

NEW JERSEY COURT OF ERRORS  
AND APPEALS

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EDWIN D. ROGERS, Plaintiff and Appellant, vs. CHARLES S. THOMPSON, Defendant and Respondent.	}	BRIEF FOR  APPELLANT	10
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This is a suit for slander tried at the Burlington County Circuit Court before Judge Carrow and a jury on January 3d, 1916. At the conclusion of the case the Court directed a verdict for the defendant upon the 20 ground that the words were spoken in the course of a judicial proceeding and consequently privileged, or, if the words were not spoken in a judicial proceeding, there were of such a character as to be qualifiedly privileged (S. C. p. 179.)

The facts are as follows:—

On December 15th, 1914, one Samuel N. Lamb, of Medford, Burlington County, filed a voluntary petition in bankruptcy in the United State District Court for the District of New Jersey, and was duly adjudicated a 30 bankrupt on that date (S. C. p. 3.) Samuel D. Oliphant, Referee in Bankruptcy, had charge of the case, the same having been duly referred to him, and in pursuance of that order of reference Mr. Oliphant went to Mount Holly for the purpose of holding a meeting of the cred-

itors of the said bankrupt for the election of a trustee (S. C. p. 3, l. 8.)

The plaintiff, Edwin D. Rogers, was a candidate for trustee and had a majority in number and amount of the claims of the creditors there present, which of course under the law was sufficient to insure his election (S. C. p. 3, l. 18.) The defendant, Charles S. Thompson, purporting to be the attorney for one Vinton N. Thompson, and another creditor, and purporting to have power  
10 of attorney from these two creditors, was present at the meeting. When nominations for trustee were called for, Mr. Rogers was nominated. The defendant then arose and said, "I know him (meaning the plaintiff) personally, that he is not straight and upright." (S. C. p. 3, l. 23.) This statement was made without any statement of fact or other information upon which to justify it. It is also significant at this point to remark, that, while the defendant made his statement as an attorney represent-  
20 ing creditors, he was not a member of the Bar of this State and was not even admitted as an attorney in the United States District Court for the District of New Jersey, until some time after this meeting (S. C. p. 64, l. 20.)

After the making of this statement by the defendant, the Referee in bankruptcy announced that he would refuse to approve the appointment of Mr. Rogers, as trustee, even though Mr. Rogers had a majority in number and amount of the claims of creditors there presented. The result was that other nominations were called for  
30 and someone else was elected trustee of the bankrupt estate.

This suit was thereafter brought against the defendant and came on for trial as indicated above. The plaintiff proved the making of the statement by the defendant and proved damages resulting therefrom in the loss of

commissions that he would have earned and received as trustee in bankruptcy of this bankrupt estate the defendant in his answer, while denying the making of the statement, at the trial admitted that it was made and based his defense entirely upon justification of the circumstances and upon the theory that the statement was made in the course of a judicial proceeding, and was therefore privileged. The trial Court took this view of the situation and directed a verdict for the defendant.

A large part of the testimony of the case was taken 10  
up with testimony offered for the purpose of proving certain circumstances and conditions and events in the life of Edwin D. Rogers, the plaintiff, which it was contended showed the truth of the statement made by the defendant. It is well to state at this point that an examination of all that testimony will disclose that none of the incidents therein related in any way sustained the allegation that the defendant was not straight and upright.

Now to deal with the first reason given by the Court for the direction of the verdict, namely, that the words 20  
were spoken in the course of a judicial proceeding and therefore privileged.

Section 44 of the Bankruptcy Act of 1898 provides as follows: "The creditors of the bankrupt estate shall, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been re-opened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a 30  
trustee or trustees as herein provided the Court shall do so."

The law provides "the creditors shall .....appoint one trustee or three trustees." There is nothing here giving the Referee the right to approve or disapprove of

the appointment. Trustees in bankruptcy are creatures of the statute. Viewed as Congress left it, therefore the law of 1898 vests in the creditors an unqualified right to appoint their trustees. And the law further provides that this appointment shall be made at the first meeting of the creditors. This, of course, means that it shall be done at such first meeting or at such time to which the said first meeting shall be regularly adjourned.

The bankruptcy act of 1898, section 56, provides,  
10 "Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided." The further provision is with reference to claims having priority.

Section 45 of the bankruptcy act provides, "Trustees may be individuals who are respectively competent to perform the duties of that office and reside or have an office in the judicial district within which they are ap-  
20 pointed, and corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed."

The above three sections are all the sections of the bankruptcy act which have particular reference to the election of trustees.

General Order No. 13, made by the United States Supreme Court, and applicable to bankruptcy cases, provides, "The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the  
30 Referee or by a Judge; and he shall be removable by the Judge only."

It will be seen by a reading of these sections of the bankruptcy law and general orders that the Referee in Bankruptcy, so far as the appointment or selection of a trustee in bankruptcy is concerned, has no power or au-

thority over it except to disapprove the election for good cause, which causes have been indicated by the cases and will be subsequently adverted to. The point that it is desired to make in this connection is that while a Referee does at times hold Court and act as a judge, at which times it may properly be said that statements made in his presence are made in the course of a judicial proceeding, it cannot be said that he is holding a Court when the creditors are electing a trustee in bankruptcy. The law recognizes only the creditors as being the persons who have anything to say at all as to the selection of a trustee. The Referee at that time merely presides at a meeting of creditors for the purpose of supervising their election of a trustee, but cannot be said to be presiding at any judicial proceeding or that the meeting is a judicial tribunal in the sense in which that term is used with reference to alleged slander statements. 10

In the case of *in re Henschell*, 6 A. B. R. 25, the Court in speaking of this general order No. 13, said, "This provision means that the supervisory power is vested in the Court to meet contingencies which could not be definitely provided for in the act and which must appeal to the good judgment and conscience of the Court, and whereby the Court would be armed with the power to prevent the selection of a person who in its judgment, and notwithstanding the express desire of the majority in number and amount of the creditors or even of all of the creditors would not be a proper selection and whose appointment might result in the defeat of the proper, just and equitable administration of the bankruptcy law in that particular case, but the emergency should not be a trival one; it should be one of grave character and due weight, and unless such an emergency appears it is the duty of the Referee to ap- 30

prove the selection, always subject, of course, to the review of such action by the District Court."

The following cases establish the rule that the election of a trustee by the creditors is not to be disapproved unless there is good reason for believing that the election has been directed, managed and controlled by the bankrupt, or his attorney, or by some interest opposed to the creditors interests.

In the case of *in re Blue Ridge Packing Company*,  
10 11 A. B. R. 36, 125 Fed. 620, there were objections that the trustee elected by the creditors had previously advised the assignment for the benefit of creditors under the State law, which was the act of bankruptcy complained of, he being also the assignee, and that he was intimately associated with the attorney of certain stockholders of the bankrupt corporation, who claimed also to be creditors. But the Court held that these mere facts did not make the election an improper one, but called only for a close scrutiny of it. In passing on the point the Court  
20 said, "It is to be remember in all such cases that the choice of a trustee is lodged by the law with the creditors constituting a majority in number and amount and that their selection is not to be interfered with unless it clearly imperils the fair and efficient administration of the estate." This paragraph certainly indicates that the election of a trustee is not a judicial proceeding and that the Referee while conducting such an election is not holding Court and is not acting in any judicial capacity.

In the case of *In re Machin*, 11 A. B. R. 409, 128  
30 Fed. 316, it was held that votes of creditors for a trustee could not be rejected on the mere ground that the candidate voted for had formerly been the attorney of the bankrupt.

In the case of *Ine re Cooper*, 14 A. B. R. 320, 135 Fed. 196, it was held that an attorney who had been em-

ployed by the bankrupt to file his petition and whose obligation as attorney ceased at that point and who had received no fee therefore was not disqualified from voting the claims afterward received from creditors without his own solicitation or the procurement of the bankrupt."

It will be seen from the foregoing cases that the United States District Courts in their interpretation of General Order No. 13 have recognized the fact that the selection of a trustee in bankruptcy is entirely within the control and power of the creditors. That the referee in bankruptcy has nothing to do with that selection except in so far as he may preside at the meeting at which the creditors vote their claims. He is not acting in a judicial capacity while so presiding. He cannot suggest their voting or prevent their voting for any person that to the creditors seem desirable. 10

It is significant in this case that after Mr. Thompson, the defendant, had made his statement of the alleged slanderous words, that the Referee in Bankruptcy asked each individual creditor there present the effect or result of such statement upon their proposed action. Not a single voice was raised against the selection of Mr. Rogers. They were creditors who knew him personally, knew his standing in the community, knew his ability, and who desired that he should act as trustee in this matter for the purpose of taking care of their interests. 20

It is therefore, respectfully submitted that the Court was in error in holding that the Referee was holding a Court and that the statements were made in the course of a judicial proceeding. 30

Now as to the next point raised by the Court that the statement was qualifiedly privileged. It will be observed that the Court seized upon two reasons for its action, so that in case it was in error as to one it might have something else to fall back upon.

A qualifiedly privileged communication of statement has been defined as being "where a party makes a communication and such communication is prompted by a duty owed either to the public or to a third party, or the communication is one in which the party has an interest and it is made to another having a corresponding interest, the communication is privileged is made in good faith and without actual malice." 25 Cyc. 385. Rothholz vs. Dinkel, 53 L. 438.

10 "The duty under which the party is privileged to make the communication need not be one having the force of a legal obligation, but it is sufficient if it is social or moral in its nature, and defendant in good faith believes he is acting in pursuance thereof, although in fact he is mistaken." 25 Cyc. 386.

"In some of the authorities the rule is stated that where the party exceeds his privilege and the communication complained of goes beyond what the occasion demands that he should publish, and is unnecessarily defamatory to plaintiff, he will not be protected, and the fact that a duty, a common interest, or a confidential relation existed to a limited degree is not a defense even though he acted in good faith." 25 Cyc. 386.

20 In the case of Fahr vs. Hayes, 50 L. 275, the Supreme Court of this State said, "The question is whether the defendant's statements come within that class of communications, which is regarded in law as having a qualified privilege. In order to bring the case within this class prima facie the burden is on the defendant to show, first, that the action was privileged, and, second, that the statement was made under an honest belief in its truth."

30 Now, suppose we test the present case by the above quoted rules, and see whether or not the communication was privileged. We must first bear in mind that the

Burden is on the defendant to show that his statement was privileged, which means that it was made to persons having a common interest or duty, and made in good faith in the belief of the truth of the statement, and made without malice. It may be conceded for the purposes of the argument that the other creditors there present at this meeting had a common interest in the selection of a trustee in bankruptcy, which common interest would entitle them to know any facts which might militate against the fitness of the plaintiff for that position. It must then be shown that the statement was made in good faith, with an honest belief as to its truth and without malice. 10

Was this statement made in good faith, with an honest belief as to its truth, and without malice? You have to look to the testimony of the defendant himself to show this condition. In his direct testimony (S. C. pp. 36, 37 & 38) the defendant was testifying as to the circumstances and conditions under which he came to make the statement. He says that Mr. Rogers, the plaintiff, was nominated as trustee and that he then objected to the appointment upon the ground of collusion between Mr. Rogers and the bankrupt, and stated an interview that he had had with the bankrupt a few days prior to the meeting at which the election of a trustee was to take place, and he then says that the person nominating Mr. Rogers made certain statements (the making of which was subsequently denied) and that the Referee then said to defendant "Mr. Thompson what else do you know about this man, why he should not be appointed?" And that at this point in the proceedings, the person who nominated Mr. Rogers stated to the Referee that the difficulties between Rogers and Thompson were personal. The defendant then said, "So long as you have brought this up, I don't think he is a straight, up- 20 30

right man, and if he is elected I don't think my father's claim will be properly taken care of."

There can be but one conclusion from the reading of this testimony. The defendant made no charge against the plaintiff which operated to influence the mind of the Referee as to whether or not he would approve or disapprove of the selection made by the creditors, until the defendant was charged with having made the statements then already made because of personal conditions  
10 between the plaintiff and defendant's father. Then he rose in his wrath and made the slanderous statements alleged and for which this suit is brought. Picture for yourselves the circumstances of this meeting of creditors. The defendant attended that meeting for the express purpose of defeating the election of Rogers as a trustee if possible and he came prepared to go to any length in accomplishing his ends. He started out with a statement of collusion between plaintiff and bankrupt, which statement he could not substantiate, because upon the facts  
20 which he related as tending to show collusion the Referee disregarded them. Then when the true situation is brought to his attention, namely, that the reason for his opposition is because of personal difficulties existing between the plaintiff and defendant's father, then, no longer being able to control himself, and no longer being able to hold back that which was in his mind, and that which shows the malice existing there, he blurts out the statement that the plaintiff is not "straight and upright"

Upon the making of this statement, the Referee  
30 regarded is as of sufficient importance to require the defendant to be put upon his oath and to testify. The defendant again, upon oath, reiterates his statement that the plaintiff is not straight and upright. Is there any malice? Was there any feeling? Was his statement actuated in an honest belief of its truth? Was his state-

ment made for the purpose of conveying to the other creditors there present facts which would disqualify the plaintiff to act as trustee? No. The statement upon its face and read in connection with the circumstances under which it was made shows that there certainly was the utmost malice existing in the mind of the defendant. It shows more than that; it shows that his statement was made for the malicious purpose of defeating the election of the trustee and of affecting his reputation in the community where he lived. 10

Another significant statement of the defendant's testimony will be found on S. C. 41, l. 23. At this point in the examination of the defendant, which was his direct examination, the effort was being made to show that his statements were made as a result of information that had come to his ears in the way of rumors and heresay testimony; and that he was justified in believing these statements and using them as a basis for the alleged slanderous statement made at the meeting. The witness when no question was pending made the following statement, 20  
"As I understand it, I have a right to show the circumstances which operated on my mind and made me believe that I was doing right in using these words. That's the law as I discovered it in looking it up." A remarkable discovery of the law by the defendant after he had made the slanderous statement and when he was preparing to defend himself in the suit brought against him for damages. Then his investigations led him to the conclusion that he was justified in using anything that he had ever heard concerning the defendant as a basis and a justification for the slanderous statement. 30

Bear in mind that this great discovery was made when the defendant came to prepare his case for trial. Prior to that time he had acted not from his knowledge of any rule or law, not from circumstances as they ex-

isted, but purely for the purpose of injuring the plaintiff and defeating his election. The relations existing between plaintiff and defendant's family prior to this meeting, together with the manner in which defendant made his statements at the meeting certainly show that he was actuated by malice against the plaintiff.

The sixth reason assigned in the notice of appeal relates to the Court's refusal to strike out the testimony of the witness, Lorrie Worrell, upon the ground that it  
10 showed the existence of the relationship of master and servant between the plaintiff and Worrell, and not the relationship of landlord and tenant, and that therefore the plaintiff had a right to discharge Worrell and remove him from the tenant house in question.

This testimony was offered by the defendant as part of his plea of justification. It was claimed that one Lorrie Worrell, while a tenant of the plaintiff, was forcibly ejected and removed from the tenant house. The facts as testified to by Worrell are as follows: That he  
20 was employed by the plaintiff, Rogers, to work on plaintiff's farm, for which he received a weekly wage and a tenant house in which to live. He further testified that his employment was for a year and that he was ejected before the end of the year. That he was ejected in the middle of winter, and his goods removed from the place and set on the road. This testimony was offered as part of the plea of justification upon the ground that it tended to show the plaintiff, Rogers, was not straight and upright. At the conclusion of the testimony of Worrell  
30 and his wife, a motion was made to strike out that testimony upon the ground that it did not show any justification because the relationship between Worrell and plaintiff was that of master and servant. This the Court refused to do. It is contended that the Court was in error in his refusal.

Upon the above statement of facts it clearly appears that Worrell was the servant of the plaintiff; that as plaintiff's servant, plaintiff had a right to discharge him, and as the occupancy of the tenant house was part of the compensation of Worrell for his work, that he was bound to remove himself immediately upon being discharged, and that upon his failure to do so, the plaintiff had a right to eject him. The following cases in New Jersey clearly sustain this contention of law: *Morris Canal and Banking Company vs. Mitchell*, 31 L. 99; *State vs. Jewell*, 34 L. 259; *McQuade v. Emmons*, 38 L. 397. 10

The second reason assigned for reversal relates to testimony of the defendant in his direct examination. The first question objected to is: "Q. Did you have any malice against Mr. Rogers?" (S. C. p. 39, l. 9.) The witness here is being permitted to testify as to his state of mind at the time he made the alleged slanderous statements. The defendant is seeking to justify himself. He is testifying in his own behalf as to his state of mind when he made the alleged slanderous statement. He is not testify to any fact. It is submitted that the only thing that can determine whether or not the defendant acted with malice is the facts as they appear at the time of the making of the statement, together with other pertinent and relevant facts. It is from those facts that the Court and jury are to determine whether or not malice existed and not from a statement of the defendant as to his state of mind. 20

"Defendant cannot be asked 'Did you have any malice against the plaintiff?' as the jury might think the reply referred to the legal malice, which the law presumes." *Mowry vs. Raabe*, 89 Cal. 606; 27 Pac. 157. 30

And the next question (S. C. p. 40, l. 20,) "Q. Were you acting in the interest of creditors or acting against Mr. Rogers for personal reasons?" Here you have

again the situation of the defendant testifying as to his reasons and motives for the situation, which are to be judged only from the testimony in the case and not from expression of opinion by the defendant.

Then there follows questions asked the defendant as to whether he had received information, which he believed to be true with reference to the defrauding of one Walter W. Cline, the illegal dispossession of one Lorrie Worrell, collusion between the bankrupt and the plaintiff, and the collection by plaintiff of claims to be presented at the meeting. All of these questions relate to entirely hearsay testimony, which had come to the ears of defendant, and defendant without investigation believed them to be true because they were to his interest to believe them, and then makes them a basis for his opinion when called into Court. A reading of the testimony with reference to each of these questions or incidents will show that none of them even tended to prove that the plaintiff was not straight and upright, as charged by the defendant.

And then on S. C. p. 36, after counsel had interrogated defendant as to all the incident which were alleged in his answer as reasons for justification, this general question was put to him. "Q. Well, now, was there any other fact communicated to you which you relied upon and believed at the time you made that statement and at the time of the making of the statement that you have already testified to?" This question was objected to, objection overruled and the plaintiff started to testify about things which were not charged in the answer as particular justification. Clearly an attempt to get before the jury, if possible, any old rumor, story or suspicion that the defendant had ever heard, which might serve him in his purpose of getting out from under the effect of statements that he had so maliciously made.

All of these things with relation to information that had come to the knowledge of the defendant were inadmissible because they were practically all hearsay, and were without any verification by the defendant as to their truth.

“Current reports and suspicions are not admissible to prove the truth of slanderous statements.” 25 Cyc. 513, and cases cited.

The third reason urged for reversal relates to questions asked of the witness, Walter Cline, (S. C. p. 80.) 10  
The Court had repeatedly refused to permit witnesses to testify to transactions with the plaintiff, which so far as the case showed had never come to the knowledge of defendant. When the witness, Walter Cline, was called, the Court suddenly and unexpectedly reversed its previous attitude with reference to this sort of testimony and proceeded to let the witness testify to transactions with plaintiff. We did it, however, upon the express ruling that the testimony must tend to show that the plaintiff was not a straight and upright man, as had been 20  
charged by defendant. The Court then permitted the witness, Walter Cline, to testify to transactions with the plaintiff, a reading of which will show that they had no relevancy to the issue and did not tend in any way to support the defendant's contention that the plaintiff was not of the character as alleged by the defendant.

The fourth reason urged relates to the testimony of the witness, Elwood Parks (S. C. p. 95.) Parks was called with reference to the alleged horse deal and was permitted to testify that he had heard of the sale of the 30  
horse to one Walter Cline. The question had no relevancy to the issue, and was incompetent as being entirely hearsay so far as this case was concerned.

The fifth reason urged relates to the testimony of Lorrie Worrell. The first question deals with his tell-

ing of what was called a forcible entry and eviction (S. C. p. 111.) This is the incident which showed the relationship of master and servant between the parties and not that of landlord and tenant. The witness Worrell was also asked this question, "Q. Did you tell the people around the neighborhood what Mr. Rogers had done to you?" (S. C. p. 115.) The theory of this was to bring home to the defendant some knowledge of the situation existing between the plaintiff and Worrell. It  
10 was the plainest effort in the world to bring clearly hearsay testimony to the knowledge of the defendant, and upon which he, without any effort to verify the truth of it, could use such rumors as a basis for his charge against the defendant. It was clearly inadmissible.

The seventh reason urged relates to the testimony of Lorrie Worrell's wife (S. C. p. 128). She was asked to testify as to conversations, which she admitted that she did not hear and her knowledge of which she gained from her husband. She was also asked with reference  
20 to compensation received by her husband (S. C. p. 132) and the Court permitted the testimony upon the ground that it threw light upon the period of time which her husband was to remain as a servant of Rogers. It had no bearing or relevancy whatsoever, because her husband had already testified to facts which showed him to be the servant and not the tenant of Rogers.

For all these reasons it is, therefore, respectfully submitted that the direction of verdict by the Court below should be set aside and a new trial granted.  
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V. CLAUDE PALMER,  
Attorney for plaintiff and appellant.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

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EDWIN D. ROGERS,  
*Plaintiff and Appellant,*

VS.

CHARLES S. THOMPSON,  
*Defendant & Respondent.*

BRIEF FOR RESPOND-  
ENT.

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BRIEF FOR RESPONDENT.

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This is an action for slander and was tried at the Burlington County Circuit before Judge Carrow and a jury, on January 3rd and 4th, 1916.

The allegation, as the cause of action, was that the defendant, who was an attorney at law of the State of Pennsylvania, residing in New Jersey, appeared before S. D. Oliphant, a Referee in Bankruptcy, representing the claim of the defendant's father and others.

The meeting presided over by Mr. Oliphant was the first meeting of creditors, for the proof and allowance of claims, for the election of a Trustee and the examination of the bankrupt, under Act of Congress. When the matter came to the election of a Trustee, objection was made by the defendant to the nomination of the plaintiff. The plaintiff claims

that the statements then made by the defendant reflecting on the character of the plaintiff were voluntary and not pertinent to the issue then before the Court.

The defendant's claim is that the question then at issue was the fitness of the plaintiff to act as Trustee in the case; that he, therefore, made objection to the election of the plaintiff as Trustee on the ground of collusion between the plaintiff and the bankrupt, and on the further ground that the plaintiff was not a "straight and upright man." Then followed some argument of counsel and the defendant was sworn as a witness and testified in the cause with respect to the fitness of the plaintiff for the position. During the course of which and in the argument of the matter the defendant is alleged to have said that the plaintiff was not a straight and upright man. The proof is, and in fact, the words were thus spoken under the circumstances above referred to. At the close of the plaintiff's case, a motion for non-suit was made, but the Court deferred action in the matter until the close of the whole case. At the conclusion of the taking of the testimony, a motion for the direction of a verdict was made by the defendant's counsel, and he assigned as his reasons therefor:

(1) That the evidence discloses that the alleged words were spoken in the course of a judicial proceeding by an attorney, and that they were pertinent and material to the issue then before the Court, and, therefore, the alleged slanderous words were absolutely privileged.

(2) That even supposing that the words were not absolutely privileged, but qualifiedly so, there

was no evidence of express malice, and, therefore, a direction of the verdict for the defendant was proper.

The Court adopted the view of the defendant's counsel and directed a verdict, assigning for the reasons of his action the grounds above stated.

The question is—did the learned trial Judge err in his action in thus directing a verdict for the defendant?

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### ARGUMENT.

1. A Referee in Bankruptcy proceedings at the first meeting of creditors at which, among other things, the election of a Trustee is conducted under his supervision, is presiding as a judicial officer in a judicial proceeding, and the words spoken by an attorney concerning matters which are then pertinent and material to the issue before the Court are absolutely privileged.

In *LaPorta vs. Leonard*, 97 Atl. 251, decided March 6, 1916, by the Court of Errors and Appeals, Mr. Justice Minturn writing the opinion, it was held "As a result of this examination" (The English and American cases) "it is therein laid down that the general American doctrine upon this subject is that counsel is not liable to a civil action, nor to criminal proceedings for anything he may have said in the course of a trial or investigation, although malicious and intended to defame, provided it was relevant and pertinent to the subject-matter of the controversy, but otherwise if malicious and not pertinent and relevant to the inquiry." The

Court in this case adopts the rule above stated, and, therefore, I consider it settled law in this State that if words be spoken by an attorney before a judicial tribunal, which are relevant and pertinent to the matter then before the Court, he may not be required to answer in any proceedings for such words, even though they were malicious. That the defendant in this case did appear as attorney amply appears from the testimony. He so testifies himself, and the testimony shows that he held powers of attorney for the claims that he represented, and acted as attorney and agent in fact, so that there can be no question that the defendant comes within this rule, provided, of course, that the proceeding was a judicial proceeding. The learned Court in the above case cites a number of authorities which are unnecessary to cite here.

The next question is whether or not the Referee presiding at the first meeting of creditors is conducting a judicial proceeding during the election of a Trustee by the creditors.

*In re McGill*, 5 A. B. R. 155, decided by the Judges of the Sixth Circuit Court of Appeals in 1901, Judge Day said, "It is to be observed that either the Judge or the Referee is to preside at the first meeting of creditors. It is to be presumed that when the Referee acts instead of the Judge, his duties are judicial in their nature, and he is to pass upon such questions of that character as may arise in carrying forward the objects and purposes of the meeting." The very matter in question in that case was whether or not the Referee had a right to control the election of a Trustee and to determine the rights of those holding powers of attorney procured by the assistance of the bankrupt, so that the matter was identical with the question before the

trial Court, namely, whether or not the Referee presided over a judicial proceeding at the time the words were spoken.

It is the law that the decisions of the United States Courts passing upon the interpretation of the Acts of Congress and the Constitution of the United States are binding upon the several courts of the several States so that this opinion of the Circuit Court of Appeals construing and interpreting the Bankruptcy Act with reference to duties of the Referee are binding upon this court.

In *Clendenning vs. Red River Bank, etc.*, 11 A. B. R. 245, Young, C. J., held:

“Under Section 55b of the 1898 Bankruptcy Act, 30 Stat. 559 (U. S. Comp. St. 1901, page 3442), Referees are judicial officers clothed with power to adjudicate in the first instance over the allowance or disallowance of claims presented against the bankrupt’s estate, and their findings are entitled to the respect and credit given to officers acting judicially.” “The question which the plaintiff seeks to have us determine has been judicially determined by a tribunal having jurisdiction, and is, therefore, binding on us.”

*In re Lathrop*, 184 Fed. 534, it was held that:

“The Referee at a meeting of creditors has the power of a Court to make a witness obey his lawful orders, and disobedience is a contempt of the bankruptcy court.”

So that there seems to be no doubt at all but that a Referee presiding in a bankruptcy proceeding is a judicial officer throughout the entire proceeding, and that anything said by an attorney concerning the

matter, which is then before the Court, is absolutely privileged.

Certainly the election of a Trustee at the first meeting of creditors is a matter which is then pertinent and material to the issue. It is made so by an Act of Congress. Also the fitness of a person nominated is a question then before the Referee's court, because that very question is to be determined by the Referee at the meeting of the creditors, so that there cannot be any argument, and in fact it is not argued by the appellant that the fitness of the plaintiff for the position of Trustee was not a matter which was then before the Referee. It seems to us to be clear in argument that the Referee was conducting the judicial proceeding; that the character of a Trustee to be elected at that proceeding was a matter which was then pertinent and material to the issue that was then before the Court. And again that the words spoken by the defendant in these proceedings were privileged for the reasons set forth in *LaPorta vs. Leonard*.

