

## COURT OF ERRORS AND APPEALS.

DANIEL DREW, NELSON ROBINSON and  
ROBERT W. KELLY,

*vs.*

JOSEPH DEAN.

} In case on error to  
Supreme Court.

This action was brought by Joseph Dean, the defendant in error, against Daniel Drew, Nelson Robinson and Robert W. Kelly, the plaintiffs in error, in the Supreme Court, for the recovery of a reward of two thousand dollars, alleged to have been offered for the recovery of certain moneys of the plaintiffs in error, taken by robbery from one Robert O. Crommelin, their clerk, on the sixth day of October, 1848, in Paterson. 2

The declaration contains five counts, the first, second and third of which, are in the words following, to wit :

## FIRST COUNT.

New Jersey, ss.

Daniel Drew, Nelson Robinson and Robert W. Kelly, citizens of the State of New York, and partners in trade, were attached to answer unto Joseph Dean of Paterson, of a plea of trespass on the case upon promises ; and thereupon the said 3 Joseph Dean, by Edward N. Dikerson, his attorney, complains for that, whereas the said defendants, by the name of

Drew, Robinson & Co., on or about the seventh day of December, in the year of our Lord, one thousand eight hundred and forty eight, at Paterson, in the county of Passaic, and within the jurisdiction of this court, made, wrote, printed and published a certain advertisement, and promise in the words and figures following, to wit :

- \$2,000 Reward. Highway robbery at Paterson, N. J.
- 4 On Friday evening, October 6th, about 6 $\frac{1}{2}$  o'clock, Mr. R. O. Crommelin was attacked by two ruffians, about five feet 7 to 8 inches in height, wearing dark clothing and caps, knocked down and robbed of a package containing \$8,500, New York State money. The above reward will be paid for the recovery of the money, or in proportion for the amount that may be recovered.

December 7th, 1848.

DREW, ROBINSON & Co.,  
52 Wall street.

- 5 And the said defendants, then being the owners of the said package containing eight thousand five hundred dollars, did thereby by the name of Drew, Robinson & Co., undertake and faithfully promise that if any person should recover for them the said amount of eight thousand five hundred dollars in the said package contained, he should receive from them and they would pay to him the said sum of two thousand dollars, lawful money of the United States of America ; and that if any person should recover for them any portion of the said sum of eight thousand five hundred dollars, less than the whole sum,
- 6 he should receive from them, and they would pay to him an amount bearing the same proportion to two thousand dollars, as the amount so recovered by him for them, should bear to eight thousand five hundred dollars.

And the said plaintiff in fact, saith that, relying upon the promises and undertaking of the said Daniel Drew, Nelson Robinson and Robert W. Kelly, so as aforesaid, made and undertaken afterwards, to wit : on or about the sixth day of February, in the year of our Lord, one thousand eight hundred and forty-nine, at New York, to wit : at Paterson afore-

said, he did cause and procure the arrest of Ezekiel Guile, Daniel Dermond and John A. Calvin, knowing them to be the perpetrators of the robbery mentioned in the said promise and offer of reward, and did thereby then and there recover the said sum of eight thousand five hundred dollars, for the said defendants, and did cause and procure the same to be paid over and delivered to the said defendants, at New York, to wit: at Paterson aforesaid, whereof the said defendants then and there had notice, by reason whereof the said defendants then and there became liable to pay to the said plaintiff the said sum of two thousand dollars, lawful money as aforesaid, when they should be thereunto afterwards requested. 7 8

#### SECOND COUNT.

And whereas, also, on or about the sixth day of October, A. D. one thousand eight hundred and forty-eight, one Robert O. Crommelin, agent of Daniel Drew, Nelson Robinson and Robert W. Kelly, partners as aforesaid, was robbed at Paterson, in the county of Passaic, of a package containing eight thousand five hundred dollars New York State money, which package was worth eight thousand five hundred dollars and was the property of Daniel Drew, Nelson Robinson and Robert W. Kelly, and the said Daniel Drew, Nelson Robinson and Robert W. Kelly, by the name of Drew, Robinson & Co., did offer and promise to any person who should recover for them the said package of eight thousand five hundred dollars, that they would pay to him the sum of two thousand dollars, lawful money, as aforesaid, and to any person who should recover for them any part of the said eight thousand five hundred dollars, that they would pay to him such proportion of said sum of two thousand dollars as he should recover for them of the said sum of eight thousand five hundred dollars. And the said plaintiff, in fact, saith, that relying upon the promises and undertaking of the said Daniel Drew, Nelson Robinson and Robert W. Kelly, he did, on or about the fourth day of February, in the year of our Lord, one thousand eight hundred and forty-nine, and at divers times thereafter, recover for the said defendants the said sum of eight thousand five hundred dollars, and did cause the same to be paid 9 10

to the said defendants, at New York, to wit, at Paterson, whereof the said defendants then and there had notice; by reason whereof, the said defendants then and there became liable to pay to the said plaintiff the said sum of two thousand dollars, money as aforesaid, whenever they should be thereunto afterwards requested.

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### THIRD COUNT.

And whereas, also, aforesaid, to wit: on the day and year last above written, at Paterson, aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendants, had before that time recovered for them the said sum of eight thousand five hundred dollars, so as aforesaid robbed from Robert O. Crommelin, they, the said defendants, afterwards, to wit, on the day and year last

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aforesaid, at Paterson, aforesaid, undertook and to the said plaintiff faithfully promised to pay him the said sum of two thousand dollars, whenever they should be thereunto afterwards requested.

The fourth and fifth are common counts for work and labor and moneys paid, and *indebitatus assumpsit* thereon.

To this declaration the defendants pleaded *non assumpsit*, and issue was thereupon joined.

The cause was tried at Passaic Circuit, at the March term, A. D. 1850, before his Honor Justice Ogden.

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At the trial the following bills of exception were allowed and sealed by the said justice.

## NEW JERSEY SUPREME COURT.

## PASSAIC COUNTY CIRCUIT.

DANIEL DREW, NELSON ROBINSON,  
AND ROBERT W. KELLEY,

*ads.*

JOSEPH DEAN.

In Case.

