home? A. Yes. 40

LILLIAN KLOPMAN—Cross Examination.

Q. Why didn't you ask her if you knew anything about the bag? A. Not until I had searched.

Q. Why didn't you ask? A. Because I was not positive she had taken it.

Q. Well, are you positive now? A. Yes.

10 Q. Now you are positive? A. Yes.

Q. And then this woman went home. Did she take anything home with her that afternoon? A. She did not.

Q. Didn't take anything home with her? A. No.

Q. And up to that time she had nothing in her house that belonged to you? A. I don't know.

20 Q. You hadn't sent her anything or given her anything to take home with her? A. She had some clothes of mine from the bag that she asked for; she took home a bundle.

Q. Oh, that afternoon? A. I don't know whether it was the first afternoon—

Q. (Interrupting) Well, now, it was the second afternoon, wasn't it? A. I am not sure.

Q. So that you did present her with a bundle of clothes to take with her? A. I didn't present it.

Q. You saw her taking it? A. She was in the back.

30 Q. You knew she was taking your clothes? A. Yes.

Q. You were satisfied she should have them? A. Yes; she asked for them.

Q. And you gave them to her? A. Yes; I gave them to her.

Q. So that before discharging her, at the time of the discharge, you gave her the bundle of old clothes? A. But she asked for them the day before; she didn't ask for them then.

40 Q. I see. She asked for them the day before;

LILLIAN KLOPMAN—Cross Examination.

but you allowed her to take them away when you discharged her? A. I didn't want them.

Q. And that is all so far as you knew, that any property of yours had gone to her home up to that time? A. I missed my necklace and my bracelet.

Q. You say you missed your necklace and your bracelet—not your necklace? A. My daughter's. 10

Q. And not your bracelet? A. My daughter's.

Q. And then on Monday following you sent her your wash to wash, didn't you? A. I don't know what day it was.

Q. Well, it was the Monday following? A. It was some day, yes; I don't know when.

Q. How much wash did you send her to wash? A. Very little.

Q. Well, how many pieces, about? A. Perhaps a dozen. 20

Q. Well, didn't you send her all the stuff that had been in this explosion? A. No, no.

Q. And you were willing to deal with her as late as Monday following the loss of your bracelet?

A. Yes; because I suspected her.

Q. Because you suspected her? A. Yes, sir.

Q. Because you suspected her you had gone and trusted her with more property; is that right?

A. I had a reason for it; I had a reason for it. 30

Q. Because you suspected her you intended to entrust her with more property? A. Yes.

Q. Was your daughter in the habit of wearing this necklace? A. Not frequently, no.

Q. Or the bracelet? A. No.

Q. And you didn't see anybody steal that necklace or the bracelet? A. No.

Q. Or the mesh bag? A. No.

Q. Your house at that time was quite a center of curiosity, wasn't it? A. Not after four in the morning. 40

Q. Well, weren't people coming there to see it?
A. No.

Q. They were not? A. No.

Q. You mean you didn't see any? A. There was a watchman there to keep them away.

10 Q. A watchman there to keep them out? A. Yes, sir.

Q. And no difficulty about getting into the house, was there? A. No.

Q. At any time after the explosion? A. Anybody could have got in there.

Q. You don't know where this necklace or this bracelet had been left by your daughter? A. Yes; I did know.

20 Q. Where had it been left? A. In a little case with three drawers, a little cretonne case in a white satin case.

Q. On top of a bureau? A. On top of a table.

Q. On top of a table? A. Yes.

Q. So that anybody entering the room where this jewelry was, entering it surreptitiously, could have picked it up and walked out it? A. No.

Q. Why not? A. Because it was in a case among a lot of underwear ribbon.

30 Q. How would that prevent it? A. They would have to empty the drawer before they could see it.

Q. My dear madam, you said it was in a case on a table. A. In this cretonne drawer; it is a little case in a white satin case.

Q. A moment ago you testified this was on a table in a white satin case.

Mr. Weller: One moment. She said—

40 Q. (Repeated by the stenographer.) Where had it been left? A. (Repeated by the stenographer.)

In a little case with three drawers, a little cretonne case in a white satin case.

Q. On top of a bureau? A. On top of a table.
(Repeated by the stenographer.)

Q. Now, it is on the top of the table and not some drawers. A. It was in a case, in some drawers. 10

Q. And not on a table. A. The little case with three bureau drawers was on top of the table.

Q. Then the whole little box was on top of the table? A. No; the jewelry box was inside of this other box.

Q. And the box containing the jewelry was on top of the table, inside of this box—the other box?
A. The cretonne box.

Q. The whole thing was on top of a table? A. 20
Yes.

Q. In what room? A. My daughter's room.

Q. What floor? A. Second floor.

Q. Back or front? A. Back.

Q. Is there a rear stairway in your house? A.
No, sir.

Q. And where did you last place your silver mesh bag? A. It was hanging on the bureau.

Q. Hanging on the edge of the bureau? A. The last time I saw it. 30

Q. The last time you saw it; in plain view of anybody and everybody? A. Yes; only for a short time.

Q. How do you know it was for a short time?
A. The maid told me she had put it in the drawer.

Q. But as far as you know it was last hanging on the edge of a bureau? A. Yes.

Q. Did you think of going to Mrs. Vlader or to Mrs. Stefan, whatever her name may be, at any time before this warrant was issued by you— A. 40
(Interrupting) No, no.

LILLIAN KLOPMAN—Re-direct Examination.

Q. —to ask her whether she had this property?

A. No.

Q. Why, didn't you? A. Why, should I go to her? I felt she was guilty.

Q. You thought she was guilty? A. Yes.

10 Q. Yet while you thought she was guilty you were entrusting her with further work— A. (Interrupting) I had a reason for that.

Q. —and you were giving her old clothes. A. I had given her those the day before.

Q. But you allowed her to take them away. A. I cared nothing about them; I was glad to get rid of them.

Q. Yes. After you had found out for some time your property was gone, you still let her go off with your old clothes. A. Yes, sir.

20

Mr. Walscheid: That is all.

Re-direct Examination by Mr. Weller:

Q. You were asked about the house up at Rye. Do you own that? A. I own the house, but not the ground.

Q. It is just a little summer house?

30

Mr. Walscheid: I object to that as immaterial.

Mr. Weller: Why, did you ask it?

Mr. Walscheid: It came out incidentally that she owned a house.

Witness excused.

Mr. Walscheid: Now, I renew my motion, sir, to strike out the testimony which

40

FANNY GERSON—Direct Examination.

I asked to have stricken out at the time when it was offered as improper evidence of justification or probable cause. It is the testimony, I think, of Lena Gross, who went down and said Mrs. Vlader told her she had a bracelet which a lady had given her, and something else, and it had a red stone in it. 10

The Court: I do not think I should strike it out, Mr. Walscheid. I decline to strike it out.

Mr. Walscheid: I ask an objection.

FANNY GERSON, sworn.

Direct Examination by Mr. Weller: 20

Q. Mrs. Gerson, you are relative of the Klopman's? A. Yes, sir; I am.

Q. In what way are you related to them? A. Through Mr. Klopman. Mr. Gerson is a relative of Mr. Klopman.

Q. They are cousins? A. First cousins.

Q. You visit one another frequently? A. Very frequently. 30

Q. And were you at Rye with Mrs. Klopman and her daughter on the first of July, 1914? A. I was.

Q. Did you while you were there get word of their house having been blown up, or of an explosion there? A. Yes, sir.

Q. Did you come down with Mrs. Klopman? A. I did.

Q. On the first day of July? A. On the first day of July.

Q. What time about did you arrive there? A. It 40

FANNY GERSON—Direct Examination.

must have been about 11:30; between 11:30 and 12:00.

Q. And you took lunch with Mr. Gilmore Kenney? A. With Mr. Kenney.

10 Q. And what time did you get home to Mrs. Klopman's house? A. I should judge we returned home about 1:30.

Q. Yes. On the next day did anyone come there to work? A. Yes, sir.

Q. Who? A. The lady in question; I don't know the name.

Q. Mrs. Vlader, the plaintiff? A. Mrs. Vlader; yes.

Q. Did you remain there all day on the first of July? A. I did.

20 Q. And all day on the second? A. I did.

Q. Do you remember her coming back to work on the third of July, the day before the fourth? A. I don't think I was there; I wasn't there then.