It, therefore, follows that the action of the learned trial Judge in directing a verdict for the defendant was proper.

2. The Court further said that even supposing the first reason assigned by him and argued above was untenable, still the direction of a verdict was proper, because the defendant was interested in the matter then before the Court, by reason of holding a power of attorney, and that what he said in the presence of other persons who were also interested in the same subject-matter gave the defendant a qualified privilege, and that, inasmuch as the plaintiff had failed to show actual malice on the part of the defendant, a direction of a verdict was proper.

“Where a party makes a communication and such communication is prompted by a duty owed either to the public or to a third party, or the communication is one in which the party has an interest and it is made to another having a corresponding interest, the communication is privileged if made in good faith and without actual malice.”

25 *Cyc.* 385. *Newell, Libel & Slander*, 3rd Edition, 1914, Section 498.

So that in order to render this privilege of non-effect it must be shown that there was express malice and not qualified privilege. See also *Fahr vs. Hayes*, 50 N. J. Law, 275, where the same question was adjudicated in this State. The Court in that case held:

“So that neither in the language or circumstances of the criminatory statements, nor in any extrinsic facts, do we discover any rational ground for charging the defendant with express malice, and hence we conclude that a verdict in his favor should have been directed.”

So that in the present case if there were no express malice, then the Court should have directed a verdict as he did, and, therefore, there was no error in the direction of this verdict. See also *Somerville vs. Hawkins*, 10 C. B. 583; *Harris vs. Thompson*, 13 C. B. 333; *Taylor vs. Hawkins*, 16 Q. B. 308.

It is argued by the appellant that the subsequent testimony of the defendant given in the Referee's court evidences express malice, and, therefore, that question should have been submitted to the jury.

In *Fahr vs. Hayes*, it was held that:

“If, however, the subsequent publications be privileged they will be no evidence of malice.”

The very essence of the defendant's case, and also as shown by the plaintiff's case, was that these words were spoken in the course of a judicial proceeding and absolutely privileged and the fact that they were reiterated in subsequent testimony does not show express malice.

So that the defendant's argument in this particular fails. There was no evidence of express malice and the Court was correct in directing a verdict for the defendant.

It is, therefore, respectfully submitted that the appeal should be dismissed.

JAMES MERCER DAVIS,  
CHARLES S. THOMPSON, *pro se*,  
RALPH W. HAINES,  
*Attys. for Defendants  
and Respondents.*

NEW JERSEY SUPREME COURT  
BURLINGTON COUNTY

EDWIN D. ROGERS,	}	Plaintiff.	ACTION AT LAW	10
vs				
CHARLES S. THOMPSON,		Defendant.	NOTICE OF APPEAL	

To DAVIS & DAVIS, ESQS., Attorneys for defendant:

Take notice that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this case on the following grounds:

20

1. Because the Court permitted the witness, Jonathan H. Kelsey, to answer the following questions:

“Q. Now, Mr. Kelsey, you have earned that, haven’t you?”

“Q. I mean considering the time spent and the trouble you have had in it?”

2. Because the Court permitted the witness, Charles S. Thompson, to answer the following questions: 30

“Q. And what was said by him when he called the meeting to order, if you remember?”

“Q. Did you have any malice against Mr. Rogers?”

“Q. Were you acting in the interest of creditors or acting against Mr. Rogers for personal reasons?”

“Q. Mr. Thompson, had you received information, which you believed to be true, as to the plaintiff defrauding Walter W. Cline?”

“Q. Did you receive information, which you believed to be authentic and true, that the plaintiff had illegally dispossessed one Lorie Worrell and his family?”

10 “Q. And did you receive information, which you believed to be true, that there was collusion in this bankruptcy sale between Mr. Lamb and the plaintiff?”

“Q. And did you know as a fact that the plaintiff, in company with the bankrupt, Mr. Lamb, had prior to the meeting called by the Referee been to the office of Mr. Palmer and there arranged the schedules?”

“Q. Well, did you believe it?”

20 “Q. And do you know, or were you informed so that you believed it, that Mr. Rogers had gone with the bankrupt, Lamb, to various creditors and obtained their claims or a portion of their claims for Mr. Palmer, who held the accounts as their attorney, and which were announced at this meeting or at this Court held by the Referee?”

“Q. And at the meeting where the Referee presided, did Mr. Rogers, the plaintiff, and Mr. Palmer say whether or not these claims had been obtained by Mr. Rogers?”

30 “Q. Well, now, was there any other fact communicated to you, which you relied upon and believed at the time you made that statement, and at the time of the making of the statement that you have not already testified to?”

3. Because the Court permitted the witness, Walter Cline, to answer the following questions:

"Q. And what conversation did you have?"

"Q. What conversation did you have in reference to the sale of this horse with Mr. Rogers, the defendant? Do you understand the question, Mr. Cline?"

4. Because the Court permitted the witness, Elwood Parks, to answer the following question:

"Q. Did you hear it was sold to Walter Cline?"

10

5. Because the Court permitted the witness, Lorrie Worrell, to answer the following questions:

"Q. Go ahead and tell us about this forcible entry and eviction."

"Q. Did you tell the people around the neighborhood what Mr. Rogers had done to you?"

"Q. And what did that stake divide, if anything?"

6. Because the Court refused to strike out the 20 testimony of the witness, Lorrie Worrell, upon the ground that it did not show the existence of the relationship of landlord and tenant between the plaintiff and Lorrie Worrell; and because the testimony did show that the relationship existing between the plaintiff and Lorrie Worrell was that of master and servant.

7. Because the Court permitted the witness, Alice Worrell, to answer the following questions:

30

"Q. Did you hear it?"

"Q. As a matter of fact, your husband received pay and compensation according to the terms you heard them discuss on this Sunday?"

8. Because the Court refused to permit the witness, George M. Hillman, to answer the following question:

“Q. And do you recall a sale in which Mr. Rogers was personally interested in the distribution of the proceeds, and in which you were interested representing some clients, and his step-father, Mr. Lofland, was interested?”

10 9. Because the Court directed a verdict against the plaintiff and in favor of the defendant upon the ground that the alleged slander was spoken before a judicial tribunal and in the course of judicial proceedings, and because it was a privileged statement; whereas, in fact, the slander was not spoken at a judicial hearing nor was it a privileged statement.

V. CLAUDE PALMER,  
Attorney for Plaintiff.

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Service of a copy of within notice of appeal is hereby acknowledged, this 24th day of April, 1916.

RALPH W. HAINES,  
DAVIS & DAVIS,  
Attorneys for defendant.

NEW JERSEY SUPREME COURT  
BURLINGTON COUNTY

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EDWIN D. ROGERS,	} Plaintiff.	} ACTION AT LAW	} COMPLAINT	} 10
vs.				
CHARLES S. THOMPSON,	} Defendant.	}	}	}

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Plaintiff, who resides in the Township of Evesham County of Burlington and State of New Jersey, says:

1. Plaintiff, before and at the time herein stated, was a farmer and acted as clerk at a large number of public sales throughout the County of Burlington, which position as Clerk, necessitated the handling of large quantities of money for various people, and was carrying on such business at the time hereinafter stated. 20

2. At a meeting of the creditors of Samuel N. Lamb, bankrupt, held at 117 Main Street, Mount Holly, New Jersey, on December 28, 1914, under the direction of Samuel D. Oliphant, Referee in Bankruptcy, plaintiff was a candidate for election as Trustee of the Estate of said bankrupt, and had a majority in number and amount of the claims filed against said bankrupt to insure his election as trustee in bankruptcy; defendant at said meeting said to the said Samuel D. Oliphant, Referee, and in the hearings of numerous creditors, of and concerning the plaintiff, "he is not a fit man, he is not straight and 30

upright; I don't think our claim will be properly taken care of;" meaning by said words that plaintiff was dishonest and was not fit to be trustee of said bankrupt estate, and would not pay to defendant's father the claim that he, his father, had against said bankrupt estate.

3. At Philadelphia, Pennsylvania, on December 26, 1914, defendant in a conversation with Samuel N. Lamb of and concerning plaintiff and his probable appointment as trustee in bankruptcy of the estate of the said Samuel N. Lamb said, "he is not a fit man, he is not straight and upright; I don't think our claim will be properly taken care of; meaning by said words that plaintiff was dishonest and was not fit to be trustee of said bankrupt estate, because he was dishonest, and that he, plaintiff, would not pay to defendant's father, the claim that he, his father, had against said bankrupt estate.

20 4. Because of said words, so spoken as aforesaid, the said Referee in Bankruptcy said he would refuse to approve of the election of plaintiff as trustee of the said bankrupt estate, whereby plaintiff lost the election to said position.

5. Said words were false and malicious.

6. Because of said words, plaintiff has suffered in his reputation and lost the good will and trade of many persons with whom he would otherwise have had profitable business.

Plaintiff demands \$5000 damages.

V. CLAUDE PALMER,  
Attorney for Plaintiff.

NEW JERSEY SUPREME COURT  
BURLINGTON COUNTY

<p>EDWIN D. ROGERS, Plaintiff.</p>	}	AMENDED ANSWER 10
<p>vs.</p>		
<p>CHARLES S. THOMPSON, Defendant.</p>	}	ACTION AT LAW

The defendant residing in the Township of Evesham, County of Burlington, and State of New Jersey, says:

1. He admits that the plaintiff is a farmer as stated 20 in the first paragraph of the complaint, but as to the other matters and things, alleged in the first paragraph of the complaint, the defendant denies.
2. The defendant admits that the plaintiff was a candidate for election as trustee of the estate of Samuel N. Lamb, bankrupt, at a meeting of the creditors of said estate under the direction of Samuel D. Oliphant, Esq., Referee in Bankruptcy, but denies all the other matters and things set forth in paragraph two of the plaintiff's 30 complaint.
3. The defendant denies the matters and things as set up in the third paragraph of the plaintiff's complaint.

4. The defendant denies the matters and things set up in the fourth paragraph of the plaintiff's complaint.

5. The defendant denies the matters and things set up in the fifth paragraph of the plaintiff's complaint.

6. The defendant denies the matters and things set up in paragraph six, of the plaintiff's complaint.

10

## FIRST DEFENSE

The defendant avers that the election of a trustee, by the creditors of a bankrupt estate in a regular proceeding before an authorized Referee in Bankruptcy is a judicial proceeding, and that the words alleged to have been spoken by the defendant as set up in paragraph two of the plaintiff's complaint, were privileged.

Also, the words alleged to have been spoken by the defendant as set up in paragraph three, were spoken in  
20 the course of a judicial proceeding and, therefore, privileged.

## SECOND DEFENSE

The defendant avers that the matters and things as averred in paragraphs two and three of the plaintiff's complaint, as to things alleged to have been spoken by the defendant, were spoken in the presence of one who had a common interest in the subject matter of the dis-  
30 cussion, and things so said by the defendant were therefore privileged.

## THIRD DEFENSE

The defendant avers that the words alleged to have

been spoken by the defendant as set up in paragraphs two and three of the plaintiff's complaint are true, but the defendant denies the innuendoes set up in the plaintiff's complaint.

The defendant further avers that he was justified in using the words complained of in the Plaintiff's Complaint by reason of the following facts, among others, known to this defendant at and before the time the words complained of were spoken, to wit:

10

1. That on or about Sunday, July 1st, 1906, the plaintiff, Edwin D. Rogers, took possession of and cut and bound the rye belonging to his, the plaintiff's step-father, Alfred W. Lofland, for the plaintiff's own benefit and without the knowledge or consent of his said step-father.

2. That in the year 1906, or about that time, the plaintiff put his wife, Helen Deacon Rogers, out of his home, telling her she had to get something to do to support herself, and this, although she had a babe in arms at the time. 20

3. That in the year 1907, or about that time, the plaintiff defrauded one, Walter W. Cline, in the matter of a horse deal, wherein the plaintiff received a certain sum for the said horse which should have been paid over by the plaintiff to the said Walter W. Cline, but instead of so paying the said money over, the plaintiff falsely represented to the said Walter W. Cline that the said horse had died and that he had been unable to realize anything on the said horse. 30

4. That in February, 1908, or about that time, the

plaintiff, unlawfully broke into and entered a certain house in the lawful and peaceable possession of one Lorrie Worrell, and unlawfully removed therefrom the goods and chattels of the said Lorrie Worrell.

5. That in December 1908, or about that time, the plaintiff was knowingly and wilfully guilty of a breach of warranty and a deceit in the sale of a heifer to the said defendant.

10

6. That in the summer of 1907, one, Vinton N. Thompson, at the request of the plaintiff took his team and dug potatoes for the plaintiff and carted one load to Medford, New Jersey, and the plaintiff promised in return thereof to dig the potatoes of the said Vinton N. Thompson in the said summer of 1907, which the said plaintiff wholly failed to do.

7. That in the summer of 1907, the said Vinton  
20 N. Thompson, at the request of the said plaintiff and relying on the said plaintiff's promise to pay and compensate him, did prepare and sow the grass seed on one field of the said plaintiff's farm, called the "Hickory Hall Farm," working for a period of six hours in doing the said work, and, although the said Vinton N. Thompson requested the plaintiff at divers times for payment, the plaintiff has never paid the same.

8. That in the summer of 1910, the said Vinton N.  
30 Thompson, at the plaintiff's request and relying on the plaintiff's promise to pay and compensate him, carted rye out of the field on the plaintiff's farm, called the "Hickory Hall Farm," to the plaintiff's barn in Medford, New Jersey, working a day and a half with his team and wagon in doing this work. The plaintiff has wholly failed

to pay the said Vinton N. Thompson for this work.

9. That in the summer of 1911, the plaintiff was requested by the said Vinton N. Thompson to pay him the compensation promised by the plaintiff when he requested the aforesaid grass seed to be prepared and sowed and the aforesaid rye to be carted, and the plaintiff in response to this request promised to pay the said compensation to the said Vinton N. Thompson the next morning, but did not do so, and has ever since wholly  
10 failed to make such payment.

10. That in May 1912, or about that time, the plaintiff, actuated by malice, falsely stated to one, Frank Gager, who was trying to buy some hay from the plaintiff, on the said Frank Gager making the remark that he had just bought some hay from Vinton N. Thompson, that the hay of the said Vinton N. Thompson was not good hay, and that the said Frank Gager wanted "to look out about dealing with that fellow down there, mean-  
20 ing the said Vinton N. Thompson.

11. That in the fall of 1914 the plaintiff was guilty of collusion with Samuel N. Lamb, a bankrupt merchant, of Medford, New Jersey, in the said plaintiff's effort to become trustee of the said bankrupt's estate, the said collusion being unlawful, and sufficient cause to properly prevent the said plaintiff from becoming such trustee.

CHARLES S. THOMPSON, Pro. Se. 30  
RALPH W. HAINES,  
DAVIS & DAVIS,  
Attorneys of Defendant.

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## JUDGMENT

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(Filed Nov. 9, 1915.)

10 This case was tried before Judge Howard Carrow, with a jury, at the Burlington Circuit, on January third and fourth, nineteen hundred and sixteen.

The Court directed the jury to render a verdict in favor of the defendant and against the plaintiff.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that  
Costs \$61.93. the defendant recover of the plaintiff, his  
costs, which are taxed at sixty-one dollars  
and ninety-three cents.

20

Judgment entered February 4, 1916.

WM. S. GUMMERE, C. J.

TESTIMONY

NEW JERSEY SUPREME COURT  
BURLINGTON CIRCUIT

10

EDWIN D. ROGERS,	}	ACTION AT LAW .
Plaintiff.		
vs.		
CHARLES S. THOMPSON,	}	
Defendant.		

Mt. Holly, N. J., January 3, 1916.

20

Mr. Davis. We are willing to admit that if Mr. Oliphant and his stenographer were here they would testify to the facts set out in the plaintiff's complaint in reference to the words spoken.

Mr. Palmer. If that is so we are ready to go ahead.

30

Mr. Davis. I am willing to admit that on the day mentioned in the complaint as the 28th day of December, 1914, S. D. Oliphant was conducting a creditors' meeting for the election of a trustee in the bankrupt estate of Samuel N. Lamb, in Mount Holly; that at that

time the creditors were assembled and nominations were made for the office of trustee; that in those proceedings Mr. Charles S. Thompson appeared as attorney for one of the creditors, and that he made the statements attributed to him in the complaint on that occasion.

Mr. Davis. I would like to move for the admission of Mr. Thompson in this suit. He is a member of the Philadelphia Bar.

10

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### OPENING FOR THE PLAINTIFF

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Mr. Palmer. If your Honor please, and gentlemen of the jury: You get in this case a rather unusual situation and this is one of a kind of cases which we seldom  
20 have to try. This is a suit for slander. As the court will tell you, when it comes time to tell you the law, slander is words spoken by any person against another which either injure their reputation, or have a tendency to injury their reputation, or hold them up to ridicule and scorn in the community in which they live or do business, and which results, because of the use of these words in the loss of any material advantage, such as the loss of business or anything of that kind, as the result of those words.

30

The facts in this case arose as follows: In December, 1914, a little over a year ago, Samuel N. Lamb, a storekeeper in Medford, filed a petition in bankruptcy in the United States District Court and was declared to be a bankrupt under the bankruptcy law. Now the creditors

of a bankrupt person elect what we know as a trustee in bankruptcy. This trustee is the man who takes charge of the bankrupt's property and sells it and pays the money to the creditors. The payment of that money is under what is known as a Referee in Bankruptcy, the referee in this particular case being Samuel D. Oliphant, of the City of Trenton. Mr. Oliphant came to Mount Holly on the 28th day of December, 1914, and held a meeting of the creditors of Samuel N. Lamb for the purpose of the election of a trustee in bankruptcy. Mr. 10 Rogers was a candidate for that position, was nominated for it and had enough claims at that time to insure his election. The method of election is that the person who is elected must have a majority in number of the amount of claims that are presented at that time for the purpose of voting for a trustee. Mr. Rogers and the persons whom he represented had the proper number of claims for the purpose of insuring his election. When he was nominated, Mr. Thompson, the defendant in this case, who claimed to be representing his father with a 20 claim, got up upon the floor of the meeting at that time and said that Mr. Rogers was not a fit man to be appointed trustee. He said, "I know him personally, that he is not straight and upright." Mr. Thompson made that statement to the creditors there assembled, as the result of which, although Mr. Rogers had a majority of the claims, the receiver announced that he refused to confirm Mr. Rogers' appointment and he called upon him who had made Mr. Rogers' nomination to make another nomination for trustee; and as a result of the 30 words spoken by Mr. Thompson, the direct result, Mr. Rogers was not elected to that position and some one else was; and that by reason of that statement being made in that vicinity, which statement was spread broadcast, that Mr. Rogers lost the money which he would

have received as the trustee in the bankrupt estate of Charles N. Lamb. We will show you those statements and we will show you this loss and we shall ask for a verdict at your hands, not only for the amount of money which he directly lost at that time, but for such an amount of money as you feel will compensate him for this statement having been made and spread broadcast by Mr. Thompson.

10 Mr. Davis. Just one minute, if your Honor please. I want to call your attention that in the opening nothing has been said as to the second count of the complaint. Does Mr. Palmer rely on that or shall we strike it out?

Mr. Palmer. I do not propose to rely on that so that does not make any difference.

Mr. Davis. Then I move it be stricken out. Does that prevail?

20

The Court. Yes.

Mr. Davis. I understand that the issue is joined distinctly as to what was said in the referee's office?

Mr. Palmer. Yes, sir.

(Mr. Davis opens for the defendant.)

30 Mr. Davis. I move for a nonsuit on counsel's opening. It clearly appears that the words were spoken in the course of a judicial proceeding. We have cases on that point. I want to call your Honor's attention to, I think, the last work on slander and libel, Newell, which is recognized in the United States and England as well, a very

well gotten up book, the rule stated in Section 524, which seems to be conclusive on this question.

The Court. There is no question about the correctness of the proposition that in a judicial proceeding the privilege is extended to counsel in the making of any comments, but was this a judicial proceeding?

Mr. Davis. Yes, your Honor, I have a number of cases on that, cases in which that question was presented 10 to the Supreme Court, and in which it had been ruled a number of times that referees hold court just the same as a Vice Chancellor and that proceedings that take place before him are judicial proceedings, within the meaning of that phrase. I have a number of cases collected on that question here which fully support that contention.

The Court. What do you say to that, Mr. Palmer?

Mr. Palmer. The election of the trustee is not 20 within the control of the referee. It is a matter that is within the control of the creditors.

The Court. Does the law require it to be done in the presence of the referee?

Mr. Davis. That does not make any difference. The question is whether the words were spoken in a judicial proceeding.

30

The Court. I would say that that is a nice question. The law upon the ground of public policy and to protect people who have, or think they have, honest litigation, against suits for slander and to protect lawyers in the use of injudicious remarks, the court throws around

them certain privileges when statements are made, or objectionable statements are made, in judicial proceedings. Now the question in this case rests on whether or not this was or was not a judicial proceeding within the contemplation of the law. I am inclined to think the court should hear the case out.

(Mr. Davis cites authorities.)

10 The Court. I am inclined to hear the case out.

Mr. Davis. Your Honor will grant us an exception?

The Court. Yes. I do not say I will not grant your motion. I am merely deferring the motion.

(Objection noted for defendant as ground of appeal.)

20

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JONATHAN H. KELSEY, sworn for defendant.

Direct Examination by Mr. Palmer.

Q. Mr. Kelsey, you are the Prosecutor of Burlington County?

A. I am.

30 Q. And were you in December, 1914, elected as trustee in the bankrupt estate of Samuel N. Lamb?

A. I was.

Q. And that was when?

A. The 29th day of December.

Q. The 28th, I think.

Mr. Davis. He says the 29th.

The Court. He was elected trustee when?

Mr. Palmer. December 28, 1914.

Mr. Davis. He says the 29th.

The Court. What is the difference?

10

The Witness. I am not positive. It may have been the 29th.

Q. And you have continued to act as trustee in that estate since that time?

A. Yes, sir.

Q. And you are such trustee at the present time?

A. Yes, sir.

Q. And in your work as trustee how much money have you collected into your hands belonging to the bankrupt estate of Samuel N. Lamb?

20

Mr. Davis. I object to that as irrelevant and immaterial. It does not matter what sum of money there is in his hands. I suppose the purpose is, if your Honor please, to show the amount that would have accrued to the trustee.

The Court. On this property, his commission, I think the testimony ought to stand.

30

Mr. Davis. My objection is that he did not earn that, by reason of the fact that he did not expend any labor on it. Labor and services in this case are per quod and without statute laws there is no measure of

damages. In the second place he has no right to claim it, as it is a matter of discretion.

(Objection overruled.)

(Objection noted for defendant as ground of appeal.)

(Question repeated.)

10

The Court. That is to show the property and the commission?

Mr. Palmer. Yes.

The Court. Go ahead.

A. So far \$23,353.86.

Q. And what will be your commission upon that  
20 amount of money as allowed by the statute?

(Objected to.)

The Court. That is a matter of law, isn't it?

Mr. Palmer. The statute absolutely prescribes the amount of commission the trustee shall receive in handling money, based upon the amount of money handled.

30 The Court. I suppose that is a matter of law.

Mr. Palmer. It is a matter of calculation, based on the amount of money handled by the trustee.

The Court. That is what you are expecting to get?

Mr. Palmer. That is what I am asking him.

By the Court.

Q. How much do you expect to get?

A. According to the calculation, under the statute—

(Objected to.)

10

A. \$378.53.

Cross Examination.

By Mr. Davis.

Q. Now, Mr. Kelsey, you have earned that, haven't you?

(Objected to.)

20

The Court. I think that is competent to show how much time it has taken, what he has done and so forth.

(Objection noted for plaintiff as ground of appeal.)

A. Yes.

Q. There has not been any money in it for you in<sup>30</sup> acting in this way, has there?

(Objected to.)

Q. I mean considering the time spent and the

trouble you have had in it.

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. I don't understand that question.

10 Q. All right. Now Mr. Palmer is your counsel?

The Court. What he wants to know is if you are getting this for doing nothing or for doing work.

The Witness. For doing work.

Q. You think you have earned it?

A. I do.

Q. Is Mr. Palmer the counsel of this estate?

20 Mr. Palmer. I object to that as incompetent, immaterial and not cross-examination.

(Objection sustained.)

Q. Is he your counsel in this matter?

Mr. Palmer. That is objected to for the same reason.

30 (Objection sustained.)

(Objection noted for defendant as ground of appeal.)

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EDWIN D. ROGERS, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. Where do you live?

A. Near Marlton.

Q. Near Marlton?

A. Yes, sir.

Q. And how long have you lived there?

A. Why, the last eight or nine years. 10

Q. And how long have you lived in that vicinity of Marlton and Medford?

A. Thirty-two years.

Q. And what is your business?

A. Farming.

Q. And do you do any other work in the way of the clerking of sales?

A. Yes, sir.

Q. And very much or little?

A. I do quite a lot.

Q. And you work in clerking sales. What kind of sales? 20

A. Farm sales.

Mr. Davis. I object to any examination along this line. Interrogatories have been asked for in which he claims no damages for this.

Mr. Palmer. I do not think you are correct as to the interrogatories, Mr. Davis. 30

The Court. No, the witness has a right to show what his occupation is in the community in which he lives.

Mr. Davis. I have no objection to that. I understood it was laying a basis for special damages.

The Court. Are any claimed in the declaration?

Mr. Davis. In the declaration and in the interrogatories we served he was asked what were the damages he had suffered and he says, "The plaintiff lost the election or appointment in bankruptcy of the estate of Samuel  
10 N. Lamb." I think he is limited to that entirely.

Mr. Palmer. Why, here is the question and the answer. "Fifth, being the commission that he would have received of the estate of Samuel N. Lamb, bankrupt."

Mr. Davis. He is entirely limited to that.

The Court. They are the only damages claimed?

20

Mr. Davis. Under the law he is bound by that.

Mr. Palmer. If your honor will read these interrogatories you will see that he has read the fifth. They have all been answered.

The Court. What do you say? Do you claim that he was injured in any other way?

30

Mr. Palmer. Yes.

The Court. In what way?

Mr. Palmer. Under the circumstances of this case if we can show that these statements were made mal-

iciously we are entitled to compensatory damages regardless of absolute injury.

The Court. You are entitled to exemplary damages in this kind of cases or compensatory damages.

Mr. Palmer. We must show that the statements were made maliciously and without foundation of truth and if we show that we are entitled to exemplary damages in addition to actual damages. 10

The Court. I will receive the testimony.

Q. Will you answer the question?

(Exception noted for defendant as ground of appeal.)

Q. First, how extensive is that work, Mr. Rogers?

A. Why, it is quite extensive. 20

Q. What do you mean by that?

A. I suppose I handle between \$50,000 and \$75,000 of sales money every year.

Q. And this is money that you collected as clerk of the sales?

A. Yes, sir.

Q. Belonging to some one else?

A. Yes, sir.

Q. And how long have you been doing that business? 30

A. Well, the past five or six years.

The Court. What was that?

(Previous testimony repeated.)

The Court. Proceed. The testimony goes to one of the ways he has of making his living in this community, I suppose.