Be it remembered that in the Term of March, in the year of our Lord one thousand eight hundred and fifty, came Joseph Dean, by Edward N. Dukerson his attorney, into the Supreme Court of New Jersey, at Trenton, and impleaded Daniel Drew, Nelson Robinson and Robert W. Kelley, in a certain plea of trespass on the case, and declared against them as follows: (Pro ut the Declaration.) 14

And thereupon the said defendants, by Daniel Barkulow, their attorney, pleaded thereto as follows: (pro ut the Plea.)

And thereupon, issue was joined between the said parties.

And afterwards, at a Circuit Court holden at Patterson, in and for the county of Passaic, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and fifty, before the Hon. Elias B. D. Ogden, one of the Justices of said Supreme Court; the aforesaid issue came on to be tried by a jury of the county of Passaic aforesaid, for that purpose duly empannelled, at which day came there the said parties by their respective attorneys aforesaid; and the jurors of the jury aforesaid empannelled, being called, also came and were then and there duly sworn to try the said issue. 15

And upon the trial of that issue, to maintain and prove the same on his part, the said plaintiff offered as a witness,

*James B. Dean*, who was duly sworn and said : I am brother of the plaintiff ; I remember the evening of the robbery of Robert O. Crommelin ; it was in October, A. D. 1848 ; I saw him that same evening at the office of Justice Burnett ; he was bloody, and said he had been robbed ; also saw Joseph Dean at the same time in the street near the office ; I called Crommelin out of the office and took him to Joseph.

The plaintiff's counsel being called upon to open what they offered to prove, said that they offered to prove a conversation that took place at that time between Robert O. Crommelin and Joseph Dean ; to wit, that Joseph Dean told Crommelin who it was, as he believed, that committed the robbery, and that Ezekiel Guile and John A. Calvin were two of the persons ; that Jas. Dean directed the Justice to issue process to arrest said Guile and Calvin ; that process was accordingly issued, and they, (Guile and Calvin,) were on the same night, arrested and taken before the said Justice, and committed to prison.

So much of the evidence so offered as related to the conversation between said Dean and Crommelin, was objected to by defendants' counsel. And the said court did then and there declare its opinion that such evidence was legal and competent, and admitted the same to go to the jury. To which decision of the said court, the counsel of the defendants did then and there except and prayed that this bill of exceptions may be sealed—and it is sealed accordingly.

ELIAS B. D. OGDEN, [L. s.]

And the said James B. Dean, being further examined on the part of the plaintiff, said :

Joseph asked Crommelin to describe the men who had robbed him ; Crommelin did so ; Joseph told him Guile and Calvin were the men, from circumstances he had seen of their movements ; Crommelin was scared ; said he would give Joseph five thousand dollars—would do anything—if he would only arrest the robbers. Joseph told him to keep still. Both went into Burnett's office. Joseph told Justice Burnett that Guile and Calvin were the men who committed the robbery, and he

wanted him to issue warrants to arrest them. Joseph did everything he could do and found out every place where they had spent money. He laid out a plan to catch them, and also Dermond, he tracked them all; we watched them personally in New York and elsewhere; went six or seven times to New York. He left his business for it. He got me to watch them for him. I was as anxious as he was. When I gave him any information he went to follow it up. I remember the prize fight between Hyer and Sullivan. We laid a plan to go after them and catch them when they went to it. I heard Guile and Dermond say they were going to it. The plan was to catch them in New York or Baltimore, or wherever he could find them. Dermond left for the prize fight on Saturday; Guile, I think, was then in New York, Joseph started to watch Dermond on Saturday. He wanted to follow him to New York on that night, but I advised him not to go until next morning. He left Paterson on Sunday morning. Calvin was then in Paterson. I do not remember what day Guile, Dermond and Calvin were brought back to Paterson. Joseph asked others to watch for him. He asked James Smith to watch them. He instructed his brother Samuel B. Dean, to watch the cars. I cannot say that he got anybody else to watch.

And being cross-examined, the witness said: Joseph did everything I thought he could do, without letting others into the secret. He searched several places where they had spent money. He searched at Walker's place, at Alexander Taylor's place; that is, he went there. I was present several times. I cannot say as to his ever inquiring at any other place. I know nothing of his going to New York, nor of his plan to follow them to the prize fight, but what he told me. At the time he said he was going to the prize fight he was prepared with means to go to Baltimore. I saw Guile in New York, on Tuesday before his arrest. I looked for him in Paterson, on Saturday, but could not find him; that is, I looked for him in Main, Van Houten and Congress streets. Daniel McGrogan was asked to watch; Thomas Farnam was also spoken to. I asked Richard White and Robert Dean, in New York, to watch. Joseph spoke to Thomas Kanouse several times about it.

And being further examined in chief, the witness said:— My watching was in furtherance of my brother's plan. He sent me into Alexander Taylor's to listen to what was said between Levi Cole and Calvin, but I could not get near them.

25 And the said plaintiff, further to maintain the aforesaid issue upon his part, offered as a witness,

26 *Daniel McGrogan*, who was duly sworn, and said: I remember the occurrence of the robbery. I was that night in the crowd at Justice Bennett's office. I was talking with Joseph Dean. He, Thomas Welsh, and I, were standing in Main street, not far from the office. I saw the sheriff that evening; Joseph Dean was present. I can't say what he said to the sheriff. Dermond's name was mentioned, but I cannot say by whom. Joseph Dean did not employ me to watch them. On that night, he said Guile and Calvin were the robbers. I cannot swear to any of Joseph Dean's acts.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Thomas Farnon*, who being duly sworn, on his oath said: I remember the evening of the robbery. After the first arrest, Joseph Dean asked me to go to Walker's, to see if Ezekiel Guile was there; he said if he was not there, he thought he was in New York.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

27 *William Cundell*, who being duly sworn, on his oath said: Joseph Dean requested me to find out where Josiah Calvin got a steam engine, which he had recently put up in his premises. I did so, and gave him the information in writing. This was after the robbery, and before the final arrest.