Mr. Walscheid: What is that answer?

A. (Repeated by the stenographer) I don't think I was there; I wasn't there then. (Witness continuing) I was there two days.

30 Q. You were there two days? A. Yes.

Q. Were you there the day Mrs. Klopman lost her jewels or missed them? A. No; that is, I wasn't told about it then.

Q. What is that? A. I only knew about the mesh bag.

Q. And you were there when she lost the mesh bag? A. Yes; because Mrs. Klopman had been looking for that then.

40 Q. And you went away that afternoon? A. I went away that afternoon.

FANNY GERSON—Direct Examination.

Mr. Walscheid: What afternoon?

Mr. Weller: When she missed the mesh bag.

A. I was there on the day we arrived from Rye and the following day; that is, the first and the second. 10

The Court: The day that you came down from Rye was when? July 1st?

A. I suppose it was; yes, the first of July; then I remained there the following day.

The Court: And you remained the balance of the day and the following day?

A. Until the following evening, yes. 20

The Court: So you were there part of the first, and the greater part of the second day. You were not there on the third.

A. I was not.

Q. Just think a minute.

Mr. Walscheid: I object.

Mr. Weller: Wait a moment. 30

Q. Were you there when the mesh bag was missed?

The Court: She said so; yes.

A. Yes.

Q. Don't you know that was the third of July?

A. Well, it is just that I don't remember dates; that is all. 40

FANNY GERSON—Direct Examination.

Q. I see. Now, do you remember Mrs. Vlader working there at the house? A. I do.

Q. How many days do you remember her working there? A. Well, she was there on the second day.

10 Mr. Walscheid: The second of July?

A. I suppose it was the second of July.

The Court: You mean the second day that you were there?

A. The second day that I was there; yes.

The Court: Is that the first day that she had been there?

20 A. Now, I can not recall whether she came—yes; that was the first day she came there, because we came home very late.

The Court: The second day you were there?

A. Yes; the second day I was there.

Q. Then she came after that? A. Yes, sir.

30 Q. Now, do you remember where she worked the first day. A. Yes; that first day she worked—she worked upstairs.

Q. Where did she work the second day?

Mr. Walscheid: I object; she was not there to see her the second day.

A. I was not there the second day.

40 Q. Well, on the day that you saw her— A. (Interrupting) What I want to say was that the

FANNY GERSON—Direct Examination.

second day was the first day that she had been engaged.

The Court: It was your second day?

A. It was my second day.

10

Mr. Walscheid: Well, that was the second of July, was it not?

A. Probably; I don't remember the dates.

Q. Yes. Do you remember going upstairs when Mrs. Vlader was working? A. Distinctly.

Q. Do you know what work she had done that day? A. Yes; I distinctly remember; she was cleaning up the bedrooms.

Q. Yes. And when you got upstairs what did you see her doing? A. She was standing in front of Mrs. Klopman's dresser; the dresser had drawers open, and I didn't go upstairs for the purpose to see this woman; I went upstairs to go to the bath room, and, as you understand—

20

Q. (Interrupting) When you stood in front of these bureau drawers did she say anything to you?

A. "Lady," she said, "go out." Naturally I walked to the door. She said: "Lady, go out. I don't need you to work." I said I didn't go up there to work, neither did I. I went to go to the bath room.

30

Q. Did you go down? A. I immediately went down and I immediately came up and put away my bag that had ten dollars in it, locked it up in a valise.

Q. Well, wait till you hear the question; then you can answer it intelligently. After you saw her with these drawers open and her hands around the drawer, did you go down and tell Mrs. Klopman what you had seen? A. I did.

40

FANNY GERSON—Cross Examination.

Q. What did you tell her? A. I simply told her I mistrusted that woman, and I said, "Lil," I have ten dollars in my bag and I have it with me and I am going to put it away, and I immediately went up and put it away.

10 Q. Did you tell her why you mistrusted her?
A. I did.

Q. Why did you tell her? A. I didn't think it was natural for a woman who was engaged to clean up, to stand around a bureau with drawers open. Such has not been my experience. I never had a maid go as far as to open bureau drawers and clean them.

20 Q. I see. Were you there when Mrs. Klopman told her she didn't need her any more and discharged her? A. I was not; I think I left early in the afternoon.

Cross Examination by Mr. Walscheid:

Q. You never had a maid go so far as to clean your bureau drawers? A. I never have been so fortunate.

Q. You never had good maids? A. I had good maids.

30 Q. But they never cleaned your bureau drawers?
A. That part was always left to me.

Q. So that what you did—you went upstairs and you saw this woman standing in a room, in front of an open bureau drawer? A. I did.

Q. And she thought you were going to enter that room? A. Told me to go down.

Q. And she said to you: "Go down, Lady; I don't need you to work there?" A. Why should she think I came up there to work?

40 Q. She probably thought you looked as if you

FANNY GERSON—Re-direct Examination.

wanted to work? A. Probably; I would not be a bit surprised.

Q. Then you did come downstairs? A. Immediately.

Q. And you were immediately full of suspicion? A. I certainly was.

Q. And you told these facts to— A. (Interrupting) Mrs. Klopman. 10

Q. Mrs. Klopman? A. Yes.

Q. No other facts; those are the facts that you told? A. Those are the facts I told Mrs. Klopman.

Q. And then that afternoon you went away? A. That afternoon I left.

Q. Yes. Now, you came down with Mrs. Klopman, didn't you? A. I did. 20

Q. When she was notified of the explosion? A. Yes, sir. 20

Q. And she came down from Rye? A. Yes.

Q. On the day on which the explosion is supposed to have occurred? A. Yes.

Q. So that after the explosion occurred on the first of July, you were there on the first and the second of July? A. I certainly was.

Mr. Walscheid: That is all. 30

Re-direct Examination by Mr. Weller:

Mr. Weller: I don't want to be leading.

Mr. Walscheid: Well, don't.

Q. The first day you ate at Mr. Kenney's, you say? A. I did.

Q. Where did you eat the second day? A. At Mrs. Klopman's; I remained there for luncheon. 40

FANNY GERSON—Re-direct Examination.

Q. Where was the most dirt or plaster? Downstairs or upstairs?

Mr. Walscheid: I object to that as immaterial and irrelevant.

10 Mr. Weller: I don't want to lead her.

A. The majority of it was on the ground floor.

Q. Is it not a fact that that was cleaned out first? A. It was.

Q. Well, then, you came down on the first of July; the next day Mrs. Vlader worked there? A. Yes.

Q. Isn't it a fact that she was working on the first floor downstairs? A. Yes, sir.

20 Q. And is it not a fact that you stayed there until the next day? A. I left next day in the afternoon.

Q. That was the third of July? A. Yes, sir. sir.

Mr. Walscheid: How many days were you there?

A. I was there two days.

30 Mr. Walscheid: That is all.

A. That is exactly what I am telling Mr. Weller.

Q. You were there two days after the day you came down?

Mr. Walscheid: No.

The Court: Let her answer now.

40 A. We came down, if I remember right, on the first.

FANNY GERSON—Re-cross Examination.

Q. Yes. A. Of course, I don't remember the dates. I know the day of the explosion I came down with Mrs. Klopman.

The Court: You stayed the balance of that day, over night?

A. Yes, sir; and I stayed the next day. 10

The Court: You stayed that day you came down, over night?

A. Yes, sir.

The Court: Now, go on.

A. And I remained the next day and I left the following day; the third day I left.

Re-cross Examination by Mr. Walscheid: 20

Q. How many nights did you stay there? A. Two nights.

Q. You were there three days, weren't you? A. I would not call it there days, no; I didn't get there until one o'clock.

Q. You have suddenly discovered, madam, that your story, as told, does not fit in with the story of Mrs. Klopman, haven't you? A. No; I have not discovered anything at all. 30

Q. And that you had to be there on the third of July in order to make your story fit? A. Not at all.

Q. That is why you are suddenly there two nights and three days? A. Not at all. All I remember is—

The Court: That is all.

(Witness excused.)

EMMA SCHULTZ—Direct Examination.

EMMA SCHULTZ, sworn.

Mr. Weller: Oh, Mrs. Gerson, I want to ask you one question.

(Witness excused for the present.)

10

FANNY GERSON, recalled.

