

INDEX.

Notice of Appeal and Reasons.....	A-1	
Opinion of Supreme Court.....	A-8	10
Notice of Appeal to Supreme Court.....	1	
Grounds of Appeal before Supreme Court.....	2,3,4,5,6	
Summons	7	
Complaint	8,9	
Answer	10,11,12,13	
Reply	13	20
Judgment	14	
Opening	15,16,17,18	
Motion of Non-Suit.....	65,66	
Charge to Jury.....	127,128,129,130,131,132,133,134,135,136	
Requests to Charge	136	
Exhibits	82	

TESTIMONY

For Plaintiff

William Yuill, direct examination.....	18	
cross examination	19	
re-direct examination	19,20	
Archibald G. Wettich, direct examination.....	20,21	
cross examination	21	40
Alexander Helstowski, direct examination.....	21,22,23,24	
direct examination	25,26,27,28	
direct examination	29,30	

	cross examination	30,31,32,33
	cross examination	34,35,36,37
10	cross examination	38,39,40
	re-called examination	123,124,125
	re-called examination	126
	Michael Marano, direct examination.....	40,41
	cross examination	41,42,43
	re-direct examination	43
	re-cross examination	43
20	Salvatore Bonavita, direct examination.....	43,44
	cross examination	44,45
	Anna Helstowski, direct examination.....	45,46,47,48
	direct examination	49
	cross examination	49,50
	re-called examination	121
	re-cross examination	121
30	Anton Walter Helstowski, direct examination.....	50,51,52,53
	cross examination	53,54,55,56
	cross examination	57,58
	re-direct examination	58
	re-called examination	119
	Felix Zeskowsky, direct examination.....	58
	cross examination	58,59,60,61
40	cross examination	62
	re-direct examination	62
	re-called examination	64,65,120
	re-cross examination	120,121

Joseph Jarenszenski, direct examination.....	62,63,64,65	
John Siedrzgia, re-buttal examination.....	121	
cross examination	121,122,123	10
<i>For Defendant</i>		
Israel Greenberg, direct examination.....	66,67,68,69	
direct examination	70,71,72,73	
direct examination	74,75,76,77	
cross examination	77,78,79,80	
cross examination	81,82	
re-called examination	119,120	20
Charles Greenberg, direct examination	82,83	
cross examination	83,84,85	
re-direct examination	85,86,87	
Herman Greenberg, direct examination.....	87,88,89,90	
direct examination	91,92,93,94	
cross examination	94,95,96,97	
cross examination	98	30
David Conron, direct examination.....	98,99,100	
direct examination	101,102,103	
cross examination	103,104	
re-direct examination	104	
Harry Kaplan, direct examination.....	104,105,106,	
direct examination	106,107,108	
direct examination	109,110,111	40
cross examination	111,112,113	
cross examination	114,115,116	
cross examination	117,118,119	

Notice of Appeal and Reasons.

(Filed, January 2, 1925)

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New Jersey Supreme Court

ALEXANDER HELSTOWSKI,

*Plaintiff-Appellee,**vs.*

ISRAEL GREENBERG,

*Defendant-Appellant.**Action at Law.**Notice of Appeal
and Reasons.*

20

To Edward B. Twardus and Anthony R. Finelli, Attorneys
for Plaintiff-Appellee:

30 Take notice that the defendant Israel Greenberg, appeals
to the Court of Errors and Appeals in the last resort in his
cause from the whole of the judgment entered in this cause
as against him for the reason that the New Jersey Supreme
Court erred in affirming the original judgment entered in this
cause in the Essex County Circuit Court, and on the follow-
ing grounds:

40 1. Because the court erroneously permitted the plaintiff
to amend his complaint at the trial of the cause by adding
paragraph No. 1 reading as follows: "That the said complaint
made by the said Israel Greenberg against Alexander Hels-
towski, the plaintiff, was dismissed by the September Term
1919 Grand Jury."

2. Because the court erroneously refused to direct a ver-
dict for the defendant on the ground that the defendant in
consulting a regular and duly licensed attorney of the State
of New Jersey and laying before him all of the facts in the

Notice of Appeal and Reasons.

case, fully and fairly, thereby had probably cause for the institution of the original criminal procedure. 10

3. Because the court erroneously refused to direct a verdict for the defendant at the close of the whole case.

4. Because the court erroneously refused to compel the plaintiff to elect which of the counts contained in the complaint he would rely upon and permitted the case to go to the jury upon inconsistent counts in the complaint. 20

5. Because the court permitted the plaintiff over objections of the defendant, to amend the complaint at the close of the whole case.

6. Because the court erroneously charged the jury as follows: "Only two questions therefore remain on the subject of liability. The first is whether there was want of reasonable and probable cause in making the complaint, and second, whether there was malice; but since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment. 30

7. Because the court erroneously charged the jury as follows: "But since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts which resulted in his arrest and imprisonment." 40

Notice of Appeal and Reasons.

10 8. Because the court erroneously charged the jury as follows: "There is really but one question on the subject of liability and that is had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment."

20 9. Because the court erroneously charged the jury as follows: "The complaint is in two paragraphs and charges two separate offenses: first, that goods which the defendant in this suit had sold to Alexander Helstowski, were obtained by false pretenses."

10. Because the court erroneously charged the jury as follows: "That goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses."

30 11. Because the court erroneously charged the jury as follows: "The complaint is in two paragraphs and charges two separate offenses: first, that goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses, and second, a violation of that provision of what is known as the bulk sales law, which makes it a misdemeanor for a person who sells his whole stock and merchandise and fixtures in bulk to make false answers to inquiries by the buyer as to the names and places of residence or business of his creditors and the amount of indebtedness to each."

40 12. Because the court erroneously charged the jury as follows: "That goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses, and second, a violation of that provision of what is known as the bulk sales law, which makes it a misdemeanor for a person who sells his whole stock of merchandise and fixtures in bulk to make false answers to inquiries by the buyer as to the

Notice of Appeal and Reasons.

names and places of residence or business of his creditors and the amount of indebtedness to each." 10

13. Because the court erroneously charged the jury as follows: "That if by any possibility the second charge should be construed as being against Alexander, the defendant had no reasonable or probable cause for the reason I have stated—that is that he, Alexander, did not make the false affidavit and there is no proof in the case that the affidavit was made by any collusion with Alexander." 20

14. Because the court erroneously charged the jury as follows: "In the first place, the case is barren of a particle of proof that the goods which were last sold by the defendant to Helstowski were obtained by any false representation of any then existing fact, and, in the second place, there is not a word of testimony that anything was said by either of the Helstowskis when the last bill of goods was purchased by way of representation of any fact upon which the defendant says he relied or from which you would be justified in finding that he did rely. He had been selling, as he says, goods to the two Helstowskis, the brothers, both of them insisting that it was only Walter who was running the business there for four and one-half months, and that the only thing about this transaction that distinguished it from all the transactions which have gone before, for which the defendant had been paid, was that this bill was a little larger than usual, but there is no proof that there was any representation made by the Helstowskis, or either of them, to the defendant in this suit, to induce him to sell a larger bill than usual or to sell these particular goods. Under these circumstances there was absolutely no reasonable or probable cause for the defendant to make a complaint against Alexander unless he is justified on the ground of advice of counsel." 30 40

Notice of Appeal and Reasons.

10 15. Because the court erroneously charged the jury as follows: "Under these circumstances, there was absolutely no reason or probable cause for the defendant to make a complaint against Alexander unless he is justified on the ground of advice of counsel."

20 16. Because the court erroneously charged the jury as follows: "The advice to avail as a defense (26 Cyc. page 32) must have been given by competent" again using the word "competent"—"disinterested, regularly admitted and practicing attorney and counsellor-at-law in good standing."

30 17. Because the court erroneously charged the jury as follows: "If that be true—that is, that the attorney at that time knew that there was no misrepresentation made by Alexander or Walter of a then existing fact, and that there was nothing said upon which the defendant in this suit had a right to rely in making this sale any different from what was said when making previous sales were made—did the attorney meet the requirements of the law sufficiently to justify the defendant making the complaint and to relieve him from liability in this case?"

40 18. Because the court erroneously charged the jury as follows: "And that there was nothing said upon which the defendant in this suit had a right to rely in making this sale any different from what was said when previous sales were made—did the attorney meet the requirements of the law sufficiently to justify the defendant making the complaint and to relieve him from liability in this case?"

19. Because the court erroneously charged the jury as follows: "If you find that this advice was not justified, then you come to the consideration of the question of damages."

Notice of Appeal and Reasons.

20. Because the court erroneously refused to charge the second request of the defendant as follows: "The statutes of New Jersey provide that it is the duty of a seller who sells his goods or fixtures or both in bulk and not in the ordinary course of trade, if requested by the buyer to give a full and complete list of all creditors to whom he, the said seller owed money, and a failure to do this is a violation of the criminal laws of the State of New Jersey, and warrants a criminal complaint being issued for the arrest of the seller." 10

21. Because the court erroneously refused to charge the third request of the defendant as follows: "If the jury believes that the defendant had reasonable ground to believe from the facts that came to his knowledge that the plaintiff was guilty of the criminal offense charged in the criminal complaint in this cause, they must find a verdict for the defendant." 20

22. Because the court erroneously refused to grant defendant's motion to adjourn the cause of the trial on the ground of surprise. 30

23. Because the court erroneously denied defendant's motion for a non-suit after the opening of plaintiff's counsel to the jury.

24. Because the court erroneously received into evidence a criminal complaint differing from the one alleged to have been made in the complaint filed in this cause. 40

25. Because the court erroneously permitted the clerk of the Grand Jury to testify to the disposition made by the Grand Jury of the original criminal complaint in the cause, without having first accounted for the non-production of the records of the Grand Jury concerning their disposition.

Notice of Appeal and Reasons.

10 26. Because the court erroneously refused to grant a non-suit at the close of the plaintiff's case.

27. Because the court erroneously refused to permit the question: "Who did you think was the owner of the place?" to be asked of the defendant.

20 28. Because the court erroneously refused to admit the original book of account of one David Conron into evidence on behalf of the defendant-appellant.

29. Because the court erroneously charged the jury as follows: "But the malice as I have already told you, sufficient to justify an action for malicious prosecution is presumed from want of reasonable and probable cause."

BRAELOW & TEPPER,

Attorneys for the Defendant-Appellant.

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Opinion of Supreme Court

(Filed November 15, 1924)

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New Jersey Supreme Court

No. 38, November Term, 1923

 ALEXANDER HELSTOWSKI,

Plaintiff-Respondent,
vs.

ISRAEL GREENBERG,

Defendant-Appellant.

Action at Law.
*Notice of Appeal
and Reasons.*

20

On Appeal from Essex County Circuit Court.

Before Justices Kalisch and Katzenbach.

For defendant-appellant—Braelow and Tepper.

For plaintiff-respondent—Anthony R. Finelli.

30

Per Curiam: Although there are twenty-nine grounds of appeal set forth in the record before us for review, the only grounds relied on and argued in the appellant's brief are numbers two, three, six, seven, eight, nineteen, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-nine.