And being cross-examined, the witness said: No secret was made of the place where the engine was purchased, nor in bringing it home or putting it up.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Jacob M. Myers*, who was duly sworn, and on his oath said : (a printed paper being shown to him,) one similar to it was given to me by Mr. Barkalow, who, on handing it to me, said, "Go to work and make the two thousand dollars." I remember the night of the robbery, and was at Justice Burnett's office at the time of the first arrest of Guile and Calvin ; Joseph Dean was there, talking with several outside ; this was after the arrests ; I heard Dean tell the sheriff that Dermond was one of them ; Dermond's house was watched that night by me and constable Inglis. 28

And being cross-examined, the witness says : I think I heard you (Mr. Barkalow) say, it was a private reward ; that you was opposed to offering a public reward, and that the first handbill offering a reward of one thousand dollars had been put out against your advice. You said something about it not being advisable to have too many engaged. 29

The paper shown to this witness (which is the same set out in the first count of the plaintiff's declaration) was here offered in evidence.

The counsel for the defendants thereupon objected to the reception of the same in evidence, on the ground that no publication of it had been proved ; and also, because the same was not, in fact, an offer of a public reward. And the said court did thereupon then and there declare it to be its opinion that, the paper being proved to be genuine, it was competent to go to the jury, the effect of it to be left for the further consideration and direction of the court, and admitted the same to be read in evidence to the jury. To this decision of the court, the counsel of the defendants did then and there except, and prayed that this, his bill of exceptions, may be sealed, and it is sealed accordingly. 30 31

ELIAS B. D. OGDEN. [L. S.]

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*John Hopper*, who was duly sworn, and on his oath said : I think I saw one of these papers at the People's Bank, in the hands of Mr. Stimson, the cashier ; I am not certain of this ; it was not exposed to public view ; he also had a list of stolen bills.

32 And being cross-examined, he says, the list of bills was for secret use, to detect the bills ; I cannot say whether the reward offered on the paper I saw there, was one thousand or two thousand dollars ; I made no publicity of what I saw ; I was attorney and counsel, and notary of the bank at the time ; this placed me in confidential relations with the bank.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

33 *Robert O. Crommelin*, who was duly sworn, and on his oath, said : I was clerk for Drew, Robinson & Company in October, 1848 ; the paper purporting to be the offer of a reward declared upon, being shown to him, he said, I have seen 34 papers like that before. Papers of that kind were sent to certain individuals and banks ; I cannot name any persons to whom it was sent, one was sent to the People's Bank of Paterson, others to bank note offices at Albany ; I saw Jos. Dean in the office of Drew, Robinson & Co. two or three times after the robbery, and before the final arrests ; I do not know that he conversed with either of the members of the firm, though he may have done so, as I think some of them were in the office ; Dean said he knew that Calvin and Guile committed the robbery ; he may have mentioned Dermond also, but cannot remember it ; at his second visit, he wanted to get the men arrested ; he said he had a grudge against them, and knew they were the men ; he said something about a reward ; the names of the firm are Daniel Drew, Nelson Robinson and Robert W. Kelly.

And being cross-examined, he says : I think a public re-

ward of one thousand dollars was first offered. Dean said it was not the reward he was working for. A list of bills was sent out shortly after the robbery—say within about a week; the second reward was not sent to the offices, to my knowledge—it was the one thousand dollars reward that was sent to the offices; I have seen a number of the papers, there might be fifty, containing the offer of two thousand dollars reward, but never saw any of them anywhere, except on the desk in the office of Drew, Robinson & Company; I have no knowledge of their offering the \$2,000 reward, except from the paper; I cannot say that Dean was ever in the office after the 7th Dec., 1848; the list of bills with one thousand dollars reward at the head of it was marked private. 35

*To the Court.*—First a public reward of five hundred dollars was offered, then a handbill, offering one thousand dollars, was published in Paterson by Mr. Robinson, two or three days after the robbery. 36

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Samuel Dean*, who was duly sworn, and said: the day before the final arrest, I went to the cars three times to see if either of the suspected persons went to New York; I did this at Joseph Dean's request; I did not see them go down on that day. 37

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Daniel Roberts*, who was duly sworn, and said: I was in New York when Calvin and Dermond were arrested; I saw Joseph Dean there; I saw him several times before three o'clock; I saw him afterwards on the same day, and before the arrest, with A. M. C. Smith; I saw Calvin and Dermond at 75 Courtland street that day.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness, 38

*Robert Dean*, who was duly sworn, and said: I lived in New York at the time of the robbery and arrest; I was asked by Joseph Dean to watch Guile, Calvin and Dermond, I did so at all convenient times and reported to Joseph; I went to White's porter-house to see what kind of money they put in circulation, at Joseph's request; on the Sunday of the arrest, Joseph Dean came to my stable in City Hall Place, at 10 o'clock, A. M., and I went with him to the corner of Chamber and Centre streets, when we parted; I saw Joseph again  
39 about twelve o'clock on the corner of Washington and Courtland street, talking with Justice McGrath; In the evening I went to look after Guile; after the arrest of Calvin and Dermond, Joseph Dean went into Justice McGrath's house, and I waited outside.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Nathaniel Lane*, who was duly sworn, and said: I live in Paterson; I was absent from home on the night of the robbery, and got home at about eleven o'clock at night; I was  
40 sheriff of Passaic County, and took an active part in the business of detecting the robbers; Dean was much engaged in the business from the time of the robbery until the arrest; I remember the circumstance of Guile and Calvin going towards the cars one day with a bundle, and Dean asked me to follow them to New York, as he was sick; I did not go; I know of his working out a plan to catch these men; he frequently consulted with me upon it; Joseph Dean called upon me on the evening of the recovery of \$2,500 or \$2,700 in Calvin's cellar; he and I went to Vanderveer's hotel—Smith  
41 and Magnes were there; thence, I went to my office, where I saw Josiah Calvin, in whose cellar the money was found; thence I went to his house and got the money; the amount found there was \$2,586 00; we then searched Guile's shop and found nothing; I afterwards got from John A. Calvin's house \$428 68, all in gold; we found at Dermond's \$70 25, and at Walker's \$86 00; at the police office in New York, I heard from Drew of \$302 92 having been recovered from Guile, \$23 52 from Dermond, and \$63 33 from Calvin.

I brought Guile from New York, and have had much trouble with the business. The three were all brought to Paterson, 42 tried and convicted.