Direct Examination by Mr. Weller:

Q. Did you steal any jewelry from the home of Mrs. Klopman? A. Why should I steal anything when I came up?

20 Q. Did you steal any? A. No.

(Witness excused.)

EMMA SCHULTZ, recalled.

Direct Examination by Mr. Weller:

30 Q. I must ask you did you steal anything from the home—

Mr. Walscheid: I object to that as immaterial and irrelevant. We are trying to reason ourselves into a situation of probable cause, and I think that the Anness case controls the situation.

The Court: I will sustain the objection, because I do not think it is a proper question.

40

EMMA SCHULTZ—Recalled, direct.

Q. You worked for Mrs. Klopman at one time, did you not? A. Yes.

Q. Just tell from what time to what time you worked there? A. I guess it was in March—

The Court: Well, how many months or years do you remember? 10

A. About a year and a half.

Q. Where did Mrs. Klopman live at that time, do you know? A. 34 Duer Place, Weehawken.

Q. You worked there as a domestic servant? You were the servant girl? A. Yes, sir; I was the servant girl.

Q. You have a sister? A. Yes, sir.

Q. What is the sister's name? A. Lena Gross. 20

Q. Is she married now? A. No.

Q. Where is she now? A. She is in Pittsburg, Penn.

Q. Where were you on the morning of the first of July? A. In the morning of the first of July—that was the day of the explosion?

Q. That was the day of the explosion. A. Well, I was at home, staying around the house.

Q. You were in Mrs. Klopman's house at that time? A. Yes, sir.

Q. And what time did this explosion occur? A. 30
About four o'clock in the morning.

Q. Did it wreck the house? A. Yes, sir.

Q. Do you remember Mrs. Klopman coming home that afternoon? A. Yes; I know.

Q. What time did she get home? A. I know it was in the afternoon, about—I don't know what time it was; it was kind of late in the afternoon.

The Court: What was that? 40

EMMA SCHULTZ—Recalled, direct.

A. (Repeated by the stenographer) I know it was in the afternoon, about—I don't know what time it was; it was kind of late in the afternoon.

10 The Court: Talk a little louder so the jury can hear you.

Q. Where did you sleep that night? A. I sleep with Mrs. Vlader Stefan.

Q. Did your sister live at Mrs. Stefan's place?

A. My sister wasn't there at that time; she was in the hospital sick.

Q. I see. Did you go up there and sleep that night? A. I go up there and sleep there; yes.

20 Q. Did Mrs. Klopman tell you to get someone to help clean the house? A. She said to "get any woman you can."

Mr. Walscheid: Isn't that all immaterial? Isn't it in the case, undisputed?

Q. Did you get Mrs. Vlader? A. Yes, sir.

Q. How many days did she work there? A. Two days, I guess.

30 The Court: Two days, she says.

Q. What time did she go the first day? A. It was not so early; about between nine and ten.

Q. Did you work with her that day? A. Yes.

Q. Where did you work the first day? That was the second of July, the first day that you were there? A. Worked all around the house, picked up the glass, the plaster in the kitchen.

40 Q. Was that upstairs or downstairs? A. It was on the ground floor.

Q. Where did you work the second day? A. The second day we went upstairs on the second floor.

Q. Yes. A. Yes, and we make the beds and clean the rooms, the bed-rooms and the sitting-room.

Q. Who made the beds? A. I don't know who made the beds; I don't know; she made some and I make some. 10

Q. You were both working there? A. Yes.

Q. How long did you work there that day? A. I went down to make the lunch, you know, and she was up there working.

Q. Yes. A. Yes.

Q. How long were you down making the lunch? A. Well, I don't know how long. 20

Q. Now, after that did you see Mrs. Klopman's mesh bag? A. Yes; I saw it.

Q. The third day of July? A. Yes.

Q. Where was it when you saw it?

Mr. Walscheid: I object to the form of your questions as leading.

The Court: Well, what day was this when you saw this mesh bag?

A. It was on the second day of the explosion; the second of July. 30

The Court: You mean the day after the explosion?

A. Yes, sir.

The Court: The next day after the explosion?

A. Yes, sir. 40

EMMA SCHULTZ—Recalled, direct.

The Court: And the explosion took place on the first of July in the morning?

A. Yes, sir.

Q. Well, was that the first or second day, Mrs. Vlader worked there?

10

Mr. Walscheid: I object to that as immaterial.

A. It was the second day.

Q. The second day that Mrs. Vlader worked there? A. Yes, sir.

20

The Court: When did Mrs. Vlader come there? What day? When did she first come there? Did she come there the day of the explosion?

A. No; not the same day.

The Court: The next day after the explosion she came there?

A. Yes, sir.

30

Mr. Weller: She testified that that day she worked downstairs.

Mr. Walscheid: As you testified.

Mr. Weller: No; I didn't testify.

The Court: Go on, Mr. Weller; go on.

Q. Now, where was this mesh bag when you saw it on the third of July?

40

Mr. Walscheid: I object to the statement of the third of July; witness has said it was the second.

EMMA SCHULTZ—Recalled, direct.

Mr. Weller: She didn't say so.

The Court: Now, let us see if we can get it straightened out. The explosion was at four o'clock on the morning of July 1st; that is right, is it?

A. Yes, sir.

10

The Court: Mrs. Vlader came there next day?

A. Next day in the morning.

The Court: And she worked there that day?

A. Yes.

20

The Court: And she worked there the next day also?

A. The next day, too.

The Court: Yes. Now, when was it that you saw this mesh bag of Mrs. Klopman's?

A. It was the first day Mrs. Vlader was in the house. 30

The Court: It was the first day Mrs. Vlader was in the house?

A. Yes, sir.

The Court: That was the day after the explosion?

A. Yes, sir.

40

EMMA SCHULTZ—Recalled, direct.

The Court: Is that right?

A. Yes, sir.

Q. Did you see it the next day? A. What?

Q. Did you see it again the next day? A. No; I did not.

10 Q. What did you do with this mesh bag? A. I took the mesh bag from the bureau and put it in Mrs. Klopman's black bag.

Q. And where was the black bag? A. It was on the bed or some chair; I don't know where it was.

Q. The black bag? A. Yes.

Q. Well, did you put it away then anywhere?
A. I don't know where I put it; I guess in the
20 bureau.

The Court: I understand she took the mesh bag and put it in Mrs. Klopman's black bag.

A. Yes, I don't know where I put the black bag.

Mr. Weller: She says she guesses the bureau.

30 A. I don't know sure.

Q. Do you remember when Mrs. Klopman missed it? A. It was in the afternoon she told me, about what I think about Mrs. Vlader, I say I don't know.

The Court: What afternoon was that?

A. This was in the afternoon; the first afternoon when she was there.

40 Q. You say that that was the afternoon that

EMMA SCHULTZ—Recalled, direct.

she missed the bag? A. Yes. Mrs. Klopman ask me about night—late in the afternoon she ask me what I think about her.

Q. How did she happen to miss the bag, do you know? A. Well, I don't know.

Q. What was in this mesh bag, anything? A. I don't know; I didn't look in. 10

Q. After she missed this bag did she discharge her? A. No; I don't know.

Q. How long did she work there after that? A. Well, the ninth, I guess; I don't know—the ninth of July.

The Court: She probably does not understand your question.

Mr. Walscheid: How many days was she there after she missed the mesh bag? 20

A. Oh, how many days? I guess one day more, I guess.

Q. You guess?

Mr. Walscheid: What is the answer?

A. (Repeated by the stenographer) Oh, how many days? I guess one day more, I guess.

Q. When Mrs. Klopman missed this bag was she angry? 30

Mr. Walscheid: I object to that as immaterial.

Mr. Weller: I merely want to call her attention to the fact in order to get the date.

The Court: She has not hesitated in saying that she knew of the missing of the bag; that Mrs. Klopman missed it and spoke to 40

EMMA SCHULTZ—Recalled, direct.

her about it later in the day, as I think she said.

Q. What time did Mrs. Vlader quit the second day she was there? Did she work till night—

10 Mr. Walsheid: I object to the form of the question. "What time did she quit?" is sufficient.

The Court: What time did Mrs. Vlader stop work the second day she was there?

A. Well, it was not so late; it was five, around; a little later.

The Court: Five or a little later.