The facts, out of which the various legal propositions, presented by this appeal, arise, are these: Alexander Helstowski was in the employ of his brother Anton who carried on a butcher and grocery business in Newark. Greenberg, the defendant below, was a wholesale grocer. Greenberg sold a bill of groceries which merchandise he claimed was sold to Anton and Alexander, as partners. This was disputed and was for

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Opinion of Supreme Court

10 the jury. Anton sold his butcher and grocery business, where-
upon the plaintiff went to Perth Amboy and opened there a
butcher and grocery business on his own account. Greenberg
made a demand upon the plaintiff to pay a bill of fifty-five dol-
lars and seventy-six cents incurred by his brother Anton in
Newark. The plaintiff denied that he owed the bill and re-
fused to pay it. Thereupon Greenberg lodged a complaint
against the plaintiff in the Second Criminal Court of Newark
charging the latter with having obtained at the City of New-
ark, on the fourth day of June, A. D., 1919, under false pre-
20 tentenses "wares and merchandise to the value of fifty-five dol-
lars and seventy-six cents with intent to cheat and defraud"
him. A warrant was issued, the plaintiff was arrested and
brought from Perth Amboy to Newark and was imprisoned in
the Newark jail where he was detained for six days before he
was released. The case was presented to the grand jury, but
that body found no bill.

The defense relied on was, in substance, that the appellant
30 had stated all the material facts so far as he knew them to
his attorney, Mr. Kaplan, and that the latter advised him to
make the criminal complaint upon which the plaintiff was
arrested. It further appeared that before instituting criminal
proceedings against the plaintiff, the appellant's attorney
caused a summons to be sent by acting Judge Yuill of the Sec-
ond Criminal Court of Newark to the plaintiff at Perth Am-
boy, summoning the latter to appear in said court on a certain
day; that at the time fixed in the summons the appellant, his
son, and his attorney appeared but the plaintiff did not. Sub-
40 sequent to this Mr. Kaplan, on behalf of the appellant, com-
menced a civil action, in the First District Court of Perth
Amboy, against the plaintiff to recover the sum claimed to be
due to the appellant from the latter, which action was discon-
tinued. Before commencing the civil action Mr. Kaplan ad-
mits that in an interview had with the plaintiff he cautioned

Opinion of Supreme Court

him that he was going to advise his client to swear to a complaint against him, to which threat the plaintiff replied: "Go ahead and do what you like, I don't care." That Mr. Kaplan advised the making of the complaint against the plaintiff for obtaining goods under false pretenses, and had a second charge embodied in the complaint against the latter, that on July 11, 1919, he and his brother executed a bill of sale of all the stock and chattels in grocery store at Chambers and Clover Streets, Newark, N. J. to J. M. and John W.; that the brother Walter Helstowski swore in his affidavit incorporated in the bill of sale that there were no creditors of the business to whom debts were due and owing. It further appeared before Mr. Kaplan had advised his client, the appellant to sign the complaint he saw the bill of sale on which the complaint was based and knew that the bill of sale had been executed only by Walter Helstowski, the plaintiff's brother. Kaplan attempts to explain this by saying that it was an apparent oversight on his part. There is not a scintilla of testimony in the entire case tending to sustain the charge that the goods for which the debt was incurred were obtained under false pretenses. So the conclusion is irresistible that the statements made in the complaint were untrue. The defense, therefore, that the defendant had fully and fairly stated all the facts within his knowledge to competent counsel, and competent counsel advised the making of the complaint and that the appellant acted upon that advice was not completely made out.

The learned Judge, however, very benignly but very properly left the consideration of these facts to the jury, who found a verdict for the plaintiff upon which verdict a judgment was entered, from which judgment the defendant has appealed.

We first take up for consideration the second ground of appeal, which is stated, as follows: "Because the court erro-

Opinion of Supreme Court

10 neously refused to direct a verdict for the defendant on the ground that the defendant in consulting a regular and duly licensed attorney of the State of New Jersey and laying before him all the facts in the case, fully and fairly, thereby had probable cause for the institution of the original criminal procedure."

20 It is obvious that this request was properly refused. Whether or not the defendant had fully and fairly laid all of the facts before Kaplan, the attorney, was a jury and not a court question, under the evidence in the cause. *Dalton v. Godfrey*, 117 Atl. 635; 97 N. J. L. 455.

30 The next ground of appeal argued is number six, which is, as follows: "Only two questions therefore remain on the subject of liability. The first is whether there was a want of reasonable and probable cause in making the complaint, and, second, whether there was malice, but since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment."

40 This instruction seems to be in accord with what was said by Chancellor Walker, in *Dalton v. Godfrey*, *supra*, speaking for the Court of Errors and Appeals, at page 460.

The seventh ground of appeal is of the same import as the one we have just considered, with the exception that the forepart of the instruction, commencing with "Only two questions," etc., and ending "whether there was malice," is omitted.

Opinion of Supreme Court

This, therefore, needs no further consideration.

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The eighth ground of appeal is the same as the sixth and seventh.

The next ground of appeal relied on and argued is number nineteen and is found upon an exception to an expression in the Judges' charge which was, as follows: "If you find that this advice was not justified then you come to the consideration of damages." This does not convey any idea whether what was said by the trial judge was correct as a proposition of law or not. For immediately preceding the statement complained of the court said: "If you decide that the facts were fully and fairly stated to competent counsel, and competent counsel advised this complaint, and that the defendant here acted upon that advice, that is a complete justification and the plaintiff in this suit cannot recover.

20

What the Court said was accurate. Of course, if the defendant had not made a full and fair statement of the facts to his counsel it is quite plain that advice of counsel could not be availed of by the defendant in justification. The nature of the advice was dependent upon the facts related by the defendant to his attorney. And all this was properly left to the jury for its determination.

30

And it is further to be observed that the Court charged the jury on this point, substantially, as requested by defendant's counsel in his fifth request, which was as follows: "If you believe that the defendant consulted competent counsel and made a full and fair and complete statement of all the material facts that came to his knowledge, or caused such full, fair and complete statement of facts to be communicated to competent counsel, then you must find a verdict for the defendant."

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Opinion of Supreme Court

- 10 The twenty-fourth ground of appeal is stated in the appellant's brief, as follows: "Because the court erroneously received in evidence a criminal complaint differing from the one alleged to have been made in the complaint filed in the cause."

20 There is no merit in this contention. The plaintiff's complaint in the present action does not pretend to set out a copy of the criminal complaint made against him. This was not necessary. The substance of the complaint was set out. It is true that the plaintiff alleged that he was charged by the defendant with having defrauded the latter out of one hundred and forty-five dollars, whereas in fact it was only fifty-five dollars and seventy-six cents. The court allowed the plaintiff to amend his complaint according to the fact. This was proper practice.

The twenty-sixth ground of appeal is that the court erroneously refused to grant a non-suit.

- 30 The contention of counsel is a restatement of what was urged by him under the twenty-fourth ground of appeal, and with the additional reason that the civil complaint, as amended, by the plaintiff, alleged that the criminal complaint in the criminal cause had been dismissed by the September 1919 Grand Jury, whereas in truth and in fact the evidence showed that it was not dismissed but that no indictment was returned. This seems to be a distinction without a material difference. The prosecution was at end so far as that grand jury was concerned. And the proof makes it clear that no further
- 40 steps were taken by the defendant to prosecute his complaint.

The twenty-fifth ground of appeal is, that "the court erroneously permitted the clerk of the Grand Jury to testify to the disposition made by the Grand Jury of the original complaint in the cause, without having first accounted for the

Opinion of Supreme Court

non-production of the records of the Grand Jury concerning that disposition." 10

It is sufficient to say that the clerk of the Grand Jury produced the best evidence that the nature of the case was susceptible of, by producing the original complaint bearing the indorsement of the foreman of the grand jury that no bill was found.

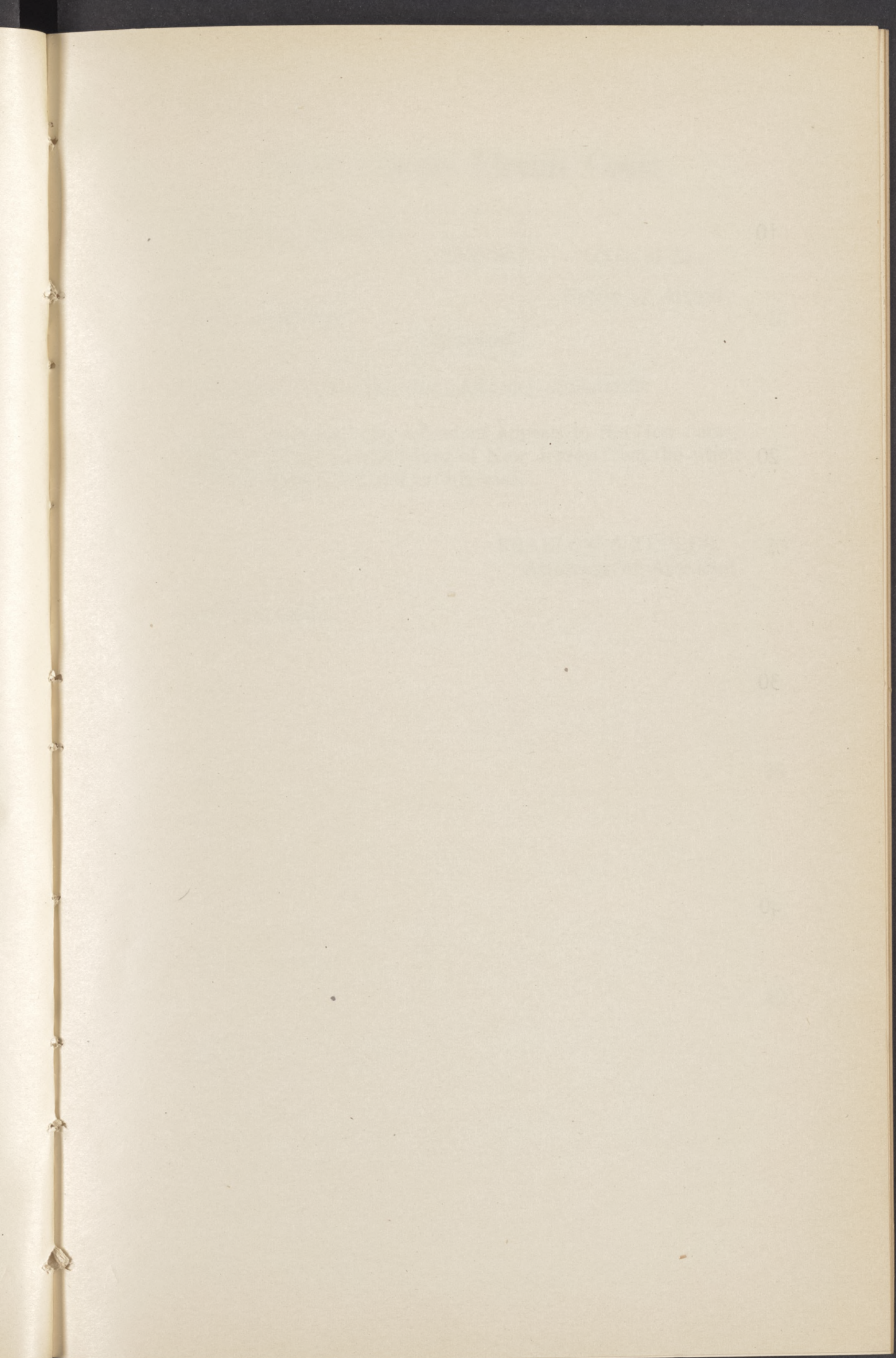
The only other ground of appeal relied on and argued in the brief is founded on the alleged exclusion of the question: "Who do you think was the owner of the place?" put to defendant by his counsel on the direct-examination. The record shows that plaintiff's counsel objected to the question but the defendant nevertheless answered it thus: "The both of them was there." And it was after the witness had answered as above the court said objection is sustained. The answer was not precisely responsive to the question put but taking in consideration the unfamiliarity of the defendant with the English language, it is clearly inferable what he meant, namely, that in seeing them both there he thought they were the owners of the store. The defendant's counsel did not see fit to pursue the examination on this line, and as the question was answered and the defendant had the benefit of it, even if the question, was a proper one, no harm was done by the court sustaining the objection. But we think the question was incompetent. It was seeking the defendant's opinion on undisclosed facts; such testimony is clearly incompetent. It was for the jury to determine from the facts introduced in evidence whether or not the defendant had reason to believe that the plaintiff was owner of the store. 20 30 40

For the reasons given judgment is affirmed, with costs.