And being cross-examined, he said :

Everybody knew that a reward of \$2,000, was offered—no one objected to it. It was a public reward ; Mr. Barkalow so understood it.

And being re-examined in chief, he said :

I had Dermond's house watched on the night of the robbery, on information from Dean. I never saw the bill offering \$2,000, reward, until to-day. I think I heard of it from the New York officers, Smith and Magnes, and also in Mr. 43 Barkalow's office. This was before the arrest. I think I talked with Dean about the \$2,000 reward, before the arrest. I think I heard of it from Jacob M. Myers.

And the said plaintiff further to maintain the aforesaid issue, on his part, offered as a witness,

*Peregrine Sandford*, who was duly sworn, and said : I was a justice of the peace in Passaic County, in 1848-9. Between the first and final arrests of Guile, Calvin, and Dermond, I had parties before me, on suspicion. Joseph Dean gave me information exculpating them. They were from Easton, Pa. 44 From my observation I am satisfied Dean was after the parties convicted. I heard of the \$2,000, reward, but cannot tell from whom : often heard it spoken of through town before the arrest. I never heard Dean speak of it, nor to my recollection, Mr. Barkalow.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered, as a witness,

*James Smith*, who was duly sworn, and said : Joseph Dean requested me to watch these men, and see what money they spent at Walker's, and what they were doing there. I went 45 there once, and reported to Dean. He requested me to go to several places, but I declined, not knowing the places.

And the said plaintiff, further to maintain the aforesaid issue on his part, offered as a witness,

*Joseph Nightingale*, who was duly sworn, and said: I recollect of Joseph Dean once asking Alexander Taylor to let him have a bill Guile had paid him, and he would give him another for it. I have often seen him there, when they were, as I thought, watching them.

46 And the said plaintiff, further to maintain the aforesaid issue, on his part, offered, as a witness,

*Thomas Hathaway*, who was duly sworn, and said: I have no knowledge of a reward being offered, but from hearsay. The story of a reward was general. I think (although my memory is not distinct about it) that it was \$2,000.

And the said plaintiff, further to maintain the said issue on his part, offered, as a witness,

*William A. Hopson*, who was duly sworn, and said: I saw a reward offered here in Paterson, posted up: it was \$1,000. 47 I heard of \$2,000 reward being out, but did not see any notice of it. On the night of the first arrest, Dean told me of them, and I went to the house where they were arrested. All the officers exerted themselves in the business.

The counsel for the plaintiff here rested the case; whereupon the counsel of the defendant's moved the said Court, that the said plaintiff be called, and a judgment of non-suit be entered against him, because,

1st. The reward declared for, was not publicly offered; no publication ever having been made of the paper offered by defendants, or any person by their authority. Therefore, the 48 first and second counts are not sustained.

2d. The 3d, 4th, and 5th counts for services, and money paid, are not sustained by the evidence, there being no privity of contract between the parties.

But the court refused to call the plaintiff, and give judgment of non-suit.

To which decision of the Court, the counsel of the said defendants excepted, and prayed that the said parties would seal this, their third bill of exception ; and it is sealed accordingly.

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The defendants, by their counsel, then opened their defence, and to prove the aforesaid issue on their part, offered as a witness,

*Alexander M. C. Smith*, who was duly sworn, and said : I was sent for to Paterson on the night of the robbery. I heard the stories current about Paterson, and advised the employment of the District Attorney. Some time afterwards, and I think in November, Thomas Kanouse, whom I charged with being implicated in the robbery, came to me and said Guile and Calvin were the men, and gave his reasons. I acted on this information, and set to work on an old indictment against "Wynockie" 50

The plaintiff's counsel here interposed, and asked that the defendants' counsel would open what he proposed to prove in relation to the old indictment named.

The counsel of the defendants thereupon offered to prove that an arrangement was made between the plaintiff and this witness, under which the plaintiff agreed to get all information in his power in relation to this matter, acting therein under this witness, and to report to him from time to time; the consideration for these acts being, the good offices of the witness, to be rendered for the benefit of Joseph Dean, in procuring a nolle prosequi on an indictment, then pending against him in New York. 51

And the said court did then and there decide that such evidence was inadmissible ; that the plaintiff could not, by such agreement, deprive himself of his right to claim the reward

for his services, and transfer those services to the benefit of another person : that plaintiff would still have a right to recover the reward, supposing his services, without such contract would entitle him to it, and the other party would have to resort to his action, supposing the contract valid against the plaintiff.

To which decision of the said court, the counsel for the defendants except, and pray that this bill of exceptions may be sealed ; and it is sealed accordingly.

ELIAS B. D. OGDEN, [L. S.]

And the said Alexander M. C. Smith being further examined on the part of the defendants, said : The arrangement I refer to was not made with me ; it was made with Justice M'Grath, and I know nothing of it except from M'Grath's statement. I never had any conversation with Dean until after the arrest, except once in the office of the Chief of Police in New York, when I told him he was in the cars on the evening of the robbery, and I suspected him. He said he was not, but that he was the person who gave the information which led to the arrest on that night. I said perhaps my information was wrong, and left him. I next saw him in New York, at Dunning's Hotel on the day of the final arrest, talking with Police Justice M'Grath. Justice M'Grath beckoned to me, and pointed out Calvin and Dermond, and told me not to take a third person who was in their company. Capt. Magnes and I arrested them in Fulton street, and took them to the Police office, and searched them. We found on Calvin, money and a diamond ring. On the next morning, I, M'Grath, Magnes, and Dean, crossed over to Jersey City, and then arrested Guile. M'Grath pointed him out, and said "that is your man." He was taken over to New York, and put in prison. On searching him, three hundred dollars were found upon him, in bank bills, from twelve to twenty of which, were identified as part of the money taken from Crommeline.

By great artifice practised upon Calvin and Dermond, information was obtained from Dermond, which led to the discovery of the money obtained from Calvin's cellar, as stated by Sheriff Lane. I got all my information on the days of arrest, from Justice M'Grath.