20 Q. What time did she stop the first day? A. The same time.

Q. Do you remember the sister coming down from Guttenberg to the house? A. Yes.

Q. Did you hear her tell Mrs. Klopman what Mrs. Vlader had told her?

Mr. Walscheid: I object to that as immaterial.

30 A. I don't know what you mean.

Mr. Walscheid: Then I withdraw the objection.

Q. Did you hear your sister tell Mrs. Klopman anything? A. Yes.

Q. What did she tell her about jewelry, if anything? A. She told me first.

40 Q. Well, I don't want that. What did you hear

EMMA SCHULTZ—Recalled, direct.

her tell Mrs. Klopman? A. She said Mrs. Vlader said to her she has a nice necklace and a nice bracelet; somebody gave it to her.

Q. And did she tell how they looked? A. I don't know.

Q. I mean did your sister say Mrs. Vlader said how they looked? A. I don't know. 10

Q. You don't remember? A. No.

The Court: You have not fixed the time when that was or the day when that was.

Q. When was that that she told Mrs. Klopman this? A. It was a few days after, because my sister wasn't here that time of the explosion; she was in the hospital.

Q. Yes. A. Yes; I don't know what day it was. 20

Q. Do you remember when Mrs. Vlader was arrested? A. Yes; I remember.

Q. How many days before Mrs. Vlader was arrested was it that your sister told Mrs. Klopman this? A. I don't know.

The Court: Was it before Mrs. Vlader was arrested or after she was arrested?

A. Before she was arrested. 30

The Court: Before?

A. Yes.

Q. Now, you say the first day you and Mrs. Vlader worked downstairs all day? A. Yes, sir.

Q. And the second day you worked upstairs?

Mr. Walscheid: Oh, I object to the form of the question. 40

EMMA SCHULTZ—Recalled, cross.

Mr. Weller: She has already testified.

The Court: It is repetition, anyway.

Mr. Weller: I don't know of any better way, though, to get to it quickly.

The Court: You have already been over it. She has testified to it.

10 Mr. Walscheid: I had no right to object to that or I would have objected to it.

Q. On the second day that you were there who was in the house besides you and Mrs. Vlader?

Mr. Walscheid: I object to that.

The Court: On the second day that Mrs. Vlader was there—restate your question.

20 Q. On the second day that Mrs. Vlader was there who else was in the house besides you and Mrs. Vlader? A. Miss Gerson and Mrs. Klopman.

Q. There is only one pair of stairs there, is there? A. What do you mean?

Q. There is only one pair of stairs, and that is in the front? A. Yes, sir.

Q. Were you in the house all day that day? A. Yes, sir.

30 Q. And nobody else there but you three? A. No.

Mr. Weller: That is all.

Cross Examination by Mr. Walscheid:

Q. Mrs. Gerson came down from Rye with Mrs—

A. (Interrupting) Klopman.

Q. Klopman? A. Yes, sir.

40 Q. And they came down on the day of the explosion? A. Yes, sir.

Q. And that day there were lots of people around that place, weren't there? A. Yes, sir.

Q. In the house? A. Not upstairs.

Q. How do you know? There were lots of people on the house, weren't there? A. Yes, sir.

Q. And you were very much excited? A. I was not much excited. 10

Q. Weren't you excited by reason of the explosion? A. Well, on the same day.

Q. I am talking about the same day? A. The day of the explosion; yes.

Q. You were very much excited? A. Yes; I was.

Q. And the firemen came in? A. Yes, sir.

Q. And they brought in their fire apparatus? Didn't they? A. I cannot understand that.

Q. They brought in their fire machinery, didn't they? A. Yes, sir. 20

Q. And on the second day, the second of July, people were still coming to look at the house, weren't they? A. The second day nobody came.

Q. Lots of people standing outside looking at the explosion? A. Yes; not inside.

Q. You mean you didn't see them go inside? A. Yes.

Q. But the people were coming there for two or three days afterwards looking at that house? A. Yes, sir. 30

Q. Of course, you didn't see any of them go inside, did you? A. No.

Q. Now, Mrs. Gerson came down with Mrs. Klopman and she stayed one night, didn't she?

A. I don't know how many nights she stayed.

Q. You don't know? A. No.

Q. Now, when Mrs. Klopman missed the mesh bag she asked you for it, didn't she? A. No; she 40

EMMA SCHULTZ—Recalled, cross.

didn't ask me about the mesh bag. She only asked me what I think about her.

Q. Well, did she tell you that she had missed a mesh bag? A. No; she didn't tell me this.

Q. You mean to say that she missed the mesh bag? A. Yes, sir.

10 Q. Well, how did you find out how she missed it if she didn't tell you? A. She told me afterwards.

Q. When afterwards? A. Well, it was not that same day.

Q. Not that same day? A. No.

Q. So she didn't tell you until several days afterwards that she missed the mesh bag? A. I don't know how many days.

20 Q. Well, is it more than two days? A. I don't know.

Q. Mam? A. I don't know.

Q. Well, the last time you saw the mesh bag was the day after the explosion? A. Yes.

Q. That is right. And where did you see it? A. I saw it on the bureau.

Q. Where? A. On the bureau; on Mrs. Klopman's dresser.

Q. On Mrs. Klopman's dresser? A. Yes.

30 Q. And you took it? A. Yes; I took it.

Q. And you put it in a black box? A. Yes.

Q. And you don't know where you put that black box?

Mr. Weller: Black bag.

Q. Black bag; and you don't know where you put that black bag? A. No; I put it in a drawer.

Q. And you have never known since? A. What?

40

EMMA SCHULTZ—Recalled, cross.

Q. You have never known since where you put that black bag? A. I am not sure whether I put it in the bureau drawer.

Q. And Mrs. Klopman on that day didn't speak to you about that black bag? A. No.

Q. And the next day she didn't speak to you about that black bag? A. I don't know whether one day after or two days; I don't know. 10

Q. Well, when she did speak to you about the bag what did she say to you? A. Well, what should I say? I can't say much.

Q. Well, didn't she ask you whether you had seen the bag? A. No.

Q. She didn't ask you that? A. No. She only asked me what I think about her; that is all.

Q. She only asked you what you thought about Mrs. Stefan without asking you whether you had seen the bag? A. Yes, sir. 20

Q. Or without saying anything about the bag? A. Yes.

Q. That is right? A. I don't know anything more.

Q. That is the way it happened? A. Yes, sir.

Q. You saw Mrs. Stefan Vlader go home— A. (Interrupting) Yes, sir.

Q. On the second day? A. Yes.

Q. Saw her take that bundle of old clothes with her? A. Yes, sir. 30

Q. You knew that Mrs. Klopman had given her that? A. Yes, sir; she was put in the bag, and she saw the bundle in the room.

Q. What? A. Mrs. Florence Stefan she was in the alley, and she saw that clothes and she asked Mrs. Klopman if she can have it, and Mrs. Klopman said yes.

Q. Mrs. Klopman said yes? A. Yes. 40

Q. And she took it with her? A. Yes.

Q. And when she went away do you remember Mrs. Klopman asking her whether she would wash for her the next Monday? A. Yes.

Q. You remember that, don't you? A. Yes, sir.

10 Q. So on the second day that Mrs. Vlader was there when Mrs. Vlader was going home Mrs. Klopman asked her whether she would take the wash up to her house and do it on Monday? A. Yes, sir.

Q. That is right; isn't it? And Mrs. Vlader said yes, she would? A. Yes.

Q. And that you should bring it up? A. Yes, sir; that was on Monday morning.

Q. It was to go up on Monday morning? A. Yes.

20 Q. And on Monday morning afterwards you did bring it up, didn't you? A. Yes, sir. On the Monday morning I brought the wash to Mrs. Stefan.

Q. You call her Mrs. Stefan, don't you, instead of Mrs. Vlader? A. Yes, sir.

Q. And that Monday morning was three days after she had worked at Mrs. Klopman's, wasn't it? A. This was on the sixth of July.

Q. On the sixth of July? A. Yes.

30 Q. And she worked at Mrs. Klopman's on the third of July? A. Yes.

Q. And did you sleep up there all that time? A. Yes.

Q. Every night? A. Every night.

Q. And did you sleep there that Monday night, too? A. Yes, I did.

Q. And Mrs. Stefan had washed Mrs. Klopman's clothes during the day, hadn't she? A. She and I washed together.

40 Q. Oh, you and she washed together? A. Yes, sir.

Q. So that on that Monday you stayed up there with Mrs. Stefan, and you and Mrs Stefan washed Mrs. Klopman's clothes? A. Yes, sir.