...the defendant had reason to believe that the plaintiff was
 owner of the store.

...the reason given for the plaintiff's failure to
 ...

...the reason given for the plaintiff's failure to
 ...



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Notice of Appeal.

Essex County Circuit Court

ALEXANDER HELSTOWSKI,

Plaintiff.

vs.

ISRAEL GREENBERG,

Defendant.

Action at Law

Notice of Appeal

10 10

To Edward B. Twardus, Esq., Attorney of plaintiff:

Take notice that the defendant appeals to the New Jersey Supreme Court of Judicature of New Jersey from the whole of the judgment entered in this case.

BRAELOW & TEPPER, 20

Attorneys of Appellant.

May 14th, 1923.

30 30

40 40

Grounds of Appeal.

New Jersey Supreme Court

10	ALEXANDER HELSTOWSKI, <i>Plaintiff-Appellee.</i> <i>vs.</i> ISRAEL GREENBERG, <i>Defendant-Appellant.</i>	}	<i>Action at Law</i> <i>Grounds of Appeal</i>
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The following are the grounds upon which the defendant-appellant relies for the reversal of the whole of the judgment entered in the lower court in the above stated cause:

- 20 1. Because the court erroneously permitted the plaintiff to amend his complaint at the trial of the cause by adding paragraph No. 1 reading as follows: "That the said complaint made by the said Israel Greenberg against Alexander Helstowski, the plaintiff, was dismissed by the September Term 1919 Grand Jury."
- 30 2. Because the court erroneously refused to direct a verdict for the defendant on the ground that the defendant in consulting a regular and duly licensed attorney of the State of New Jersey and laying before him all of the facts in the case, fully and fairly, thereby had probable cause for the institution of the original criminal procedure.
- 40 3. Because the court erroneously refused to direct a verdict for the defendant at the close of the whole case.
4. Because the court erroneously refused to compel the plaintiff to elect which of the counts contained in the complaint he would rely upon and permitted the case to go to the jury upon inconsistent counts in the complaint.
5. Because the court permitted the plaintiff, over objections of the defendant, to amend the complaint at the close of the whole case.
6. Because the court erroneously charged the jury as follows: "Only two questions therefore remain on the subject of

Grounds of Appeal.

liability. The first is whether there was want of reasonable and probable cause in making the complaint, and, second, whether there was malice; but since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment." 10

7. Because the court erroneously charged the jury as follows: "But since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts which resulted in his arrest and imprisonment." 20

8. Because the court erroneously charged the jury as follows: "There is really but one question on the subject of liability and that is had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment." 30

9. Because the court erroneously charged the jury as follows: "The complaint is in two paragraphs and charges two separate offenses: first, that goods which the defendant in this suit had sold to Alexander Helstowski, were obtained by false pretenses."

10. Because the court erroneously charged the jury as follows: "That goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses." 40

11. Because the court erroneously charged the jury as follows: "The complaint is in two paragraphs and charges two separate offenses; first, that goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses, and second, a violation of that provision of what is known as the bulk sales law, which makes it a misdemeanor for a person who sells his whole stock and merchandise and

Grounds of Appeal.

fixtures in bulk to make false answers to inquiries by the buyer as to the names and places of residence or business of his creditors and the amount of indebtedness to each."

10 12. Because the court erroneously charged the jury as follows: "That goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses, and second, a violation of that provision of what is known as the bulk sales law, which makes it a misdemeanor for a person who sells his whole stock of merchandise and fixtures in bulk to make false answers to inquiries by the buyer as to the names and places of residence or business of his creditors and the amount of indebtedness to each."

20 13. Because the court erroneously charged the jury as follows: "That if by any possibility the second charge should be construed as being against Alexander, the defendant had no reasonable or probable cause for the reason I have stated—that is that he, Alexander, did not make the false affidavit and there is no proof in the case that the affidavit was made by any collusion with Alexander."

30 14. Because the court erroneously charged the jury as follows: "In the first place, the case is barren of a particle of proof that the goods which were last sold by the defendant to Helstowski were obtained by any false representation of any then existing fact, and, in the second place, there is not a word of testimony that anything was said by either of the Helstowskis when the last bill of goods was purchased by way of representation of any fact upon which the defendant says he relied or from which you would be justified in finding that he did rely. He had been selling, as he says, goods to the two Helstowskis, the brothers, both of them insisting that it was only Walter who was running the business there for four and one-half months, and that the only thing about this transaction that distinguished it from all the transactions which have gone before, for which the defendant had been paid, was that this bill was a little larger than usual, but there is no proof that there was any representation made by the Helstowskis, or either of them, to the defendant in this suit, to induce him to sell a larger bill than usual or to sell these particular goods. Under these circumstances, there was absolutely no

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Grounds of Appeal.

reasonable or probable cause for the defendant to make a complaint against Alexander unless he is justified on the ground of advice of counsel."

15. Because the court erroneously charged the jury as follows: "Under these circumstances, there was absolutely no reason or probable cause for the defendant to make a complaint against Alexander unless he is justified on the ground of advice of counsel." 10

16. Because the court erroneously charged the jury as follows: "The advice to avail as a defense (26 Cyc. page 32) must have been given by competent" again using the word "competent"—"disinterested, regularly admitted and practicing attorney and counsellor-at-law in good standing." 20

17. Because the court erroneously charged the jury as follows: "If that be true—that is, that the attorney at that time knew that there was no misrepresentation made by Alexander or Walter of a then existing fact, and that there was nothing said upon which the defendant in this suit had a right to rely in making this sale any different from what was said when previous sales were made—did the attorney meet the requirements of the law sufficiently to justify the defendant making the complaint and to relieve him from liability in this case?" 30

18. Because the court erroneously charged the jury as follows: "And that there was nothing said upon which the defendant in this suit had a right to rely in making this sale any different from what was said when previous sales were made—did the attorney meet the requirements of the law sufficiently to justify the defendant making the complaint and to relieve him from liability in this case?"

19. Because the court erroneously charged the jury as follows: "If you find that this advice was not justified, then you come to the consideration of the question of damages." 40

20. Because the court erroneously refused to charge the second request of the defendant as follows: "The statutes of New Jersey provide that it is the duty of a seller who sells his goods or fixtures or both in bulk and not in the ordinary course of trade, if requested by the buyer to give a full and complete list of all creditors to whom he, the said seller owed money, and a failure to do this is a violation of the criminal laws of

Grounds of Appeal.

the State of New Jersey, and warrants a criminal complaint being issued for the arrest of the seller."

10 21. Because the court erroneously refused to charge the third request of the defendant as follows: "If the jury believes that the defendant had reasonable ground to believe from the facts that came to his knowledge that the plaintiff was guilty of the criminal offense charged in the criminal complaint in this cause, they must find a verdict for the defendant."

22. Because the court erroneously refused to grant defendant's motion to adjourn the cause of the trial on the ground of surprise.

20 23. Because the court erroneously denied defendant's motion for a non-suit after the opening of plaintiff's counsel to the jury.

24. Because the court erroneously received into evidence a criminal complaint differing from the one alleged to have been made in the complaint filed in this cause.

30 25. Because the court erroneously permitted the clerk of the Grand Jury to testify to the disposition made by the Grand Jury of the original criminal complaint in the cause, without having first accounted for the non-production of the records of the Grand Jury concerning their disposition.

26. Because the court erroneously refused to grant a non-suit at the close of the plaintiff's case.

27. Because the court erroneously refused to permit the question. "Who did you think was the owner of the place?" to be asked of the defendant.

40 28. Because the court erroneously refused to admit the original book of account of one David Conron into evidence on behalf of the defendant-appellant.

29. Because the court erroneously charged the jury as follows: "But the malice as I have already told you, sufficient to justify an action for malicious prosecution is presumed from want of reasonable and probable cause."

BRAELOW & TEPPER,
Attorneys for the Defendant-Appellant.

Summons.

STATE OF NEW JERSEY, To ISRAEL GREENBERG.

(SEAL) YOU ARE SUMMONED to answer the annexed complaint of ALEXANDER HEL-STOWSKI in an action at Law in the ESSEX COUNTY CIRCUIT COURT. And take notice that unless you file your answer to said

Complaint with the Clerk of said Essex County Circuit Court, at Newark, within twenty days after the service upon you of this Writ and the Annexed Complaint, the plaintiff may proceed against you in this suit, and judgment may be entered against you.

WITNESS, NELSON Y. DUNGAN, Judge of the said Court of Newark, this fifth day of February, 1921. 20

JOHN A. MATTHEWS, Attorney. JOHN H. SCOTT, Clerk. 30

SECOND COURT
Plaintiff repeats the first Court
The record of the previous proceedings brought by the defendant as set forth in the first Court judgment was taken and held in custody by the Police Authorities of the City of Newark.

40

Complaint.

Essex County Circuit Court

10	ALEXANDER HELSTOWSKI, ISRAEL GREENBERG,) <i>Plaintiff,</i>) <i>Defendant.</i>	<i>Action at Law</i> <i>Complaint</i>
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Plaintiff, residing in the City of Newark, County of Essex and State of New Jersey, states that:

FIRST COUNT.

1. In the month of June, 1919, plaintiff was in the grocery business and had a store in the City of Perth Amboy, County of Middlesex and State of New Jersey.

2. In dais month of June, 1919, defendant, Israel Greenberg, maliciously made a complaint and caused a warrant to be issued in the City of Newark for the arrest of plaintiff who was then and there conducting his business in the City of Perth Amboy aforesaid.