And being cross-examined he said : I know nothing about Dean and M'Grath's business. Robinson, of the firm of Drew, Robinson & Co., some time after I had been engaged in this business, asked me how I got on. He made a private bargain with me, to give me two thousand dollars for the recovery of the money, and at that rate for any part of it. 56

And being again examined in chief, he said : I heard of the purchase of the steam engine by Calvin, and also of his purchase of a house in Paterson, from Tom Kanouse. I had no knowledge of a reward of two thousand dollars being offered. The reward appearing in the paper containing a list of the bills, was one thousand dollars. I have received six hundred dollars of the reward, and it was shared by me with McGrath and Magnes, each taking two hundred dollars of it. It was paid on account of the two thousand dollars privately agreed upon between Robinson and me. Dean was offered one hundred dollars by McGrath, but refused it. The whole amount recovered was \$3,560. It went to Drew, Robinson & Company. 57

And the said defendants, further to maintain the aforesaid issue on their part, offered as a witness,

*James P. Rogers*, who was duly sworn, and said : I was clerk for Drew, Robinson & Company, at the time of the robbery. I saw Dean in the office about two or three weeks after the robbery. He then disclaimed all right to the reward, for anything he had done or should do. 58

And being cross-examined, he said : One Webster was about on this business ; his expenses paid. Dean said he did not want the reward ; he was working with another view ; he had a grudge against these men. I have seen such papers as that produced, (the same described in the declaration,) but never sent any of them out ; I do not know of one being sent away ; they were kept out of sight.

And the said defendants, further to maintain the aforesaid issue on their parts, re-called, 59

*Robert O'Crommeline*, who farther said : I first informed Mr. Prall, Mr. Danforth's clerk, of the robbery. Mr. Prall and I went immediately to the livery stables of John D. Hogan, and there saw Mr. Hogan. I gave him a description of the persons who had robbed me, and he mentioned John A. Calvin and Ezekiel Guile as the persons who had done it. I requested him to have them arrested ; he said he did not want to have his name mentioned in the matter, but that he would go out and see to have it done. This was the first time that
   
 60 these men were named. Mr. Prall and I looked for officers, but did not find any. We then went to Justice Burnett's office, when I made an affidavit, on which Justice Burnett issued a warrant for Guile and Calvin. At this time there were a number, probably twenty persons outside the office ; it was in that crowd that I first saw Dean ; half a dozen of them were talking about Calvin and Guile, and said they were in an oyster cellar near by ; my affidavit as to these men was based on the information I received from Hogan ; while I was there, Calvin and Guile were arrested, brought before the
   
 61 magistrate, examined and committed ; I tried to get a search warrant for their houses, but did not succeed. I was in Pater-son the next day, with Mr. Robinson, but no discoveries were made, and I returned to New York at night with Mr. Robinson ; I next saw Dean two or three months afterwards, at the office of Drew, Robinson & Co., in New York ; we talked of the robbery, and he said he knew the men ; I told him that I had never changed my opinion as to the men, since the first arrest ; he wanted one of the printed lists of stolen bills, but I did not give it to him ; Mr. Kelly came in and called
   
 62 me into another room. About a week or ten days after the recovery of the money, Dean called at the office again, and requested Mr. Kelly not to pay the reward to the New York officers, as he was fearful they would not do with him as they agreed to do ; he said he would rather give Drew, Robinson & Co. the reward, than that those officers should have it. Mr. Kelly had before that, told him he would pay no more re-wards ; he disclaimed the reward half a dozen times ; said he was not working for the reward, but was working to get the
   
 63 men in prison, because they had sent his brother there ; he said this both before and after the recovery of the moneys ; I

have no knowledge of the small paper (offer of reward declared on,) having been made public; I do not know that it was even intended to be published.

And being cross-examined, he said: I was very much excited that evening; I spoke to both the Deans (Joseph and James,) on the night of the robbery, in front of Burnett's office; they asked me to speak with them; Joseph called me aside, and I think my brother was by; they were talking about Calvin and Guile; they said they suspected them, and I asked them why; Joseph said he saw them at the cars, and running through the street by the court house; he then asked me which way I went, and said he saw me come out; I told him which way I went, and described the place where I was knocked down; I said it looked suspicious against them; Dean and half a dozen others had, before that, said they were the men; Dean spoke of having seen them in some alley; this was after the warrant was issued, and while the officers were out after them; there were lists of the stolen bills in the office; I did not give Dean one; I was told not to give any out; I know nothing about the two thousand dollar reward being put out by Drew, Robinson & Co.; I never heard any of the firm talk of it; I went to Easton, by order of Drew Robinson and Company, in pursuit of men of the name of Dempsey, suspected of this robbery, in company with Jack Webster, but my mind was not then changed as to the men. On the day of the conversation in Drew, Robinson & Companys office. I did not hear Dean say he was arrested on account of the robbery; I think he had not then been arrested. The time he first disclaimed the reward, was before I had seen the two thousand dollar hand-bill; he did not mention any particular reward.

And the said defendants, further to maintain the aforesaid issue on their part, offered as a witness,

*John S. Magnes*, who was duly sworn and said: I am a police officer in New York; I was called upon in relation to this matter, on the night of the robbery, and from that time forth spent a good deal of time in investigating it; I got my first information from Tom Kanouse; it pointed to Guile, Calvin and Dermond; A. M. C. Smith and I worked together; I