Q. And on Tuesday, did you stay up there, too? A. Yes; I came back again.

Q. Tuesday you came back again and you helped her iron, didn't you? A. Yes, sir. 10

Q. And on Wednesday, did you go back? A. Yes, on Wednesday I was back.

Q. Also helping ironing, eh? And I suppose Mrs. Stefan had to do her own work in between?

A. What do you say?

Q. She had other work to do besides this washing, didn't she? A. She had other work, yes.

Q. She was doing her own housework and attending to Mrs. Klopman's wash? A. She didn't attend to on this wash; she ironed him a little. 20

Q. She didn't what? A. She didn't wash much; only she ironed more.

Q. You did the washing, eh? A. Yes.

Q. And then your sister had been in the hospital, hadn't she? A. Yes, sir.

Q. And Mrs. Stefan had taken her over to that hospital, hadn't she? A. Yes, sir.

Q. And had paid for the carriage, hadn't she? A. Yes, sir.

Q. And had helped your sister, hadn't she? A. Yes, sir. 30

Q. And then your sister came back, then, to live at Mrs. Stefan's? A. Yes.

Mr. Weller: I object. This is not cross-examination, and the girl is swearing to something she does not know anything about. It is hearsay.

Q. Weren't you there when your sister came back there? A. No, I was not there. 40

Q. Weren't you at Stefan's? A. I don't know the same day; maybe the night; I don't know.

Q. You know that your sister did come back to Stefan's to live, don't you? A. Yes, sir.

Q. And you know she left there? A. Yes, sir.

10 Q. What day did she leave? A. I don't know.

Q. In relation to the day when this warrant was issued, wasn't it on the same day? A. When what?

Q. When the warrant—when Mrs. Klopman went for the warrant? A. I can't understand what is a warrant.

Q. Do you know when Mrs. Stefan was arrested? A. Yes, I know.

Q. When Mrs. Stefan was arrested? A. Yes.

20 Q. And your sister wasn't living at Stefan's any more then, was she? A. No.

Q. She had left Stefan's one day, hadn't she? A. I don't know.

Q. Well, you know why your sister left Stefan's, don't you? A. Why?

Q. Why. A. Yes.

Q. She had a fight, didn't she, with Mrs. Stefan? A. Well, she want my father to pay her.

30 Mr. Weller: And she wanted the money again from your sister; that started the fight.

Q. Your father had paid your sister? A. To pay to Mrs. Stefan, when my sister was sick, and my father paid every cent, because she didn't have any.

Q. Mrs. Stefan said she had not been paid and wanted some money? A. That is right.

40 Q. And then your sister and she had a fight? A. Yes, sir.

EMMA SCHULTZ—Recalled, cross.

Q. And she ran down to Mrs. Klopman and to you—your sister? A. Yes, sir.

Q. And she told you all about this fight, didn't she? A. Yes, sir.

Q. And she told Mrs. Klopman about the fight, didn't she? A. Well, she told more, and I told Mrs. Klopman. 10

Q. But your sister told also Mrs. Klopman that she had a fight with Mrs. Stefan about money matters? A. Yes, sir.

Q. And in that conversation about these money matters when she was telling this to Mrs. Klopman—

Mr. Weller: I object. It is not proper cross-examination. 20

The Court: Will you please wait 'till I hear the question. I can not constantly hear your objection and hear a question put; nor can I if I hear your objection, decide whether it is proper before the question is put.

Mr. Walscheid: I will give the question again. Strike out the beginning of it.

The Court: Don't answer until I tell you to. 30

Q. And in that conversation in which your sister told Mrs. Klopman about the fight she had had with Mrs. Stefan, your sister told Mrs. Klopman that Mrs. Stefan had said that she had a bracelet and a necklace? A. Yes.

Mr. Weller: I do not object to that. That was not the question before.

The Court: The trouble was the whole question had not been put, you see. 40

Q. And you had seen your sister before that time, hadn't you? A. Yes, sir.

Q. And you before that time had told your sister that Mrs. Klopman had missed her jewelry?

A. Yes, sir.

10 Q. So that your sister when she came down to tell Mrs. Klopman this knew that Mrs. Klopman had lost her jewelry; had had a fight with Mrs. Stefan and came and told these things to Mrs. Klopman?

Mr. Weller: I object to that as immaterial and irrelevant.

The Court: I can not see that it is relevant. It is merely a resume of all that has been said before.

20 Mr. Walscheid: I withdraw the question to save time.

The Court: Because every point raised in it has been passed upon.

Q. And Mrs. Klopman knew when your sister came to tell her about what Mrs. Stefan had said, that you had told your sister about the jewelry?
A. Yes, sir.

30 Mr. Weller: One moment. I object to the question.

The Court: Why?

Mr. Weller: On the ground that it is a statement made by Mr. Walscheid in the first place. It is a statement made by him. It is not a question.

The Court: Oh, I think it is. It follows up the other line of testimony. I will overrule the objection.

40 Mr. Walscheid: That is all.

GEORGE RANDER—Recalled, direct.

Re-direct Examination by Mr. Weller:

Q. Now, after the house was blown up there, was a watchman employed there to watch the house? A. I guess so.

Q. Well, don't you know? A. Well, I know there was a man around; I don't know about it so much. 10

Q. How many days was he there, do you know? A. I don't know.

Q. What was his name? A. I don't know.

Mr. Walscheid: Oh, we do not dispute about the watchman.

Q. For what purpose did you take this wash to Mrs. Vlader? A. Why?

Q. For what purpose did you take this wash to Mrs. Vlader? A. Because I can't wash it home; everything was upset. 20

Q. Was there any other reason? A. No.

Q. Before going up there, did Mrs. Klopman tell you anything—to look for anything up there?

Mr. Walscheid: I object to the question as immaterial and irrelevant.

A. No.

Mr. Walscheid: The answer is "No." I withdraw the objection. 30

(Witness excused.)

GEORGE RANDER, sworn (recalled):

Direct Examination by Mr. Weller:

Q. I show you a paper, and ask you what that paper is, Mr. Rander? A. That is a complaint for larceny. 40

GEORGE RANDER—Recalled, direct.

The Court: Against whom and by whom is the complaint?

A. Against Marie Stefan by Lillian Klopman.

10 The Court: And bears date—

A. And bears date the 10th of July.

The Court: And before whom was it sworn?

A. Before me.

Q. Where were you when this warrant was sworn?

20 Mr. Walscheid: Oh, I object to that as immaterial,—

A. Where I was?

Mr. Walscheid: —as long as he was in the State of New Jersey.

The Court: That is the purpose, to show he was outside of his jurisdiction?

30 A. I was in the jurisdiction.

Mr. Weller: All right.

Q. Who came to your house when this warrant was made out?

Mr. Walscheid: I object to that as immaterial.

40 The Court: That has not been ruled upon yet. I think I ought to pass on that before.

GEORGE RANDER—Recalled, direct.

It was testified by Mrs. Klopman that Lena Schultz was with her, as I remember it, when she went to the office, wherever it was; and while I overruled one question as to whether or not Lena Schultz was sworn, I did let you ask the question as to the statements made by Lena Schultz. That was the situation in regard to the testimony of Mrs. Klopman.

10

Q. Were Mrs. Klopman and Lena Schultz there at your house together? A. Yes.

Q. Or Lena Gross, I meant to say? A. Yes.

Mr. Walscheid: That is the witness who was just on the stand.

The Court: No, that was Emma.

20

Q. Did you take the statement of Lena Gross before issuing the warrant?

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: Well, I suppose the same thing will develop if I permit that, if I permit you to proceed with that as I did with the other, and that seemed to go only at an affair which existed, if it existed at all, as between Lena Gross and the plaintiff in this action, and did not have any bearing on the issues in this case.

30

Mr. Weller: Oh, no, no, absolutely as to the issues in this case. I think you let Mrs. Klopman's testimony in.

Mr. Walscheid: No; you did not. But I will withdraw the objection so far as a yes or no answer is concerned.

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GEORGE RANDE—Recalled, direct.

The Court: Let me hear the question again.

Q. (Repeated by the stenographer) Did you take the statement of Lena Gross before issuing the warrant?

10

The Court: Well, answer yes or no.