3. Plaintiff was thereupon arrested in the City of Perth Amboy and brought to the City of Newark under guard to answer charges maliciously brought by defendant and plaintiff was thereby imprisoned and was kept and detained in prison for a long period of time, to wit: 6 days, and plaintiff was forced and compelled to go to Court and forcibly conveyed to a certain police station and there imprisoned without any reasonable or probable cause whatsoever for a long space of time, to wit: 6 days, contrary to Law and under a false malicious and unreasonable assertion, color, and charge that plaintiff had committed an offense punishable by Law, to wit: that he had defrauded defendant from the payment of a claim of \$145.00 alleged to be due by the brother of plaintiff, Anton Walter Helstowski, or by the plaintiff, Alexander Helstowski.

SECOND COUNT:

1. Plaintiff repeats the First Count.

2. By reason of the malicious charges brought by the defendant as set forth in the First Count, plaintiff was falsely arrested and held in custody by the Police Authorities of the City of Newark.

Complaint.

3. By reason of the acts aforesaid, plaintiff lost all his business and was compelled to discontinue same and was greatly injured in his name, reputation and calling.

4. Whereby plaintiff was greatly hurt and suffered great anguish and pain of mind and body and lost his business and was also thereby greatly exposed and injured in his credit, reputation, name and fame and was subjected and put to divers expenses in order to obtain and in obtaining his liberation from said imprisonment as aforesaid, and thereby sustained other wrongs and greatly damaged." 10

Plaintiff demands on the First Count the sum of \$10,000.00 and on the Second Count the sum of \$10,000.00.

JOHN A. MATTHEWS, 20
Attorney of Plaintiff.

30

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Answer.

Essex County Circuit Court

10	ALEXANDER HELSTOWSKI, <div style="text-align: right;"><i>Defendant.</i></div> <div style="text-align: center;"><i>vs.</i></div> ISRAEL GREENBERG, <div style="text-align: right;"><i>Plaintiff.</i></div>	}	<i>Action at Law</i> <i>Answer</i>
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20 The defendant, residing in the City of Newark, County of Essex and State of New Jersey, as and for his Answer to the Complaint filed in the above cause, and reserving the right on or before trial of the same, to make a motion to have stricken out, all or any part of said Complaint, on the ground that same is defective both as to form and substance, and on the further ground that the same does not set forth a legal cause of action, says:

1. He denies each and every allegation contained in the said Complaint.

FIRST SEPARATE DEFENSE TO FIRST COUNT

30 1. For a first separate defense to the First Count, he says: As to the first paragraph in the First Count, he has not sufficient knowledge or information upon which to form a belief as to the truth of the same.

2. He denies paragraphs 2 and 3 of the First Count.

SECOND SEPARATE DEFENSE TO THE FIRST COUNT

40 1. The defendant says that before he took any action whatsoever which could result or did result in the damage to the plaintiff, as set forth in the Complaint, he did lay all the facts of the case which were known to him, or which he had reason to believe, fairly, before counsel of competency and integrity, and that he did act bona fide upon the opinion given by that counsel.

THIRD SEPARATE DEFENSE TO THE FIRST COUNT

For a Third Separate Defense to the First Count the defendant avers that he had probable cause for instituting the proceedings mentioned in the Complaint, and which the Com-

Answer.

plaint alleges, caused the damage set forth therein to the plaintiff, due to the following facts:

1. That the defendant believed that the plaintiff was engaged as the sole owner or partner in the grocery business in the City of Newark, and that the plaintiff ordered very small amounts of merchandise from the defendant prior to June 2, 1919. 10

2. That on or about June 2, 1919, the plaintiff did order from the defendant an unusually large bill of merchandise which was shortly thereafter delivered to him, and that within a short time thereafter, the plaintiff, without informing the defendant, did sell to a third person, his said place of business and that the plaintiff signed a Bill of Sale for the said place of business, which Bill of Sale contained an affidavit made by the plaintiff, or by his brother, with the plaintiff's knowledge, which affidavit alleged that there were no debts outstanding nor any liabilities due any creditor of the business. 20

3. That at the time of the making of the said affidavit, the said sum of \$55. was still due and owing to the defendant from the plaintiff.

4. That the plaintiff did inform another creditor of his that it was not his intention to pay the defendant and that it had been his intention at the time of the contracting of the said debt not to pay the defendant, and that shortly after the sale of the said store, the plaintiff disappeared and the defendant was for a time unable to locate him. 30

FOURTH SEPARATE DEFENSE TO THE FIRST COUNT.

1. The defendant avers that at the time of the making of the Criminal Complaint, which caused the arrest of the plaintiff, it was his intention to make the Complaint solely for a violation of "An act to prohibit sales of merchandise, goods and chattels in bulk, in fraud of creditors" Approved April 8, 1915, and that at the time of the signing and making of the said Complaint, he did suppose and believe that he was actually making a Complaint for such violation and no other Complaint. 40

Answer.

FIRST SEPARATE DEFENSE TO THE SECOND COUNT.

1. Defendant denies paragraph 1, 2, 3 and 4 of the Second Count of the said Complaint.

10

SECOND SEPARATE DEFENSE
TO THE SECOND COUNT.

1. Defendant repeats paragraph 1 of the Second Separate Defense to the First Count.

THIRD SEPARATE DEFENSE TO THE SECOND COUNT.

1. Defendant repeats the whole of the Third Separate Defense to the First Count.

20

FOURTH SEPARATE DEFENSE
TO THE SECOND COUNT.

1. Defendant repeats paragraph 1 of the Fourth Separate Defense to the First Count.

BRAELOW & TEPPER,
Attorney for Defendant.

30

40

Reply.

Essex County Circuit Court

ALEXANDER HELSTOWSKI,

Plaintiff.

vs.

ISRAEL GREENBERG,

Defendant.

Action at Law

Reply

10

1. Plaintiff denies paragraph 1 of the Second Separate Defense of the First Count of the Answer filed by the Defendant herein.

2. Plaintiff denies Third Separate defense to the First Count and Sections 1, 2, 3, and 4, of the answer filed by the defendant herein.

20

3. Plaintiff denies Fourth Separate defense to the First Count and the first section thereof.

Plaintiff denies generally the answer filed by the defendant herein.

JOHN A. MATTHEWS,
Attorney of Plaintiff.

30

40

Judgment for Plaintiff.

JUDGMENT.

10	ALEXANDER HELSTOWSKI, <i>Plaintiff-Appellee.</i> <i>vs.</i> ISRAEL GREENBERG, <i>Defendant-Appellant.</i>	} <i>Action at Law</i> } <i>Verdict by a Jury</i> } <i>Judgment</i> } <i>for Plaintiff</i>
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Amount	\$3500.00
Cost	91.50
	\$3591.50

Edward B. Twardus, attorney for Plaintiff.

20 This action was tried before Judge Nelson Y. Dungan with a jury at the Essex County Circuit Court on April 18, 1923.

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

They find in favor of the said plaintiff, Alexander Helstowski, and assess the damages against the defendant at the sum of Three Thousand Five Hundred Dollars (\$3500.00).

30 Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Three Thousand Five Hundred Dollars (\$3500.00) and cost which are taxed at the sum of \$91.50 making in the whole the sum of \$3591.50.

Judgment entered and signed April 18, 1923.

WILLIAM GUMMERE,
Judge.

40

Opening.

Essex County Circuit Court

Monday, April 16, 1923.

ALEXANDER HELSTOWSKI,

Defendant.

vs.

ISRAEL GREENBERG

Plaintiff.

10

Action at Law

Before Hon. Nelson Y. Dungan, J., and a jury.

For the plaintiff appears Edward Twardus.

For the defendant appear Braelow & Tepper,

(By Joseph C. Braelow.) 20

(A jury is called and sworn.)

Mr. Braelow. If your Honor please, I move to strike out the complaint filed in this case. The complaint is in two counts. The first count contains an allegation that the plaintiff was in business in Perth Amboy, and that in June, 1919, the defendant maliciously made a complaint, caused a warrant to be issued in the city of Newark for the arrest of the plaintiff, who was then and there conducting his business in the city of Perth Amboy; that the plaintiff was arrested, brought to the city of Newark to answer these charges, and kept incarcerated for six days. There is a second count which repeats all the allegations in the first count and states further that "By reason of the malicious charges set forth in the first count the plaintiff was falsely arrested and held in custody by the police authorities. Apparently, what the pleader attempted to do was to plead a count in malicious prosecution in the first count and then a count for false imprisonment in the second. I further move as to the first count to strike it out of the complaint on the ground that there is no allegation that this criminal proceeding has terminated in favor of the plaintiff in the present proceeding. I also move that the second count be stricken out for the same reason, to wit, that it contains no allegation that the proceeding

30

40

Opening.

has terminated in favor of the plaintiff or that it is terminated at all—I mean the proceeding in the criminal action.

Mr. Twardus. Will your Honor allow me to amend to show that the criminal case terminated in favor of the present plaintiff?

10

The Court. Is there any objection to that?

Mr. Braelow. That takes me by surprise. I have no evidence to refute that fact. I don't know whether it went to the Grand Jury, it certainly surprises me.

The Court. The amendment will be allowed and the case will proceed.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20

The Court. Counsel is entitled to have you dictate on the record what you rely upon and where you put it in your pleading.

Mr. Twardus. I would ask to add a paragraph to count No. 1. No. 4: "That the said complaint made by the said Israel Greenberg against Alexander Helstowski, the plaintiff, was dismissed by the September term, 1919 Grand Jury."

The Court. I fear you are going to have trouble in proving that.

30

Mr. Twardus. We have the record of the Grand Jury.

Mr. Braelow. I move for an adjournment of this matter on the ground of surprise.

The Court. I will permit the case to proceed. If the surprise appears evident as the case proceeds the matter will be taken care of by the court.

Defendant's counsel prays an exception to this ruling by the Court.

Exception noted as ground of appeal.

40

(Plaintiff's counsel opens to the court and jury as follows:)

May it please your Honor and gentlemen of the jury. At the time the plaintiff was arrested he was conducting a butcher shop and grocery store for a period of four months. He was taken away from his business on a Friday, when he had prepared to take care of his customers; he had a volume of customers,

Opening.

as he will relate to you; that when he was taken away Friday night there was no one left at home to take care of his Saturday and Sunday trade; that during the week he was away he lost business; when he came back after the period of six days his business was simply ruined; he was the laughing stock of the community in which he lived; people wouldn't trade with him any longer, called him a crook and a thief because he was arrested. We will also prove to you that the man that was arrested was not the proper party to be taken into custody, but his brother. In the answer of the defendant they say, "We thought we had the proper man; we thought he was the sole owner before we arrested him; we thought he was our man." But, gentlemen of the jury, if anybody arrests anybody by mistake he should bear the damage that we will prove to you. We will prove to you that the complaint was dismissed, that the man was entirely innocent in that transaction. If we prove those facts I submit that you should bring in a verdict in such an amount as we may prove to your satisfaction.