Q. You are doing that same kind of work at the present time?

A. Yes, sir.

Q. In December, 1914, were you present at a meeting of the creditors of the Samuel N. Lamb estate—on  
10 the 29th day of December?

A. Yes, sir.

Q. And were you at that time nominated for the trustee in bankruptcy of that estate?

A. I was.

Q. And did you vote—or first who made your nomination as candidate?

A. Mr. Palmer made the nomination.

Q. And at that time do you know whether or not I held a majority of the number or the amount of claims  
20 presented at that meeting?

Mr. Davis. I object to that. That is not within his knowledge.

The Court. Well, if Mr. Palmer made that statement.

By the Court.

30 Q. Did you hear Mr. Palmer say in the presence of the creditors and before the referee that he held a majority of the amount of the claims of the creditors?

Mr. Davis. It seems to me that the rule that allows statements made in the presence of the party does

not prevail when that statement is made in a judicial proceeding. I understand there you are limited to the things that may be said and done. In other words, there is supervision over counsel upon what may be said where a man may not be there himself to answer back and therefore consequently the rule does not prevail. I think the records themselves ought to show that fact.

Mr. Palmer. Will you admit the transcript?

10

Mr. Davis. I do not know what is in that. If there is a certified copy I won't object to that.

The Court. Is there any doubt about that?

Mr. Palmer. If they will admit it that settles it.

The Court. Have you the proceedings here? The court is required to deal with an objection which goes to the admissibility of this evidence and the objection is 20 sustained, because this witness could only get that information from his counsel, Mr. Palmer, and that would be hearsay.

Mr. Palmer. I beg pardon.

The Court. You have asked him something that could only be hearsay.

Q. Was Mr. Thompson the defendant present at 30 that meeting?

A. Yes, sir.

Q. And Mr. Thompson made some statement concerning you?

A. He did.

Q. And after Mr. Thompson had made this statement did or did not Mr. Oliphant, the referee call for another nomination for trustee?

A. He did .

Q. And what other nomination was made?

A. Mr. Kelsey.

Q. And was Mr. Kelsey elected?

A. Yes, sir.

10 Q. Mr. Rogers, do you recollect answering some interrogatories served in this case?

A. I do.

The Court. Was this case before the Supreme Court?

Mr. Davis. On motion to strike out the complaint.

Mr. Palmer. And the Supreme Court said that this question of privilege was a matter of defense and not a  
20 motion to strike out.

The Court. Have you the opinion of the court?

Mr. Davis. I think so; yes, sir.

Q. Mr. Rogers, the first of these interrogatories asks you to name any person or persons who had refused you credit by reason of the alleged spoken words.

30 Mr. Davis. How can he go into that?

The Court. Just wait a minute, gentlemen, please.

Mr. Davis. I object that the interrogatories are not evidence. My objection is that the answers are made

in favor of the person who makes them. The person who is interrogated cannot put them in evidence, only the man who proposes the interrogatories.

The Court. He is trying to explain his answers to the interrogatories.

Mr. Davis. But he cannot explain them. He cannot answer the interrogatories and then come into court and say they are not so. 10

Mr. Palmer. We do not propose to show that, but we propose to show what the answers are.

The Court. Don't they show what they are?

Mr. Palmer. The other side served the interrogatories, but there is nothing to prevent my having this witness swear to the same things if I choose. 20

Mr. Davis. He is offering matter that is in the interrogatories.

The Court. He may do that if it is a necessary part of his case.

Mr. Davis. All right.

(Question repeated.) 30

Q. "Of these words complained of," and to that your answer was "None," was it not?

A. Yes, sir.

Mr. Davis: Now I call your Honor's attention to this act. They cannot get it in in this way.

The Court. The statute or the practice act?

Mr. Davis. Yes, sir; the practice act of 1903.

The Court. Now this section 140 says:—(Reads)

10 Mr. Davis. I object to his question.

(Objection overruled.)

(Objection noted for defendant as ground of appeal.)

Mr. Davis. I object, because it is the law, if your Honor please.

20 The Court. That is true, that is the law and it may be immaterial, but it is harmless because it stated the same words. I think that the answer is irrelevant, but harmlessly irrelevant, because it states exactly what the answer to the interrogatories state.

Mr. Davis. But the interrogatories and the answers thereto cannot be offered in evidence by any one except those who propose the interrogatories.

30 The Court. That is true and that is a good ground and upon that ground the objection will be sustained.

Mr. Palmer. But we haven't offered the interrogatories.

The Court. No, but you are stating the contents of the interrogatories.

The Court. You are proving in a roundabout way what he said in an answer to the interrogatories.

Mr. Palmer. Why, certainly.

The Court. Are you going to try to contradict the interrogatories? 10

Mr. Palmer. No.

The Court. Well, we are taking up time and a whole lot of time with this case. If the man was not injured by what was said there is no use in pursuing it any further. His reputation has not been hurt.

Mr. Palmer. That is not the question at all.

Mr. Palmer. I want an exception to your Honor's striking out the question and answer. 20

The Court. No, sir; I will allow that question and answer to stand, Mr. Palmer.

No Cross Examination.

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30

Mr. Davis. Is the plaintiff's case in?

Mr. Palmer. With the exception of the proof of some records in the referee's office.

Mr. Davis. I suppose you only want the record in in so far as it applies to the first meeting?

Mr. Palmer. Yes, sir; all the testimony that pertains to that meeting, the testimony that was taken at that meeting is all.

Mr. Davis. We have no objection to the record so far as it relates to the first meeting, that is, December  
10 28, 1914.

Mr. Palmer. If your Honor please, I would like to read this record to the jury and into the record here. It is under the date of December 28th, in the matter of the estate of Samuel N. Lamb:

“Sat pursuant to notice the first meeting of creditors at the office of V. Claude Palmer, Esq., Mount Holly, N. J.

20

## APPEARANCES

The bankrupt, and his counsel, Clifford R. Powell, Esq.

V. Claude Palmer, Esq., representing numerous creditors.

Mr. Killie of Kelsey & Killie, representing several creditors.

Charles S. Thompson, representing 2 creditors.

30

Wm. E. Sloyer, representing A. Sloyer & Sons.

William Jones, a creditor.

Joseph M. Wells, creditor.

George H. Vickery, representing Vickery Co., creditor.

Julia Haines, creditor.

Charles F. Gaskill, creditor.  
 Ely F. Joyce, creditor.  
 Daniel MacDowell, creditor.  
 Medford Gas Co., creditor.  
 J. A. Lamb, creditor.

The following proofs of claim were filed:

By Mr. Palmer:

Hannah E. Lamb, Medford, N. J. ....	\$1,500.00	10
Wm. H. McClaskey, Medford, N. J. ....	100.00	
Wm. Dumphey, Medford, N. J. ....	106.00	
Caleb R. Dudley, Medford, N. J. } Mr. Killie	9.54	
Chas. E. Evans, Medford, N. J. }	34.00	
Wm. Jones, Medford, N. J. ....	120.52	
Vinton N. Thompson, Medford, N. J., (Chas. S. T.) .....	273.00	
Ely F. Joyce, Medford, N. J. ....	96.18	
Joseph W. Wells, Medford, N. J. ....	35.00	
Walter S. Hoskins, Medford, N. J. (Chas. S. T.) .....	53.76	20
Charles K. Kirby, Medford, N. J. ....	36.49	
Calvin J. Adams, Medford, N. J. ....	120.88	
William Thackara, Medford, N. J. ....	1.25	
Joseph Anderson, Medford, N. J. ....	10.00	
Job Braddock, Medford, N. J. ....	62.78	
Ella A. Cline, Medford, N. J. ....	55.00	
A. Schlover & Son, Camden, N. J. ....	502.55	
Thos. J. Bedford, Medford, N. J. ....	57.00	
Pemberton B. Griscom, Medford, N. J. ....	11.60	30
Harry Garron, Medford, N. J. ....	1.52	
Albert F. Kirby, Medford, N. J. ....	6.80	
Davis McDowell, Vincentown, N. J. ....	62.91	
Geo. J. Romer, Medford, N. J. ....	260.68	
George Stockum, Medford, N. J. ....	83.04	

Henry L. Garwood, Medford, N. J.....	502.00
William P. Bodine, Medford, N. J.....	40.00
Edward D. Willets, Medford, N. J. ....	17.05
Idella Bodine .....	38.21

Referee calls for nominations for trustee :

Mr. Palmer nominates, Edwin D. Rogers.

A creditor nominates Ralph W. Haines.

Majority of the creditors present or represented voted for Mr. Rogers. Mr. Thompson objects to Mr. Rogers on the ground of collusion. Testimony of Bankrupt and Mr. Thompson taken. Filed Jan. 5, 1915.

Referee sustains the objection and asks Mr. Palmer to make another nomination.

Mr. Palmer nominates Jonathan H. Kelsey for trustee. The majority of claims filed were voted for Mr. Kelsey, and Referee states he will approve the appointment. Bond of Trustee placed at \$10,000.

Examination of the bankrupt not desired at this time. Hearing adjourned to January 7, 1915, at 10.45 A. M., at the office of Mr. Palmer, Mount Holly, N. J."

Mr. Palmer. Now I want to read the testimony.

Mr. Davis. I object to that.

The Court. What is the offer ?

Mr. Palmer To prove the official record of Samuel D. Oliphant taken at that meeting where the defendant made this statement. I offer to read that testimony to the jury.

The Court. What is the ground of the objection ?

Mr. Davis. The ground of the objection, if your

Honor please, is that it has not been proved that that is the testimony. I don't know whether that is the testimony or not.

The Court. Is that the testimony taken by Mr. Oliphant ?

Mr. Palmer. Yes.

The Court. Is there any doubt about it ? 10

Mr. Davis. I don't know whether there is or not.

The Court. Well, look at it and see whether there is any doubt it.

Mr. Davis. Only a part of the testimony is here.

Mr. Palmer. Then I will have to ask that the matter be continued until I can produce Mr. Oliphant to 20 show that this was the testimony taken at this time.

Mr. Davis. He consented to going on.

Mr. Palmer. What objection is there to the offer ?

Mr. Davis. The testimony does not refer to the non-suit made there at that time. It refers to a paragraph in the complaint which was stricken out. It has no bearing upon this case at all. 30

The Court. Well, Mr. Palmer is entitled to present his case, if he insists on his motion to continue the case.

Mr. Davis. If this had anything to do with this case I would not object.

The Court. Do I understand that the offer now is to put before the jury the testimony that was taken before the referee?

Mr. Davis. A part of it.

10 The Court. A part of it?

Mr. Davis. No, all of it. It has no reference to this matter at all. The complaint has two counts in it.

The Court. But one count is eliminated.

Mr. Davis. But this testimony refers only to that count and that is my objection.

20 The Court. It will be necessary for the court to read that over, I suppose. Now why do you say that this is relevant, Mr. Palmer?

Mr. Palmer. It is a reiteration of the statement made by Thompson, that he stated at this meeting.

Mr. Davis. He should not read this before the jury.

30 Mr. Palmer. He makes this statement under oath. He was sworn as a witness and testified there.

The Court. This may all be very clear to you gentlemen but it is not clear to me, I must confess. Let me see the declaration, please.

Mr. Davis. It is there before your Honor.

The Court. What is the purpose of this offer of proof?

Mr. Palmer. The purpose of this—

The Court. To show malice?

Mr. Palmer. Yes. I think there should be before <sup>10</sup>  
this jury an exact statement of what the defendant said  
at this meeting. They have admitted that he made a  
statement. I want the jury to know the exact statement  
that he made.

Mr. Davis. Our admission went to the words that  
Mr. Palmer used in opening to the jury and which are  
laid in the first count of this complaint. The second  
one Mr. Palmer consented must be stricken from the  
complaint. 20

The Court. But you say that this testimony is  
more than that. In other words, Thompson appears to  
have said more against Rogers than you are entitled to  
go to the jury on.

Mr. Palmer. No, sir; the complaint was drafted  
verbally from that statement of the testimony.

Mr. Davis. I would like to have his opening, if <sup>30</sup>  
your Honor please.

The Court. I have examined both the testimony  
and the first count and it appears to be the same, sub-  
stantially the same.

Mr. Davis. We have admitted it here. But it should not go in what we have not admitted in his opening.

Mr. Atkinson. It alludes to what he said in Philadelphia to Lamb and that has been stricken out of this complaint.

10 Mr. Palmer. But it was a repetition of that statement at the meeting of the creditors and in which he says again what you have admitted that he said. That is competent. I do not offer it as a part of the conversation with Lamb in Philadelphia. I have consented that that shall go out. I offer it as a statement, to show that he again made the same statement that he made at the meeting of creditors.

The Court. But the case will be limited to the First count?

20

Mr. Palmer. Certainly.

Mr. Atkinson. But they were the same people, whether he said it once or twice.

The Court. But it seemed to be conceded that it would be proper to limit the case to the precise language relied on in the first count. I cannot exclude the proof because it does not fit in with the exact proposition, but  
30 the jury will be limited in their consideration of the case to what was said and to the precise language given in the first count.

Mr. Palmer. That is what I want the jury to hear.

The Court. That may be admitted.

Mr. Davis. Your Honor will grant me an exception?

The Court. And then there is another theory. I think it would be admissible upon the ground that it tends to show malice.

Mr. Davis. Will your Honor allow to go on the 10 record that there is no evidence to prove the authenticity of this paper which he offers in evidence?

The Court. Now if you are going to seriously oppose the admission of this evidence and make it necessary for Mr. Palmer to get his witnesses here I think that the matter should involve—

Mr. Davis. I will withdraw that.

The Court. Mr. Palmer is entitled to prove his 20 case. He started the case with some embarrassment by reason of the absence of his witnesses and the fact that the witnesses if they were here would testify to that does not prohibit him from the right to prove his case.

Mr. Davis. This is offered particularly for the purpose of showing a repetition and not as a basis of the cause of action?

30

Mr. Palmer. That is correct. They have admitted that he made a statement of that kind. Now this is another statement made at another time and it largely goes as a repetition.

Mr. Davis. I have no objection as to the form of proof, but I do object as to its materiality.

The Court. What is that?

Mr. Davis. I say I object to it as to its materiality. I do not object because of lack of proof that these are the stenographer's notes.

10 Mr. Palmer. (Reads.) "Charles S. Thompson, being duly sworn testifies as follows: "He was coming out of the drugstore (the he refers to Mr. Lamb.) I was going in. I said, 'Good morning. I would like to see you a few minutes. I want to get a copy or a list of the creditors, and he, Mr. Lamb said, 'It won't do you any good if you do. We have got the man already. We have got over two-thirds. I don't think he is a fit man.'"—

20 I am not offering this as showing a conversation between Lamb and Mr. Rogers, but this is a repetition of this conversation had at the meeting on December 28th.

(Objected to.)

Mr. Palmer. His Honor allowed this in because it was evidence of a repetition of the statement.

30 Mr. Palmer. All right.

Mr. Davis. Now I have no objection to it as a repetition. I do not care for one moment. It is the same thing he said at the time of the hearing. It is for the jury to determine.

Mr. Palmer. Certainly, certainly. They are not going to take my word for it if it is not correct.

(Mr. Palmer continues reading.)

“He said, ‘You got in ahead of me, that way. I don’t think he is a fit man. I know personally he is not straight and upright. I have been a witness that he did not act the man! I said in the conversation, ‘I don’t think such a man is fit for that position. I didn’t know  
10 there was a claim. I said, ‘I don’t want him in at all. Everything has been kept so that he couldn’t get a list of the creditors.’ He said, ‘Mr. Rogers is right.’ I said ‘My own experience is you don’t know a man until you have dealt with him. He isn’t a straight upright man. He asked my father to do some work for him.’”

Mr. Davis. I object to that. It has no relevancy to the words charged.

The Court. Exclude that, please. All of the testimony that is not directly referable to the count in the complaint must be excluded. 20

Mr. Palmer. Certainly, certainly. “The referee then asked Mr. Palmer to make another nomination.”

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(Papers previously offered marked Exhibits P 1 and P 2.)

Mr. Davis. I move for a direction.

The Court. The question of privilege is a defence. It was a statement when he was privileged. I think the evidence should go in and I will deal with it on the whole case on a motion to direct a verdict.

10

## DEFENDANT'S TESTIMONY.

CHARLES S. THOMPSON, sworn for defendant.

Direct Examination by Mr. Atkinson.

Q. Where do you reside?

A. With my father near Medford, New Jersey.

20 Q. And what is your father's occupation?

A. Farming.

Q. And how long have you lived in that neighborhood?

A. We have lived there about eleven years.

Q. And prior to that where did you live?

A. Mount Holly.

Q. And prior to Mount Holly?

A. We lived near Juliustown.

Q. You have lived in Burlington County always?

30 A. No, sir; from the time I was one year old until I was four years old, and then we moved to the shore until I was eight years old, and then I lived all but a few years when I was in the city in Burlington with my parents.

Q. And what is your age?

A. Twenty-nine.

Q. And what is your occupation?

A. A lawyer.

Q. And admitted to the bar in Philadelphia?

A. I am.

Q. And are you a member of the bar of any New Jersey courts?

A. The United States Court in the District of New Jersey.

Q. And were you at a meeting of the creditors of the Lamb estate which has been referred to here? 10

A. On December 28th I was at that meeting.

Q. And in what capacity did you attend that meeting?

A. I appeared as attorney in fact and as counsel for my father and Joseph Wells.

Q. That was two claims?

A. Two claims yes, sir.

Q. And was the referee Mr. Oliphant present?

A. Yes, sir. 20

Q. And was the plaintiff present?

A. The plaintiff was.

Q. And Mr. Palmer?

A. Mr. Palmer was there.

By the Court.

Q. Where was the meeting?

A. At Mr. Palmer's office over there. I think it is 117 High Street. 30

By Mr. Atkinson.

Q. Now do you remember who nominated—

By the Court.

Q. Now what kind of a meeting was it and for what especial purpose? You had better prove your case.

A. This was the first meeting of creditors in the bankrupt estate of Samuel N. Lamb, a bankrupt—

Q. Under the jurisdiction of the United States District Court?

A. Under the jurisdiction of the United States District Court of New Jersey, the matter having been referred to Samuel D. Oliphant, referee, of the American  
10 Mechanics' Bank Building, Trenton, New Jersey, and he set December 28th for the date of the first hearing. The purpose of this hearing was the election of a trustee.

By Mr. Atkinson.

Q. And he was the referee and holding a referee's court?

A. Yes, sir; holding a referee's court under the  
20 bankruptcy act of 1898.

Mr. Palmer. I object to that as a conclusion of law.

Mr. Davis. He is a lawyer.

The Court. I suppose the court will have to decide that.

30 Q. Well, do you know whether or not Mr. Oliphant himself called that meeting as referee?

A. He sent a notice to my father which was turned over to me, calling this meeting as referee.

Q. Was his name signed to it?

A. Yes, sir

Q. As referee?

A. Yes, sir.

Q. Now do you remember who nominated—

The Court. Now wait a minute. Don't you propose to show who was at the meeting?

Mr. Atkinson. I thought I had shown who was there. But I will go over that again.

10

Q. You testified as to who appeared at that meeting, that Mr. Palmer was there and Mr. Rogers was there, the referee was there and who else was there?

A. Mr. Killie was there and Mr. Kelsey, the two attorneys, Mr. Palmer, as I said, and myself, and that was all the attorneys that were present. Then there was the Stenographer, Miss Hulett, and my father, a creditor, and Joseph Wells, a creditor, and a man by the name of Reeve Hopkins, I think his first name was. He wasn't a creditor. He was there looking on. If I had these 20 sheets we had I could go ahead and tell you the people.

The Court. The law, Mr. Thompson, makes it a privilege or a matter of privilege on defence, and requires the circumstances to be produced. But that is sufficient.

By the Court.

Q. Now who presided at this meeting?

A. Mr. Samuel D. Oliphant, the Referee in Bankruptcy of the United States District Court of the District of New Jersey.

Q. Proceed.

A. Do you want me to give the number of people, the number being there?

By Mr. Atkinson.

Was the meeting called to order?

A. It was called to order by Mr. Oliphant.

Q. In this particular bankruptcy matter?

A. Yes, sir.

Q. And what was said by him when he called the meeting to order, if you remember?

10 Mr. Palmer. I object that the record shows what was done at the meeting.

(Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. Mr. Oliphant said the meeting would now come to order and that nominations were in order for the election of a trustee. That was after he had taken the claims  
20 and the amount each one represented.

The Court.

Q. A trustee for what?

A. A trustee of the bankrupt estate of Samuel N. Lamb, a bankrupt of New Jersey.

By Mr. Atkinson.

30 Q. He then asked for nominations? Did he call for the filing of the claims that were there?

A. Yes, sir.

Q. And did he make that announcement?

A. Yes, sir; and he asked the young lady, Miss Hulett, to ask the creditors to present their claims. For

instance, they asked me, "Mr. Thompson, do you represent creditors?" and I said, "Yes, Joseph Wells and Mr. Vinton N. Thompson, \$273, and Mr. Wells, \$35," that was what was down.

Q. And did Mr. Killie present a claim there?

A. I think he presented a couple of small ones.

Q. And Mr. William E. Sloyer? Mr. Sloyer, of Camden, did he present a claim?

A. He presented his father's claim.

Q. And William Jones, did he present a claim? 10

A. Mr. Jones' claim was presented by Mr. Palmer. He was a creditor and present.

Q. And George H. Vickery?

A. He presented his father's claim of the Vickery Company, I believe.

Q. And the various people who are noted here all presented their claims, did they not?

A. Yes, sir; those claims noted.

Q. And then after the claims had been presented I understand the referee called for nominations for 20 trustee?

A. Yes, sir.

Q. And did Mr. Palmer himself present any claim or claims?

A. He did, but I did not follow all that he said. He presented these claims and they took them down the same as they did mine.

Q. And who nominated Mr. Rogers?

A. Mr. Palmer.

Q. And what if anything did you say at that time? 30

A. Mr. Palmer said, "I offer" or "I nominate Mr. Edwin D. Rogers, of Medford, New Jersey. He is a man who has had experience in handling public sales and he lives near Medford." I stepped forward and I says, "Mr. Referee, I object to the nomination of Mr.

Rogers on the ground of collusion. I said"—shall I go ahead?

Q. Yes.

A. I said, "Mr. Rogers was the man who drew up the blank chattel mortgage to Henry Garwood, an employee of Samuel N. Lamb in March, 1913, and Mr. Rogers has been advising Mr. Lamb since that time, and Mr. Rogers was the man that Mr. Lamb turned to when he wanted to go in bankruptcy; he was seen in his store and he was out with Mr. Lamb collecting claims and collecting debts due the bankrupt estate."

Q. You stated these things?

A. I stated these things.

Q. At that time?

A. Yes.

Q. And at that time were you acting as attorney for the two creditors?

A. Yes, sir; for the two creditors, and I spoke for them. I says, "I met Mr. Lamb on the street the other day in Philadelphia and asked him for a list of the creditors, and he told me that he couldn't give me a list and that it would not do me any good if he did, because a man in the neighborhood had taken two-thirds of them already and had them signed up already. I says, "Who is that, Rogers?" and he says 'Yes. He says, 'I don't know him. Is he a fit man to be trustee of this estate?' I says to Mr. Lamb, I told him at that time, I says—

Mr. Palmer. I object to this, the conversation.

Q. Proceed. At the meeting did you testify to this?

A. I stated this in my objection.

Q. All I want is what you stated.

A. I said, "Mr. Lamb told me the other day on the

street in Philadelphia when I saw him that "Things are not taken entirely out of my hands yet, I still have some say, and I will see that your father is treated right if Mr. Rogers is appointed trustee."

Q. And did you say anything in regard to Mr. Rogers having gone around with the bankrupt prior to this meeting to get the creditors to sign that he, Rogers, should be appointed trustee?

A. I said—I don't think I said that at that time. I don't remember saying that. 10

Q. Well, did you later?

A. Well, it was brought up later. I will give you a picture of this.

Q. Well, just state the facts.

A. Then Mr. Palmer stepped forward to speak for Mr. Rogers and he said, "We will admit, Mr. Referee, that Mr. Rogers drew up a blank chattel mortgage in March, 1913, and has been Mr. Lamb's business adviser for the past two years, that he was the man Mr. Lamb turned to when he went into bankruptcy; he has been in 20 the store since that time inventorying the goods and has gone over the books, and that he prepared the data for the schedule, and that he had brought Mr. Rogers to his office to help prepare the schedule, and that he and Mr. Lamb went around to collect debts, because Mr. Rogers expected to be trustee and wanted to get the settlement of the estate started as soon as possible. He says, 'These claims I hold in my hands—over \$3,000 worth of claims—were signed up by the creditors with the express understanding that Mr. Rogers would be the trustee, because 30 he has been helping Mr. Lamb run his business for the past two years, that he understood the business and was just the man to be trustee. And then I omitted something in the first statement. I want to say that I saw Mr. Lamb bring Mr. Rogers over here in his Ford car

the first day when the schedule was prepared. But that was what Mr. Palmer said in his defence and gave as a reason why Mr. Rogers should be trustee. Then Mr. Palmer says, "Mr. Referee, Mr. Thompson is stating conclusions. We want facts." I said, "Mr. Palmer has just given you the facts," and then I reiterated what I said before. Then the referee said that he thought that showed friendliness between Mr. Rogers and Mr. Lamb, but he didn't think that was enough to warrant him in  
10 not appointing him. Then he turned to me and says, "Mr. Thompson, what else do you know about this man, why he should not be appointed?" Just at that time Mr. Rogers stepped up to Mr. Palmer and whispered in his ear and Mr. Palmer said it was a personal matter between Mr. Thompson and Mr. Rogers. So I says, "So long as you have brought this up, I don't think he is a straight, upright man and if he is elected I don't think my father's claim will be properly taken care of." I said, "I  
20 saw Mr. Lamb on the street and he told me things were not taken out of his hands and would not be and he would see if Mr. Rogers was elected my father would be treated right." Mr. Oliphant called on the bankrupt Mr. Lamb to tell what that conversation was and Mr. Lamb testified, his testimony was in that regard, he said he didn't say so and I—

Mr. Palmer. Not the conversation between yourself and him.

30 The Court. What occurred at the time of the meeting?

A. Mr. Lamb was put on his oath as to the conversation I had with him and he said he might have had it, but he couldn't remember exactly, he didn't think he

would have to say it in court. He didn't remember saying he wasn't a fit man for the position; and I says, "Mr. Referee, I can tell you what that was," and I was sworn and testified.

Q. And the testimony that you have repeated here was it given at the trial?

A. So far as it was read.

Q. Did you have any malice against Mr. Rogers?

(Objected to.)

10

Mr. Atkinson. Why?

Mr. Palmer. That is inferable from the facts and not from a person's opinion.

The Court. I think he may state what motive induced him to make the statement which is attributed to him.

(Question repeated.)

20

Mr. Palmer. It calls for a conclusion. Whether malice exists is to be drawn from the facts and not from the witness' statement as to the existence or non-existence of a material fact.

(Objection overruled.)

(Objection noted for plaintiff as ground of appeal.) 30

A. The question is did I have any malice towards Mr. Rogers at that time?

Q. Yes.

A. No, sir; I did not.

Q. And what operated on your mind when you made the statement there that in your judgment he was not a fit man to have that position?

Mr. Palmer. I object to that as irrelevant and incompetent and calling for the operation of this man's mind at that time and that he is not in a position to testify to it now.