A. I took a verbal statement.

Q. Did you also take the statement of Mrs. Klopman? A. I did.

Q. After you had heard the statements of Mrs. Klopman and of Lena Gross, did you give Mrs. Klopman any advice?

20

Mr. Walscheid: I object.

The Court: I will sustain the objection.

Mr. Weller: Your Honor will allow me an objection.

The Court: I don't suppose I am making a mistake. Are you an attorney at law of this state?

Mr. Walscheid: No; he is a Justice of the Peace.

30

The Court: Are you an attorney at law of this state?

A. No.

The Court: You have not been admitted to the bar of this state?

A. Simply a Justice of the Peace and Recorder,

Q. And you are also the Recorder of the Town of Weehawken? A. I am supposed to be so, yes.

40

Q. Well, are you? A. Yes, sir.

GEORGE RANDER—Recalled, direct.

Q. And qualified to issue warrants for the apprehension of criminals?

Mr. Walscheid: Yes.

The Court: I suppose there will be no contest over that.

Q. And in this case when you received these statements from Lena Gross and Mrs. Klopman, did you make up your mind as to whether it was a proper case for a warrant or not? 10

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: I will sustain the objection.

Mr. Weller: Your Honor will allow me an objection. I merely want to get my record straight. 20

Q. Do you remember the trial of this cause? A. The what?

Q. The trial, or the hearing in the cause in which Mrs. Stefan was arrested. A. Perfectly.

Q. Who were the witnesses sworn there?

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: I will sustain the objection. I cannot see any relevancy to it. 30

Q. Was Mrs. Hottwett—Doctor Hottwett's wife sworn? A. She was.

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: I sustain the objection.

Mr. Weller: I will go one step further, your Honor, to get the record straight. 40

GEORGE RANDER—Recalled, direct.

Q. Did she or did she not swear that the plaintiff in this case, Mrs. Vlader, had worked for her—

10 The Court: One minute, Judge. Please do not answer by nod or word until after the question has been asked and counsel has had an opportunity to place his objection. You know enough about court matters for that.

Q. —and she had missed articles of jewelry and silverware after this woman was there?

Mr. Walscheid: I object to that as immaterial and irrelevant.

20 The Court: I will sustain the objection.

Mr. Weller: Your Honor will allow me an objection.

Q. Mrs. Vlader has testified that Mrs. Klopman went down to the cell where she was confined, whereas she went down there alone. Can anyone get down there alone to the cells? A. I don't know. I presume they can go alone if they want to, if the police allow them to go in there.

30 Q. They are locked; they can't get in there unless the doors are unlocked? A. No; the outside door to the cell room is not always locked; the cells are locked, but not the outside door.

Q. Oh, I see. Did you go down there with Mrs. Klopman when she went down to the cell?

40 Mr. Walscheid: I object to that as immaterial. I am trying to shorten the case. The only defense in here, as urged by the pleadings, is probable cause. Now, this is after.

GEORGE RANDER—Recalled, direct.

The Court: You still have your count for slander open, have you?

Mr. Walscheid: Yes; I withdraw the objection.

The Court: There was a question put this morning—I will call your attention to it later—that was at least relevant to the slander if it was not to the other. 10

Q. (Repeated by the stenographer) Did you go down there with Mrs. Klopman when she went to the cell? A. I don't know whether she was with me or not. I think I was down to the cell once, seeing this woman there.

Q. Did Mrs. Klopman say to Mrs. Vlader while you were with Mrs. Klopman that she was a thief; that she had stolen her clothing and sold them? 20

A. I never heard such an assertion by Mrs. Klopman and I didn't hear that.

Mr. Walscheid: Take the witness.

Mr. Weller: That is all.

(Witness excused.)

Mr. Walscheid: If I am at this time (it not being a part of my case), I desire to offer this complaint which is now here. 30

The Court: I was just going to ask you, Mr. Weller; it has been practically proved.

Mr. Weller: Yes; put it in.

The paper was received in evidence and marked Plaintiff's Exhibit 2.

GILMORE KENNEY, sworn.

Direct Examination by Mr. Weller:

Q. Mr. Kenney, where do you live? A. 771 Boulevard, Weehawken.

10 Q. Weehawken? A. Yes, sir.

Q. Do you remember the trial or hearing of Mrs. Stefan Vlader before Justice Rander? A. Yes, sir.

Q. Weehawken? You were down there? A. Yes, sir.

Q. Did she or did she not at that time say that she knew who took Mrs. Klopman's jewelry and mesh bag?

20 Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: I do not understand the question. Who had?

Mr. Weller: No, I asked Mrs. Vlader for the purpose of contradiction of her statement if she did not say at that time in the presence of Mr. Kenney that she knew who had these things. She answered no.

The Court: Well, if that was done he did lay a proper foundation.

30 Mr. Walscheid: He laid a proper foundation for it, but I say it is immaterial. In the first place, it is after the warrant was issued, after the complaint was in. In the second place, supposing that she had said so, supposing she did think so—

The Court: It goes to the veracity of the witness.

Mr. Walscheid: As to an immaterial issue. We are opening up this side-line again.

40 The Court: I will permit the question. It

is only for the purpose of contradiction of the witness; that is all it will be used for.

Q. (Repeated by the stenographer) Did she or did she not at that time say that she knew who had Mrs. Klopman's jewelry and mesh bag? A. I don't think she used it exactly in that way. 10

Mr. Walscheid: Well, the answer is no.

Q. Did she say she knew?

Mr. Walscheid: If the answer is no, the matter is closed.

The Court: What is your answer, Mr. Kenney? Did she say what counsel has suggested in his question, or did she not say it? 20

A. Practically, yes; but in those exact words, no. I cannot tell just exactly what she did say.

Q. Well, I will ask you what she did say.

Mr. Walscheid: Now, I object, because it is merely for the purpose of testing her veracity, and unless the exact words had been repeated to her and her memory had been refreshed, they cannot be asked of this witness. 30

Mr. Weller: I did use his exact words; I got them from his mouth. I don't know what they are now. I don't want the stenographer to turn back to them. I have no doubt that he will answer in the direct words.

The Court: The only way to do is to go back.

Q. (Repeated by the stenographer from the re-cross examination of the plaintiff, after she had 40

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been recalled following the swearing of George Rander and before his examination by Mr. Weller) "Did you say, while you were under arrest in the courthouse, in the presence of Mr. Gilmore Kenney, 'I can't tell Mrs. Klopman who has her things?'"

10 A. (Repeated by the stenographer) "No, sir."

The Witness: Those are the exact words that she used.

Q. That she could tell who had her things? A. "I can tell Mrs. Klopman who has her things."

Mr. Weller: That is all.

Mr. Walscheid: That is all, Mr. Kenney.

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(Witness excused.)

The Court: That closes the case. Any rebuttal?

Mr. Walscheid: No.

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Mr. Weller: Now, your Honor, before commencing the summing up I would like to ask your Honor to direct a verdict in favor of the defendant.

The Court: On what grounds, Mr. Weller?

Mr. Weller: Upon the ground that the plaintiff has not shown a want of reasonable and probable cause, and upon the ground that we have distinctly shown that this de-

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pendant had reasonable and probable cause for the issuing of this warrant. Now, the testimony in the case as it stands is this: That they had that little house where they lived; that there was only one pair of stairs, the front stairs—

The Court: Now, Mr. Weller, I remember the testimony perfectly and I might just as well say to you very frankly and freely, without spending time arguing on it, that there is nothing that I can see which would warrant me in directing a verdict. Whether or not the testimony has been sufficient or not is a question for the jury in this case now. There is not that in the case—and I am talking very frankly about it—there is nothing in the case as to which a review of the testimony—and I have it all in my mind—would warrant my directing a verdict on those grounds. 10 20

Mr. Weller: I think your Honor will hear me—

The Court: I do not see why I should, Mr. Weller, when my mind is as I say it is.

Mr. Weller: Well, if I can show you by the evidence—and I will be brief—and by the law that it is a question of law for the Court and your Honor should direct a verdict— 30

The Court: It is only a question of law where it undoubtedly appears that the plaintiff has not made out that case which the law says plaintiff must make out. Now, the plaintiff must make out these things: That the prosecution is ended and that he is duly discharged. There is no question about that. 40

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Mr. Weller: No.