10

20

Mr. Braelow. I move for a nonsuit on the opening statement of counsel for the plaintiff. The opening states that he was conducting a grocery business; that he was apprehended for six days and that he was discharged. There was no statement at all by the plaintiff's attorney to show in any way that this proceeding was maliciously instituted or that the present defendant had no probable cause for the institution of the same. The plaintiff's counsel did say that he, the plaintiff, will prove that the man they had arrested was not the proper man, but was his brother. That is the only statement from which there can be inferred anything to show the probable cause. Secondly, there is nothing to show malice in any form, and I submit that those two elements are essential elements to this kind of an action.

30

40

The Court. It is not necessary to show implied malice. Malice is shown from the want of probable cause. You did not inform the court that you were going to ask for a nonsuit on the opening of plaintiff's counsel and therefore, I cannot grant a nonsuit on an

William Yuill, Direct.

opening that I did not hear. I decline to grant the nonsuit.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

10 Mr. Braelow opens on behalf of defendant.

WILLIAM YUILL sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q With whom are you connected? A Second Criminal Court, city of Newark.

Q In what capacity? A Clerk.

Q Did you at any time in 1919 have cause to be arrested in your precinct a man by the name of Alexander Helstowski?

A Yes, sir.

20 Q Whom was that complaint made by? A Israel Greenberg.

Q What is the date of the offense? A June 4, 1919.

Mr. Braelow. I object. The witness is apparently reading from some book.

By the Court Q What book are you reading from? A The docket of the second criminal court of that date.

Q Have you the complaint? A I haven't the complaint. The complaint was forwarded to the Grand Jury.

By Mr. Twardus. Q What was the charge? A False
30 pretense.

Q On what date? A June 4, 1919.

Q And when was he actually arrested and brought to your precinct? A August 16, 1919.

Cross Examination by Mr. Braelow.

Q And what is the disposition of this case? A On August 16th he was committed to the Grand Jury in default of five hundred dollar bond.

Q On August 16th the defendant—— A Was committed to the Grand Jury in default of five hundred dollar
40 bond.

Q And that defendant is Alexander Helstowski? A Yes, sir.

Q That is the present plaintiff? A I cannot identify the plaintiff.

Q But that is Alexander Helstowski? A Yes, sir.

Q Who took the complaint in that case? A I presume I did. I cannot swear to that fact.

William Yuill, Cross.

Q Where is the complaint now? A I forwarded it to the office of the Prosecutor.

Q And after that the defendant was bailed for the Grand Jury that is all that you have to do with the case, isn't that correct? A The defendant wasn't bailed to the Grand Jury.

Q What did you say? A Paroled. 10

Q That is all you had to do with the case? A That is all; forward the complaint.

Q And you sent the papers to the Grand Jury? A That is correct.

Q Do you recollect sending a summons to this same man to appear? A I can't positively say, but it is a practice to do so.

Q The first is not a summons? A Sometimes.

Q Do you remember the defendant Greenberg, the present defendant, coming into your court? A I can't recollect the occasion. 20

Q You don't remember whether he is the man that signed the complaint or not? A I cannot tell you.

Q Haven't you an entry in your docket there that shows that this present plaintiff was bailed for the Grand Jury or committed in default of bail for the Grand Jury? A He was bailed for the Grand Jury the first day of his appearance.

Q When was he paroled for the Grand Jury? A On August 20th.

Q Do you happen to know how it is, having been committed first in default of bail, he was subsequently paroled? A Yes, sir. 30

Q What is it? A He might have been brought back to be bailed and the court may have had an examination and from the evidence adduced paroled the defendant.

Q You say may have. Don't you recollect? A No, I can't tell that.

Re-direct Examination by Mr. Twardus.

Q Then how many days was he actually in custody of the police department according to your records? A Well, he was committed on the 16th day and on the 20th he was paroled. 40

Mr. Twardus. At this time I offer this book in evidence, the record.

The Court. It will be received.

Q (By the Court). Have you read to us all that your docket states? A Yes, that is all.

Archibald G. Wettich, Direct.

By Mr. Braelow. Q Do you remember whether or not you advised the present defendant, Mr. Greenberg, that he had a complaint, a criminal complaint, against this plaintiff Helstowski? Do you remember whether you did or not? A I don't remember. The court may have advised me.

10 Q The court may have advised you? A Yes, but I can't remember it.

ARCHIBALD G. WETTICH sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q With whom are you connected? A Clerk of the Grand Jury.

Q Essex County? A Yes, sir.

Q Have you the complaint made by Mr. Greenberg against Alexander Helstowski sometime in 1919? A I have.

20 Q When was that complaint dated?

The Court. Suppose you just offer it in evidence.

Mr. Braelow. I object to this complaint going into evidence on the following grounds: The complaint purports to be a complaint charging the present plaintiff with obtaining money under false pretenses of the value of fifty-five dollars and seventy some odd cents, and another count charging the plaintiff with violating the Bulk Sales Law of the state of New Jersey. The arrest upon which this action is predicated and the complaint in this cause of action states that it was a complaint made by the present defendant charging the present plaintiff that he had defrauded from the payment of a claim of \$145 alleged to be due by the brother of the plaintiff, Walter Helstowski. I submit that it is not such a complaint.

30

The Court. It will be received.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

40 Q As the result of this case being brought to the attention of the Grand Jury what was the disposition of it?

Mr. Braelow. I object. I think the disposition is a matter of record, in the first place, and the record is the best evidence.

The Court. You have charge of the records of the Grand Jury?

Witness. Yes, sir.

Archibald G. Wettich, Cross.

The Court. The question may be answered.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

A It was considered by the April term, 1919, Grand Jury and no indictment was returned. 10

Q Has it ever been considered since? A No, it has not.

By Mr. Twardus. Q That is not possible because the complaint is dated— A The April term runs up to the second week in September and then the September term begins.

By the Court. Q Do you know when it was considered by the Grand Jury? A Yes. It was considered September 5th, 1919, is the date, but it is the April term which considered it.

Cross Examination by Mr. Braelow. 20

Q Were you clerk of the Grand Jury at the time this came up? A Assistant clerk of the Grand Jury.

Q How do you remember that that was the disposition?

A By my records.

Q You have a record of the matter? A In the book.

Q And you don't remember it outside of the record, do you? A No. I have got the data all here. I have the dates and all the information on here, my own memorandum.

Q You mean on the complaint? A There is the date it was actually heard. 30

Q Where is the disposition? A On here, signed by the foreman.

ALEXANDER HELSTOWSKI, plaintiff, sworn in his own behalf, (through the interpreter).

Direct Examination by Mr. Twardus.

Q Where do you live? A 71 Jackson street, Newark.

Q Do you know Israel Greenberg? A I didn't know him. I didn't have anything to do with him.

Q When is the first time you saw Mr. Israel Greenberg? A I don't remember. 40

Q In the year 1919 were you engaged in any kind of business? A I had a business in Perth Amboy.

Q What kind of a business? A Butcher shop and grocery man.

Q When did you open up that store? A I don't remember the time I opened it. It was open at that time.

Q What time do you refer to? A I remember I opened

Alexander Helstowski, Direct.

it on a Saturday.

Q Was it summer time or winter? A Summer.

Q Did anything unusual happen to you while you were engaged in the grocery and butcher business in Perth Amboy?

10 A Yes. I remember that Greenberg had me arrested. He came to my store and I told him I don't know him and I don't owe him any money.

Q When Greenberg had you arrested where were you brought? A They brought me to Perth Amboy to the court and from the court at Perth Amboy they brought me to Newark, to the City Hall, and I stayed there over night.

Q Where in the City Hall were you kept over night? A On Van Buren Street, in the lock-up there.

Q Is that the City Hall or police headquarters? A Police headquarters.

20 Q After spending the night at police headquarters where were you brought the next day? A To Van Buren street, where the hearing was there.

Q What is there on Van Buren street? A A court.

Q Was Mr. Greenberg there at that court on Van Buren street? A Yes, he escorted me there with the detectives.

Q What happened after the hearing? A They wouldn't let me talk anything. I don't know what they were talking about, but from there they had taken me to Newark street jail and I have remained there six days.

30 Q During the six days while you were at Newark street jail was anyone coming to see you, your relations? A My brother came to see me, too, he couldn't get me out until later, and then he brought Mr. Bonavita and Mr. Bonavita helped me to get out.

Q And is Mr. Bonavita a property owner? A Yes.

Q And he put up bail for you? A Yes; he put \$500 bail up for me.

40 Q Do you remember the day you were taken from your business at Perth Amboy? A I forget that. I know it was on a Friday.

Q And about what time on Friday were you taken away?

A About four o'clock in the afternoon.

At this point a recess was taken for one hour.

AFTER RECESS.

Q You were taken away to Newark and arrested on a Friday afternoon; is that right? A Yes, sir.

Q When did you buy your supplies, such as meats and groceries, for your Saturday and Sunday trade? A I had al-

Alexander Helstowski, Direct.

ready about \$200 worth of meat for those days. I ordered \$200 worth of meat on that Friday.

Objected to as immaterial.

Objection sustained.

Plaintiff's counsel prays an exception to this ruling of the court. 10

Exception noted as ground of appeal.

Q When you had returned after being away from your business six days was any part of that meat sold?

Objected to.

Objection sustained.

Q What was the condition of your store with reference to stock on the date of your arrest?

Objected to.

Objection overruled.

A I would have done business, but they had taken me away. They took my coat and apron off and they take me away. 20

Q Did you leave any meat when you were taken away, in this icebox?

Objected to.

Objection overruled.

A Yes. I got a lot of meat in the icebox because they just brought to me about \$200 worth.

Q When you returned where was this meat? A The meat remained there and when I came back it was in bad odor; I couldn't sell it any more. 30

Q Where was the meat? A I had to dump it out; I couldn't use it.

Q Did you have any conversation with Mr. Greenberg on the Friday that you were arrested? A I have to tell you Polish the way I spoke. He had told me that it is nothing against me, but against my brother.

Q When he said that he had nothing against you did he order the policeman to have you arrested? 40

Objected to as leading.

Objection sustained.

Q Did you make any protest about your being taken away when Greenberg said it is not against you, but your brother?

Objected to.

The Court. The objection is sustained. What was said may be stated. Whether he protested or not we will have to judge.

Alexander Helstowski, Direct.

Q What was said by Greenberg when you refused to go with the police authorities? A They didn't say anything. They came and they took me away.

Q How many months prior to your arrest had you been conducting your business in Perth Amboy at the same place?

10 A About three months.

Q Did you start up the business there or did you buy an already established business? A I bought from another man. A party established the place.

Q Was it an established place or did you buy fixtures? A I bought the fixtures there and I moved it to my store.

Q And on what street did you open up this store? A On Charles Street.

Q What number? A I forget the number; I don't know it any more.

20 Q What did you pay for the fixtures that you removed into the Charles street store?

Objected to.

Objection sustained.

Q What articles did you buy for your Charles street store? A I bought everything I needed.

Q What did you need? A I bought meats, groceries, bread and everything that people ask for.

30 *Mr. Braelow.* It seems to me that this line of evidence is not material, what occurred three months before he opened the store. I object to that line of evidence.

The Court. I cannot rule on a line of evidence.

Q I want you to name all the articles you bought in the line of fixtures for your store.

Objected to.

Objection sustained.