10 Mr. Davis. He is in no position to testify as to the man's mental condition.

(Question repeated.)

Mr. Atkinson. Well, what operated on his mind.

By the Court.

Q. Were you acting in the interest of creditors or  
20 acting against Mr. Rogers for personal reasons?

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. I was acting in the interest of the creditors and doing what I considered my duty and what I considered right, what I considered to be right, as a matter of duty in the interest of my creditors whom I represented and whose interest I was trying to protect.  
30

By Mr. Atkinson.

Q. And upon what did you base the statement that you made that he was not a man fit for this position?

What information had you?

A. I had heard rumors and had in mind facts that had come before my personal attention and I believed that to be true.

Mr. Palmer. I object to that unless they are facts that are within his knowledge and not rumors. His preceding statement or his preceding answer said he had heard various rumors and certain facts. Now such 10 things as are facts he can testify to but not such things as are rumors. I make the objection so that he will distinguish between the two.

The Court. Well, did these rumors affect Mr. Rogers' reputation for integrity and uprightness?

Mr. Davis. They negative malice.

Mr. Palmer. He cannot do that, go out and believe 20 unwarranted rumors and slide out from under it on the ground that he believed them.

The Witness. As I understand it, I have a right to show the circumstances which operated on my mind and made me believe that I was doing right in using those words. That is the law as I discovered it in looking it up.

The Court. You are only a witness now. You 30 have counsel and he will look after the legal aspect of the case.

(Question repeated.)

Q. What were they?

The Court. Have you pleaded justification?

Mr. Palmer. Yes, they have pleaded justification.

The Court. They have a right to do that. They can prove the truth. If they can prove that Mr. Rogers was an unfit man they can do it.

10

Mr. Palmer. The door is wide open for anything they can prove. I object to this witness testifying to rumors and not facts. They can show anything that affects Mr. Rogers' integrity and honesty. They may show that.

The Court. But is it your purpose to show that knowledge came to him independent of what he knew personally of Mr. Rogers which caused him to make the statement? Is that what you are trying to prove?

20

Mr. Davis. Yes.

The Court. Well, you can do that but you cannot go into the particulars by hearsay. You can say that knowledge came to him which caused him to believe in the unfitness of Mr. Rogers.

Mr. Davis. I understand, as negating malice and not as proof or justification. You cannot prove the justification.

30

The Court. The court has ruled that you can prove that he had knowledge without going into the particulars.

Mr. Davis. I would like an exception to that.

The Court. You may have it.

(Objection noted for defendant as ground of appeal.)

By the Court.

Q. Do you mean that you had information that led you to believe that the defendant was unfit for the office of trustee? 10

A. Yes, sir; and from what I knew myself.

Q. And you believed in his unfitness?

A. I believed I was told the truth.

By Mr. Atkinson.

Q. Well, just state.

The Court. State what? 20

Mr. Atkinson. State those facts.

The Court. The court has ruled that out.

Q. State what you know.

The Court. He has already stated that. 30

By the Court.

Q. You have stated that, haven't you?

A. I had personal knowledge and I also said I heard rumors of things which I believed. And I felt in

order to show an honest belief—

Q. You are testifying and not arguing the law with the court. Proceed.

A. In 1906, Mr. Rogers had a man on his farm, Lorrie Worrell, as manager, and as near as I can come to it it was July, July 6, 1906—

By Mr. Palmer.

10 Q. Did you hear this conversation?

A. No, sir; I didn't hear the conversation.

Mr. Palmer. Then I object and ask it be eliminated.

The Witness. I can testify what I saw, Mr. Palmer.

The Court. The court has ruled that you cannot testify to the particulars of hearsay evidence. You have  
20 been permitted to say that information came to your knowledge without giving the particulars which led you to believe that the defendant was not a suitable man for trustee.

Mr. Davis. And your Honor further ruled that he might state what he knew of his own knowledge. Tell what you know of your own knowledge.

By The Court.

30

Q. Do you know anything more than you have stated?

A. Yes, I saw some things.

By Mr. Atkinson.

Q. You may say what you started to say, only do not speak of what certain persons told you.

A. I was sitting there and maybe looking out the window and I saw on Mr. Rogers' farm the binders start out from there in the rye field, and cut down from the house towards the woods, on Sunday morning, and they continued to cut down there and I could see them when they came out at the end. That is all I saw until the next 10 day, when I saw another binder in there and Mr. Lofland carting the rye from there up to his house and put it in his yard and threshed the rye.

Q. And do you know whose rye he was cutting?

A. Personally at the time I didn't know.

Q. And do you now know?

Mr. Palmer. I object unless the source of his information is shown.

Mr. Atkinson. He does not have to do that. 20

Mr. Palmer. Yes, he does, too.

A. Can I show the source of my information?

Q. Do you know whether or not afterwards there was a lawsuit right in this court on that very act?

A. I do.

Q. And do you know whether or not it was decided there on the records of this court that the rye was 30 in fact Mr. Lofland's?

(Objected to.)

The Court. The record of the court is the only

thing by which that can be shown.

Mr. Atkinson. A man does not have to give the source of his knowledge every time he testifies. He says that he knows these things.

Mr. Palmer. The record is the best evidence.

10 The Court. Is this offered to show that the defendant was involved in a lawsuit?

Mr. Atkinson. No, sir.

The Court. What are you trying to prove?

Mr. Atkinson. This man has a right to prove why he arrived at the idea that this man was not a fit man. We think we have a right to show that he had knowledge of certain things that he had done which would suggest  
20 that to any fair minded man with good sense.

The Court. The court has ruled. You can do that specifically.

Mr. Atkinson. In this particular case he will testify that he has knowledge that his rye belonged to Mr. Lofland and that Mr. Rogers was cutting this rye, which was an unlawful thing to do.

30 The Court. Do you mean that Mr. Rogers took Mr. Lofland's hay or rye?

Mr. Atkinson. Yes, sir; and that was one of the things which operated on his mind.

The Court. And there was a lawsuit over it?

Mr. Atkinson. Yes. We do not intend to prove the lawsuit here by any attorney, that is not the idea, but that there was a lawsuit and to show why he considered it was a wrong thing on the part of Rogers, that is the idea.

The Court. He has said as much as he can say. I think he said he saw some rye being cut on Sunday and he couldn't tell whether it was Rogers' or Lofland's rye. Now Mr. Thompson may support that by the offer of direct testimony, and say that he believed from that and other circumstances and other things that came to him, that he was doing his duty as a member of the bar representing the creditors at that meeting to call the referee's attention to the unfitness of Mr. Rogers as trustee.

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Recess till 1.45 P. M.

20

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(Trial of the cause resumed at 1.15 P. M.)

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CHARLES S. THOMPSON, resumed.

30

Direct Examination Continued by Mr. Atkinson.

Q. Now, Mr. Thompson, what other fact did you have in mind that caused you to make that statement?

A. Beside the cutting of Mr. Lofland's rye?

Mr. Palmer. I object to that. His testimony did not show that he knew it was Mr. Lofland's rye.

By the Court.

Q. Do you understand from your testimony that you do or do not know that it was Mr. Lofland's rye?

A. I say I saw them cutting rye. I didn't know at that time so as to personally say as I knew. After-  
10 wards I heard father say and the witnesses on the case say that it was Lofland's rye. As I say, Mr. Lofland carted the rye up to his barn and put in in there, so I knew it was Mr. Lofland's rye in my own mind.

Mr. Palmer. The witness has testified that it was hearsay testimony.

The Court. Strike it out. You may show that he saw Mr. Lofland carting it back, or cutting the rye, was  
20 it?

The Witness. Cutting the rye. The binder was put in there and cut the rye.

By Mr. Atkinson.

Q. Did you see it?

A. I saw Mr. Rogers' binder start from his house and go down there and cut the rye.  
30

Mr. Davis. He testified to that.

The Witness. And I saw Mr. Lofland's binder the next day go in there, I saw two binders working there, and I saw Mr. Lofland carting the rye and putting it in

his yard and I saw it in his yard.

Q. The same rye which Mr. Rogers cut?

A. Mr. Rogers cut first and the next day Mr. Lofland cut too. It was Mr. Lofland's rye.

Q. And do you know what relationship if any there is between the plaintiff and Mr. Lofland?

A. Mr. Lofland is the plaintiff's step-father and he had previously been a tenant on the farm, the previous year. 10

By the Court.

Q. You mean that Mr. Lofland is the step-father of Mr. Rogers?

A. Yes, sir. And Mr. Lofland had the previous year been a tenant on Mr. Rogers' farm and Mr. Lofland had sowed the grain. I heard rumors, which I believed to be truse, that Mr. Rogers— 20

(Objected to.)

Mr. Davis. It seems to me, if your Honor please, there is no question in my mind, and I think the cases fully sustain it, that he may state what rumors he has heard, not as proving the truth of the rumors, but as showing the reason for his belief.

The Court. Have you any cases which hold that? 30  
I have allowed you to show that information came to him which caused him to believe it. Now can you go further than that? I have no doubt as to the correctness of the rule that I have cited, that information came to him upon which he acted. But after he has received it and acted

upon it in good faith he cannot go into the details.

Mr. Davis. I never would have thought that that was the law if your Honor had not said so. I thought that he might say what these rumors were, not as to the truth of the rumors, but as the basis of his judgment, of what he believed, and that he acted in accordance with it.

10 The Court. If you have any authority bring it here.

The Witness. I know I have read such cases.

Q. Now the court has ruled, as I understand it, that you can give any fact that came to you, or which you were informed of, which caused you to entertain this feeling which you expressed in words upon that occasion. Now just state the facts that came to your knowledge.

20

The Court. Now, Mr. Thompson, I thought I had stated it sufficiently clear for counsel to understand it, at least, that you received this information—without going into the details of the information—which caused you to believe that Mr. Rogers was not a suitable person to be trustee of that estate, and that you conveyed that information, as you believed it to be your duty to do, to the referee, believing that you were doing right. Now that is all right and you have a right to show that. But  
30 you cannot go on and say that John Jones told him that Mr. Rogers stole his dog the night before. Do you think he can?

Mr. Atkinson. No sir; I don't think so.

Mr. Davis. But we think that is the law.

The Court. Well, if that is the law—you are very industrious counsel—the court is waiting to hear it.

Mr. Davis. You Honor flatters me.

Q. Well, what else do you know?

A. Well, may I ask your Honor a question?

10

The Court. No, you must remember you are a witness and are not to interrogate the court.

A. The next was that in 1907 Mr. Rogers sent his manager, his farm manager Mr. Worrell, down to my father to get him to sow some grass seed—

By Mr. Palmer.

Q. Did you hear this conversation?

20

A. I don't know that I heard the conversation. I know that the grass seed was sowed. I saw father do it.

Q. How do you know that Mr. Rogers sent his man down there?

A. This man and father both said so.

Q. Who said so?

A. The man and my father.

Q. His man told you?

A. Yes. He said he had to go to town that day and that Mr. Rogers wanted him to come down and sow this grass seed for him and that he would pay him for it.

30

Q. Mr. Rogers' man told him that?

A. He told him that and my father told me that.

Mr. Palmer. I ask that it be excluded as not having

come from the plaintiff. What some one else said is not competent testimony. It is purely hearsay.

The Court. Yes, it would not bind him.

Mr. Palmer. I merely cross-examined to get this matter straight.

By Mr. Atkinson.

10

Q. And did you afterwards and prior to this meeting verify what you have just testified to?

A. Yes, sir.

Q. And was Mr. Rogers there at that time?

A. No.

Q. And did you hear a further conversation between Mr. Rogers and your father touching this matter?

A. Yes.

Q. And what was that?

20

A. In 1911 when I was coming home from the city one night, as I was coming up the road one night, Mr. Rogers came along as I came along, and he was cultivating potatoes just about that time and father asked him to pay him for the work he had done in sowing grass seed and carting rye for him and Mr. Rogers got out of the cart and wanted to fight. My father told him he didn't want to fight with him. He said, "You just pay me. All I ask of you is three dollars a day for the team and man for carting the rye, for the rig, and pay  
30 for sowing that grass seed. You just pay me that and we will call it square and we will have nothing more to do with one another." He said that he would bring it down the next morning but he has never done it. Now that rye that was referred to at that time, Mr. Rogers came to my father and said—

By Mr. Palmer.

Q. Did you hear this conversation that you are about to detail?

A. No, sir; I don't believe I did.

Mr. Palmer. Then I shall object to the se of it.

By Mr. Atkinson.

10

Q. Was it afterwards talked about by Mr. Rogers?

A. At this time he said he would bring down the money the next morning for the work my father did in carting the rye and sowing the grass seed. That was said in front of me, but he never did it, never explained it and never came down with it.

Q. Now was there anything else that you know of that caused you to make the statement?

A. Well, one time my father purchased for me from Mr. Rogers—

20

Mr. Palmer. That is objected to. This is another time and place. We object until the circumstances are shown. We are entitled to that.

The Witness. About 1908, in December, about 1908, my father purchased from Mr. Rogers a heifer for me for the sum of \$25. Mr. Rogers had previously had the heifer—

30

Mr. Palmer. I object, unless it was within his own knowledge.

By the Court.

Q. Do you know? Did he tell you where he bought the heifer?

A. My father was at the sale where he bought the heifer.

Q. You were not there, were you?

A. No, sir; I wasn't there.

The Court. Well, that evidence is not admissible.

By Mr. Atkinson.

10

Q. You cannot make any reference as to that. But you bought a heifer of Mr. Rogers?

A. My father bought the heifer for me.

Q. Tell the circumstances.

A. From Mr. Rogers and told Mr. Rogers he was buying it for me.

Q. Well, what is it? It is not necessary to tell where Mr. Rogers bought the heifer.

A. My father bought the heifer from Mr. Rogers  
20 for me for the sum of \$25. The circumstances, as I say, were these: Mr. Rogers came to my father's barn in the afternoon—

By Mr. Palmer.

Q. Were you there?

A. No, sir; I wasn't in the barn.

Mr. Palmer. I ask that it be excluded then. If  
30 your Honor please, the witness knows very well what the rule is and he certainly knows better than to attempt to testify to matters which the court has repeatedly ruled are hearsay statements.

Mr. Davis. I think that is a very wild presump-

tion. We every day hear counsel making similar contentions and insisting on them before the court when we suppose that they know better, but we find that they do not. I think that is a very wild assumption.

The Court. He cannot tell what happened in his absence.

Q. Tell what you know about this heifer transaction. 10

A. I know I gave my father \$25 to buy a heifer with and he bought this heifer and she was there on the farm. He bought this heifer from Mr. Rogers.

Q. Anything the matter with the heifer?

A. The heifer was bought as being all right.

By Mr. Palmer.

Q. Were you there at the sale?

A. I told my father to buy it and he told me he 20 bought it.

Mr. Palmer. I ask to exclude it.

By the Court.

Q. Well, what was the matter with the heifer?

A. She had a bunch on the inside of the back leg, the hock. He said she was all right and she wasn't as he said she was. He said she was all right. 30

By Mr. Atkinson.

Q. Did you hear any conversation between your father and Mr. Rogers about this heifer?

A. No, sir; I did not.

Q. Now anything else that you know of?

A. Why, in order to testify properly I must testify as to what were the circumstances under which I spoke these words and what operated on my mind.

Q. That is what I am asking you.

A. And I have to testify to things I heard in the family circle and these rumors and things to show my honest belief that there were such things and I believed  
10 in them. At that time I was away from home working in the city and a good many of these things occurred when I wasn't present. I was present at the conversation in 1911, between my father and Rogers, where he said he would pay him for the work and didn't do it.

The Court. You have gone over that.

Q. Did you hear of anything else which you afterwards verified, prior, of course to this action?

20

(Objected to.)

Mr. Atkinson. I think he would have a right to testify to that.

Mr. Palmer. It would be hearsay testimony.

The Court. Do you say that you have any authority for the proposition that he may give the details of  
30 what he has heard?

Mr. Davis. I have not tried to find them, your Honor. I have not worked up this part of the case, but Mr. Thompson has. My understanding is that it is the law, not as part of the proof of the truth—

The Court. I want to see it in black and white.

Mr. Davis. I have no authorities here. Mr. Thompson says he has.

The Court. Well, if counsel has such authority I should like to see it.

Mr. Atkinson. The pending question, is that allowed? 10

The Court. You are going around and around. Hasn't he said everything that he can about this matter?

Mr. Atkinson. He has not said all that caused him to have this belief about Mr. Rogers. I was under the belief that surely in exculpation of slander a man would have the right to show the foundation for his belief and that he would have a right to back it up by witnesses. I can readily see how that is true also. 20

The Court. Do you think that he should be entitled to say that he heard Mr. Smith say something about Mr. Rogers to back it up?

Mr. Atkinson. That is the point.

The Court. Is there any difficulty—if you think it is so clear why is there any difficulty about showing the court the law? 30

Mr. Atkinson. Mr. Davis is trying to find this. I cannot find it. He has most of the papers and I don't suppose in this limited time he can put his hand on it.

The Court. Without being able to recall any ruling, any special ruling, upon the precise point, my impression is that as far as a witness can go is to say that he received information upon which he acted in the honest belief that it was true.

Mr. Atkinson. He has already testified to that.

10 The Court. Now you seem to think that the law is broader, that you can go into details. It is the effect of the rumors on his mind which induced him to act. It is immaterial and absolutely immaterial whether what was said to him at that time was true or not for the purpose of determining whether what he said was privileged.

Mr. Atkinson. I understand that perfectly.

The Court. The burden of proof as to whether there was malice or not is upon the plaintiff. Proceed.

20

Q. What do you know if anything of collusion?

A. I saw Mr. Lamb in Philadelphia and he told me that Mr. Rogers—

Mr. Palmer. I object. This is a conversation not in the presence of the plaintiff and it is not chargeable to him, what some one else went around the country and said about him.

30

Q. That was the bankrupt?

A. The bankrupt stated to me what I was going to say.

The Court. Well, we are back to the same question again. Now if you gentlemen will hand me a case

that justifies your position.

(Mr. Davis argues and cites authorities.)

The Court. Is that any broader than I have ruled? He received rumors which led him to believe this was so. Can you go into the particulars?

(Mr. Davis cites other authorities.)

10

The Court. You can tell me what you want to prove by this witness. Now specifically what do you want, or have you covered it?

Mr. Davis. No, no.

Mr. Atkinson. The first was about cutting the rye. That has been testified to. Then he heard a rumor about the defendant defrauding one Walter Kline and another about his putting out of his house illegally in the winter 20 time, a family and a woman, and so forth and so on, and then another one, a breach of warranty, as he has testified, in the sale of this heifer.

The Court. He has testified to that. About putting these persons out of the house in the winter time, that might go to his sense of propriety, but would it affect his integrity?

Mr. Atkinson. And one was tried out in this court 30 here and that wasn't brought out.

The Court. I want to know specifically.

Mr. Atkinson. I am reading them as they are

here. Then in not paying his father for carting this rye.

The Court. That you have already shown.

Mr. Atkinson. And making false and malicious statements to Frank Gauge about Mr. Thompson's hay and trying to prevent his buying it?

The Court. Would that affect his integrity or his  
10 fitness for trustee?

Mr. Atkinson. I think so.

The Court. Oh, well, the court will permit you to show it. The court will relax the rule and will permit you to show any information which came to him which would be calculated to disqualify Mr. Rogers from acting as trustee, but mere trifling things are nothing; it must be knowledge of some consequence, affecting his  
20 integrity and fitness. Now you will be permitted to do that.

Q. Mr. Thompson, had you received information which you believed to be true as to the plaintiff defrauding Walter W. Kline?

Mr. Palmer. I object to that as purely hearsay testimony.

30 (Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

Mr. Palmer. I object to this witness being permitted to testify to these matters.

The Court. Is it necessary to go into the details of that matter?

Mr. Atkinson. Just what he heard.

Q. Did you receive information which you believed to be authentic and true that the plaintiff had illegally dispossessed one Lorrie Worrell and his family?

Mr. Palmer. I object to that as incompetent, irrelevant, immaterial and hearsay testimony and no justification. 10

A. Yes, sir.

(Objection noted for plaintiff as ground of appeal.)

Q. And did you receive information which you believed to be true that there was collusion in this bankruptcy sale between Mr. Lamb and the plaintiff? 20

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. Yes, sir.

Q. And did you know as a fact that the plaintiff in company with the bankrupt, Mr. Lamb, had prior to the meeting called by the referee been to the office of Mr. Palmer and there arranged the schedules? 30

Mr. Palmer. That is objected to as entirely incompetent and irrelevant. It has no relevancy to this issue whatsoever.

(Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. I was so informed.

Q. Well, did you believe it?

Mr. Palmer. I object to that and ask to strike the answer out.

10

The Court. The motion is denied.

(Objection noted for plaintiff as ground of appeal.)

A. Yes, sir; I believed it.

Q. And do you know or were you informed so that you believed it that Mr. Rogers had gone with the bankrupt, Lamb, to various creditors and obtained their claims or a portion of their claims, for Mr. Palmer, who  
20 held the accounts as their attorney and which were announced at this meeting, or at this court held by the referee?

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. Yes, sir.

Q. And at the meeting where the referee presided  
30 did Mr. Rogers, the plaintiff, and Mr. Palmer say whether or not these claims had been obtained by Mr. Rogers—

A. Mr. Palmer said—

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. These claims I have in my hand were signed up by these creditors with the express understanding that Mr. Rogers would be the trustee, because of his helping Mr. Lamb run his business for two years past and he understood it and was just the man to be trustee.

Q. Well, now, was there any other fact communicated to you which you relied upon and believed at the time you made that statement and at the time of the making of the statement that you have not already testified to? 10

(Objected to. Objection overruled.)

(Objection noted for plaintiff as ground of appeal.)

A. Well, I was informed in 1913 when Robert Kirkbride sold his property—

Mr. Palmer. That is objected to for the same reasons given before and, secondly, it is not pleaded in the pleadings setting up justification. The other incidents so far have been those of which we have had notice. This one does not appear in the pleadings at all. 20

The Court. The objection will be sustained.

The Witness. That is not in the answer. He stated certain facts in the answer.. He says among other facts, and this is proving the full justification. This question is asked in mitigation of damages under the general issue to show an honest belief. 30

Cross Examination.

By Mr. Palmer.

Q. Are you a member of the bar of Pennsylvania?

A. I am.

Q. And of New Jersey?

A. Of the United States Court of the District of New Jersey.

10 Q. Have you any objection to answering the question?

A. I say I am of the United States Court for the District of New Jersey.

Q. Have you any objection to answering the question?

Mr. Atkinson. I object. He has answered the question.

The Court. What was the question?

20 Q. Are you a member of the bar of the State of New Jersey?

A. No, sir.

Q. When were you admitted in the United States District Court?

A. I think it was in February or January.

Q. Of what year?

A. 1915.

Q. That was after you attended this meeting in December?

A. Yes, sir.

30 Q. So that at the time you were present at this meeting on December 28th you were not a member of the bar of the United States District Court for the District of New Jersey?

A. No, sir.

Q. And you appeared at that meeting as repre-

sending your father?

A. Yes, sir.

Q. With a power of attorney?

A. Yes, sir.

Q. And also one other creditor?

A. Yes, sir.

Q. With a power of attorney from him?

A. Under a power of attorney.

Q. And who pays the claims that are presented  
against the bankrupt estate? 10

Mr. Davis. Is that cross examination, your Honor?

The Court. I think that is a matter of law. I suppose a good many creditors would like to know that too.

Mr. Palmer. But there is one element of the statement that this defendant made, and that was that his father's claim would not be properly taken care of if 20  
Mr. Rogers was elected trustee. Under the law Mr. Rogers has nothing to do whatever with the presentation or payment of claims. They are all ordered by the referee.

The Court. Well, the trustee, though, conserves the estate and he is an executive officer of the court. He goes out and gathers up the assets and he manages them in the interest of his trust for the creditors. 30

Mr. Palmer. But one of the elements this defendant charged against Mr. Rogers is that his father's claim would not be properly taken care of and I want to show that.

The Court. You may show what he meant by that.

The Witness. That is not what is meant by that.  
That is not what is meant by my statement.

Q. What did you say?

A. I said our claim would not be properly taken care of. I believed that to be true.

10 Q. The referee pays the claims, doesn't he?

Mr. Davis. I object to that. How does the referee pay the claims? He has no fund to pay the claims from.

The Court. He makes the orders, doesn't he?

A. The funds are in the trustee's hands.

Q. Who countersigns the checks?

A. The referee.

20 Q. And no vouchers are paid without his signature?

A. No, sir.

Q. And to whom are the claims presented?

A. To the referee.

Q. And the trustee has nothing to do with them so far as the presentation is concerned?

A. At the meeting they are presented to the referee.

30 Q. And they go with the referee to his office?

A. The proofs are filed in his office.

Q. The trustee has nothing to do with that?

A. Not with that part of it.

Q. Did you endeavor to collect any claims against this estate?

(Objected to.)

Mr. Palmer. That is one of the things they charge we did that were improper.

(Question repeated.)

Q. For the purpose of presenting them at the referee's meeting?

A. My father came to me with his. 10

Q. Any others?

A. None were brought to me.

Q. Did you go to see any of the creditors?

A. No, sir.

Q. And did you talk with any of them at all?

A. Only this man Joe Wells.

Q. Did you go to any one else?

A. I didn't ask any one else for their claims.

Q. Did you go and talk to any of the other creditors about their claims?

20

Mr. Davis. That is objected to.

The Court. What is the object of the cross examination?

Mr. Palmer. Here is a man who is said to have made some exceedingly damaging statements against this plaintiff and he represents himself as having done that from the purest and best motives. Now it is competent to show what his connection was and what his situation was with this bankrupt estate. 30

The Court. I think that is right.

A. I met one man who said he was a creditor and I wrote and asked him if he would send me a power of attorney.

Mr. Davis. Answer yes or no, is all, then stop.

Mr. Palmer. Let him answer.

Mr. Davis. I do not propose to have you dictate  
10 how I shall conduct my case.

The Court. Mr. Palmer may cross-examine this witness.

Mr. Davis. I am objecting to the question and advising the witness when he has answered it to stop.

The Court. The objection is overruled. Proceed. You asked the witness if he had a power of attorney.

20

Q. Did you ask him for it for yourself?

A. No, sir.

Q. He didn't give it to you?

A. No, sir.

Q. You live and have lived close to Mr. Rogers, haven't you?

A. Right across the street from him.

Q. And have lived there for a number of years?

A. Yes, sir.

30

Q. And have not been on speaking terms with him for a number of years?

A. No, sir.

Q. Neither you nor your father?

A. No, sir.

Q. And that was true before this bankruptcy matter arose?

A. Yes, sir.

Q. And that was the reason you started in to see if you could defeat his nomination for trustee in bankruptcy?

A. No, sir.

Q. That had nothing to do with it?

A. No, sir.

Q. And the fact that you had been on bad terms with him didn't enter into your consideration at all? **10**

A. The exact—

Q. Do you mind answering the question?

A. No, sir.

Q. Not the least bit?

A. No, sir.

Q. You forgot that entirely?

A. I was actuated—I wasn't actuated by any personal motive.

**20**

(Question repeated.)