The Court: That the defendant instituted the proceedings against him without reasonable or probable cause.

Mr. Weller: That is the question.

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The Court: And that the defendant was actuated by malicious motives in making the charge.

Mr. Weller: Those are the only things I wish to speak to.

The Court: Now, is this case in that shape where I am warranted in taking it from the jury and saying there is nothing?

Mr. Weller: I think there is no doubt about it.

20

The Court: Well, I don't, Mr. Weller.

Mr. Weller: If your Honor will hear me a moment—I don't like to be foreclosed in this way. I like to be heard.

The Court: Well, go ahead, Mr. Weller. I am going to sit here until this case is finished if I take 'till midnight. When I have made up my mind as I have it is quite useless to argue upon it. However, you shall have your turn. Go ahead.

30

Mr. Weller: I say these four people were in that house on that day—the plaintiff, Mrs. Gerson, Mrs. Klopman and Emma Gross. They have all testified that no one else was in that house that day. Yet that morning Mrs. Klopman says that she saw these jewels upstairs. That afternoon about two o'clock when nobody else, so far as they knew, had been up there but Mrs. Vlader, and Miss Gross who had been in the employ of the family for more than a year; no one

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else, as far as is known, had been there. Now, after this when this Lena Gross brings her the story that Mrs. Vlader had told her— it doesn't matter whether it is true or whether it is false—that a lady had given her a bracelet with stones in, and that a lady had given her a necklace which she would show her in the future, but did not show her—when she told her those facts, knowing that that woman had been in the house, and when Mrs. Gerson had told her that she had seen this woman with her hands about the drawer and that the woman had said, "Lady, go out; you can't work here" or words to that effect, I say that there could not be any stronger reasonable and probable cause for a person to work upon, and I don't think there is a reasonable being but what would have done as she did. If anyone should be working for your Honor and there should be four people in the house, and there should be one stranger in the house, and that stranger should be caught in these suspicious circumstances, with the bureau drawers out, and getting excited and telling a woman to go out, and afterward someone should come and tell you that that very person had said a lady had given her these things, and described your articles that had been stolen from you, you would be justified in laying that matter before a magistrate. Now, in this case—the Lane case that has been mentioned by Mr. Walscheid, the Court said: "The question of probable cause does not turn upon a consideration of what were the facts in the

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10 case, but upon a consideration of what were the facts as they appeared to be, or were known by, or believed to be by the defendant. The controlling fact is not. Was there actual cause for the prosecution? but, had the defendant at the time of instituting the prosecution probable cause for so doing?"

Now, these things were stolen; that woman had been working there; and when Mrs. Klopman got the description of those very things from a third party as given to her by this defendant (the plaintiff in this action) hadn't she reasonable and probable cause to believe that this woman might be guilty, and wasn't she justified in laying these matters before a magistrate? I submit that she was. And right here in this same case they hold that that is not a question for a jury.

20

The Court: The question of reasonable and probable cause is not for a jury?

Mr. Weller: Yes, sir.

The Court: I never understood so.

Mr. Weller: "The question of probable cause does not turn upon the actual commission of the original wrong charged"—

30 wait one moment— oh, yes; where the facts are undisputed—

The Court: Oh, of course, of course.

Mr. Weller: Well, has anyone said Lena Gross didn't tell Mrs. Klopman this? Has anyone said these things were not stolen from her house? I say the facts are undisputed, and I don't think any other inference could be reasonably and probably drawn. I, therefore, ask you Honor to direct a verdict.

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Court's Charge to the Jury.

The Court: I will decline to direct a verdict.

Mr. Weller: Your Honor will allow me an objection.

The Court: You may have it.

Mr. Weller summed up to the jury.

Mr. Walscheid summed up to the jury.

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Court's Charge to the Jury.

Gentlemen of the Jury: This is an action brought by the plaintiff against the defendants. We in dealing with the matter deal with only one defendant, and that defendant is Lillian Klopman. The action is brought for the purpose of recovering damages upon two causes of action. There were originally three causes. Two only remain, and they are these: for malicious prosecution and slander. I will take them up in the order in which I have named them, taking first, of course, malicious prosecution. In an action of that character and for that purpose the Court has said this:

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“To support an action for malicious prosecution the plaintiff must show by a preponderance of the evidence” these things:—I will repeat that to you: “To support an action for malicious prosecution the plaintiff must show by a preponderance of the evidence, first, that the prosecution is ended and that he is duly discharged; second, that the defendant instituted the proceedings against him without reasonable or probable cause; third, that the defendant was actuated by malicious motives in making the charge.”

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Court's Charge to the Jury.

10 In this case it is not denied but what a complaint was made; it is not denied, but the fact remains that a warrant was issued; that the plaintiff was arrested—and you have heard the testimony as to what the transaction was from that time down to and through and to the conclusion of the so-called trial or hearing before the recorder or justice of the peace, whatever title he may have been known by; and it is not denied and the fact appears that the prosecution is at an end; that is, that the plaintiff was discharged.

20 So that the first thing, and undoubtedly the paramount thing for you to determine and consider is the question of whether or not it has been shown and established by the plaintiff by a fair preponderance of the evidence that this complaint and these proceedings were without reasonable or probable cause.

Upon the question of reasonable and probable cause the courts have said this—and I am going to read from this case to you and leave the question upon that point to you upon that reading, because no effort on my part would enable me to use any simpler, or better, or more understandable language than that which I am about to read to you:

30 “In cases of criminal prosecutions probable cause means reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant an ordinarily cautious man in the belief that the accused is guilty of the offence of which he is charged. To constitute probable cause a prosecutor need not necessarily have personal knowledge of the transaction of which he complains. He
40 may rightfully act upon information communicated in the ordinary routine of business,

Court's Charge to the Jury.

where he honestly believes such information to be true, and the information is of such a character and is communicated in such a manner as under similar circumstances it would be acted upon by a business man of ordinary prudence. The question of probable cause does not turn upon a consideration of what were the facts of the case, but upon a consideration of what were the facts as they appeared to be, or were known by, or believed to be by the defendant. The controlling fact is not, Was there actual cause for the prosecution? but, had the defendant at the time of instituting the prosecution probable cause for so doing?" 10

That is the rule and that is the measure which our courts have given us for our guidance in matters of this character. Therefore, I say to you again that I will not attempt any further expression on that point. I will not attempt to give you my language, but I will rest entirely upon the reading which I have just given you to guide you as to what the question of probable cause is, how it is to be determined, and how you are to use it in applying it to the testimony or evidence that there is before you in this case. 20

Of course, if you find that plaintiff has not established by a fair preponderance of the evidence that this complaint was brought without reasonable and probable cause, then, of course, she has not made out her case as the law and our courts say she must make it out; and if she has not, then, of course, she is not entitled to recover upon that ground; and if you find that to be the case, then upon the question of malicious prosecution you need give no further consideration to the matter, 30 40

Court's Charge to the Jury.

and you will turn your consideration to the other cause of action and determine as to that.

10 If, on the other hand, you find that the plaintiff has made out her case upon all of these points which I first called your attention to, and has done so by a fair preponderance of the evidence, then she is entitled to recover for the injuries which she has sustained by and because of these acts upon the part of the defendant which grew out of the cause of action which I have denoted as malicious prosecution; then the question would be as to what she would be entitled to recover for.

20 She would be entitled to recover such damages, generally speaking, as will compensate her for the losses and injuries with which she has met and which she has suffered because thereof. She would be entitled to be compensated for the confinement under which she was put. She would be entitled to recover for her mental suffering. She would be entitled to recover for injuries to her reputation. She would be entitled to recover for the ignominy and shame to which she was subjected.

30 There is another element to which she may be entitled, of which element I will speak to you after I have taken up with you the second cause of action; namely: the cause of slander; because that element of damages applies to both classes of action.