Plaintiff's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

40 Q How soon after you purchased the fixtures did you begin carrying on your retail trade as a grocer and butcher? A Two days afterwards I opened my store.

Q What was your average daily receipts for merchandise sold? A I always figured at night, it was always ninety dollars or two or three dollars more than ninety dollars, above.

Q How many customers could you serve for ninety dollars a day? A I had fifty steady customers.

Alexander Helstowski, Direct.

Q Did you have anybody else helping you in this store?
A My wife helped me.

Q When you returned from being away from your business for six days what did you observe? A I found that the meat was bad and I had to do away with the meat first. First, I had to buy new meat, and I had to induce my trade back, but when they passed back and they said— 10

Objected to.

The Court. Not what was said.

Q What did you see? A When I came back I had to clean the meat out first and I had to buy new meat and then when I already bought meat the people didn't return to buy it.

Mr. Braelow. I ask that that be stricken out. It has not been shown the reason why the people did not return.

The Court. Motion denied. 20

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Witness. There was people passed by and laughed at me and told me I was a crook.

Objected to.

The Court. What they told him will be stricken out. That they passed by and laughed at him may remain.

Q What did the people do when they passed by?

The Court. I said that might remain. 30

Q Did they do anything except laughing and talking? A They laughed at me and said that I was no good.

Mr. Braelow. I object to what they told him.

The Court. What they told him will be stricken out.

Q How long did the people continue to laugh at you? A Since that time business never was any good.

Mr. Braelow. I object to that answer and ask that it be stricken out.

The Court. The motion will be denied.

Q How much a day did you take in immediately after coming back from the Newark street jail in your place of business for the first week? 40

Mr. Braelow. I object. It has not been shown that if there is any difference that it was caused by this event. There was evidence showing that a certain period certain moneys were taken in. He is now attempting to show that after this event some money was

Alexander Helstowski, Direct.

taken in, but there is nothing to connect this defendant with the receipts in the store.

A I couldn't take in any more because when I returned my wife became sick.

10 Q How long did you keep the business going after you came back? A Two weeks after I returned.

Q What did you do in those two weeks time? A I placed a sign into the store and offered my store for sale. I couldn't remain there.

Q How soon after you came back did you put that sign in the window? A A week after I returned the people wouldn't come in, so I placed a sign in the window.

Q As the result of that sign did you sell your business?

A I sold everything in there for five hundred dollars.

20 *Mr. Braelow.* I object to that and ask that the answer be stricken out.

The Court. The answer may remain.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q How much had you paid for the articles that you sold for \$500?

Objected to.

Objection sustained.

30 Q What did the articles that you sold for \$500 consist of? A I sold everything, the grocery and the butcher shop, so after people wouldn't come in it wasn't any use to me.

Q What size was that store that you had, the frontage of, the length? A I don't know the exact dimensions, but it was about the width of half of this courtroom and the length up to the end of the fixture.

Q As the result of being arrested had you lost credit anywhere?

40 *Mr. Braelow.* I object to that as a conclusion, whether he lost credit.

The Court. I suppose it is proper to show he applied for credit where he had previously had it and was refused.

Q Prior to your arrest, the three months you were in business, did you ever buy any merchandise on credit? A I paid for everything cash.

Q Did you pay cash for your meat? A Cash.

Q Did you ever buy on credit? A I asked for credit and

Alexander Helstowski, Direct.

I was a new man there, and I didn't get it. First they didn't want to give me credit, they wouldn't listen to me.

Q Were you ever promised credit prior to your arrest from any of your wholesale dealers?

Objected to.

Objection sustained. 10

Q As the result of being arrested have you lost any friendship with your friends?

Objected to.

The Court. I think that is rather a conclusion. I suppose he may tell what the attitude of his friends is towards him, short of stating what they say.

Q As the result of this arrest have you lost the friendship or what is your friends' attitude towards you?

Objected to.

The Court. He can only tell how certain people act toward him before the arrest and after the arrest and leave it to the jury to determine whether it was due to the arrest. 20

Q How did your friends act towards you before your arrest and after your arrest? A From the people whom I bought from?

Q Do you understand the questions very clearly that are put to you through the interpreter? A I don't understand you very well because you speak a different dialect. I understand you all right at times and at times I don't. 30

Q Why don't you understand the interpreter very clearly? A Because there is so many different types of Slav language and you speak sometimes Slavish, sometimes Polish, sometimes Russian.

Mr. Twardus. That is a disadvantage of the witness. Some of the words are put to him in Russian and some of the answers are misinterpreted on that account.

The Court. This is the official interpreter and we will do the best we can through the interpreter. 40

(Question read as follows: "How did your friends act towards you before and after your arrest.")

A I had no friends there. I don't understand you right. If you tell it to me in my Polish I can answer it properly.

Q What did your friends think of you before your arrest in Perth Amboy in 1919 and after you returned from jail to Perth Amboy?

Alexander Helstowski, Direct.

Objected to.

Objection sustained.

Q What did your friends think of you before and after your arrest?

Objected to.

10

Objection sustained.

Q How did your friends act towards you before your arrest and after your arrest? A Before the arrest everything was all right, but after the arrest they were talking about me, that I am a thief and I am not a good man.

Objected to.

The Court. What they said will be stricken out.

Q Did all of your friends associate with you after your arrest?

Objected to as a conclusion.

20

The Court. The question is a leading question and the objection will be sustained.

Q What was the attitude of your friends towards you?

Mr. Braelow. I object to that. That is certainly leading.

The Court. The objection will be overruled. I suppose that means how they acted towards him.

A Before that we get along very good, but after that they kept away from me and they didn't feel towards me as good as before.

30

Q Just how did they act? What did you notice in their change of conduct towards you? A After the arrest they told me they can't keep company with me——

Objected to.

Witness. I am not as good a man as before. Although I have explained to them I was arrested and I hadn't done anything, but yet the feeling wasn't of the best towards me.

The Court. That answer will be stricken out.

40 Q Did your friends come to visit you as often as before your arrest? A They came to the house and made inquiries personally why I was arrested. I explained to them but I didn't believe it.

Objected to.

The Court. "But they didn't believe it" may be stricken out.

Alexander Helstowski, Direct.

Q After you explained the situation and after you returned from jail did they come to see you again? A They did not.

Mr. Braelow. I object unless it is shown who the witness means by "they." "They" is too general.

The Court. The objection will be overruled. 10

Q When you refer to your friends how many in number do you refer to? A About five.

Q And for how many years have you known these different people? A I think about three months.

Q Did anybody from Newark make inquiries about your arrest? A They were reading in the newspapers; the newspapers had printed that I was a thief and I stole a lot of goods and they called my attention to it.

The Court. The whole answer will be stricken out.

Q How many friends from Newark came to make inquiries of you about your arrest? A About ten of them told me. 20

Q Of those ten people how many have you known for a period of years?

Objected to as leading.

Objection sustained.

Q How long had you known these Newark friends? A Some of them I have known two or three years here in the city of Newark.

Q How did those ten friends act towards you when you returned to your business in Perth Amboy? 30

The Court. Not what they said.

A They were laughing at me.

Q Did they associate with you as much as they did prior to your arrest? A Well, some of them here in the city of Newark they laugh at me up to the present day.

Q How often did you see those people who laughed at you even today? A Well, we meet sometimes on a Sunday as we go together and they laugh at me.

Q As the result of them laughing at you do you find any peculiar feeling about your person or body? 40

Objected to.

Objection sustained.

Q What particular day is it when they laugh at you and talk about you?

Objected to.

Objection sustained.

Alexander Helstowski, Cross.

Q Was anyone capable of taking charge of your business when you were taken away to Newark? A Do you refer to Perth Amboy?

10 Q Yes. A During the time I was locked up my wife opened the store and we lost the customers. There was no one there to cut the meat.

Q How long did she take care of the business? A You refer to the time here in jail?

Q Yes. A For two days after I was locked up she kept the store open, but we done no business and so closed the store.

Cross Examination by Mr. Braelow.

Q Don't you speak English? A I cannot speak well English.

20 Q Can you understand English when it is spoken to you?
A Not very much.

Mr. Braelow. Will your Honor permit me to try this witness in English?

The Court. Yes.

Q (In English.) Where do you live? A Jackson street.

Q What number? A 71.

Q How long are you in America, how many years? How many years are you in America? Don't you understand me?
A No.

30 Q You don't understand me? A No.

Q When did you come to America, five years ago?

Mr. Twardus. The witness answered that he does not understand English and the questions put to him are incomprehensible.

The Court. He answered two or three questions put to him.

Q Are you married? A Yes.

Q How long? Don't you understand me?

(Witness pauses.)

40 *Mr. Braelow.* I ask your Honor to direct the witness to answer.

The Court. I cannot direct him to answer if he says he does not understand.

Q Do you understand me? A I understand a little, not much. I only understand by him.

Q Do you understand "sell"? (Through the interpreter.) How long are you in America? A Eighteen years.

Q How long are you in New Jersey? A I have been here all the years when I came from the old country.

Alexander Helstowski, Cross.

- Q How old are you? A Past thirty-nine.
- Q Are you married or single? A Yes.
- Q (By the Court.) Do you mean to say that you have been in this country for eighteen years, right here in New Jersey and do not understand English? A You see, I have been employed in the factory over ten years and practically the only language we did speak there was Polish and Slavish and very seldom the English language was used there. 10
- Q What factory? A The snuff factory.
- Q Where is that? A Helmetta.
- Q How long have you been in business for yourself? A three months.
- Q That is the time you were in Perth Amboy? A Yes.
- Q You were never in business for yourself except those three months? A I had no business there myself except working. 20
- Q (By Mr. Braelow.) You are married, you say? A Yes.
- Q When you first came to Newark where did you go to live? A Market street.
- Q When was that? A I don't remember.
- Q How many years ago—five years? A Yes.
- Q What number Market street? A I don't remember the number.
- Q Near what street? A Near Jackson street. 30
- Q Where were you working then? A I went to a factory.
- Q What factory? A Celluloid.
- Q How long did you work there? A I don't recall how long I worked there.
- Q Was it a year? A I worked there until this man fixed up the store and then I went there.
- Q You worked there until you went to Perth Amboy; is that correct? A Do you refer to where I was employed in the factory? 40
- Q In the celluloid. A No, I worked here in the store for this man.
- Q Which man? A Walter Helstowski.
- Q Is that your brother? A Yes.
- Q Where did your brother keep a store? A Chambers street.
- Q When did he open that store? A I don't know, I don't remember.

Alexander Helstowski, Cross.

Q How many years ago? A I can't tell how many years ago.

Q Is it five years ago? A I don't know positively. I haven't got any clear recollection.

10 Q How long did you work for your brother? A I worked for him for several months and then I had been looking around for a business for myself.

Q You left your brother and went directly to Perth Amboy looking for a business for yourself; is that correct? A I left my brother when he sold his store and he tell me "I have no more work for you."

Q Did you immediately go to Perth Amboy? A But I have remained here five or six days or probably a whole week.

Q Did you then go to Perth Amboy? A Yes, I went and found the store there.

20 Q You say you never saw the defendant until you were arrested in Perth Amboy, is that correct? A When I worked in the store I saw him coming there. I didn't know his name at that time.