A. I didn't forget.

Q. But you had that in mind, didn't you?

A. That didn't—

Q. You had it in mind, didn't you?

A. Not at the time.

Q. Then you dismissed it from your mind entirely?

A. It is just the same as it is now.

Q. What do you mean by that? **30**

A. I have no feeling against that man at all.

Q. You haven't?

A. No, sir.

Q. Then why did you say he was dishonest?

A. I said he wasn't a straight, upright man.

Q. Didn't you say he was dishonest?

A. No, sir; I didn't say he was dishonest.

Q. Did you ever have any dealings with Mr. Rogers?

A. The only dealings I had with him was when this heifer was bought for me.

Q. And how long did you have that heifer?

A. Why, I think she was there, brought down one forenoon and taken back the next day.

10 Q. Did you get your money back?

A. I got my money back; yes, sir.

Q. Was there anything about that that was not straight?

A. Yes, sir; he said this heifer was straight and all right. She was bought that way, and not being sound therefore that was a breach of warranty.

Q. I see.

A. When my father discovered this bunch we took her back.

20 Q. Did he see her before he bought her?

A. He took Mr. Rogers' word for her.

Q. He hadn't seen her at all?

A. He saw her at the time. He said, "Mr. Rogers, if you say she is all right I will buy her."

Q. And Mr. Rogers bought her at a public sale, didn't he?

A. He had her some time.

Q. How long?

A. To the best of my knowledge a few days.

30 Q. And then he sold her to your father?

A. Yes, sir.

Q. And Mr. Rogers bought her at a public sale?

A. Yes, sir.

Q. And he asked him to sell it to him then and he

said he didn't want to sell it and he afterwards decided to sell it?

A. He afterwards decided to sell it.

Q. And then when you complained he took her back?

A. I will answer that in my own way.

The Court. Answer the question under the direction of the court.

10

A. He took her back.

Q. And gave you your money?

A. Yes, sir.

Q. Do you remember going to Mr. Rogers' house in the summer of 1909 looking for a man named Charles Warner or Albert Horner?

A. Warner? I don't remember him.

Q. Charles Warner.

A. I don't remember him.

Q. Do you remember looking for a man you said 20 you understood was at Mr. Rogers' place and who was supposed to have stolen some water-melons from your place?

A. Yes, sir.

Q. And you went there with a gun, didn't you?

A. I did.

Q. Who were you looking for?

(Objected to.)

30

The Court. I think that is pertinent.

A. Why, I don't remember the man's name, but that was—I want to explain this thing.

Q. Were you looking for Mr. Rogers?

A. No, sir.

Q. You were looking for a man who was supposed to have stolen the water-melons?

A. I was looking to find out who had stolen our water-melons. I was there to inquire.

Q. What did you take the gun for?

A. This man came or several men came across the fields to our water-melon patch and it looked as though they had dragged away a lot of melons in a bag.

10 Q. And you thought he went over there?

A. I chased these fellows but I didn't get anywhere near them.

Q. What day of the week was that?

A. It was on Sunday.

Q. Was the gun loaded?

A. No, sir.

What did you take it for then?

A. I took it to scare them.

20 Q. Oh, I see. Now that is all. There is no question pending.

A. May I answer that question?

The Court. When the question is answered stop. You cannot be a lawyer and a witness too. The court has told you two or three times. You ought to know that without the court repeating it.

Q. When was this conversation you had with Mr. Rogers about paying for sowing the grass seed?

30 A. I didn't have it with him, my father had it with him.

Q. Weren't you there?

A. I was there but I didn't have anything to say about it.

Q. Your father asked him to pay for the work that was done?

A. Yes, sir.

Q. And when was the work done?

A. In 1907 the grass seed was sowed.

Q. And when was this you asked him for the money?

A. 1911.

Q. Four years afterwards?

A. Yes, sir. 10

Q. How much did you ask him for?

A. I didn't ask him for anything.

Q. How much did your father ask him for?

A. I think he asked him for seventy-five cents for the grass seed, was all, and half a day it took to do it.

Q. What else did he ask him for?

A. For pay for carting the rye, a man and team a day and a half or two days or something like that.

Q. And how much did he ask for that?

A. \$3 a day. 20

Q. And Mr. Rogers refused to pay it?

A. He said he would bring it down the next morning.

Q. Did you hear that conversation between Mr. Rogers and your father?

A. Mr. Rogers cut almost all of it.

Q. Would you mind answering that question, Mr. Thompson? Have you given us any parts of it you didn't hear yourself?

A. I heard the parts I have given you. 30

Q. Was that all the conversation that you heard?

A. Mr. Rogers wanted to get off and fight with my father.

Q. You have told us that. Anything else?

A. My father told him he didn't want to fight with him.

Q. Well, what else?

A. My father said, "All I want you to do is pay me that money and then we will call it square and we won't have anything to do with one another," and Mr. Rogers says, "I will bring it down tomorrow morning."

Q. Now what about the collusion between Mr. Rogers and Mr. Lamb? What do you know about that?  
10 Mr. Rogers went out to see some of the creditors, didn't he?

A. He did.

Q. And he got their claims?

A. Yes, sir; and Mr. Lamb was with him.

Q. Mr. Lamb went with him?

A. Yes, sir.

Q. They were claims against Mr. Lamb, weren't they?

A. Yes, sir;

20 Q. And you said the statement was made that they were obtained with the express understanding that Mr. Rogers was to be the trustee?

A. Yes, sir;

Q. And that was accompanied by the statement that because of his knowledge of the business he would make a good trustee?

A. Yes, sir;

Q. And under those conditions the creditors had given him the claims?

30 A. Yes, sir;

Q. And those statements were made at the meeting?

A. Yes, sir;

Q. And there were a number of creditors at the meeting, weren't there?

A. Yes, sir;

Q. And after you had made this statement didn't Mr. Oliphant ask them if there were any creditors who objected to Mr. Rogers as trustee?

A. No, sir.

Q. And didn't they all say they were satisfied?

A. Joseph Wells said he didn't know him and Mr. Vickery said he didn't know him.

Q. Who said that outside of that?

A. Mr. Vickery. 10

Q. Did Mr. Vickery offer any objection?

A. He didn't say anything about it.

Q. Didn't Mr. Rogers have Mr. Vickery's claim?

A. I don't know. Mr. Vickery was there representing their firm. They asked him and he said he didn't know Mr. Rogers, he didn't know anything about it, whether there was anything wrong with him or not.

Q. Whether he was straight and upright?

A. He didn't know him, he said.

Q. He didn't say because you had made this statement that he objected to him, did he? 20

A. No.

Q. Who else said they didn't know him or objected to Mr. Rogers' appointment?

A. I don't know of any one else.

Q. And outside of the two people you represented they were the only ones who objected to his appointment?

A. Yes, sir.

Q. And that was after you made this statement that he was not straightforward? 30

A. Yes, sir.

Q. They heard you make the statement?

A. Yes, sir.

Q. They were perfectly satisfied, were they?

A. Yes, sir.

Q. And their claims were obtained with the idea of Mr. Rogers being appointed?

A. Most of the creditors represented by the claims you have in your hand.

Q. And the power of attorney was addressed to him?

A. Yes, sir.

Q. And these claims were obtained by Mr. Rogers?

A. Most of them.

10 Q. And the creditors, the people interested in this, were satisfied, were they?

A. Yes, sir; they were there.

Q. And the others that were not there, their statement had been obtained under the statement that Mr. Rogers was to be the trustee?

A. That was the understanding, that he was to be the trustee; yes, sir.

Re-Direct Examination.

20

By Mr. Atkinson.

Q. Mr. Thompson, Mr. Palmer asked you as to what you said about Mr. Rogers not being a straight and upright man. Now you can explain. You can state now what you meant.

A. As I said there, Mr. Palmer then stepped up after I made this statement, he stepped forward and said, "Mr. Referee"—

30

Mr. Palmer. I object that it is not redirect examination.

The Court. I think he has a right to explain his testimony. If it is not strictly redirect it will be allowed

in the discretion of the court.

The Witness. He says, "Mr. Referee, Mr. Rogers must be honest, because you will see everything he does, or oversee everything that he does." The referee says, "I can't see everything the trustee in bankruptcy does. There are a lot of things that he does I can't see." I said, "Mr. Referee, that is the point."

By Mr. Palmer.

10

Q. Was that before or after you made the statement?

A. After I made the statement.

(Objected to. Objection overruled.)

Mr. Davis. I ask to strike it out.

The Court. The motion to strike it out is denied 20 and an exception allowed.

(Objection noted for defendant as ground of appeal.)

Q. Proceed.

A. I says, "Mr. Referee, that is just the point. It is not a question of paying my money over to him or my father." I says, "The trustee is supposed to search the conscience of the bankrupt and find out what he has done with his property and whether there has been a concealment of the assets," and I says "How is a man who has helped draw up this blank chattel mortgage and been Mr. Lamb's business adviser for two years to search into the transactions of the bankrupt and get these assets

30

back for the estate?" That was the point and that was what I meant. It wasn't a case of paying the money over, it was the case of executing the trust as trustee in bankruptcy. He should not act for the bankrupt but should act without fear or favor, and you could not expect a man who had been in business with the bankrupt to do that.

10 Re-Cross Examination.

By Mr. Palmer.

Q. And after you had made all of these statements the creditors still expressed themselves as satisfied with Mr. Rogers, didn't they, with the exception of those that you represented?

A. Now I don't remember whether the call was taken right after that or not.

Q. I think it was, wasn't it?

20 A. I couldn't say.

Q. Wasn't the call of the names of the creditors taken the last thing before the statement was made calling for nominations for trustee?

A. I know the call was made. I couldn't say exactly what time it was, whether it was after I spoke or where.

Q. Then if it was before you made this last statement none of the creditors there present objected to it up to that time, did they?

30 A. They didn't say so, except the ones that I represented, no, sir.

---

WALTER KLINE, sworn for defendant.

Direct Examination by Mr. Davis.

Q. Where do you live, Mr. Kline?

A. I live at Tabernacle.

Q. And about how long have you lived there?

A. About five years.

Q. Do you know the plaintiff here, Mr. Edwin  
Rogers? 10

A. Yes, sir.

Q. And did you ever have any business with him?

A. Yes, sir.

Q. And what sort of business did you have with  
him?

A. I sold him a horse.

Q. And when was that?

A. 1906.

Q. Did you take the horse to his place?

A. Yes, sir. 20

Q. And did you have a conversation with him  
there?

A. Yes, sir.

Q. About the horse?

A. Yes, sir.

Q. And what conversation did you have?

Mr. Palmer. If your Honor please, this is an effort to show just what your Honor has ruled against, this specific proposition which the defendant was not permitted to testify to. 30

The Court. I relaxed that rule, Mr. Palmer, for this witness. Now if he is going to narrate any transactions between himself and the plaintiff which throw light

on the question of whether Mr. Rogers was or was not the character of man that the plaintiff believed him to be or stated him to be at this meeting of the creditors before the referee, I think that that would be admissible evidence and any testimony of that nature would be admissible and would be proper testimony to introduce.

(Objection noted for plaintiff as ground of appeal.)

10 Mr. Palmer. May I have this noted to save time? May I have it understood that my objection goes to all of this witness' testimony?

The Court. Oh, yes, yes. That is to say, if it is along that line.

Q. What conversation did you have in reference to the sale of this horse with Mr. Rogers the defendant? Do you understand the question, Mr. Kline?

20 A. Yes, sir.

Q. Go ahead and tell us.

A. I had this horse to sell and I says to my wife—

Q. Never mind what you said to her, witness. We say a great deal to our wives that hasn't any business here.

A. I seen him in Medford, I seen Mr. Rogers. He said he sold a bay horse and I went and asked him whether he wanted to buy a horse, or would buy a horse, and he said, "Yes, but horses is very low now." He went  
30 around and looked at the horse on the street. He said, "What do you want for him?" and I said "Twenty-five dollars." He says, "I can't give you that." I says "What can you give me?" He says, "I couldn't give you over ten dollars." I says, "Mr. Rogers, I am poor and I will have to take it," and I went and sold him the horse. He

says, "You take him around, I am going after my dinner and you put him in my stable and I will pay you for him after dinner." When I came around or when he came around the horse was taken sick in the stable when I put him in there with the cramp or colic. And I says "This horse is sick." He says, "Will you insure this horse's life?" I studied a little bit and I says "I wouldn't like to." He says, "I will tell you what I will do with you," he says, "I don't care to pay for a dead horse." I says, "No, sir; I wouldn't either, Mr. Rogers, buy any dead horses, not much." He says, "I will tell you what I will do with you, I will take this horse and if I can get him to Philadelphia I will give you that \$10; if I don't get but \$3 for him." I says, "I can't complain about that." So in a little while I heard the horse was all right and Mr. Rogers had gone down with him to Philadelphia. So I worked for Mr. Jones at Friendship and I saw Mr. Jones and he was going over to Medford and I says—

Q. Never mind what you said. Did you go over there?

A. He went first, Mr. Jones, and he says—or I says, "You stop and see Mr. Rogers and see how he made out about my horse, will you?" and he said yes and he done so and he brought me back word—

(Objected to.)

Q. Never mind what be brought you back word. What did you do? You can't tell what took place except what took place between you and Mr. Rogers. Did you get your \$10?

A. No, sir.

Q. And did you see Mr. Rogers afterwards?

A. Yes, sir. He said the horse was dead and it cost him \$3 to get him over there and he would like for me to pay it.

Q. Did you pay it?

A. No, sir.

Q. Did you get your \$10?

A. No, sir.

Q. Did you get any money.

A. I did after while.

Q. How did you get it?

A. I found out the horse wasn't dead. I seen the horse afterwards.

10 Q. Where did you see him?

A. Right here in Mount Holly.

Q. Who had him?

A. Frank Corn or Cohen.

Q. The same horse and you saw him?

A. Yes, sir.

Q. And was he dead or alive when you saw Cohen have him?

A. Alive in the stable.

Q. Then what did you do?

20 A. I went back to Mr. Rogers and says, "Mr. Rogers, I thought you told me that horse was dead," and he says, "He is dead." I says, "No, sir; he ain't. I seen the horse and I can show you the horse in two hours." He says, "You are a liar." I says, "Mr. Rogers, I will show you whether I am a liar or not," and I started away from his office. He says, "Look here, you hold on," he says, "I will tell you, I will give you my check for \$7.50, otherwise I will make a fight with you." I studied a little bit and I says, "I have had awful bad  
30 luck with this horse business. I guess I will take the check."

Q. Go ahead and tell us about it. He offered you \$7.50 now?

A. Yes, sir.

Q. And the horse was still living?

- A. The horse was still living.  
Q. Go ahead. What did you do?  
A. I took the \$7.50.  
Q. And did you get any money on the check?  
A. I took the check and got it cashed over at the Medford bank.

Mr. Davis. I call for the check.

By Mr. Palmer.

10

- Q. Where did you get it?  
A. I got it cashed at the Medford bank.

Mr. Davis. I call for the check, made to the order of Walter W. Kline for \$7.50.

Mr. Palmer. There has been no call made for this check and we object to producing it on this call.

By Mr. Davis.

20

- Q. You got a check for \$7.50, did you?  
A. Yes, sir.  
Q. How long after you sold this horse to the defendant was it before you got this \$7.50 check? How long after you sold it before you got your money?

A. As near as I can tell it was two months or more.

Q. Now after you took the horse to Medford and left it with Mr. Rogers when you thought the horse was going to die, how long was it before you saw the horse alive?

30

A. Two months after that.

Q. And you are certain this was the horse, are you?

A. Yes, sir.

Cross Examination.

By Mr. Palmer.

Q. What kind of a horse was it? Describe him as to color.

10 A. He was a dark bay horse.

Q. A dark bay horse?

A. With two white feet?

Q. And which two?

A. His hind feet, and a white spot in his face.

Q. Yes.

A. And he had saddle marks on his back, three white spots on the right hand side where the saddle wore him and two on the other. That made me know him in particular.

Q. Saddle spots?

20 A. Yes, sir.

Q. Anything else about him that you identified him?

A. No, sir.

Q. Where did you see him?

A. Right at Cohen's stable.

Q. Cohen's stable?

A. This man took me over there and showed him to me and a man that used to own him said it was the same horse.

30 Q. And who was that?

A. Jim Sparks.

Q. And when was that?

A. 1906.

Q. What time?

A. What time in the year?

Q. Yes.

A. Along in the fall. I couldn't tell you rightly.

Q. When did you sell this horse to Rogers? When did Rogers first get it?

A. It must have been 1907 when I found out about the horse. 1906 was when I sold it.

Q. When?

A. In the fall.

Q. In December?

A. I should judge it was, as near as I can tell you. 10  
It was a good while ago.

Q. When was it you saw the horse in Mount Holly?

A. Yes, sir.

Q. When was it?

A. 1907.

Q. What time in the year?

A. It was towards—it was in the winter, the latter part of the winter.

Q. Did Mr. Cohen tell you where he got the horse? 20

A. Yes, sir.

Q. And where did he say he got it?

A. He told me that he bought the horse in Philadelphia in the bazaar.

Q. Did he say which bazaar?

A. If he did I don't remember.

Q. And who did you say was with you when you went to Cohen's stable?

A. Jim Parks.

Q. And did you tell Mr. Cohen anything about 30  
coming back?

A. Coming back?

Q. To see him about it.

A. The horse? Yes.

Q. What did you tell him?

A. I told him I was going to see Mr. Rogers and I would be back about this horse. I says, "I won't put you to any trouble but I want to prove this horse."

Q. Did you ever go back?

A. No, sir.

Q. Had you been paid for the horse then?

A. He did give me a check. Well, he didn't let me get far away from him.

That was when you went back to Mr. Rogers?

10

A. Yes, sir.

Q. And this was in the fall of 1907?

A. It was along about New Year's I got the money.

Q. And did you get the money before you saw the horse here at Cohen's?

A. Oh, no, no, no.

Q. You saw the horse at Cohen's before you got the money?

A. Yes, when I sold him the horse was in 1906. before New Year's. And when I found the horse it was  
20 in 1907, and 1907 when I got my money. Now you understand?

Q. You are sure it was after you saw the horse at Cohen's before you got your money.

A. No, sir; he wouldn't have given any of it to me but for that.

Q. I show you a check dated January 6, 1907, payable to the order of Walter Kline and signed by E. D. Rogers and ask you if that is the check you got.

A. I can't read.

30

Q. Don't you know?

A. No, I don't know.

Q. You don't know whether that is the check you got or not?

A. No, sir; it is so long. I am no scholar.

Q. Where did you get the money on this check?

A. At the Medford bank.

Q. You took it right to the Medford bank when Mr. Rogers gave it to you?

A. Well, now, I won't be sure and certain about it. I might have got it cashed in Medford somewheres or other.

Q. Did you get it cashed the day Mr. Rogers gave it to you?

A. I won't be certain about that.

Q. You are sure it was cashed in Medford? 10

A. I am pretty sure it was cashed in Medford. He gave me a check for the money.

Q. You are sure it was cashed in Medford?

A. I wouldn't be sure.

Q. Where else could it have been cashed?

A. Well, I don't know.

Q. Well, don't you know what you did with it?

A. I got the money on it in Medford. I am thinking I got it at the bank.

(Objected to as not cross-examination. Objection overruled.) 20

(Objection noted for defendant as ground of appeal.)

Q. Who was with you when you got the money?

A. I don't remember.

Q. Was anybody with you?

A. I don't remember about that. 30

Q. Were you sober when you got the money?

Mr. Davis. I object to that. This man was given his pay for the horse and he ought to be able to have one drink on it.

(Objection overruled.)

Q. Will you answer the question? Were you sober when you got the money?

A. Yes, sir.

Q. Did you make your mark on the check?

A. I don't recollect that either. I don't recall. I was only anxious to get the money and I went and got the money on it.

10 Q. You don't recollect whether you made any mark on the check to endorse it or not?

A. I don't recollect.

Q. You know you have to endorse a check to get the money?

A. Yes, sir.

Q. And if you are unable to write you have to endorse it by making a mark?

A. Yes, sir.

20 The Court. Why don't you show it to the witness?

Mr. Palmer. He can't read.

Q. Did you make your mark on there?

A. I couldn't say. It has been a good while ago. I dare say I might have been whiskeyed up. I was drinking pretty hard then at that time.

Q. The horse got sick while he was at Medford?

A. Yes, sir; I took a load of wood over there and  
30 he was taken sick after he got to Medford.

By Mr. Davis.

Q. One minute. Did you ever sell any other horse to him?

- A. No, sir.  
Q. This was the only one?  
A. Yes, sir.  
Q. I see. How old are you?  
A. Fifty.
- 

ANDREW PARKS, sworn for defendant.

10

Direct Examination by Mr. Davis.

- Q. Where do you live?  
A. Friendship, or the other side.  
Q. And where is Friendship? Is that South-  
ampton Township?  
A. On the left hand side of Tabernacle.  
Q. Do you know your friend that has just left the  
stand.  
A. They say it is Tabernacle. 20  
Q. Do you know Walter W. Kline?  
A. Yes, sir; I know him.  
Q. And did you know him along in 1905, 1906  
and 1907?  
A. And longer ago than that.  
Q. Well, that is about eight years ago.  
A. Eight years?  
Q. About eight years ago.  
A. Yes, I have known him twenty-five years.  
Q. And did you know a horse that he had that had 30  
two saddle marks on his back, a dark bay horse?  
A. Yes, sir.  
Q. And did you hear whether or not that horse  
had been sold to Mr. Rogers.  
A. Yes, sir.

Q. And did you see him at any time after you heard he had been sold?

A. Did I see him after Walter sold him to Mr. Rogers? Yes, sir.

Q. Where?

A. At the Medford sheds.

Q. And how long after?

A. I couldn't tell you just exactly.

10

Q. And who had him?

A. Mr. Cohen, a peddler.

Q. This man Cohen that lives here in town?

A. Yes, sir.

Q. The same horse that Walter Kline used to have?

A. Yes, sir.

Cross Examination.

By Mr. Palmer.

20

Q. And where did you see him?

A. At the Medford sheds and had my hands on him.

Q. He was there hitched to Mr. Cohen's wagon?

A. Yes, sir;

Q. And did you recognize the horse?

A. I was there with Al Jones' team and I drove my team in the shed. I knew him and his name was Bobbie.

30

Q. What marks did he have on him by which you could recognize him?

A. This horse?

Q. Yes.

A. He had white spots on each side of him and a small white spot on his face, not very big. He was a

roach-backed horse, what you would call a roach-backed horse.

Q. And what else?

A. He had two white feet behind, one was a little more white than the other. He had one tooth out of the front of his mouth.

Q. An upper or lower tooth?

A. An upper tooth.

Q. Did you talk to Mr. Cohen that day about the horse? 10

A. No, sir.

Q. Were you with Mr. Kline when he was paid for the horse?

A. No, sir.

Q. And when was this, how long after you heard that he had been sold?

A. I couldn't say.

Q. Two or three months, about?

A. About that.

Q. And what part of the year did you see him at 20 Medford?

A. Well, it was in the fall of the year, if I can remember just right, sometime in the fall, late towards winter.

Q. And do you remember what time in the year it was that Mr. Kline sold this horse?

A. Well, it has been between seven and eight years.

Q. How long before you saw him was it that you heard that he had sold him, that Mr. Kline had sold him?

A. Sold him to the defendant Rogers? 30

Q. Yes.

A. Well, I couldn't tell exactly. I suppose it would be two or three months, somewhere around there.

Q. Two or three months?

A. To the best of my knowledge.

Q. Two or three months after he had been sold to Mr. Rogers you saw him at Medford?

A. Yes, sir.

Q. And it was in the fall of 1907 you saw him there?

A. Yes, sir.

Q. Have you ever had any business transactions with Mr. Rogers?

A. No, sir.

10 Q. You bought a horse from him, didn't you?

(Objected to as not cross-examination.)

Mr. Palmer. The purpose of this testimony is to show that this witness has some considerable animus against the plaintiff.

Q. You didn't pay for the horse?

A. Didn't pay for the horse I got?

20 Q. Yes.

A. Oh, yes.

Q. Didn't Mr. Rogers get a judgment against you?

A. No, sir.

Q. He never did?

A. No, sir.

Q. And that matter is untrue?

A. Yes, sir; he never did. He never got it.

30 Re-direct Examination.

By Mr. Davis.

Q. You think you would be safe in saying that you were acquainted with this horse Bobbie pretty well, weren't you?

A. My father used to own him and my brother too.

Q. And have you seen Bobbie after you saw him in the Medford sheds?

A. Have I seen him since that time?

Q. Yes.

A. Well, yes, I think I did once or twice on the road with this peddler.

Q. You say your father owned the horse?

A. Yes, sir. I saw him at Red Lion at one time.

Q. This same horse? 10

A. This same horse; yes, sir.

---

ELWOOD PARKS, sworn for defendant.

Direct Examination by Mr. Davis.

Q. Whose son are you?

A. James Parks. 20

Q. And you a brother of Andrew?

A. No, sir; not a whole brother, a half brother.

Q. Now do you remember Bobbie, that horse by the name of Bobbie?

A. I think I do.

Q. When did you first get acquainted with him?

A. I don't know.

Q. I mean who owned him when you first knew him?

A. When I first knew him? 30

Q. Yes,

A. Harry Morris.

Q. Who did he sell him to?

A. You are asking me more than I know now.

Q. Didn't your father own him afterwards?

A. Afterwards, yes.

Q. Your father?

A. Yes, sir.

Q. And who got him when your father got rid of him?

A. My grandfather.

Q. And your grandfather lived closed to you?

A. Well, about three miles.

Q. How long did your grandfather keep him, do  
10 you remember?

A. No, sir; I don't remember.

Q. Then what did you do with him?

A. He was—

Q. Yes, what became of him after your grandfather got rid of him?

A. He got to going around just the same as all old horses.

Q. Different people owned him?

A. Eh?

Q. Did Walter Kline own him?  
20

A. Yes, sir.

Q. And did you hear that Walter Kline sold him to the defendant Rogers?

(Objected to.)

Mr. Davis. As fixing the time.

Mr. Palmer. That is not competent.

Q. The Court. What did he hear about the horse  
30 being sold?

Mr. Palmer. To permit a man to say he heard he sold it does not bind anybody. He simply heard about this situation.

The Court. What is the purpose?

Mr. Davis. To fix the time, whether he saw him after that time.

The Court. You may show it was sold.

Q. Did you hear it was sold to Walter Kline?

(Objected to. Objection overruled.) 10

(Objection noted for plaintiff as ground of appeal.)

A. Yes, sir.

Q. And after that time did you see him?

A. Yes, sir.

Q. Where?

A. At home.

Q. Where was it, at your place?

A. Yes, sir.

Q. Who had him? 20

A. That there peddler. (Indicating.)

Q. Was his name Cohen?

A. Yes, sir.

Q. The same horse, was it?

A. Yes, sir.

Q. Did you go with Walter Kline then to see the horse?

A. No, sir.

Q. Where did you afterwards see him?

A. I don't know that I ever saw him after that 30  
time. I saw him that afternoon and that night and the  
next morning. After the peddler left our place and went  
away from the place I don't know that I ever saw him  
since.

Q. I see. I see.

## Cross Examination.

By Mr. Palmer.