- 67 accidentally found out that Dean (Joseph) was frequently in communication with Justice McGrath ; I found out what he told McGrath ; I also got information from Crommeline, and A. M. C. Smith, who had information which I could not get elsewhere ; Crommeline gave me a description of the persons ; I communicated with Tom Kanouse, a dozen times, meeting him by his appointment ; he always indicated these men ; I ascertained from him that that they were passing the stolen money ; that some of it had been put up on a horse-race ; there was a plan arranged to find out when they were to go to New York, with a view to arrest them there ; I found out that
- 68 Justice McGrath, also had a plan to effect the same object, but it was different from ours ; McGrath came to me on Saturday morning, to get me to aid in the arrest ; I had before that sufficient information as to the persons, but did not know the particular time when they would be in New York ; on and before that morning, McGrath, Smith and I acted together. McGrath being the acting man on Dean's side. there is no doubt but that McGrath got his information from Dean ; we then talked the matter over daily ; I had no arrangement with Dean, until after the arrest ; after the men
- 69 were in prison in New York, I associated with Dean for the recovery of the moneys ; he appeared very sanguine as to our having the right men ; money had been found on them ; then, for the first time, Dean said to me, " I want you to take care of me in this business ; I don't see what business Smith has in it ; we three (referring to me, McGrath and himself,) are enough to do it up ; I said ' there will be no difficulty about that ; Smith had been engaged in it some time ; that will make no difference to you ;' everything shall be brought right." From that time forward, he and I worked together
- 70 to get the money ; I do not think that any body else has any credit for getting it ; it was got by Dean and me. I brought Dermond out of the cell, put him in a separate room, then Dean and I got him to admit, little by little. Dermond knew the money was in care of Josiah Calvin, but did not know where. He was put in the cell with John A. Calvin ; he was to tell Calvin that his (Dermond's) wife had come over to see them, and informed him (Dermond) that the officers were searching all Paterson ; and if his (John A. Calvin's) wife had

the money hid, he had better send her word to move it. In half an hour Dermond was let out of the cell, and said the money was in Josiah Calvin's cellar. 7

After the conviction, I called on Drew, Robinson & Co., and got the reward, six hundred dollars; we (McGrath, Smith and I,) undertook to divide it; I wanted \$150 to go to Dean, considering him entitled to it, but I was overruled, and one hundred dollars was set aside for him; this sum was fixed upon because he had disclaimed all intention of taking any reward, and said he was acting as he did because the men had been the means of his being arrested, and of sending his brother to States prison; I heard him say he did not claim any of the reward; after he found the money was likely to be recovered, he put in for reward, and asked me to look out for him; I never knew Dean claimed the whole reward until this morning. 72

And being cross-examined, he said: Smith and I gathered all the information we could, but never saw either Guile, Calvin or Dermond until the final arrest; I did not look for them because I was to be informed by a man from Paterson, of their coming to New York. In the beginning, the most useful information came from Tom Kanouse. I found out three or four places in Chatham street where Calvin had got money changed. At the time of the arrest, Dean was present; I had never yet seen the men; he pointed out two men, and Smith and I went in pursuit of them, but Dean called us back and said we had missed the right men. McGrath said, "there go your men," and we went and arrested Calvin and Dermond; Guile was arrested in Jersey city the next morning, and I think was first pointed out to McGrath by Dean. Before we found the money in Paterson, Smith and I were coming up to Paterson to search Guile's house, and met Dean at Jersey city; he stopped us from coming up, and we went back with him; it is likely he may have told us he would work a plan in New York to get the fellows to tell where the money was. The reward was not the subject of conversation until after the recovery of the money. A. M. C. Smith informed me of the two thousand dollars reward; I have heard Dean speak of it. I never saw the paper in evidence (\$2,000 reward) until to-day. 74

75 And being re-examined in chief, he said : Dean at the time of the arrest, did not name any sum when he spoke of the reward ; I have never heard him name the amount of the reward ; I cannot say certainly, but that it was after the money was got, and when we started up to search Guile's place, that Dean met us in Jersey city, and turned us back ; Dean's \$100 is in McGrath's hands ; I received the reward from Drew, Robinson & Co. February, 10th, 1849.

And the said defendants further to maintain the aforesaid issue on their part, offered as a witness,

76 *John D. Hogan*, who was duly sworn, and said : I saw Crommelin on the night of the robbery, and asked him to describe the robbers ; on hearing his description, I went down to Van Houten street and there saw Guile and Calvin, and saw their movements on Calvin's stoop, and in the alley opposite, and went back and told Crommelin they were the men ; that I did not wish to have anything to do with it, but would find a man who would. I went to James Dean and told him the story and what I had seen, and that Calvin and Guile were the men ; he said so too ; he said he would go and find Joseph, (Dean) and he would find them out.

77 And being cross-examined, he said : I saw James Dean in Taylor's saloon, under Odd Fellows' Hall.

The defendants having rested, the plaintiff further to maintain the aforesaid issue on his part, re-called

78 *Jacob M. Myers*, who further said : I took the manuscript offering one thousand dollars reward, to the printing office to have bills printed, from the office of the prosecutor of the pleas, for Passaic county, either by his or Robinson's request. (It is dated Oct. 7th, 1848, and is in the same words as that declared on, except the amount.) When I received the \$2,000 paper from the prosecutor it was not said that I alone should have the benefit of it ; the purport of the conversation was, that the matter was to be kept private, as they might begin to put out the money if they got wind of it ; I also told David Roe of the two thousand dollars reward after I received it.

And being cross-examined, he said: The prosecutor also said if the one thousand dollars reward had not been made public, the robbers would have been found; it strikes me he said he wanted them for the officers; that the public reward which had been offered, had injured the cause, and that there were persons busying themselves about it whom he did not want. 79

The parties having rested the cause, his Honor, Justice Ogden charged the jury as follows:

I shall not detain you, gentlemen, under present circumstances, by a review of the testimony, which has been produced on this trial. It has been delivered by the respective witnesses in your hearing, and it rests with you to weigh and settle it. When it is contradictory, you must reconcile it if you can, if you cannot, you must give the preponderance to that which most strongly impresses your consciences with its verity. Sufficient will it be for me to lay before you such legal principles as appears to me to be applicable to the case, and by which the rights of these parties should, through the evidence, be determined. 80

It is too plainly proved to be questioned by you, that the plaintiff was very efficient in ferreting out the perpetrators of the robbery which induced an offer of reward from the defendants. He is shown to have been in pursuit of them shortly after the attack upon Crommelin. He saw two of them leaving the railroad station at this place on the arrival of the train in which Mr. Crommelin brought up the money that was soon after stolen from him. He has produced evidence which is unshaken by contradiction, of what he did between the 6th Oct., 1848, and the 4th of February following, the day of the final arrest, for fastening the crime upon those persons. The arrests in New York and at Jersey city, if you credit the testimony, are fully proved to have resulted from his acts and communications. 81

The first serious conflict of evidence is touching the recovery of the money from the cellar of Josiah Calvin; Mr. Smith claiming on the one hand that his stratagem through the Sheriff, was the meritorious cause of that discovery, the plaintiff, on the other hand, claiming, by the testimony of Mr. 82

Magnes, and of others, that he was an efficient agent in reaching that money. Which version is correct, you must determine. That question can be of moment only in one view of the case, namely, whether the reward is divisible; whether more than one person, unless they be joint operators, can sue upon a single contract. I think that only one action for the money that has been recovered, can be maintained on the contract of these defendants.