Q In which store? A In Chambers street.

Q So you did see him in Chambers street, is that correct? A Yes.

Q Did your wife live with you in Chambers street? A Yes.

30 Q And your brother and his wife lived there or didn't they? A My brother wasn't married.

Q And he lived in Chambers street, too? A Yes.

Q In what capacity were you employed by your brother in Chambers street? A I worked in the grocery and butcher shop.

Q Were you a salesman? Did you wait on trade? A Yes, I made the sales and my brother took the money.

Q Who took the money when he wasn't there? A He was always there.

40 Q He never left you alone in that place? A No, he was always in that store.

Q Didn't he trust you?

Mr. Twardus. I object. That is incriminating.

The Court. Objection overruled.

A He didn't want no one or me to handle the cash. He said, "The business belongs to me and I want to handle the cash myself."

Q Who took the money if you made the sale and he was in the toilet? A Well, if I made a sale customers would

Alexander Helstowski, Cross.

come in with little books and I made the entry in the book.

Q How about a cash sale? A I didn't handle any moneys. I didn't want to handle no money.

Q Didn't you sell people if he was in the toilet and they paid cash? A He kept the butcher and the butcher sold more than I did. 10

Q (Question read.) A I didn't handle any cash money. I told my brother, "I will not handle the cash," and I didn't.

Q I am asking you what did you do when a cash customer came in there to buy merchandise from you and your brother was in the toilet and wasn't in the store? A Why, the customer would come in, that is, pay cash. They generally waited until my brother came in because he wasn't away very long. I didn't handle any cash.

Q You went to work in that store immediately when your brother opened it, didn't you? A I started to work for my brother after he had the store open four or five days and I worked up until that day in the factory because I know something of that line of business in the old country. 20

Q How long did you work for your brother? A Well, I think I worked seven months.

Q Your brother had no experience in that business in Europe, did he?

Objected to.

Objection overruled.

A I left the old country long before he did. When I left him he was a little boy. 30

Q So far as you know, did he have any experience in the grocery and butcher line? A Well, he must have had some experience as my father was in that line in the old country.

Q How much money did you give your brother to buy that place with?

Objected to.

Objection overruled.

A I didn't give him any money. 40

Q Did you loan him any? A No; I didn't give him any money; I had children of my own and I kept my money.

Q Did you buy any goods from the salesmen in that store? A No.

Q Didn't you ever buy any goods from Mr. Greenberg, that elderly gentleman there (indicating) in that store? A No.

Q Who bought the goods for the store? A My brother.

Alexander Helstowski, Cross.

- Q Who bought the goods when he was out? A Nobody bought.
- Q Did your wife work in that store, too? A No, sir.
- Q She lived in the house, didn't she? A Yes.
- 10 Q And where were the rooms, on the same floor as the store? A In the rear.
- Q So she never came and helped out in the store at all? A No, she only came in when she needed to buy something.
- Q She bought in that store, your wife did? A Yes.
- Q Is your brother older or younger than you? A Younger.
- Q How many years? A I don't know.
- Q Is he ten years younger? A I don't know. I don't know nothing.
- 20 Q How is it you don't know how much younger your brother is? A I can't tell anything about it. I haven't heard nothing from my mother, about her age. In other words, I haven't got the right to show his age.
- Q When you left the old country eighteen years ago how old was your brother? A I can't tell; I don't know.
- Q Was he a nursing baby? A I don't know.
- Q Do you know whether he was a little baby in arms or going to school or whether he was still in dresses? A He was a very little boy, that is all I recall.
- 30 Q Was he wearing trousers?
Objected to.
The Court. The question may be answered.
- A I don't remember.
- Q Did you ever see your brother in trousers when he was little? A I don't remember.
- Q Was he talking when you left? A Yes.
- Q (By the Court.) Where was your home? A Poland.
- Q Where? A Polish country.
- Q That is a big place. What town? A It is near the city, Russia Poland.
- 40 Q Near what city in Russia Poland? A Scholan.
- Q You lived with your mother and brother, didn't you? A Sure.
- Q And when you left eighteen years ago he was a little boy, is that right? A Well, he was a little boy; I cannot tell how many years.
- Q Show me with your hands how tall he was, referring to

Alexander Helstowski, Cross.

the height of this railing (indicating.) A (Witness indicates.)

Q Did you ever buy any goods in that store from a man named Conron? A I didn't buy nothing from no man.

Q Was there a sign on the window in that store? A Which store do you refer to? 10

Q Chambers street, Newark? A Yes.

Q And didn't that sign say "Helstowski Brothers"? A No.

Q What did it say? A To the best of my recollection it said Anton Helstowski.

Q Who painted the lettering on that window? A I don't know. When I started to work for him it was there.

Q How much wages did you get from your brother? A He paid me twenty-five dollars per week.

Q How much wages did you get in the factory? A At that time I earned in that factory twenty-three dollars. 20

Q And who worked in that store? A All of us, butcher worked, he did and I did.

Q Did you work there Saturday afternoon and Saturday night, too? A Yes, sir.

Q Did you work there Sunday? A Yes, sir.

Q Did you work there holidays? A On some holidays I didn't work.

Q And some you did? A Sometimes; sometimes I didn't. 30

Q And you say your wife paid for everything that you got in that store? A Yes, sir.

Q Do you remember when your brother sold the store, as you say? A Don't remember.

Q How did you know he sold it? A As soon as he sold that store he tell me there is no more work for me there.

Q Didn't you know he was going to sell it? A Yes, he said that before. There were several there looking at the store and he would sell it.

Q Did Mr. Greenberg sell any goods to your store there in Chambers street? A To whom? 40

Q To you? A No.

Q To your brother? A Well, I know they had some conversations. I was only in the employ there. What they were talking about I know nothing about.

Q What language were they talking? A I paid no attention. I have been working.

Alexander Helstowski, Cross.

Q Did you ever talk to Mr. Greenberg yourself? A He didn't talk to me and I was only there in the middle and I done my work.

10 Q Don't you know as a matter of fact that just before that store was sold you and your brother bought a bill of goods from Mr. Greenberg amounting to about \$55? A I don't know nothing about it.

Q Didn't your brother buy such a bill of goods? A I don't know nothing about it.

Q Didn't you buy two or three cases previous to the sale of this store bills of goods in the neighborhood of twelve or fifteen dollars each from Mr. Greenfield? A No, I never bought any from anyone.

20 Q Where did you live the six days after the store was sold and until you went to Perth Amboy? A As soon as the store was sold the new owners took possession of the store. The door entering to our rooms, they were nailed with big nails tight and I remained there about six days and I moved out.

Q When did your brother move out? A He left before me.

Q How long? A As soon as he sold the store he went to some other people to board.

30 Q Do you remember getting a summons while you were in Perth Amboy calling upon you to appear in police court? A Yes, sir.

Q Why didn't you appear? A Yes, I went there. I am entering the police station and I showed a subpoena to the police officer; he looked at it and he tell me to sit down; I did sit down, waited there, no one called my name. I saw everybody start to go out the court there and I went.

Q Did you talk to anybody but the police officers? A I showed him the card. I didn't get it back again. The only thing he tell me, "Sit down."

40 Q That was the police officer? A Yes, that was in the court, in the same way as you see here in court.

Q Do you remember Mr. Greenberg calling upon you on another day than the one you were arrested on in Perth Amboy? A Yes, I remember two detectives came and they took me.

Q Didn't you see him in Perth Amboy before that? A Yes, he was there before.

Q How long before? A I can't tell.

Alexander Helstowski, Cross.

Q How many people were with him? A I can't tell. I paid no attention to it.

Q Was his son, this young man (indicating) with him? A I didn't see this young man, but I remember it being the one with the glasses on.

Q Was this gentleman here, Mr. Kaplan? A I don't know. 10

Q How many people in all were there? A There were other people in the store at the time, but I have no recollection.

Q Did you have any conversation with Mr. Greenberg then? A No, I didn't.

Q Didn't you speak in English to Mr. Greenberg on that occasion? A No.

Q You know who I mean by Mr. Greenberg, this man here (indicating)? A Yes, sir.

Q And you didn't speak to him in English? A No, I didn't speak to him. 20

Q Did you speak to this man in English (indicating)? A I don't even know if he was there. The first time I see him here.

Q Did you speak to Mr. Greenberg at all? A All I do remember Greenberg told him that I owed him money.

Q And you told him that you didn't? A Yes, sir.

Q Did you say to Mr. Greenberg, "Why do you bother me, I was partner with my brother, why don't you get after him"? A I haven't been partner with no one, neither did I say to Greenberg that I was a partner. 30

Q Didn't you offer to pay Greenberg one-half of that indebtedness, saying it was your share? A I didn't owe him anything. I had no intention to pay him. I don't owe him, why should I pay him?

Q Answer the question, please. (Question read.) A No, I didn't say nothing of the kind.

Q Did you make that statement to anybody that accompanied Mr. Greenberg? A I said nothing to no one. I didn't owe him any money. 40

Q Were you not asked why you hadn't answered the police court summons? A He is supposed to be the one who asked me.

Q Any one of these people with Mr. Greenberg, either he or one or the other? A No, there was no such question. No question was asked; the only time was when they took me along.

Alexander Helstowski, Cross.

Q Did you tell Mr. Greenberg or anybody with him on that occasion where your brother Walter was? A I wasn't asked anything about it.

Q Where was your brother Walter then? A He lived in the city of Newark, on Lafayette street.

10 Q You say you were arrested on Friday night; is that correct? A Yes.

Q Who arrested you? A Greenberg.

Q Wasn't there a police officer who arrested you? A Two detectives and one police officer.

Q And who went back to Newark with you, two detectives? A Two detectives.

Q The police officer, too? A No.

Q Were they in plain clothes, the detectives? A They were in business clothes.

20 Q You drove back in an automobile? A Yes.

Q Brought by the detectives? A Yes, the detectives brought me here and put me in the jail. The first night I was kept in police headquarters. That is near the City Hall.

Q Did they arrest your brother Walter? A I don't know. I was locked up. I couldn't say anything about it.

Q Was he in court any time you were? A No.

Q Do you know Mr. Bonavita? A Yes.

30 Q And wasn't it Bonavita who helped you get out of your trouble? A And Mr. Bonavita bailed me out.

Q Who got him to bail you? A Why he came there together with my brother.

Q So your brother was there? A Sure, with Mr. Bonavita.

Q You say that when you came back after you were arrested you closed the store because your wife was sick, is that correct? A When I was released I tried my utmost to do the best in the store to improve the store and I wasn't able to.

40 Q When did your wife get sick that time? A She took sick—Mr. Greenberg took me away and told her I will be back soon. I didn't return until after seven days and she took sick right after.

Q After you returned or after you went away? A Well, she took sick grieving herself. I was taken away and business was closed.

Q You say your friends commenced to laugh at you and didn't feel the same towards you? Which friends, who? A They are in court.

Alexander Helstowski, Cross.

Q Who are they? A Up to the present day I don't remember the names now. I have forgotten.

Q Who were the friends in Newark that you say turned against you? A Here in Newark, when they met me they asked me why I was in jail, why I was locked up in jail.