Q. The peddler was down in the neighborhood of your home all night. Did he stay down in that vicinity all night?

A. Yes, sir.

10 Q. And that is where you saw the horse?

A. Yes, sir.

Q. And do you know where the peddler spent the night, where Cohen spent the night?

A. William DeCamp's, right near our place.

Q. How long was this after you heard that the horse had been sold?

A. Well, I couldn't tell you.

Q. Well, now, you have an idea. Was it a year?

A. I couldn't tell.

Q. Two years?

20 A. I wasn't thinking anything about things like this, or to mark down things like this. I was too young for that.

Q. And when did you remember that you had seen the horse? Who has called your attention to it recently?

A. Nobody only myself. I thought I knew the horse and I went and looked at him and knew him.

Q. Did you tell anybody that you had seen the horse that Kline had sold?

A. Yes, sir.

30 Q. Who did you tell?

A. My father.

Q. And who have you told this last year that you saw the horse?

A. That would be a hard thing for me to tell how many I have told.

Q. Several people?

A. Like enough I have.

Q. Who has talked to you about the horse in the last few months?

A. I don't know nothing about it. I was subpoenaed the other day.

Q. And how did you know what they wanted you for?

A. I could pretty nearly tell.

Q. How did you know? 10

A. I could easy tell, couldn't I, if the trial was coming off?

Q. Did you know what the trial was about?

A. Yes, sir.

Q. Who told you that?

A. Why the people talked about it.

Q. What people?

A. Lots of people.

Q. Who?

A. Well, I don't know as I can tell. 20

Q. Who have you heard talk about it?

A. You, for one, now.

Q. Before today?

A. I heard it every day.

Q. Did they talk about this every day?

A. That is about all we have down there in the woods. If we have one thing we talk about it till it is wore out.

Q. You have been talking about this horse then for seven or eight years? 30

A. I drove him till I wore him out.

Q. Have you been talking about the horse then for the last seven or eight years?

A. No, sir.

- Q. When did you start to talk about him again recently, within the last year?
- A. I couldn't tell you as to that.
- Q. Who have you talked to about it?
- A. You are asking me more than I know now.
- Q. Have you talked with Mr. Thompson about it?
- A. No, sir.
- 10 Q. Have you talked to Mr. Davis about it?
- A. I never met Mr. Thompson until I met him here today that I know of.
- Q. Who subpoenaed you?
- A. He did, I suppose, I don't know.
- Q. Who did you get the subpoena from?
- A. From him, I suppose.
- Q. Who handed it to you?
- A. William Bazar.
- Q. A constable?
- A. No, sir.
- 20 Q. When did you get it?
- A. Last week.
- Q. And the only time you saw the horse was at DeCamp's after he had been sold?
- A. I don't think I ever saw him only that one time.
- Q. Do you know when he was sold to Mr. Rogers?
- A. No, sir.

30

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ALLEN JONES, sworn for defendant.

Direct Examination by Mr. Davis.

Q. You live at Friendship?

A. Yes, sir.

Q. Do you know Walter Kline?

A. Yes, sir.

Q. And Eddie Rogers?

A. Eddie Rogers, yes, sir.

Q. And did you know a horse by the name of Bobbie that Kline used to own?

A. Well, I suppose I have seen the horse many a time.

Q. Were you with Kline the day that the horse<sup>10</sup> was sold to Eddie Rogers?

A. No, sir.

Q. And did you afterwards go to Rogers at Kline's suggestion or request?

A. Yes, sir.

Q. And talk to him about this horse?

A. Kline sent me there for the money for him.

Q. Did you talk to Mr. Rogers about it?

A. I asked Mr. Rogers for the money and he said there wasn't any coming. The horse was dead and it<sup>20</sup> cost him \$3 to remove him.

Q. Did you get the money?

A. Did I?

Q. Yes.

A. No, sir.

No Cross Examination.

---

30

FRANK COHEN, sworn for defendant.

Direct Examination by Mr. Davis?

Q. Where do you live?

A. Mount Holly.

Q. How long have you lived here?

A. I have lived here about twenty-two years.

Q. Did you see this man Kline at any time before today?

A. Yes, sir.

Q. Did he ever come to your house?

A. I remember him coming there.

Q. Did he come there once to look at a horse?

10 A. Yes, sir.

Q. And did you show him the horse?

A. Yes, sir.

Q. What kind of a looking horse was it?

A. He was kind of between a bay and a sorrel.

Q. With any white feet?

A. Two hind feet white.

Q. Any spots on his sides?

A. Yes, sir.

Q. Did you ever look at his teeth?

20 A. Well, I wouldn't like to say that. I never looked at them. I never look at an old horse's teeth anyway.

Q. Where did you get that horse?

A. I got him in Medford.

Q. From whom?

A. I traded with a man by the name of Atkinson.

Q. You got him in Medford?

A. Yes, sir.

30 Cross Examination.

By Mr. Palmer.

Q. When did you get him? This was when?

A. To my knowledge it has been six years ago

this winter or early in the fall.

Q. And what kind of a horse did you trade for him?

A. A black horse.

Q. And do you remember that is six years ago this winter?

A. Yes, sir; I should think it was.

Q. What was the man's name you got him from?

A. Atkinson.

Q. What was his first name? 10

A. I think it was Joe. I didn't know him very much. I seen him several times but had never had any dealings with him.

Q. Where does he live?

A. He lived in Tabernacle at that time.

Q. Now did you ever take this horse, this bay or sorrel horse, down to William DeCamp's?

A. Yes, sir.

Q. And stayed all night with him there?

A. Yes, sir. 20

Q. How long was that after you got him?

A. I think I had him quite awhile.

Q. You had him quite awhile?

A. Yes, sir.

Q. How long?

A. About six months and more.

By the Court.

Q. How long did you have the horse altogether? 30

A. Two years.

Q. Was he serviceable all that time?

A. Yes, sir.

Q. And capable of doing your work?

A. Yes, sir; he was a pretty good horse.

By Mr. Davis.

Q. And when you took Kline to this horse and he saw him did he recognize him as a horse that he had owned?

A. Yes, sir.

Q. The same horse?

A. Yes, sir.

10 By Mr. Palmer.

Q. And did Mr. Kline say he would come over again and see you?

A. He said if Mr. Rogers didn't settle he would be up and see me.

Q. And did he ever come back?

A. No, sir.

20

SAMUEL D. OLIPHANT, sworn for defendant.

Direct Examination by Mr. Davis.

Q. You are Samuel D. Oliphant, a Referee in Bankruptcy?

A. Yes, sir.

Q. And were you a Referee in Bankruptcy in December, 1914?

30 A. Yes, sir.

Q. Where are the claims, Mr. Oliphant, that were filed in the estate of S. N. Lamb?

A. I believe they are here. (Witness produced package of papers.)

Q. And was there a claim of Hannah E. Lamb filed in that estate?

A. I will have to look for it.

The Court. Do I understand that the defendant was sworn by the referee?

Mr. Davis. Yes.

The Court. And gave in testimony? 10

Mr. Davis. Yes, the record shows it.

The Court. And was it for what he said in his testimony—I am assuming that he gave testimony—is it for what the defendant said in his testimony for which he is being sued for slander or what he said on the floor of the meeting?

Mr. Palmer. It is the same thing. He made the 20 statement twice. In his sworn statement he reiterated it. He said the same thing twice.

The Court. I see. Now you are asking him if Mrs. Lamb had a claim against her husband's estate?

Mr. Davis. Yes, sir.

The Court. Is there any doubt about it?

30

Mr. Palmer. There was such a claim filed.

Mr. Davis. The purpose of the proof is to show that Hannah E. Lamb, a man by the name of William H. McClaskey, another man by the name of Joseph An-

derson and William E. Sloyer filed claims against this estate and that proof was taken before Mr. Rogers, acting as a commissioner of deeds, and was filed under those conditions. Do you admit that?

Mr. Palmer. Why, certainly we admit it. There is no doubt about that.

10 Mr. Davis. And I want also to show and I will show they were filed the day following the filing of the petition.

Mr. Palmer. They were not filed the day following the filing of the petition.

Mr. Davis. They were sworn to and executed the day following the filing of the petition.

Mr. Palmer. That was not what you said.

20

Mr. Davis. They were sworn to and executed the day following the filing of the petition.

Mr. Palmer. We do not dispute that.

Mr. Davis. You admit that?

Mr. Palmer. Yes, sir.

30

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ALFRED W. LOFLAND, sworn for defendant.

Direct examination by Mr. Atkinson.

Q. You live at Mr. Thompson's?

A. Yes, sir.

Q. And you are the step-father of the plaintiff in this suit?

A. I am.

Q. Now in 1906, I think it was, did your step-son, the plaintiff here, cut rye that belonged to you?

A. He cut around the farm that he lived on and that I rented the year before that.

Q. Well, now, answer that. Can't you answer the question without so much explaining? 10

A. What rye?

Q. Did he cut rye which belonged to you?

A. No, sir.

Q. Didn't he cut rye on a Sunday night, rye which you claimed?

A. He cut around a piece, around about six acres.

Q. He cut some of it, didn't he?

A. Yes, sir.

Q. And he afterwards brought suit, or you went afterwards and took it yourself, didn't you? 20

A. Yes, I went and got it.

Q. And afterwards he brought suit against you in this court for that rye, for the removing of some rye and fodder, and the court decided that the rye was yours, didn't it?

Mr. Palmer. I object that the best proof available is the record. No other proof is competent.

The Court. Is there any doubt about that, that the 30 decision went as counsel has indicated?

Q. Was I not your attorney in this case?

A. Yes, sir; I believe you were.

The Court. Well, produce the records in the case. Send for them.

The Court. Any further questions?

Mr. Atkinson. That is all.

By the Court.

10 Q. I understand there was a dispute between you and him over the ownership of this rye, which dispute reached its culmination in this lawsuit?

A. Yes, sir.

Cross Examination.

By Mr. Palmer.

20 Q. Mr. Lofland, how long have you known Mr. Rogers?

A. Since he was a small boy.

Q. And do you know other people who know him?

A. Yes, sir.

Q. And are you acquainted with his reputation in the vicinity where he lives for honesty and fair dealing and as being square and upright?

(Objected to.)

30 Mr. Palmer. I will make him my witness on this point.

Mr. Davis. That is not a matter in issue. That is a matter of reputation.

Mr. Palmer. I thought that was what you are trying to make the issue.

The Court. Is there any authority for that? Can you put his reputation in issue?

Mr. Palmer. They are putting his reputation in issue. They have attacked his reputation and I certainly have a right to come back at them. I can offer testimony as to his reputation in my own case. 10

The Court. I will receive it, subject to my ruling on it tomorrow morning. In the meantime I will be obliged to counsel if they will examine the authorities and see whether evidence of reputation is admissible in a suit of this sort. I do not think it is.

Mr. Davis. I do not think it is.

The Court. I will be obliged to counsel if they will 20 take the pains to investigate the subject.

A. Yes, sir.

Q. And is that reputation good or bad?

A. Good.

Re-direct Examination.

By Mr. Atkinson.

30

Q. And how long has that reputation been good?

A. Good with me ever since he was a boy.

Q. Well, it wasn't that way when he brought that suit?

A. It was a misunderstanding under the lease.

Q. You wouldn't have testified that way then?

A. You heard my evidence. I didn't testify he was dishonest.

Q. Oh, it wasn't brought in. That wasn't your opinion then?

A. No, sir. I thought the rye was mine and he thought it was his.

Q. That is all.

10 By the Court.

Q. Did he swear it belonged to him?

A. The judge decided it.

By Mr. Atkinson.

Q. And there was an estrangement between you and him?

A. There was an estrangement between him and  
20 me.

Q. And it lasted for a long period, didn't it?

A. No, sir; it didn't last six months.

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(Adjourned till January 4, 1916, at 9.45 A. M.)

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Mt. Holly, N. J., January 4, 1916.

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(Trial of the cause resumed at 9.45 A. M.)

LORRIE WORRELL, sworn for defendant.

Direct examination by Mr. Davis.

10

Q. Where do you live, Mr. Worrell?

A. Between Lumberton and Medford.

Q. And how long have you lived there?

A. I have lived there four years.

Q. And you have lived in the county how long, all your life?

A. Yes, sir.

Q. Now do you know Edwin Rogers?

A. Yes, sir.

Q. And how long have you known him?

20

A. I guess about twelve years.

Q. At one time did you live on his farm?

A. Yes, sir.

Q. And when was that?

A. The winter of 1906. I moved away in 1908.

Q. And were you present or were you at home at the time that Mr. Rogers cut the rye concerning which there was a lawsuit?

A. Yes, sir.

Q. Do you know where Mr. Rogers was on that day?

30

A. Yes, sir.

Q. Where?

A. Down taking dinner with Mr. Lofland.

Q. And was the rye being cut while he was away?

A. Yes, sir.

Q. Now did you have trouble with Rogers about being up out of his house?

A. Yes, sir.

Q. Won't you tell the court and jury about that?

(Objected to.)

10 Mr. Davis. I offer to prove by this witness that while this man was a tenant on Rogers' place that Rogers came to his house and with a rail broke in the door, broke his furniture up and threw his family out, threw the dinner right off of the stove and evicted these people in the dead of winter; that there was a litigation that resulted in this man's favor showing the unlawful eviction of this man.

Mr. Palmer. There was no litigation. That is untrue.

20 Mr. Davis. A suit was brought. It was terminated by a settlement between the parties.

The Court. Well, what is the ground of your objection?

Mr. Palmer. It is incompetent and immaterial as to this issue. If there is a record of the litigation that would be the best evidence.

30 The Court. Yes, that would be the best evidence. I suppose the circumstances could be detailed because it goes to the evidence.

Mr. Palmer. I say there is no such record exist-

ing, so that before that is detailed I would like to have the record produced.

Mr. Davis. If there is no record I propose to prove it by the witness.

The Court. What, by the witness?

Mr. Davis. Yes, sir. He says there is no record and I will prove it by the witness without the record. 10

Mr. Palmer. I ask that the record be produced.

The Court. Let me get the facts, gentlemen. Is it now your offer to prove a forcible entry?

Mr. Davis. Yes, sir.

The Court. And to get that forcible entry in this statement? 20

Mr. Davis. Yes, sir.

The Court. Proceed.

(Objection noted for plaintiff as ground of appeal.)

Q. Go ahead and tell us about this forcible entry and eviction. 30

The Court. I was going to suggest that you ask him the question.

Q. When did you leave his place?

A. I think it was somewheres around the 23rd.

Q. Of what?

A. Of February—I wouldn't like to tell.

Q. Was it in the dead of winter?

A. Yes, sir.

Q. And what kind of weather did you have then?

A. Snow three or four feet deep and some deeper than that.

Q. And you were living with whom? What family did you have?

10 A. My wife and little boy about five years old and my daughter.

Q. How old was your daughter?

A. Sixteen or seventeen at that time.

Q. Now did Mr. Rogers come to your place that morning?

A. Yes, sir.

Q. With whom?

A. With Mr. Kline, the constable.

Q. Any one else?

20 A. Several parties with him there.

Q. You had been working for Mr. Rogers during that year?

A. Yes, sir.

Q. And what did he do and what did these men do?

A. He came there and asked if I was going to leave and I told him no and he said all right and he went and got a rail and busted the door right in.

Q. What door?

A. The kitchen door.

30 Q. Was the door locked or fastened?

A. Yes, sir.

By the Court.

Q. Were you a tenant there?

A. Yes, sir.

Q. A tenant of Mr. Rogers?

A. Yes, sir.

Q. Did you rent that place?

A. No, sir; I worked for him.

By Mr. Davis.

Q. Was the rent taken care of under an agreement between you? 10

A. Yes, sir.

Q. In other words, were you provided with a house while you worked for him?

A. What is that?

Q. I say were you provided with a house while you were working for him?

A. Yes, sir.

Q. Then what was done?

A. He called the rest of them in and they went to carrying out the things. They took the stove, lifted it 20 up, took it out in the lane and set it in the snow.

Q. And what was on the stove?

A. The dinner.

Q. And what became of that?

A. Carried it out.

Q. The stove and everything?

A. Yes, sir.

Q. What happened to your family?

A. The family?

Q. Yes. 30

A. My wife stayed until noon and then she went away. We took the little boy right away.

Q. And where were the things, the furniture and all like that, put?

A. Right out in the road.

By the Court.

Q. Had you been sued for possession?

A. No, sir.

Q. And no suit had been brought for dispossession?

A. No, sir; just word of mouth.

Q. Word of mouth?

10 A. He gave me three days to move them.

By Mr. Davis.

Q. Who gave you three days?

A. Mr. Rogers.

Q. His Honor wants to know if any suit was brought against you about that time?

A. No, sir.

Q. Did you sue him or threaten to sue him?

A. I threatened to sue him.

20 Q. But you never sued him?

A. No, sir.

Q. Did you get a lawyer?

A. Yes, sir.

Q. And who was your attorney?

A. Mr. Hillman at first. He said such a thing couldn't be done.

Q. Did you have Mr. Hillman?

A. No, sir; Mr. Eckerd.

Q. Mr. Budd?

30 A. Mr. Budd.

Q. Mr. Budd is dead. Did you know that?

A. Yes, sir.

Q. Did you get a settlement from Mr. Rogers?

(Objected to. Objection sustained.)

Mr. Davis. My purpose is to show this settlement as an acknowledgement of wrong.

(Objection noted for defendant as ground of appeal.)

Mr. Davis. I offer to prove by the present testimony, may it please the court, that the witness now on the stand freely reported it in the community that a settlement had been made, for the purpose of bringing home the news to Mr. Thompson, and that he acted under an honest belief in this matter. 10

The Court. You can ask him if he told the people in the community of his experience and what Mr. Rogers had done.

Q. Did you tell the people around the neighborhood what Mr. Rogers had done to you?

(Objected to as incompetent and irrelevant. Objection overruled.) 20

(Objection noted for plaintiff as ground of appeal.)

Q. Answer the question.

A. Yes, sir.

Q. And Mr. Thompson at that time lived where?

A. Right at the end of the lane.

Q. Right across in front of you, did he not? 30

A. Yes, sir.

Q. Now were you a tenant on the farm at the time the rye was cut and this dispute occurred between the parties?

A. Yes, sir.

Q. Were you familiar with the location of the rye on the farm?

A. No, sir; I didn't know much about the rye only what Mr. Rogers told me.

Q. And do you know whether or not there was a stake in any part of the rye?

A. Yes, sir.

Q. And what did that stake divide if anything?

10 Mr. Palmer. That is objected to. This witness says he doesn't know.

(Objection overruled.)

By the Court.

Q. If you know tell the court and jury what that indicated, that stake, if anything.

A. That half was Mr. Lofland's and half was  
20 Mr. Rogers'.

By Mr. Palmer.

Q. How do you know that? Did that stake indicate that?

A. Mr. Lofland said that.

Mr. Palmer. Then I ask that the answer be stricken  
out.  
30

The Court. Strike it out.

By Mr. Davis.

Q. Did you see the stake?

A. No, sir; I didn't when I started to cut.

Q. Did you see it at any time?

A. Yes, sir.

Q. Were you there when they started to cut the rye?

A. Yes, sir.

Q. And did you see them cut the rye?

A. I saw them when they cut the rye.

Q. Where did they begin?

A. Began at the house and cut around a little <sup>10</sup> piece.

Q. In reference to the stake?

A. He didn't tell me there was any stake there.

Q. Now Rogers gave you orders to cut the rye?

A. Yes, sir.

Q. And did he tell you where he was going and for what purpose he was going?

A. He said he wouldn't be up there, he was going down to Mr. Lofland's to take dinner.

20

Cross Examination.

By Mr. Palmer.

Q. When did you go to work on the Rogers' place-

A. In 1906.

Q. What time in 1906?

A. I couldn't exactly tell you.

Q. What time in the year?

A. I think it was in March.

30

Q. What was your arrangement for your pay?

A. The first I made was \$6 a week, my rent, fire-wood and potatoes.

Q. And the house rent?

A. Yes, sir.

Q. And you also had an agreement at that time you were to leave on three days' notice?

A. Not that year. I hired for only half a year.

Q. The first year wasn't it your agreement to leave on three days' notice?

A. No, sir.

Q. And that agreement, you say, lasted for one year?

A. Yes, sir.

10 Q. And until what time?

A. Until my year was up. I couldn't exactly tell you?

Q. In 1907?

A. In 1908.

Q. Until 1908?

A. Yes, sir.

Q. What time in 1908?

A. The 22nd. I couldn't tell you.

20 Q. January or February or March? Was it January or February?

A. I couldn't tell you.

Q. Was it some time in the Winter?

A. Yes, sir; in the winter.

Q. Of 1908?

A. Yes, sir;

Q. And that was when your first year was up?

A. No, sir.

Q. When your second year was up?

A. Yes, sir;

30 Q. And when was it you were put out?

A. 1908.

By the Court.

Q. Before your year was up?

A. Yes, sir.

Q. When was your year up?

A. I couldn't exactly tell you that.

By Mr. Palmer.

Q. When were you put out?

A. I couldn't tell you. I was put out in the winter.

Q. How do you know it was before your year was  
up? 10

A. I know when my year was up.

Q. Tell us now.

A. I worked by the day. I went to my home up  
the state.

Q. Tell us how you know when your year was up.

A. Well, I couldn't exactly tell you.

Q. Do you know whether you were put out at the  
end of it or before?

A. Yes, sir; I was put out before the year.

Q. How do you know? 20

A. I couldn't exactly tell.

By the Court.

Q. Do you know what month you were put out?

A. In January.

Q. When was your year up?

A. In March.

Q. What time in March?

A. I couldn't exactly tell you.

J. I thought you said you went there in January 30  
originally?

A. No, sir.

Q. When did you go there?

A. I went there in March.

Q. In 1907?

A. 1906.

By Mr. Palmer.

Q. And what was the arrangement for the second year you were there?

A. The same, all except the chickens. I was going to put out the potatoes and he was going to give me one-third of the potatoes for the chickens.

10 Q. And you were to be paid wages, get a share of the poultry, potatoes and house rent?

A. Yes, sir.

Q. And firewood?

A. Yes, sir;

Q. That was the second year?

A. Yes, sir.

Q. And it was in the arrangement you were to move at three days' notice?

A. No, sir.

20 Q. What arrangement was made about that?

A. There was no arrangement.

Q. None whatever?

A. No, sir.

Q. Were you paid your wages?

A. No, sir; not all of them.

Q. Weren't you \$15 ahead of your wages when you were put out?

A. No, sir.

Q. You never did?

30 A. No, sir.

Q. You never got any wages ahead of time?

A. No, sir.

Q. Never in the time that you were there?

A. No, sir.

Q. Do you know William Jones of Medford?

A. Yes, sir.

Q. Did you tell Mr. William Jones that Mr. Rogers had not paid you your wages?

A. Yes, sir; I think I did.

Q. And you borrowed \$25 from him, didn't you?

A. \$25 of Mr. Jones?

Q. Yes.

A. No, sir.

Q. Did you borrow any money of him?

A. No, sir.

10

Q. Did you borrow any money from anybody and tell them that Mr. Rogers hadn't paid you your wages?

Mr. Davis. I object to that. He must be confronted with the person.

The Court. Make it a little more specific, Mr. Palmer.

Q. Did you tell Mr. Jones that Mr. Rogers hadn't 20 paid you your wages?

Mr. Davis. He has answered that question.

Mr. Palmer. I want him to answer it again.

A. Yes, sir; I told him and told several of them.

Q. And did you borrow \$25 from William Jones telling him that Mr. Rogers hadn't paid you your wages?

A. No, sir; I don't think I did.

30

Q. Well, don't you know?

A. No, sir; I don't think I did.

Q. Why did Mr. Rogers put you out this time?

Mr. Davis. That is objected to. He can't tell what was in Mr. Rogers' mind.

The Court. Well, if he disclosed it. The objection is overruled.

(Objection noted for defendant as ground of appeal.)

10

Q. Why did he put you out?

A. I couldn't tell you.

Q. Did he tell you?

A. No, sir; he came down and said he would give me three days to move.

Q. Did he give you notice?

A. Just word of mouth.

Q. That is all?

A. Yes, sir.

Q. Had you had any trouble with him before?

20

A. Some trouble one time.

Q. And what was that about?

A. About a pig.

Q. What about it?

A. The bargain was he was to keep my two pigs and one day he sold one to the butcher and bought two more and ordered me to move the pigs out of the pen.

Q. And did you have any trouble with him about a calf?

A. Yes, sir.

30

Q. You sold one calf off of the place?

A. Yes, sir. He told me when I needed milk to sell the calf.

Q. And what did you do after that?

A. He told me to go and get the calf and fetch it back.

Q. Did you do that?

A. No, sir.

Q. You did talk with him about the calf, did you not?

A. Not much of any talk.

Q. He told you you would have to move off of the place?

A. He gave me three days.

Q. And what did you say to him then?

A. Nothing at all. 10

Q. Didn't you tell him he was a god damned son of a bitch?

A. I told him if he would give me two weeks I would move. He said, "I will give you two days." My wife heard him too.

Q. How much notice did he give you?

A. Three days.

Q. Mr. Rogers owed you no money when you moved off of the place?

A. Yes, sir. 20

Q. Did he ever pay you?

A. No, sir; only we had a settlement.

Q. Has he ever paid you?

A. Only when we had the settlement.

Q. Has he ever paid you?

A. Yes, sir.

By Mr. Davis.

Q. Did you have a settlement? 30

A. Only what Mr. Budd had.

Q. And that included all of your account, did it not?

(Objected to. Objection overruled.)

Q. What did the settlement include?

(Objected to.)

Mr. Davis. He brought it out.

The Court. There is no use in bringing the other in. He said he got a settlement from his lawyer and out of Mr. Rogers. Do you want anything more than that?

10

Mr. Davis. All right, sir. I will submit to your Honor's ruling.

Mr. Palmer. I desire to move to strike out this testimony on the ground that it shows no existence of a tenancy. He was there as a servant and as a servant the master had a right to eject him from the premises.

The Court. Do you mean to say as a matter of law  
20 that a man can take forcible possession of property?

Mr. Palmer. Yes, sir.

The Court. The answer may be that he put him out during the term.

Mr. Palmer. But he had no term as a servant.

The Court. But during his term as employee the  
30 master took forcible possession.

Mr. Palmer. He has a right to sue the landlord if the relation of landlord and tenant exists. That does not exist in this case. He was merely there as a servant. There is a distinction, you see, that when a man employs

—as lots of people in Burlington County do—servants to work on farms and gives them a house as part of their wages, then if for any reason the employer is justified in dispensing with the services of his employee he then may take possession of the house his servant is occupying.

Mr. Davis. We are not trying that action. We are trying the fact that this story was reported to Mr. Thompson.

10

Mr. Palmer. If that is so it has no relevancy whatsoever.

(Objection noted for plaintiff as ground of appeal.)

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MRS. ALICE WORRELL, sworn for defendant.

Direct Examination by Mr. Davis.

20

Q. You are the wife of Mr. Worrell who was just on the stand?

A. Yes, sir.

The Court. Can she say any more than the husband said?

Mr. Davis. Simply to corroborate the husband.

30

The Court. Does she know any more than the husband said?

Mr. Davis. I don't know that she does.

Q. You lived in Mr. Rogers' house?

A. Yes, sir.

Q. What kind of weather was it when he came there?

A. Well, snow on the ground.

Q. Now tell us what happened.

A. Well, a good bit happened.

Q. Well, go ahead and tell us about it. Did Mr. Rogers come to the house?

10 A. Yes, sir.

Q. Who was with him?

A. A constable.

Q. Mr. Kline?

A. Yes, sir.

Q. Anybody else?

A. No, sir; I don't think so.

Q. Now what happened?

A. They knocked the door in and came in.

Q. What did they knock it down with?

20 A. They knocked it down with a rail.

By the Court.