40 As to the question or charge of slander: Slander is defined to be a false and malicious defamation made by word of mouth, tending to injure the reputation of the person of whom the words are spoken. The two things to be decided on that question proper, are these: First, were the words charged as having been spoken, actually used? Secondly, were they false? If you find in favor of

Court's Charge to the Jury.

the plaintiff on both of those points, then the words as alleged in the declaration or complaint are words which impute crime, and malice is presumed under those circumstances, and special damages need not be proved. If you find that she has established her case upon this score, then she will be entitled to be compensated for what her loss has been because thereof. She will be entitled to recover damages for injuries to her feelings, and for mental suffering and anguish. She will be entitled to recover damages for the injury to her character and reputation, for loss of social standing, for the loss of her business or occupation, growing out of the slanderous words spoken—if, of course, gentlemen of the jury, you find they were spoken. 10

I have omitted to say to you, and it occurs to me now that I should for safety sake say to you, if the plaintiff has not made out her case by a fair preponderance of the evidence upon the charge of slander, then, of course, she is not entitled to a verdict at your hands; and then, of course, you need not go into the question of damages, because there will be nothing to assess on that point—if she has not made out her case. 20

There is one other element of damage, and that applies to all cases of this character, and that class or element of damages is what we know as positive damages. Those are damages which may form a portion of your verdict in cases of this character, not so much because the plaintiff is entitled to them or that it goes to measure his or her actual damage; but they are given and permitted to be given, as a punishment to those who have committed the acts complained of—to punish them for having done so, and as a deterrent to others not to do so. That element of damages is what we call punitive damages or smart money. The amount 30 40

Court's Charge to the Jury.

10 thereof, and as to whether or not you should include in your verdict anything therefor, is very largely, gentlemen of the jury, in your discretion. It is a matter very largely under your control, to be determined, first, as to whether or not you will include anything, as to how you may find the facts and circumstances of the particular case to warrant or not to warrant the adding or assessing of a sum for that purpose; and if you find that you are warranted, and the facts and circumstances of the case do warrant that you should add something to your verdict for that purpose, then as to what shall be added, as to what amount shall be added is also to be determined by you from the facts and circumstances of the particular case that is before you.

20 Now, gentlemen of the jury, that is all I can say to you so far as the law applicable to the case is concerned.

I can only say this much more to you: You and I are not concerned one way or the other by favor or sympathy in cases that come before us. You and I are here to deal with the facts and the law as we find them to be. Your particular duty is to determine what the facts are and to weigh those facts, determining in what manner and in which way the weight of evidence seems to fall. If you find that the greater weight of evidence is in favor of the plaintiff and the contention of her cause, she is then entitled to a verdict at your hands. My business is to direct you so far as the law is concerned. You are to determine what the facts are, and when you have done that, to apply the law as I have given it to you, and in that manner find your verdict.

40 With that, gentlemen, you may take the case.

(The jury retired.)

Plaintiff's Exhibit 2.

Mr. Weller excepts to the charge of the judge wherein he said the jury could award punitive damages, and did not tell the jury that that could only be done as to the slander and not as to the malicious prosecution.

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Plaintiff's Exhibit 2.RECORDER'S COURT OF THE TOWNSHIP
OF WEEHAWKEN.

THE STATE

vs.

MARIA STEFFAN.

Complaint:
For Larceny.

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Township of Weehawken, County of Hudson, State
of New Jersey, ss.:

Lillian Klopman of No. 34 Duer Place, being
duly sworn, complains that on the third day of
July or thereabout, A. D. one thousand nine hun- 30
dred and fourteen at about three o'clock, P. M., or
thereabouts, at 34 Duer Place, in the Township of
Weehawken, aforesaid, the following described
goods and chattels were feloniously stolen, taken
and carried away, viz.:

One gold and coral necklace of the value of
Twenty dollars; one silver bag of the value of Ten
dollars; one gold and coral bracelet of the value of
Fifteen dollars, in all of the value of Forty-five
dollars; the said goods and chattels are the prop- 40
erty of said Lillian Klopman of 34 Duer Place,

Plaintiff's Exhibit 2.

Weehawken, and that he hath just cause to suspect and does suspect that same were stolen by Maria Steffen, all against the peace of the State and contrary to the Statute in such case made and provided.

10 WHEREFORE, this Complainant prays that the said offender may be dealt with according to law.

(Sig.) W. KLOPMAN,
Complainant.

Subscribed and sworn to before me this
Tenth day of July, 1914.

20 GEO. RANDEr,
Justice of the Peace and Recorder.

WITNESSES:

	Name.	Residence.
	Lena Groth,	34 Duer Place, Weehawken.
	Officer Quigley,	Station House, Weehawken.
30	Mrs. Hottwett,	4 Clifton Terrace, Weehawken.

Proposed Amendment to Answer.

HUDSON COUNTY CIRCUIT COURT.

<p>MARIE STEFAN VLADER, Plaintiff, vs. LILLIAN KLOPMAN and WILLIAM KLOPMAN, Defendants.</p>	}	<p>Action at Law. Notice to 10 Amend Answer.</p>
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To

J. EMIL WALSCHEID, Esq.,
 Attorney for the above-named plaintiff.

Sir:

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PLEASE TAKE NOTICE that at the trial of the above entitled cause we shall amend our answer, filed herein by adding a second separate defense as follows:

“SECOND SEPARATE DEFENSE.

The defendant, William Klopman, having departed this life, defendant, Lillian Klopman alleges that on the 3rd day of July A. D. 1914, there was stolen from her home at 34 Duer Place, in the Township of Weehawken, in the County of Hudson and State of New Jersey, one gold and coral necklace of the value of \$20.00, one silver bag of the value of \$10.00 and one gold bracelet set with coral of the value of \$15.00, the property of defendant, Lillian Klopman; that at that time the said Lillian Klopman had in her employ as domestic servant, one Emma Gross; that on or about

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Proposed Amendment to Answer.

the second and third days of July, 1914, she employed the plaintiff to assist the said Emma Gross to clean her house; that said plaintiff worked in the part of the house in which the defendant, Lillian Klopman, kept her jewelry which was on the second floor of said house; that on the 3rd day of July, 1914, Fannie Gerson reported to her that she had seen the plaintiff with her hands in one of the bureau drawers in defendant's room, and told said defendant, Lillian Klopman, that she did not like the way the plaintiff acted and advised her to lock up her valuables; that on that evening the defendant, Lillian Klopman, discharged the said plaintiff after she learned the said jewelry had been stolen; that thereafter and prior to her making said complaint, Mrs. Hottwett told the defendant that the said plaintiff had been employed by her and many articles of value had been stolen from her home; that prior to defendant making the complaint hereinbefore mentioned, one Lina Gross, a sister of said Emma Gross who was at that time living with the plaintiff at 12 Adam Street, in the Town of Guttenberg, Hudson County, New Jersey, told the defendant, Lillian Klopman, that on the 6th day of July, 1914, the plaintiff had told her that she had a nice bracelet and necklace which had been given to her as a present by a lady; that she had told her the necklace had a red stone in it, and the bracelet had red stones in it, and that she would show her the bracelet, but had not done so; that said Lina Gross also told the defendant, Lillian Klopman, that on or about the 6th day of July, 1914, the said Lina Gross had asked the plaintiff for a silver bag which belonged to her, but that said plaintiff had refused to give up said bag and that a friend

Proposed Amendment to Answer.

who was with her at the time tried to get a police-
 man to have the plaintiff arrested and when he
 had gone out of the house to get a policeman, the
 plaintiff had torn off a neck-chain and charm from
 the neck of the said Lina Gross and refused to re-
 turn the same; that the said Lina Gross and her sis- 10
 ter Emma went up to Judge Rander's house to see
 him in regard to her own troubles with the plain-
 tiff, and one Gilmore Kinney took the defendant,
 Lillian Klopman, up to the said Rander's office;
 that the said George Rander, who was then and
 there a Justice of the Peace in the aforesaid County
 of Hudson and Recorder of said Township of Wee-
 hawken and qualified to take oaths and make ex-
 aminations under oath, talked with the said Lina
 Gross about what the said plaintiff had told her; 20
 that the said George Rander then swore the said
 Lina Gross, and she swore to the same statement
 that she had made to the defendant, Lillian Klop-
 man, and the said George Rander, being then and
 there duly qualified to give legal advice on such
 subjects, advised the defendant, Lillian Klopman,
 to swear out a warrant for the arrest of the said
 plaintiff and advised the said defendant to swear
 to said complaint, and fully believing that said
 Justice, as such Magistrate, was advising her ac- 30
 cording to law, and believing that she had a rea-
 sonable and probable cause to do so, and it was
 public duty to obey the law of the land, she exe-
 cuted the complaint aforesaid."

Yours, &c.,

WELLER & LICHTENSTEIN,
 Attorneys for Defendant.

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