83 If several persons, by conjoint and united acts, bring themselves within the terms and intent of an offered reward, they should institute a joint action for the money, but if several, by their disconnected and individual acts, seek to place themselves separately within the terms and intent of a proffered reward, only one of them can be entitled by his service, to a recovery of the money: and the simple question, in such case, will be, *who is that party?*

84 So stands this case, in one aspect of it. Supposing that an offer of the reward had been publicly circulated, and that the plaintiff had regularly received one of the hand-bills, would he be entitled to recover in this action?

85 The settlement of that point must follow from a legal application of the testimony adduced. A certain sum of money was received before the stratagem said to have been put in motion by Mr. Smith, was resorted to; a certain other sum after its adoption. Did the plaintiff effect the recovery of all the money, or of either portion of it? His acts in the matter are before you by the proofs. If you believe that he gave the first substantial and available information that led to the ultimate apprehension of the three culprits, and to the recovery of the money found upon *them* and in their houses; and that he acted in the matter on his own account and not in concert with others as participants with him, he was the meritorious cause of the recovery of that money, and would be entitled to the proper proportionate part of the reward. His motives should not enter into the case. The question is, whether the results of his acts entitled him in law, to the money. You must settle that matter by the testimony before you.

86 Again; It is said that the recovery of the \$2,600, from the cellar of Josiah Calvin, was effected without Dean's agency; and this position creates the chief embarrassment in the case.

If Dean had not trailed the culprits to New York, would the \$2,600 have been recovered as it was? You must settle that point. Does it follow that after their apprehension, the recovery of the \$2,600 would not, in due time, have resulted from Dean's continued exertions in the search of it? If these parties acted individually in that scrutiny, and the evidence entitles Dean to his reward for the money first recovered, my instructions to you are, that he is also entitled to it upon the \$2,600 found in the cellar. A different ruling would, in my judgment, involve an admission of the doctrine that this reward is divisible, and that different suits could be brought on that contract, for moneys already recovered. 87

Should this view of the law, in the opinion of the defendant's counsel, prejudice their rights, I shall be willing and desirous to afford them every facility for reviewing my rulings upon this novel action in New Jersey, made in the haste incident to a circuit trial.

But, in this same aspect of the case, assuming again that the reward was public, if you shall believe that the plaintiff being timid of his individual exertions, or from any other motive, united his knowledge with the police skill of others, and made common cause with them in seeking to entitle themselves to the benefit of the defendants' offer of a reward, and that they worked conjointly together, the partners thus associated were the meritorious cause of the recovery, and this plaintiff, after the end is accomplished, cannot shake off his colleagues and fall back upon his first knowledge as a basis for his individual claim to the reward. 88

Again; It is true that the printed paper produced in evidence, binds the defendants to pay the monies promised by it, to whomsoever, within the circle of those with whom they intended to contract, should, with knowledge of it, perform the service therein contemplated. The phraseology of the paper offered in evidence, indicates that it was prepared for the public at large. The printing of it is an ordinary manifestation of an intent to circulate it. Its form is appropriate for particular individuals. But, gentlemen, these grounds of inference may be overcome by proof of other actual intent, drawn either from the withholding of the papers from others, or by declarations at the time of using any of them that the contract pro- 89

posed by them was not proffered to any one who might volunteer his services upon reading it, but that it was to be limited to each person to whom the paper might, by the defendants or their agents, be given. You therefore are to settle the evidence, whether the defendants intended this to be an offer of a special reward to be acted upon only by such as they might select; and whether by their acts they carried out such intent; or whether they designed it to be public, but exercised discretion in the circulation, lest the object of the reward might be thwarted by impudence.

91 It is objected by the defendants, that the plaintiff should not recover because he has disclaimed an intention to claim a reward. If you shall be satisfied that he had a right of action when the conversation alluded to as evidence of disclaimer took place, I do not think that *it* was sufficient to bar a recovery. It would only operate by way of a release; and to permit evidence of a parol release without consideration, to discharge a substantial cause of action, would be fraught with incalculable mischief.

92 The plaintiff's counsel have pressed with energy, that any payments or promises made to the officers in New York, were illegal and contrary to public policy; and have urged that their connexion with this arrest and recovery of the money, should not be permitted in any manner to affect this case. I do not see how that principle is properly involved in this suit nor how the plaintiff could claim any advantage from it. He is entitled to a recovery, if at all, upon his own conduct and not upon the alleged misconduct of others. Suppose that the principle contended for would interpose a successful barrier to a recovery by Smith, Magnes or McGrath; their weakness would not add to this plaintiff's strength. I therefore dismiss this point without further comment, as unnecessary to be ruled upon in this action.

93 It is further objected against the plaintiff's right of recovery, that Mr. Hogan gave the first information of suspicion against the culprits, and that Mr. Crommelin made his affidavit to effect their arrest upon that information. Be that so—still there is an important view beyond that. Nothing was effected by that arrest—the prisoners were examined and discharged. When the several rewards were, from time to time, offered,

Hogan's communication was well known to the defendants and to the public. The defendants made their contract to pay parties who *thereafter* might recover the money : and if Hogan's interview with Crommelin on the night of the robbing, should be permitted to cut off the claims of those who subsequently acted, the offer of a reward would have been a fraud, because Hogan not pursuing the matter, no one else could earn it. I am of opinion that Hogan's information and acts were the property of the public when the offer of reward was made, and that they should not be allowed to prejudice other parties. 95

The amount of money lost was eight thousand five hundred dollars; that recovered appears to have been three thousand five hundred and sixty. The two thousand dollars should be apportioned to such part of it as you find, (if any,) that the plaintiff, under the law laid down should recover upon. Interest may be computed from the 3d of April, 1849, the return day of the writ; the day of its issue not having been shown.