Q. Was the door locked?

A. Yes, sir.

By Mr. Davis.

Q. Then what did he do?

30 A. He started to move out the things.

Q. Did he do it?

A. Yes, sir;

Q. And where did he put them?

A. Out in the lane.

Q. Did you have your dinner on?

- A. Yes, sir.  
 Q. What became of that?  
 A. Took that out and put it—  
 Q. Put it where?  
 A. With the rest of the things.  
 Q. In the snow?  
 A. Yes, sir.

By the Court.

10

Q. Do you know whether your husband's year was up when that happened?

A. No, sir; my husband's year was up on the 25th of March.

- Q. Had he been employed for a year?  
 A. Yes, sir.

Cross Examination.

By Mr. Palmer.

20

- Q. How do you know it?  
 A. Because I know it.  
 Q. How do you know it?  
 A. Well, that is the way we hired, by the year.

By the Court.

Q. Did you hear the bargain made?

A. I didn't hear the first one. I heard the last  
 one.

- Q. What was it for, how long?  
 A. It was for a year.

30

By Mr. Palmer.

Q. Well, when was that made?

A. Well, it was talked of on Sunday. It wasn't made on Sunday.

Q. When was it made?

A. I don't remember.

Q. What is that?

A. I don't remember. It was some time after that

10 Q. You were there when it was made?

A. No, I wasn't there when they had their regular settlement. I was there when they talked about the change in the potatoes and the chickens.

Q. You were not there when it was made?

A. No, sir.

Mr. Palmer. I ask that it be stricken from the record.

20 By the Court.

Q. What did you hear about the term?

The Court. You have to take the whole testimony. She wasn't there at first, though she was there the second time.

Mr. Palmer. The second year she said she heard the bargain between her husband and Mr. Rogers.

30

Q. Did you hear it?

A. Mr. Rogers came down and said that he couldn't give us—

Mr. Palmer. I object. This testimony is a preliminary arrangement or bargain.

The Court. The objection is overruled. They subsequently decided on it.

(Exception noted for plaintiff as ground of appeal)

Re-Direct Examination.

10

By Mr. Davis.

Q. Go ahead. Tell his Honor.

A. He said he couldn't have the chickens, they destroyed so much around the house, and we asked him what he would give us, we said we didn't think it was enough, and he said he would give us one-third of the potatoes instead of the chickens.

Q. And how much per week or month? How was that fixed?

20

A. He was hired by the year and paid by the week.

By the Court.

Q. When was his year up?

A. The 25th of March.

By Mr. Davis.

30

Q. Was it during that year that you were put out?

A. That was the last of the year.

Q. It was during the year you heard this bargain talked over you were put out?

A. Yes, sir.

Q. And now afterwards during the year did your husband go by or in accordance with this agreement that you heard or not?

(Objected to.)

The Court. Does she know?

10 Q. Do you know?  
A. I don't understand it.

The Court. She don't know about that.

Q. I will ask you. Now this agreement provided so much each week to be paid each week and so much potatoes?

A. We got just a sum of money a week.

Q. And the potatoes?

A. Yes.

20

Re-cross Examination.

By Mr. Palmer.

Q. Now on this Sunday you heard it talked about, they didn't make the agreement that day, did they?

A. No, I guess not.

Q. Well, don't you know?

A. I don't remember, it has been so long ago now.

30 Q. You don't remember much about it now?

A. I remember enough about it.

Q. Do you remember about the agreement?

A. I know what we was to get.

Q. You know what was talked about that Sunday?

A. Yes, sir.

Q. And your husband and Mr. Rogers consummated that agreement later; that is true, isn't it?

A. Yes, sir.

Q. And you were not there at the later conversation?

A. No.

Mr. Palmer. I ask that this whole testimony as to the agreement be stricken from the record.

10

Mr. Davis. I want to ask a question or two.

By Mr. Davis.

Q. What was said on this Sunday as to when they were finally to agree on it, if anything?

A. I told you what was said. He came down and said that he couldn't allow us for the chickens.

Q. You said awhile ago that that wasn't the last talk.

20

A. Yes, sir; this was the last talk. He just came down and said, "You people are going to stay on? I want you people to stay on." And we said yes and he said, "I can't give you the chickens, but I will give you one-third of the potatoes."

Q. And what did you mean awhile ago that the agreement wasn't made Sunday and then that it was made Sunday?

A. He said, "We will talk about it later on."

30

By the Court.

Q. You were to stay on under the same terms except the chickens?

A. Yes, sir; stay on in the same way.

By Mr. Davis.

Q. Now you don't know whether there was any talk afterwards or not?

A. No, sir; only what they had outdoors.

By the Court.

Q. You were not present?

10 A. No, sir.

By Mr. Davis.

Q. As a matter of fact your husband received pay and compensation according to the terms you heard them discuss on this Sunday?

Mr. Palmer. I ask the testimony be stricken from the record as to the bargain for the second year.

20

The Court. The witness overheard this conversation between Mr. Rogers and her husband about staying on on this Sunday. That is admissible. It throws light on the period of time that he was to remain and that is all. A bargain made on Sunday is void under the law, of course, but, nevertheless, it may throw light on the period of time.

(Objection noted for plaintiff as ground of appeal.)

30 Mr. Davis. We have a number of witnesses who are merely cumulative and we have just decided not to take your Honor's time on this cumulative evidence and we will rest.

---

DEFENDANT RESTS.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

GEORGE ATKINSON, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. Where do you live, Mr. Atkinson?

A. At Pemberton.

10

Q. And where did you live in 1907?

A. At Tabernacle.

Q. Do you know Frank Cohen?

A. Yes, sir; I know of him.

Q. And did you have a horse trade with him in 1907?

A. Yes, sir.

Q. Whereabouts?

A. In Medford.

Q. On the street in Medford?

20

A. Yes, sir.

Mr. Davis. We object to this testimony, may it please the court, and we object to it for this reason—

The Court. You are not in time. Proceed. Wait until some questions are asked. These are preliminary questions.

Q. Did you own a sorrel horse at that time with two white feet and two white marks on its sides?

30

A. Yes, sir.

(Objected to.)

The Court. What is the purpose?

Mr. Palmer. To show that the story told by these two or three men on the stand is not correct and the truth or falsity of their statement is affected by it. This question is material.

The Court. You plead justification?

10 Mr. Davis. The purpose of this testimony was stated very distinctly. This was offered for the purpose of showing an honest belief.

The Court. In your answer you set up justification and that means that you undertake to prove the truth of the matter, of course. Upon that theory it is admissible. An exception is allowed.

(Objection noted for defendant as ground of  
20 appeal.)

(Question repeated.)

A. Yes, sir.

Q. Did you trade that horse to Mr. Cohen?

A. Yes, sir.

Q. And what did you trade it for?

A. I traded it for a black mare.

Q. How long did you own the horse that you  
30 traded to Mr. Cohen?

A. Well, as near as I can tell about six years.

Q. Prior to the time you traded with Mr. Cohen or before you traded with Mr. Cohen?

A. Yes, sir.

Q. You had owned that horse before that?

A. Six years; yes, sir.

Q. And where did you live during that six years?

A. Tabernacle.

Q. And do you know who owned the horse that you bought?

A. Yes, sir.

Q. And who?

A. Mr. Giffin owned him for four years and Mr. Ed Bakley owned him for four years.

Q. And who did you buy the horse from? 10

A. Monroe Giffin.

Q. And where does he live?

A. Between Vincentown and Red Lion.

Q. And had you seen the horse while Mr. Giffin had him?

A. Yes, sir.

Q. And had you seen the horse while Mr. Bakley owned him?

A. Yes, sir.

Q. And how long before you bought the horse had you known him? 20

A. All the time Mr. Bakley owned him.

Q. For about how many years?

A. About five years anyway.

Q. And at the time you traded with Mr. Cohen you had owned the horse six years yourself?

A. Yes, sir.

Q. About six years?

A. Yes, sir.

30

Cross Examination.

By Mr. Davis.

Q. When did Monroe Giffin come to Burlington County?

A. I couldn't tell you. I couldn't answer that question. I just forget.

Q. Didn't he move there about 1905?

A. I couldn't say just the time.

Q. When did you get this horse?

A. I bought this horse about—I don't know, about six years before that.

Q. You owned him about six years?

A. Yes, sir.

10 Q. And you say you got him from Monroe Giffin?

A. Monroe Giffin; yes, sir.

Q. And do you know when Monroe Giffin came to Burlington County?

A. I don't just remember.

Q. It is a fact that Monroe Giffin came to Burlington County from the west?

A. I couldn't just say.

Q. You know that he hasn't always lived here?

A. Yes, sir.

20 Q. And you were born in that neighborhood around there?

A. Pretty close there.

Q. And your father owns a farm almost adjoining Monroe Giffin's?

A. Yes, sir.

Q. And you were raised on that farm?

A. Not altogether.

Q. The latter part of your young manhood?

A. Yes, sir.

30 Q. And you know Monroe Giffin hadn't lived there so very long?

A. Not so awful long.

Q. And when he came there he came from Indiana, didn't he, or from the west?

A. No, sir.

Q. Do you know when he came there?

A. No, sir.

Q. How long have you been married?

Mr. Palmer. I object to that as incompetent, immaterial and not cross-examination.

Mr. Davis. Merely as fixing the time.

(Objection overruled.)

10

(Objection noted for plaintiff as ground of appeal.)

A. About fourteen years.

Q. Where were you living in 1906?

A. Where was I living in 1906?

Q. Yes.

A. I was living at Red Lion.

Q. And in 1905?

A. At Red Lion.

20

Q. And who occupied the farm where Monroe Giffin now lives in 1905?

A. In 1905?

Q. Yes.

A. I don't remember whether Mr. Giffin lived there or not. He lived there when I bought the horse from him.

Q. I understand. In 1905 who lived there?

A. I am not sure, I think Mr. Giffin.

Q. Where were you living then?

30

A. Red Lion.

Q. Whereabouts in Red Lion?

A. With my father.

Q. Did you live with your father?

A. On the farm.

By Mr. Palmer.

Q. Mr. Atkinson, you said you had known this horse about six years?

A. About six years.

Q. You mean that was six years when you traded him or you had owned him six years before you traded him?

10

A. Six years before I traded him.

By Mr. Davis.

Q. You traded him when?

A. When I traded him?

Q. Yes.

A. About five years ago.

Q. So that five years ago would be 1910 or 1911, is that right?

A. Somewheres around five years ago I traded  
20 him; yes, sir.

Q. Then you owned him for six years before that?

A. Yes, sir.

Q. And that would be 1905, wouldn't it, 1904 or 1905 you bought the horse?

A. I don't just remember when I bought him.

Q. You ought to remember. You said you had the horse six years.

A. Somewheres around six years; yes, sir.

Q. And that would bring it about 1904 or 1905,  
30 wouldn't it?

A. It was after that I bought him.

Q. You didn't have him six years then?

A. Somewheres around six years.

Q. What year did you buy him?

A. I don't just remember.

Q. You don't remember when you bought him?

A. I bought him somewheres around between five and six years ago.

Q. You bought him between five or six years ago?

A. When I sold him.

Q. I am asking you when did you buy him?

A. Somewheres around eleven years ago when I first bought it.

Q. And eleven years would bring it to 1904 or 1905, wouldn't it? 10

A. Yes, sir.

Q. The latter part of 1904 or the early part of 1905?

A. Yes, sir.

Q. Now you say that you knew that Monroe Giffin had owned him for two years?

A. I said I didn't know how long. He didn't own him long.

Q. Didn't you in answer to Mr. Palmer's question say that Monroe Giffin owned the horse for two years before? 20

A. No, sir.

Q. And that you owned him six years and that Ed Bakley owned him two years?

A. No, sir; I didn't say Monroe Giffin owned him two years.

Q. How long did he own him?

A. He didn't own him a year.

Q. Did you say that he owned him three years?

A. Who? 30

Q. Monroe Giffin.

A. No, sir.

Q. You say now he owned him a year?

A. No, sir; I said he didn't own him a year.

Q. How long did he own him?

A. I couldn't answer that question.

Q. Your memory seems to fail you when I cross-examine you. You were very bright when Mr. Palmer examined you.

A. I didn't say two years or three years.

By the Court.

Q. Mr. Atkinson, did you not say in your examination in chief that Monroe Giffin owned the horse for three years?

A. No, sir; I did not.

By Mr. Palmer.

Q. Did you ever trade any other horse with Frank Cohen?

A. No, sir.

20

EDWARD BAKLEY, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. Where do you live, Mr. Bakley?

A. Near Vincenttown.

Q. What is your business?

A. I farm a little and thresh and bale.

30 Q. Did you ever own a sorrel horse with two white feet and two white spots on its side?

A. Yes, sir.

Q. And when did you own that horse?

A. I couldn't give you the dates.

Q. And how long did you own him?

A. Well, I wouldn't say positively, somewhere around five years.

Q. To whom did you sell him?

A. Monroe Giffin.

Q. And do you know when?

A. No, sir; I couldn't give the date.

Q. Nowhere near the time?

A. No, sir.

Q. And do you know to whom Mr. Giffin sold him? 10

A. I think Mr. Atkinson had him next, Mr. George Atkinson.

Q. The gentleman who was just on the stand?

A. Yes.

Q. And where did you get the horse?

A. I bought the horse off of Ben Powell at Magnolia.

Q. About when?

A. I don't know that.

Q. And you owned him how long? 20

A. About five years.

Q. And then sold him to Mr. Giffin?

A. Yes, sir.

Q. And do you know that Mr. Atkinson was the next possessor of the horse?

A. Yes, sir.

Q. The same horse that you had owned?

A. Yes, sir.

Cross Examination. 30

By Mr. Davis.

Q. Ed, do you know where Giffin came from when he came to Burlington County?

A. No, sir.

Q. Do you not remember when he came there?

A. No, sir; I don't remember that.

Q. It was after you were married?

A. Yes, sir.

Q. And when were you married?

A. I have been married eighteen years.

Q. To refresh your memory, wasn't it in 1905, the  
latter part of that year, that Mr. Giffin came to Vincen-  
10 town?

A. Well, I wouldn't say, Mr. Davis. I don't know  
positively.

Q. One minute. How long after Giffin went there  
was it before you bought the horse or sold the horse to  
Giffin?

A. I couldn't tell you that.

Q. How long have you owned the farm on which  
you now live?

A. Somewheres about fifteen years, I think.

20 Q. You lived there?

A. Yes, sir.

Q. When you sold the horse?

A. Yes, sir.

Q. Were you living there when you bought the  
horse?

A. Yes, sir.

Q. And how long had you been on the present place  
when you bought the horse?

A. Not so long.

30 Q. Not so very long?

A. As soon as I started in business myself I bought  
the horse.

Q. What do you mean by not long?

A. I think about a year, somewheres around that.

Q. You have been there fifteen years?

A. Yes, sir.

Q. So that was about 1901 you bought the horse, about fourteen years ago?

A. Well, I wouldn't say positively.

Q. Well, that would be about right, that was your best judgment?

A. I couldn't say.

Q. You kept the horse for five years?

A. I think it was around five years?

Q. And that brings it in 1906 you sold this horse <sup>10</sup> to Monroe Giffin?

A. Around that time.

Q. That is your best recollection. You had the horse about five years and that would bring it around 1906 when you sold the horse to Monroe Giffin, wouldn't it?

A. Yes, sir.

Q. And do you know how long Monroe Giffin had the horse?

A. I don't know. About a year, I don't think a <sup>20</sup> year.

Q. And do you know how long Atkinson had the horse?

A. No, sir; I don't know.

---

MILTON ALLEN, sworn for plaintiff.

Direct Examination by Mr. Palmer.

30

Q. Where do you live, Mr. Allen?

A. At the present time at Mr. Horner's place, say about a mile from Mount Holly.

Q. You formerly lived in Medford?

A. Yes, sir.

Q. Were you the justice of the peace at Medford?

A. Yes, sir.

Q. And have you your docket with you?

A. I have.

Q. And do you recall a judgment being obtained by Mr. Rogers against James Parks and Andrew Parks?

A. The two Parks; yes, sir.

Q. Will you turn to that in your book.

10

Mr. Palmer. This witness was on the stand yesterday and denied that any such judgment was ever obtained against him.

Q. Will you read your record?

A. The whole of it?

By Mr. Davis.

20 Q. Who were the parties to it, Mr. Allen?

A. Andrew J. Parks, Jr., and Andrew Parks, Sr.,  
(Reads.)

COURT FOR THE TRIAL OF SMALL CAUSES.

EDWIN E. ROGERS,

Plaintiff,

vs.

ANDREW J. PARKS, SR., and

30 ANDREW PARKS, JR.

Defendants.

ACTION ON  
CONTRACT.

Demand \$100. Summons was served on the within Andrew J. Parks, Sr., and Andrew Parks, Jr., on March 23, 1912. Summons returnable at ten A. M. Copy of

the return and service of the within summons 11, 25, 1912, by attorney for the defendant and leaving defendant a copy of the same on the undersigned

Constable. Case called at ten A. M. the 11th month, the 30th. The plaintiff presented his state of demand upon oath proving that his claim was just and true. Judgment \$51.50, interest \$16.85 and constables' costs."

The Court. Is it necessary to go over that? You 10 have the record. There is no objection.

Mr. Palmer. I want the record of the judgment in.

The Witness. "The Justice's costs \$2.15. The total demand and claim. The defendants appeared and were sworn and gave their evidence in the case. They acknowledged the note was signed by them and witnessed by J. W. Griffith. The Justice having heard the case gave judgment for the face of the note \$51.50, interest 20 and costs \$21.40, total \$72.90."

By Mr. Davis.

Q. That judgment has not been satisfied, has it?

A. Not to my knowledge.

Q. That is what I thought. That is all.

---

EDWIN D. ROGERS, recalled for plaintiff.

30

Direct Examination by Mr. Davis.

Q. Mr. Rogers, do you recall Mr. Kline bringing a horse to your place?

A. Yes, sir.

Q. About when was that?

A. 1906, in the latter part of 1906.

Q. What kind of a horse was it?

A. Well, it was an old horse.

Q. How old?

A. Well, I can't say now. I should judge twenty or twenty-five years old.

Q. And what was his color?

10 A. He was a dark sorrel with two white hind feet.

Q. And did you have a conversation with Mr. Kline?

A. I did.

Q. You were in business at Medford at that time, were you not?

A. Yes, sir.

Q. And the horse was brought to your place of business?

A. Yes, sir.

20 Q. And what was your conversation with Mr. Kline when he had the horse there?

A. Mr. Kline wanted to sell it to me. I told him it wasn't worth anything and I wouldn't buy it. He stayed around for quite awhile and I told him I couldn't do anything with the horse. Finally I says, "If you want me to take it to town I think I can get \$8 for it."

Q. And were you taking horses to Philadelphia to sell at that time?

A. Yes, sir; quite frequently.

30 Q. Was that part of your business?

A. Yes, sir.

Q. What did Mr. Kline say to that?

A. Well, Kline thought it was the best thing to do.

Q. And did you take the horse?

A. I did, sent him down.

Q. To Philadelphia?

A. Yes, sir.

Q. What happened to the horse?

A. The horse died.

Q. Was he sold in Philadelphia?

A. No, sir.

Q. When did you see Mr. Kline next?

A. I think he sent Mr. Jones there to get the money. It was quite a little while after that before I saw Mr. Kline again. 10

Q. And what did Mr. Kline say when he came to your place?

A. He came in and demanded the money for the horse. I told him the horse died.

Q. What did he say?

A. He said I guaranteed him \$8 for the horse if I got him to town alive and I didn't think I guaranteed it, not at that rate, at least. He came there, at that time he was drinking quite a little, but I think Mr. Kline has reformed since he went away. 20

Q. Was he intoxicated at that time?

A. When he came back first he only had a few drinks and when he came back the next time he was pretty well jiggered. He was loud in his conversation and I had people there trying to do business with me and there was only one thing to do, to settle with Mr. Kline or to get a constable. I tried to get him out of there—I had to do something with him—and I called him in the office and told him I would settle with him and not to bother me any more. 30

Q. Did Mr. Kline at that time tell you he had seen the horse alive?

A. I don't remember whether he did or not on that day.

Q. Did you hear of that afterwards or did he tell you that?

A. I couldn't tell you that, Mr. Palmer.

Q. What did you say to Mr. Kline when he came into the office?

A. The first time he came in?

Q. Or did you settle with him this last time?

A. I called him in and told him I would pay him \$7.50, the price he claimed for his horse, less 50 cents.

10 Q. Did you give him a check?

A. I did.

Q. And that is the check you gave him, this check dated January 12, 1917, payable to the order of Walter Kline?

A. Yes, sir.

Mr. Palmer. I offer the check.

The Court. It will be admitted.

20

(Check marked Exhibit P 3.)

Q. Did you hear anything more about that horse after that time?

(Objected to.)

A. No, sir.

30 Q. And did Mr. Kline ever come back after the day that you gave him this check in regard to the matter?

A. No, sir.

Q. He never has been to your place since?

A. No, sir.

Q. Or said a word to you about it?

A. No, sir.

Q. Now, Mr. Rogers, about some rye that was claimed to be cut on a farm belonging to you

A. Yes, sir.

Q. You owned that farm?

A. Yes, sir.

Q. And to whom was it rented?

A. Mr Lofland, my step-father.

Q. Under a lease?

A. Yes, sir.

10

Q. And Mr. Lofland's time was up on the farm?

A. Yes, sir.

Q. Was there any argument about the ownership of the rye prior to his leaving?

A. No, sir.

Q. After he left what happened?

A. It was in the lease that he was to have sowed seven acres of rye. So when it came time to cut the rye Mr. Lofland had sowed more than seven acres, he had sowed in the neighborhood of twenty-seven acres. And I understood that he was going to try to take this rye. I consulted Mr Hillman.

Q. Mr. George M. Hillman?

A. Yes, sir.

Q. A member of this bar?

A. Yes, sir; and I acted under his advice.

Q. What did you do?

A. I started to cut the rye.

Q. Did Mr. Lofland also cut some rye?

A. Yes, sir.

30

Q. And took it away with him?

A. Yes, sir.

Q. And the trouble was over the interpretation of the lease?

A. Yes, sir.

Q. Concerning which there was a lawsuit afterwards?

A. Yes, sir.

Q. Now do you recall meeting the defendant Mr. Thompson and his father on the road one night and having a conversation in reference to some work?

A. I do.

Q. About when was that?

A. 1910 or 1911, I think 1910.

10 Q. Now prior to that time had Mr. Thompson done any work for you, that is, Vinton N. Thompson, the father of the defendant, prior to the conversation?

A. Yes, sir.

Q. Tell us about when and how that work came to be done.

A. Mr. Worrell got him to sow some grass seed when he was working on the farm for me and Mr. Worrell planted some sugar corn against my knowledge and he wanted to haul it to town and he got Mr. Thompson to sow some grass seed in my absence. After he  
20 had been on the farm some time, I don't know how long, Mr. Thompson threw it up to me, about this grass seed, that the elder Mr. Thompson told him he had sowed grass seed half a day. I asked him how much it was worth. He said seventy-five cents and I paid him. Then along in 1910 I had a lot of rye, more than the barn would hold, so I put this rye in a barn in Medford that I had there and it took a number of teams, altogether we had seventeen loads, I think it was. I went down to Mr.  
30 Thompson's to borrow his hay shelvings to load this rye. I asked him to lend it and he said, "Yes, You have done a lot for me," he says, "and I don't want to lend you only the shelvings, I will bring my team up, because they haven't had much to do." I said, "I don't want a team, I have a team but I want a wagon." I had one wagon

and it wasn't any good and I wanted another, and he insisted in helping me out, which he did.

Q. What did he do?

A. He hauled rye for me, he hauled two or three loads of rye to Medford.

Q. Now you were living neighbors at that time?

A. Yes, sir.

Q. And was it customary for you to exchange work back and forth?

A. It wasn't customary. Mr. Thompson borrowed 10 lots of stuff from me. I never asked him for anything before. I think I borrowed a wagon from him one time previous to that.

Q. Now was their team busy at that time?

A. No, sir.

Q. And did he ask you at that time for any money for doing any carting of the rye?

A. No, sir; At that time?

Q. Yes.

A. He offered it to me freely. 20

Q. And how long after that actually occurred was it that you first heard that he wanted some money for it?

A. When he made this demand on the road.

K. And that was how long after he had carted the rye?

A. That was that fall.

Q. Now what was said?

A. He asked me to send men down there afterwards to help him with his oats. I had a fire in 1905 and it burned down all my buildings and I had some men 30 working for me after that fire, cleaning up, in the summer, and I got behind in the work. Mr. Thompson demanded men to help haul oats. I said, "I don't think I can let you have the men." I said, "I need help, instead of giving help away." Well, it didn't make any differ-

ence, he must have the men. I sent a man down and he helped pitch oats two half days for Mr. Thompson. A few days after that, after he hauled the rye, he came up to the yard and asked me what he owed me. I says, "You don't owe me anything, Mr. Thompson." I says, "You don't owe me anything." I says, "You pay your bills, but you can't pay me anything as a neighbor." But he insisted on it and he reached down in his shot bag and gave me a silver half dollar and I took it, because he  
 10 insisted, but I thought it was a pretty poor principle of him to do it, for he had paid me that twice, if he claimed I owed him for hauling this rye.

Q. Now, Mr. Rogers, about the Worrell incident When did Mr. Worrell go on your place?

A. In March, 1906.

Q. And what was the arrangement made between you and him in reference to the work on this place?

A. He was working for me by the week.

Q. How much a week?

20 A. \$6 a week.

Q. And what else was he to receive?

A. I was to give him his house rent and his firewood and his milk, what milk he wanted. He was to give me one-half of the butter, if they made any butter, and one-third of the chickens.

Q. That was the first year that he was on the place?

A. Yes, sir.

Q. Was the contract for a year or not?

30 A. No, sir.

Q. Was there anything provided in that arrangement about notice upon which he was to leave?

A. Yes, sir. I says to Mr. Worrell when I hired him in February, I says, "Everything is all right except the terms of service." I says, "When I hire a man I

want him to work for me and when I don't want him I want him to leave. When he don't want to work for me I want him to quit."

Q. What did he say?

A. I was to give him three days' notice. I said I would give him three days' notice. He said, "That suits me. That is the way I like to work."

Q. Was there any change made later as to the potatoes and chickens?

A. I was to give him ten per cent. of the gross 10 proceeds and the potatoes in lieu of chickens.

Q. Was there any other change?

A. No, sir; no other change in the arrangement.

Q. And did you also pay him wages?

A. Yes, sir.

Q. At the time that he left the place did you owe him any money for wages?

A. That week I owed him two or three dollars and I offered it to him when he went away.

Q. Would he take it? .

A. No, sir. 20

Q. Was he ever ahead of his wages, that is, paid in advance?

A. Yes, sir.

Q. Seldom or frequently?

A. Why, the last fall and winter that he worked for me.

Q. Did he ask you for money in advance?

A. Yes, sir;

Q. And did you give it to him? 30

A. Yes, sir.

Q. And how far ahead on his wages was he at one time?

A. He has had \$15, I think it was. \$15 was the most.

Q. Now what were the circumstances that led up to your removing him from the place?

A. Why, after he had borrowed some money I heard that he was telling around that I wasn't paying him any wages and I was behind in his wages and I told him about it and he said it wasn't so. I wanted him to go down and face the man and he wouldn't do it. He got ugly about it and he wanted his wages. He wanted this money and his wages both. I told him it was a poor  
10 plan to try to have the penny and the cake both. I told him I wouldn't pay him that Saturday night and he got rather angry about it. One thing led on to another. I had a cow on the farm and that previous spring she came fresh and I thought as I had eighteen cows and he had the benefit from the milk and butter from this bunch that was sufficient and this cow was the only cow I had there during the last part of the term that he was with me. This cow was a cow that I was keeping to wait until she had a calf so that I might sell her and  
20 buy another cow and he sold the calf away from the cow.

Q. Did you know that he was going to do it?

A. No, sir.

Q. Had he a right to do that as part of his job?

A. Not at all. He was only working for me.

Q. Then what happened?

A. He gave the money to a man to give to me.

Q. He didn't bring it to you himself?

A. He didn't bring it to me himself. I sent the  
30 money back and the next day he came up. I asked him what was his idea in selling the calf when he knew I wanted to keep the calf and sell the cow.

Q. What did he say?

A. Do you want to know the exact words?

Q. Yes.

A. He said, "You are nothing but a god damned dirty shit."

Q. What happened?

A. I said, "Lorrie, you will have to move. I don't stand that kind of talk from you. I don't give it to you."

Q. What did he say?

A. He said he wouldn't move.

Q. Then what did you do?

A. I went over to Mr. Sam Shinn's.

Q. What did you do?

10

A. I got his advice.

Q. What did you do?

A. I went down the next day and gave him verbal notice to leave in a week.

Q. A verbal notice?

A. Yes, sir.

Q. What did he say?

A. He said he wouldn't move.

Q. Did he say if he had two weeks' notice he would move?

20

A. I don't remember it at that time.

Q. Who was with you at that time?

A. Mr. Shonts, the man who worked for me.

Q. Did he move within two weeks?

A. No, sir.

Q. What did you do?

A. It came time to move and he hadn't made any preparation and I called Mr. Shinn up on the phone that morning and asked him what to do and he says—

30

(Objected to.)

Q. Don't tell what Mr. Shinn advised you, but as the result of that advice what did you do?

A. I went down and opened the house.

- Q. What did you do?  
A. Removed his goods.  
Q. And what did you do?  
A. I broke a little piece off the top of the organ.  
Q. Any other damage done?  
A. Not to my knowledge.  
Q. How carefully did you take up the carpets?  
A. As carefully as I would my own carpets.  
Q. You didn't pull the carpets up?  
10 A. The kitchen carpet I pulled up. It was in pretty bad shape. I didn't know when I undertook to take it up it was so bad.  
Q. Where did you put his things?  
A. Out in the road.  
Q. Did you offer to take them anywhere?  
A. No, sir; I didn't. I had men who did.  
Q. Was that offer by your instruction?  
A. Yes, sir.  
Q. To do what?  
20 A. To take them anywheres he said to take them.  
Q. What did he say?  
A. He said to leave them out there in the road, he didn't want anything to do with them.  
Q. That is what he said?  
A. That is what he said; yes, sir.  
Q. Now do you remember selling a heifer to Vinton N. Thompson?  
A. Yes, sir.  
Q. How did that come about?  
30 A. Mr. Thompson and I was at a farm sale and there was some heifers sold there and I bought three heifers. One I gave \$37 or \$38 for and Mr. Thompson came there and asked to sell it to him at the price I gave at the sale.  
Q. That is, at the sale?

A. No, sir; after I had gotten him.

Q. He had been at the sale himself?

A. Yes, sir; and I brought the heifer home and it took two and a half days to get home. I didn't want to sell the heifer; she looked to me like she would make money. And Mr. Thompson wanted me to sell her. I told him what it cost me to get her home and he wanted her at the price I gave that day and finally I sold it to him.

Q. Did you warrant the heifer to be all right? <sup>10</sup>  
Was there any warrant as to her?

A. No, sir; I had no reason to warrant her. He had as much right as I had to buy her at the sale.

Q. He saw the heifer at the sale?

A. Yes, sir.

Q. And also at your place?

A. Yes, sir; he was there three times.

Q. Did you sell it to him?

A. Yes, sir.

Q. How long did he keep it?

20

A. About twenty-four hours.

Q. And what did he say?

A. He called me in and said the heifer was not sound but he didn't want to get out of paying the money. I asked him what was the matter with the heifer. I says, "If there is anything the matter with her I will take her back. I didn't want you to have her anyway," and I think I gave him the same check back.

Q. It wasn't used by you?

A. I don't think so.

30

Q. That was the same check he gave you?

A. Yes, sir. The first heifer looked worth the money and he kept her. That was previous to this time. She was bought in the same way.

Q. Did Vinton N. Thompson ever dig any potatoes for you and cart them to Medford?

A. Yes, sir. It was done without my knowledge. It was while Mr. Worrell worked there.

Q. Was that done before that?

A. I received the benefit. Mr. Worrell gave the instructions to do it.

Q. You didn't ask him to do it?

A. No, sir.

10 Q. Did Mr. Thompson ever ask you for pay for that work?

A. No, sir. My men had dug potatoes in return for it, though.

Q. Now, Mr. Rogers, come to the time of the bankruptcy of Samuel N. Lamb and the trustee. Did Mr. Lamb come to you in reference to his financial condition, as to the condition his business was in?

A. Previous to the time that he went in bankruptcy?

20 Q. Yes.

A. Yes, sir.

Q. How long before?

A. About three or four days.

Q. And had you been for a period of two or three years the financial and business adviser of Mr. Lamb?

A. I had not.

Q. And when Mr. Lamb came to you what did you do?

30 A. Mr. Lamb came to me to write a list for him and I wrote the list and he said he wanted to take up some other business and for me to come up the next morning. I went up the next morning to see him about this other business. He explained the difficulties he was in and I was very much surprised. I was very much surprised to hear that. I thought there would be a chance to

to get him out of it if he had the running of the farm. I thought then we could possibly realize some money out of the stock and that is what he wanted to do.

Q. Was that Mr. Lamb's own farm?

A. Yes, sir.

Q. And he also ran a business in Medford?

A. Yes, sir.

Q. And what kind of a business?

A. Groceries and meat.

Q. Go on. The farm was the matter with refer- 10  
ence to which you wrote the list?

A. Yes, sir. Mr. Garwood had a chattel mortgage on the stock, which I knew.

Q. Let me ask you right there, do you draw chattel mortgages and other mortgages for the farmers in your vicinity?

A. Yes, sir.

Q. You are a commissioner of deeds?

A. Yes, sir.

Q. And authorized to take the acknowledgments 20  
of such instruments?

A. Yes, sir.

Q. Now, then, go on with the story as to Garwood.

A. I thought it would be possible for me to buy the stock on the farm and have Mr. Garwood release the chattel mortgage, so that Mr. Lamb could possibly get himself out of this trouble, but when I came to find out that he had so many judgments and so few liquid assets that he could liquidate it was impossible to do it.

Q. Then what was done? 30

A. He went into bankruptcy.

Q. Now after he went into bankruptcy did you go to some of his creditors?

A. Yes, sir.

Q. They were people living in the vicinity of Medford?

A. Yes, sir.

Q. That knew you?

A. Yes, sir.

Q. And knew Mr. Lamb?

A. Yes, sir.

Q. And did you ask them to present their claims against the bankrupt estate?

10 A. I did.

Q. With the idea of having yourself elected as trustee?

A. Yes, sir.

Q. And it was agreeable to these creditors?

A. Yes, sir.

Q. And you obtained their names?

A. I did.

Q. Now you were present at a meeting of the Referee in Bankruptcy in my office on the 28th of December?

20 A. Yes, sir.

Q. And was there any statement made by him at that time to the effect that you had been a financial or business adviser of Mr. Lamb for a period of two years or more?

A. No, sir; there was not.

Q. You were a candidate for trustee?

A. Yes, sir.

Q. Of the Lamb estate?

A. Yes, sir.

30 Q. And it was at that meeting that the statements alleged in this case were made by Mr. Thompson?

A. Yes, sir.

Mr. Davis. I do not care to cross-examine at this time. I shall make a motion for a direction at the proper

time and then may I have the right to recall Mr. Rogers in case you do not grant this motion.

The Court. Well, to expedite the case you may do that.

---

WILLIAM JONES, sworn for plaintiff.

10

Direct Examination by Mr. Palmer.

Q. Where do you live, Mr. Jones?

A. Medford.

Q. Do you know Mr. Rogers?

A. Personally.

Q. And do you know Mr. Lorrie Worrell?

A. Yes, I guess so.

Q. And do you recall his coming to you at the time that he was living on Mr. Rogers' farm in reference to 20 borrowing some money?

A. Yes.

Q. Did he borrow some money from you?

A. Yes, sir.

Q. How much?

A. \$15.

Q. And what did he tell you if anything in reference to Mr. Rogers and his wages?

A. Well, now, he told me that he wanted to borrow \$15 and that he couldn't get the money of Mr. Rogers at 30 that time.

Mr. Davis. With leave to recall Mr. Jones if necessary I do not think I will cross-examine him.

MRS. HELEN D. ROGERS, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. You are the wife of Edwin D. Rogers?

Mr. Davis. What do you intend to prove by this witness?

10 Mr. Palmer. It deals with the Worrell incident.

The Court. About the \$15?

Q. Now, Mrs. Rogers, do you recall that Mr. and Mrs. Worrell went to live on your husband's farm?

A. Yes, sir.

Q. And were you present when the arrangement was made for that purpose?

A. Yes, sir.

20 Q. And where was that arrangement made?

A. Why, in our sitting room on Branch Street in Medford.

Q. And what were the terms that he was to get on the farm?

A. So much a week.

Q. How much a week?

A. I don't remember.

Q. What was said about what he was to have?

30 A. I don't remember. He was hired by the week and Lorrie said it suited him.

Q. Was he to have a house to live in?

A. Yes, sir; he was to have that.

Q. Now do you remember whether or not there was anything said at that time as to the notice that he was to have to leave the place?

A. Yes, there was a few days' notice. I don't remember just how many days it was.

Q. That was talked over between Mr. Rogers and Mr. Worrell?

A. Yes, sir.

Q. But it was agreed upon whatever the number was?

A. Yes, sir.

Q. And what did Mr. Worrell say about that matter?

10

A. He said that suited him.

Q. That is, that he should have this number of days to leave?

A. Yes, sir.

Q. Did you ever hear any other arrangement made between them?

A. No, sir.

Q. Were you present at the house on the day that Mr. Worrell's things were removed?

A. Yes, sir.

20

Q. Did you help take them out?

A. No, sir; I helped take some things out afterwards. We had a woman pack the dishes and we packed them in our barrels that we took our dishes out of.

Q. And were they carefully packed?

A. Yes, sir; they were packed with the paper my things came in.

Q. Was there anything broken you saw that day?

A. I didn't see anything broken more than Edwin said a piece off of the organ went off as it went out the door.

30

Q. Now do you recall the time when your husband asked Mr. Vinton N. Thompson for the use of his wagon and hay shelvings?

A. Yes, sir.

Q. What was said by Mr. Thompson at that time?

Mr. Davis. That you heard.

A. I was in the wagon when Mr. Rogers drove in there.

Q. And drove over to Mr. Thompson's place with him?

A. Yes, sir.

10 Q. What was said while you were over there?

A. Edwin asked him if he would lend him his hay shelvings and he said he would and he would let him have a team. Edwin said he didn't need the team and that he would send down a man to get the hay shelvings and he got it down and put it on the body of the wagon and he said he could have his team and wagon too.

Q. And Mr. Rogers at that time asked for the loan of it?

A. Yes, sir.

20 Q. And was anything said about paying for it?

A. No. Mr. Thompson said we had done a lot for him in our time and he would let us have it gladly.

Q. Do you remember an incident when Vinton N. Thompson paid your husband a half dollar?

A. Yes, sir.

Q. And do you recall that conversation?

A. I do.

Q. And what was that?

30 A. He said the men had come down there to help him with his oats.

Q. Whose men?

A. Edwin's men, Mr. Rogers.

Q. Yes.

A. He said he wanted to pay him for it. Edwin said he didn't want any pay for it, he let him go down as

a neighbor and Mr. Thompson said that he paid his bills. Edwin said that was all right and he put his hand in his bag and gave Edwin a dollar and Edwin took it. I was on the wagon when he did it.

Q. And do you know whether this was after the time that Mr. Thompson had carted the rye for Edwin?

A. It was some months after that.

Mr. Davis. No cross-examination, with the privilege of recalling the witness if necessary. 10

---

CHARLES GASKILL, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Mr. Davis. What is the offer in this case?

Mr. Palmer. The offer is as to a statement made 20 by Mr. Rogers to Mr. Worrell at the time of the removal of his goods from the place.

Mr. Davis. By whom?

Mr. Palmer. Mr. Rogers to Mr. Worrell.

Mr. Davis. That is a self-serving declaration.

Mr. Palmer. Mr. Worrell denied that the thing 30 was said at all.

The Court. Proceed.

Q. Mr. Gaskill, were you employed by Mr. Rogers

at the time and were you present at the removal of Mr. Worrell's goods?

A. Yes, sir.

Q. And were you told to tell Mr. Worrell anything with reference as to where these goods would be taken? What was to be done with them? What were you to do with them?

A. Mr. Rogers told me to tell him we would take them wherever he wanted them.

10 Q. Did you tell him that?

A. Yes, sir.

Q. And what did Mr. Worrell say?

A. He said, 'To hell with him.'

Q. That was as they were being moved out of the house?

A. Yes, sir.

Q. And where were the goods placed?

A. Out on the road.

Q. Were they moved carefully?

20 A. Yes, sir.

Q. Was there anything broken??

A. No, sir.

Cross Examination.

By Mr. Davis.

Q. You were there and helped move them out, didn't you?

A. Yes, sir.

30 Q. Mr. Rogers employed you to go and help move them out?

A. He didn't employ me. He asked me to help him as a neighbor.

Q. Worrell was also a neighbor?

A. I lived nearer Rogers than I did Worrell.

Q. I understand. There was snow on the ground at that time?

A. It wasn't so bad.

---

GARRISON FOSTER, sworn for plaintiff.

Direct Examination by Mr. Palmer.

10

Q. Mr. Foster, do you recall the day that Mr. Thompson sent a team to Mr. Rogers to help cart some rye?

A. Sent a team to Mr.—

Q. Mr. Thompson sent a team to Mr. Rogers?

A. Yes, sir.

Q. Who were you working for at that time?

A. Mr. Rogers.

Q. And do you know what time the team got there?

20

A. Why it didn't get there very early.

Q. Well, about what time?

A. I don't know just exactly. About nine o'clock, I guess, as near as I can tell; between eight and nine.

Q. Did you help load the wagon?

A. Yes, sir; I done all the loading, all the pitching.

Q. That is, you pitched the rye up on the wagon?

A. Yes, sir.

Q. And how many loads did Mr. Thompson's team cart?

30

A. I don't know just exactly how many I carted. I don't think it was over two or three.

Q. Were they large or small loads?

Q. They were not large loads like some of the rest,

because I loaded them for him and he said not to load them too big, so that I could make good time. So they wasn't as big as some of the others.

Q. Do you recollect Mr. Rogers asking you one day to go down and help Mr. Thompson in pitching some oats for him?

A. Yes, sir.

Q. Did you go?

A. No, sir.

10 Q. You were working for Mr. Rogers at that time?

A. Yes, sir.

Q. Did one of Mr. Rogers' men go?

A. Yes, sir.

Q. Who was it?

A. One of the hired men.

Q. Do you know his name?

A. I don't exactly know his name.

Mr. Davis. The same thing. I reserve the right to  
20 cross-examine.

---

GEORGE M. HILLMAN, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. You live at Moorestown?

A. Yes, sir.

30 Q. And you are a member of the bar of this State?

A. Yes, sir.

Q. Practicing in Mount Holly?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. Did you represent Mr. Rogers in a matter or a lawsuit over some grain upon his farm?

A. Yes, sir.

Q. And do you recollect when it was?

A. I can't give the exact date, no. It was several years ago.

Q. And what Mr. Rogers did that day, that was done under your instructions?

(Objected to.)

10

Q. Did you give Mr. Rogers any instructions as to his rights in that matter?

A. I did.

Q. And what were those instructions?

A. My instructions to him were to go and get twenty acres—I think it was twenty acres—a certain number of acres of rye, on his farm.

Q. Do you recollect the terms of the lease in reference to that matter?

20

A. Yes, sir.

Q. What were they?

A. The terms of the lease were that Mr. Lofland, the tenant, was to sow a certain specified number of acres in rye, which rye was to be the property of Mr. Rogers, and Mr. Lofland it appears had sowed more than the specified number and the question arose as to which twenty acres Mr. Rogers was entitled to. I advised him to go there and cut and take possession of twenty acres of rye.

30

Q. And did you know Mr. Rogers?

A. Yes, sir.

Q. And have you known him a number of years?

A. Yes, sir; fifteen or twenty years.

Q. And do you know of his work in clerking sales throughout the county?

A. Yes, sir.

Q. And do you know what his reputation is?

Mr. Davis. That is objected to as not rebuttal, as to his ability to conduct sales of that kind.

10 Mr. Palmer. That is one of our points, that we allege the plaintiff has been injured by a circulation of the stories that he was not straight and upright, that would affect his business in this line of work. He has a large amount of money to handle and it is an extensive business. If objection is made on the ground that it is not rebuttal I will ask to offer it as part of my case.

The Court. That cures it. You are trying to show that he has an official position, in a way?

20 Mr. Palmer. Yes.

Mr. Davis. But he has answered the interrogatories, in which he says he has no loss.

Mr. Palmer. You haven't offered the interrogatories.

Mr. Davis. I will offer them.

30 The Court. I will receive the testimony.

(Question repeated.)

A. Yes, it is very good.

Q. Has he conducted sales for you?

A. He has conducted sales in which I was interested, yes.

Q. And do you know that he does that quite extensively?

A. Yes.

Q. And do you recall a sale in which Mr. Rogers was personally interested in the distribution of the proceeds and in which you were interested representing some clients, and his step-father, Mr. Lofland, was interested?

10

(Objected to.)

The Court. What do you desire to prove?

Mr. Palmer. It was where Mr. Rogers was personally interested and it was left to Mr. Rogers to settle and the settlement was made satisfactory to Mr. Hillman's clients.

(Objection sustained.)

20

(Objection noted for plaintiff as ground of appeal.)

The Court. Now I allowed testimony yesterday of the plaintiff's good character, over an objection, and held the matter under consideration. I find upon an examination of the question that the law presumes the plaintiff to have a good reputation and a good character. But when that is put in issue by the plea of justification he has a right to show his general reputation, but he cannot give particular instances of how well he has acted. They may show his general good character, upon the theory that a man of general good character would not be likely to be guilty of the matters imputed to him. Proceed.

30

Mr. Davis. I have no cross-examination, except I will reserve the right to recall Mr. Hillman, may it please the court.

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GEORGE SHONTS, sworn for plaintiff.

Direct Examination by Mr. Palmer.

10

Q. Where do you live?

A. Medford.

Q. And you worked for Mr. Rogers?

A. Yes, sir.

Q. Do you work for him now?

A. No, sir.

Q. Did you work for him at the time that Mr. Worrell lived on his farm?

A. Yes, sir.

20

Q. And were you with Mr. Rogers when he went there to give Mr. Worrell notice to leave?

A. Yes, sir.

Q. How much time did he give him in which to leave?

A. Five days.

Q. Did you hear a conversation between Mr. Worrell and Mr. Rogers at that time?

A. At that time; yes, sir.

30 applied to Mr. Rogers?

A. Not at that time.

Q. Did he at any time that you were there before that time?

A. Yes, sir.

Mr. Davis. I object to his being asked that question. The only question asked Mr. Worrell was whether he didn't call him a son of a bitch. I think the rebuttal should be confined to that.

The Court. The court will receive it.

Q. Do you recollect what Mr. Worrell said to Mr. Rogers, what he called him?

A. He called him a god damned shit. 10

No Cross Examination.

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GEORGE KLINE, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. Where do you live? 20

A. Marlton.

Q. Do you know Mr. Rogers?

A. Yes, sir.

Q. How long have you known him?

A. All his life.

Q. And are you acquainted with his reputation in the vicinity or neighborhood in which he lives for honesty and observance of law?

A. Yes.

Q. Is that reputation good or bad? 30

(Objected to.)

The Court. I think you may show his general reputation.

Mr. Palmer. That is what I am asking him.

Mr. Davis. I will call your attention to Newell, section 933, which seems to be contrary, if your Honor wants to see it.

10 The Court. If you will look in 1 Butcher, an opinion by Justice Elmer, in Sayre, Vs. Sayre—if you will get me 1 Butcher I will show you. In that case there seems to be authority for it. The question has been settled in England and in this country, so far as I know. I think as a general proposition I would say no, that the plaintiff in a slander case is not entitled to show his general good reputation, because that is presumed. His reputation is presumed to be good.

20 (Mr. Davis argues and cites authorities.)

The Court. I know if the cause of action involves misconduct, involved the defendant in any moral turpitude, in a plea of justification, if there is a plea of justification, then the plaintiff may show it. I think that is the law.

30 Mr. Davis. That is justification, when the question is privileged. It seems to me that we have offered no evidence in regard to the question of justification. It seems to me the only matter in issue is the proof—

The Court. What were you doing all day yesterday, trying to prove these things that operated on his mind?

Mr. Davis. We were showing a reasonable ground for his belief.

The Court. You have filed in your answer a plea of justification and I supposed that the witnesses were put on the stand to prove that. Do you mean to say that you had no justification for it at all? Either you are endeavoring by proof to justify it or you are not. Now if you were and if you say there is anything in the proof to justify the belief which Mr. Thompson had, then the testimony is proper. Anyhow it can do no harm, because his reputation is presumed to be good. 10

By the Court.

Q. Well, his general reputation. What is that general reputation, good or bad?

A. Good, so far as ever I heard.

Cross Examination.

20

By Mr. Davis.

Q. Mr. Kline, you are the constable that went with these men and threw Worrell out, did you not?

A. No, sir; I didn't throw him out.

Q. Weren't you the constable?

A. I was the constable there at that time.

Q. You were present with Mr. Rogers?

A. Yes, sir. 30

Q. I want to know if you are the man.

A. Yes, sir; I was the man.

Mr. Davis. I want to reserve the right to recall him if necessary.

LAWRENCE G. MINGIN, sworn for plaintiff.

Direct Examination by Mr. Palmer.

Q. Where do you live?

A. Medford.

Q. And do you know Edwin D. Rogers?

A. Yes, sir.

Q. And how long have you known him?

10 A. Oh, fifteen years anyway.

Q. And do you know other people who know him?

A. Yes, sir.

Q. And are you acquainted with his reputation for truth and honesty in the community where he lived?

A. Yes, sir.

Q. His general reputation?

A. Yes, sir.

Q. And is that reputation good or bad?

A. Good.

20

Mr. Davis. I have the liberty to recall him if necessary, if your Honor please?

The Court. Yes.

Mr. Davis. Then I have no questions.

Mr. Palmer. I would like to recall Mr. Thompson?

30

The Court. For cross-examination?

Mr. Palmer. Yes.

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CHARLES S. THOMPSON, recalled.

Further Cross Examination by Mr. Palmer.

Q. Mr. Thompson, at the time you attended this bankruptcy meeting in December, 1914, did you have any assignment of your father's claim to you?

A. No assignment of the claim. I had power of attorney.

Q. The usual power of attorney that is given to 10  
represent a person in bankruptcy proceedings?

A. Yes, sir; the regular form.

Q. And that is also true in reference to the other claim you represented?

A. I had a power of attorney in that same way.

Q. The usual form for bankruptcy proceedings?

A. It was the form used in Pennsylvania, but it is acceptable here. I believe it is somewhat different from the Jersey form.

No Cross Examination.

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### MOTION FOR DIRECTION

Mr. Davis. May it please your Honor, I think we are in a position at this time to ask for a direction of a verdict and I would like to have leave to argue that ques-  
tion at the present time and with leave to call the wit- 30  
nesses for further cross-examination in surrebuttal if it is necessary to do so. With that reservation I move at the present time for the direction of a verdict. Shall I argue it here?

The Court. Yes.

Mr. Davis. May it please the court, the only question which remains in this complaint is the paragraph under which we have gone to trial and refers to the statement made by the defendant at the meeting of the creditors of Samuel N. Lamb, bankrupt, under the direction of Samuel D. Oliphant, Referee in Bankruptcy. That appears in the complaint and it appears abundantly in  
10 the testimony and it is not contradicted in any place.

The Court. Read that to me slowly, will you, that paragraph of the complaint?

(Mr. Davis reads first paragraph of complaint.)

Mr. Davis. Now that is the only paragraph of the complaint upon which we have gone to trial and is the only question at issue. Now it appears in the complaint  
20 itself, that that was a hearing or meeting of the creditors, presided over by a referee in bankruptcy pursuant to the provisions of the Bankruptcy Act of the United States; that that meeting was being held and that these things were said to Mr. Oliphant while still presiding, and in the presence of the creditors, who were likewise assembled for the purpose of electing a trustee, concerning a man who at that time was a candidate or a nominee for trustee. Now there are a number of cases, may it please  
30 the court, decided by the Federal Courts of the United States that a referee in bankruptcy conducting a meeting of the creditors for the election of a trustee is conducting a judicial proceeding.

(Mr. Davis argues and cites authorities.)

(Mr. Palmer replies.)

The Court. Gentlemen, the proceedings before the referee were, in the opinion of the court, judicial and the communication was therefore privileged. But even if the communication was not absolutely privileged it was at least qualifiedly privileged. That is to say, if this was not a judicial tribunal and if the proceedings were not judicial, yet where the communication is made under a qualified privilege the burden of proof is upon the plaintiff to show express malice. Now the plaintiff has not done that. Upon grounds of public policy communications involving the character of reputable citizens may be absolutely privileged. In view of the circumstances of this case the referee was holding a creditors' meeting, and in the opinion of the court he was acting as a judge conducting judicial business. The creditors were called upon to nominate trustees for the Lamb estate, and any creditor who was in that room had a right to make objection upon the ground of unfitness to the appointment of any person who was nominated for trustee, and if what was said was material and in the interest of the judicial business that was being transacted, the communication was absolutely privileged and cannot be made the subject matter of a suit for slander.

A qualified privilege is like when a note is handed around in a board of directors' meeting in a bank, anything that any of the directors say about the financial responsibility of persons on that note is privileged. Then again if you have a servant and he quits your service and your neighbor wants to employ him and your neighbor comes to you and asks what kind of a man the servant is and you tell him in good faith what you think—even though it may be very harmful to the servant and the servant may lose the position—it yet would be privileged

nevertheless. It would be privileged, because your neighbor had an interest in that information, and you gave it under circumstances repelling the legal inference of express malice. When a privilege is only qualified and not absolute it is protected, even though the communication contains criminary matter, unless the plaintiff shows, and the law imposes the burden of proof upon him to show, that the communication was made with express malice, that is to say, that it involved an immoral  
10 motive, and was made, not for the purpose of aiding the administration of justice by having a proper trustee appointed as here, but that it was made with an immoral and malicious motive. I therefore direct you, gentlemen, to return a verdict for the defendant in this case.

Mr. Palmer. I except to the direction of a verdict.

(Objection noted for plaintiff as ground of appeal.)