The counsel of the defendants excepted to the following portions of the said charge: 96

1st. To so much thereof as directs that only one action for the money that has been recovered, can be maintained on the alleged offer of reward.

2d. To so much thereof as directs the jury that if they believe that Dean gave the first substantial and available information, that led to the ultimate apprehension of the culprits, and to the recovery of the moneys found upon them and in the houses, and that he acted in the matter on his own account, he would be entitled to the proper proportionate part of the reward. 97

3d. To so much of said charge as directs the jury, that if the parties acted individually, and the evidence entitles Dean to his reward for the money first recovered, he is also entitled to it on the \$2,600 found in Josiah Calvin's cellar.

4th. To so much of said charge as directs that the said reward is not divisible.

5th. To so much of the said charge as directs the jury that the said Dean's disclaimer of the reward is not a bar to his recovery. 98

6th. To so much of said charge as directs that the first information given by Hogan to Crommelin, being known to the

defendants and to the public, at the time of the alleged offer of reward, he would not be entitled to the reward, although that information led to the recovery of the money.

7th. To so much of said charge as gives prominence and effect in sustaining the plaintiff's claim, to his acts prior to the alleged offer of reward, but denies all merit and effect, as a  
 99 ground for claiming the same reward to the acts and information of John D. Hogan, for the reason that the alleged reward was not then offered.

And the said counsel prays that this his bill of exceptions, may be sealed—and it is sealed accordingly.

ELIAS B. D. OGDEN, [L. s.]

The jury rendered a verdict in favor of the plaintiff below, for \_\_\_\_\_ on which final judgment was entered at the April Term of the Supreme Court, A. D., one thousand eight hundred and fifty.

100 To revise this judgment, the plaintiffs bring their writ of error.

The foregoing is agreed upon, as a true state of the case therein mentioned.

D. BARKALOW,  
 Atty. for Plffs. in Error.

E. N. DICKERSON,  
 Atty. for Defts. in Error.

## NEW JERSEY COURT OF ERRORS AND APPEALS.

APRIL TERM, A. D. 1850.

DANIEL DREW, NELSON ROBINSON, and  
ROBERT W. KELLY, Plaintiffs' in  
Error,

*vs.*

JOSEPH DEAN, Defendant in Error.

Assignment of  
Errors.

Afterwards, to wit, on the third Tuesday of April, in the 101  
year of our Lord, one thousand eight hundred and fifty, be-  
fore our Court of Errors and Appeals, in the last resort in all  
cases, came the said Daniel Drew, Nelson Robinson and Ro-  
bert W. Kelly, by Daniel Barkalow, their attorney, and say,  
that in the record and proceedings aforesaid, and also, in giving  
the judgment aforesaid there is manifest error in this ; that the  
declaration aforesaid, and the matters therein contained, are  
not sufficient in law for said Joseph Dean to have or main-  
tain his aforesaid action thereof against them, the said Daniel  
Drew, Nelson Robinson and Robert W. Kelly: and also, there 102  
is error in this ; that by the record aforesaid, it appears that  
the judgment aforesaid, in form aforesaid, was given in favor  
of the said Joseph Dean, and against the said Daniel Drew,  
Nelson Robinson and Robert W. Kelly, whereas, by the law  
of the land, the same ought to have been given in favor of  
the said Daniel Drew, Nelson Robinson and Robert W. Kelly,  
and against the said Joseph Dean.

There is also error in this, to wit, that the said Justice, in  
the trial of the aforesaid issue, permitted the said Joseph  
Dean to give in evidence his own declaration in support there- 103  
of, on his part.

There is also error in this, that the said Justice, in said trial, received in evidence and permitted to be read to the jury, the paper set out in the aforesaid declaration, purporting to be an offer of reward, without proof of publication thereof, and without proof that the same was in fact a public offer of reward.

104 There is also error in this, that the said Joseph Dean having rested his cause, and a motion being made on behalf of the defendants below that the plaintiff be called, and judgment of non-suit be entered against him, for the reason that he had failed to sustain his aforesaid action, the said Justice refused to call the said plaintiff and give judgment of non-suit against him, as he ought to have done.

105 There is also error in this, that the said Justice refused to permit the said defendants (they offering such proof) to prove on the said trial, that in rendering the services alleged in said declaration, the said plaintiff acted by express agreement, in subordination to and for another person, and not for himself and on his own account.

106 There is also error in this, that the said Justice, in his charge to the jury on the said trial, instructed the said jury that only one action can be maintained for the recovery of the reward offered for the recovery of the money in the plaintiff's declaration mentioned, supposing said reward to have been publicly offered, and that the said reward was not divisible; and that the said plaintiff, if individually entitled to any portion of said reward for the money actually recovered, was entitled to the whole of the said reward for the amount so actually recovered.

There is also error in this, that the said Justice, in his said charge, instructed the said jury that the said plaintiff's parol disclaimer of the said reward, so as aforesaid alleged to have been offered, was not a bar to his recovery.

107 There is also error in this: that the said Justice in his said charge instructed the said jury that if the said plaintiff gave the first substantial and available information which led to the recovery of the said moneys in his declaration alleged to have been recovered, such first information would entitle him to the proportion of the reward due on the amount of money recovered.

There is also error in this : that it being claimed on the part of the defendants below, and proved on the said trial, that one John D. Hogan gave the first substantial and available information which led to the recovery of the said money alleged to have been recovered ; and it appearing that the said information was given before the alleged offer of the said reward of two thousand dollars ; the said Justice in his said charge, instructed the said jury that the fact of such information being given and made public prior to said alleged offer of reward, would debar said Hogan from claiming and recovering said reward, although that information led to the recovery of the money. 108

There is also error in this : that the said justice in his said charge, gave importance and effect in reviewing said plaintiffs claim to information given and acts done by him, prior to the time of the alleged offer of the reward claimed by said plaintiff, and instructed the said jury that they ought to consider the same.

And the said plaintiff in error prays, that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled and altogether holden for nought, and that they may be restored to all things which they have lost by occasion of the said judgment, &c. 109

DANIEL BARKALOW,  
Attorney and Counsel of  
Plaintiff in Error.

Common joinder in error by the defendant.