The Court. That will be stricken out. He was asked who they were. 10

Witness. One man is Sefanski.

Q Where does he live? A I don't know the present time where he lives.

Q Where did he live at the time? A Monroe street.

Q What number? A I don't remember.

Q What does he do for a living? A He is a machinist.

Q What is his first name? A I don't know. I know his second name, Sefanski, but I don't recall the first.

Q How long did you know him before you were arrested? A About three years. 20

Q Did you ever visit his house? A Yes.

Q When is the last time you visited his house? A Don't know.

Q Is he one of the men who laughed at you after you were arrested? A He is the one who questioned me about the arrest. He read it in the paper.

Mr. Braelow. I ask that that be stricken out. That is not responsive. 30

The Court. It will be.

Q (Question read.) A Not only him, more.

Q I asked if he was one? A There was some more.

Q Ask him again, is that one of the men.

The Court. Yes, or no.

A Yes.

Q How many times did he laugh at you? A I don't remember; several times.

Q When is the last time? A I have forgotten.

Q Did he laugh out loud or just smile? A They were talking and he laughed. 40

Q Are you sure you didn't have some kind of a funny coat on or something that made him laugh at you? A No. I didn't have any funny coat on me. He laughed at me because I was made a thief.

Mr. Braelow. I object and ask that that be stricken out.

The Court. It may remain.

Michael Marano, Direct.

Q You say there were some more friends of yours that laughed at you, who else? A A number of them laughed at me, met me on the street, but I don't remember.

Q Suppose you name us another one of those friends.

A I don't know them so well, they are friends of that man.

10 Q What man? A I mean friends to Sefanski.

Q They are not your friends, are they? A No.

Q So the only friend that you had in Newark that laughed at you was Sefanski? A Yes.

Q You don't know how many times he laughed at you?

A Several occasions.

Q And you don't remember the last time, do you? A I have forgotten it. It is a long time ago.

Q When did you leave Perth Amboy after your arrest? A Well, after my arrest, after I was released, I think about two
20 weeks after.

Q Where did you go? A I came to Newark.

Q Where did you go to work? A I went to work in the factory.

Q Where? A I went back in the same place where I worked before, in the celluloid factory.

Q How much did you get a week? A Twenty-three dollars, twenty-two dollars.

Q Are you still working there? A No.

30 Q Where are you working now? A Du Pont's.

Q How much are you making now? A Twenty-four dollars and a few cents.

Q Where is your brother now? A I don't live with my brother.

Q Is he here in court? A Yes.

Q Did you pay Bonavita, that man that helped you get out, any money?

Objected to.

Objection sustained.

40 MICHAEL MARANO sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q Where do you live? A Newark, New Jersey, 511 Market street.

Q What is your business? A I am in the real estate business and notary public and justice of the peace.

Q Do you ever make out any bills of sales or legal papers?

A Yes, sir.

Michael Marano, Direct.

Q Do you remember making out a bill of sale from Walter Helstowski to John Wilksanski? A Yes, sir.

Q (Showing witness paper.) Is that a copy of a paper that you received from the county clerk's office? A Yes, sir.

Paper referred to is offered in evidence and marked
Ex. Pl. 10

Q You know Walter Helstowski? A About seven years.

Q How long have you known his brother Alexander? A The first day when I drew this bill of sale.

Q Walter was the owner of this store on Chambers street, wasn't he?

Objected to.

Objection sustained.

Q How many times did you see the store owned by Walter Helstowski on Chambers street? A No, sir; only business; sometimes pass around, pass him. 20

Q Whose name was on there? A I never pay attention to the name there.

Q At the time the bill of sale was made out Walter said the store belonged to him?

Objected to.

Objection sustained.

Q What conversation was had between the purchasers of this store and Walter Helstowski at the time of the bill of sale? 30

Objected to.

Objection sustained.

Q Did you ask Walter whether he was the sole owner of the business at the time that you had the bill of sale executed?

Objected to.

Objection sustained.

Q Did Alexander Helstowski have anything to do with the making of the bill of sale? A No, sir.

Objected to.

Objection overruled.

Q Nothing to do with the transaction at all? A The transaction was between Walter and the man that bought the place, but I don't remember his name. 40

Cross Examination by Mr. Braelow.

Q You say that you saw Alexander Helstowski for the first time when the business was sold? A Yes.

Q That was in your place? A Yes.

Q And he was there when Walter Helstowski sold the business? A Yes, sir.

Michael Morano, Cross.

Q How much was the business sold for? A I don't remember exactly. I think about fifteen hundred dollars or sixteen hundred dollars.

Q Whom was it sold to? A I forget his name. Give me the bill of sale and I will remember it. Wilksanski.

10 Q The man named in the bill of sale, is that the buyer?
A Yes, that is the buyer.

Q What is your first name? A Michael.

Q At the bottom of this bill of sale is an affidavit made by Walter Helstowski in which he says that there are no debts against this business. Did you take that affidavit? A Yes, sir.

Q Who swore to that? A Walter.

Q Any money left with you to pay any creditors? A No, sir.

20 Q None at all? A Not at all.

Q Did you tell them that if they had any creditors they would have to leave the money with you? A I asked him if he had any creditors but he said, "No, I will take an affidavit."

Q Was Alexander Helstowski present when you asked him that? A Yes, sir.

Q Was Alexander Helstowski present when Walter Helstowski swore to that affidavit?

30 Objected to as irrelevant.

A Yes, he was there all the time.

Q Did all these people go away together? A Yes, went away together.

Q When this bill of sale was signed did you take the fifteen or sixteen hundred dollars or did you pay it over to Walter? A I counted the money and I handed it to Walter because he transacted the business.

Q Where is Wilksanski now, the man who bought the place? A I don't know.

4 Q Is that place still running as a place of business down there, this place in Chambers street? A No, no more there.

Q Somebody else? A Three or four people around there.

Q Do you remember this man Greenberg coming to your place of business after the sale? A Yes.

Q Do you remember his asking you if the Helstowskis had left any money there for him? A Yes, he asked me.

Michael Marano, Cross.

Q Did he tell you that they owed him money? A No, sir.

Q Do you remember how much he said they owed them?

A I don't know how much.

Q Did you tell him that there was no money left there for him? A Yes, sir.

Q Did you tell him that an affidavit had been made that there were no creditors? A Mr. Greenberg asked me if I took an affidavit and I said yes. 10

Q Weren't there any other creditors that came to you to apply for payment? A No, sir.

Q Did a man named Conron come to you? A No, only Mr. Greenberg came to me.

Q And you say you never noticed what the sign on the store read? A No, I don't pay attention to the sign. It is none of my business. 20

Q And you never saw Alexander Helstowski except that day? A No, only that day he came to my office.

Q Did you do any kind of work of the nature that you usually do, such as drawing affidavits, and so forth, for Walter Helstowski before this bill of sale? A I drew a lease one time from Tom Smith.

Q Do you remember a bill of sale from him whereby he bought this place? A No, he started this business.

Q Do you remember when he was arrested? A I don't know anything about being arrested. 30

Q You have been present in court? A I don't know anything about that. I heard it from the brother.

Re-direct Examination by Mr. Twardus.

Q When Greenberg came to you what did he say? A Well, he asked me if Walter left any money for him.

Re-cross Examination by Mr. Braelow.

Q Did he say Walter? A Yes.

Q He said the word "Walter"? A Yes, "Walter."

Q What did you say? A I said no, he no leave no money for him. 40

Q Are you sure he didn't say just Helstowski? A No, sir; he said Walter Helstowski.

Q You are sure he said Walter? A Yes, sir; Walter. SALVATORE BONAVIDA sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q Where do you live? A 295 Lafayette street.

Q Do you own the house you live in? A Yes, sir.

Salvatore Bonavita, Direct.

Q Do you know Walter Helstowski? A Yes, sir.

Q Do you know Alexander Helstowski? A I know the brother. The other brother comes to get shaved.

Q But you know Walter better than you know Alexander?

A Yes, sir; I have a number of years.

10 Q That is the younger brother? A Yes, sir.

Q Were you present at the third precinct when Alexander was brought before the judge? A Yes, sir.

Q Did you hear there any conversation between Mr. Greenberg, and Mr. Greenberg's lawyer, about Alexander? A Well, I bailed out Alexander and one day came the case, the lawyer for Greenberg, he came right in court. The lawyer said to me, he says, "Is that a brother?" He don't owe anything, he owes the money and want to put him in jail," and the judge says "Paroled for the Grand Jury, let him go," and the lawyer for Greenberg, he says, "Anybody that signed the note, what they owe me for Greenberg, I will let him go." I said, I will stand for it." I go to the house and I sign a note \$5 a week for Mr. Greenberg. The young fellow pays for two weeks and Greenberg came to me again, "I lost \$135 or \$145." He put it on the paper right in front of my barber shop that he wanted to sell my fixtures.

Q The judgment? A Yes, sir; I pay every nickel.

30 Q You heard Greenberg say, "It is Walter owes me money, not Alexander"? A Yes, sir; I signed the note, too.

Q Did Greenberg tell you who owed him the money? A Yes, sir.

Q Who did he tell you owed him the money? A The young fellow.

Q Did he ever tell you that Alexander owed him any money? A No, sir; that is the reason he put him on parole, Judge Yuill.

40 Q Did you endorse any notes for Walter to pay Greenberg? A Yes, sir; five dollars a week to pay for two weeks and after he no pay at all and Greenberg, he put me in trouble, and I pay every nickel. I paid \$155.

Cross Examination by Mr. Braelow.

Q How much did you endorse? A I don't remember now. He got the note. He know.

Q About how much? A It would be ninety-five dollars because he paid the expenses of the court and everything.

Salvatore Bonavita, Cross.

Q How much were the notes that you endorsed? A Thirty notes, five dollars a week.

Q And those notes were not paid, were they? Nobody paid those notes, did they? A I paid two weeks, three weeks.

Q Who paid? A The other fellow, the young fellow. 10

Q Then Walter didn't pay; is that right? A No pay.

Q And then Greenberg got a judgment against you? A Yes.

Q And he levied on your barber shop? A No, not the barber shop; the fixtures, the piano, and everything.

Q Your furniture, you mean? A Yes, sir.

Q He advertised it in the paper for sale? A Yes, for thirty days time.

Q And you paid that money, didn't you, to Greenberg's lawyer? A Every nickel I paid for. 20

Q And you never got that money? A No, sir.

Q So you are out that money? A What are you going to do? I don't want to sell my fixtures. I pay full.

ADJOURNED until Tuesday, April 17, 1923, at ten o'clock A. M.

SECOND DAY.

Tuesday, April 17, 1923.

Continued pursuant to adjournment. 30

Counsel as before stated.

ANNA HELSTOWSKI sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q Where do you live? A 71 Jackson street.

Q You are the wife of Alexander Helstowski, the plaintiff in this case? A Yes, sir.

Q Do you remember the time that your husband opened a business as butcher and grocer in Perth Amboy? A No, sir.

Q Do you remember the time that Mr. Greenberg came to your store in Perth Amboy with several men? A Yes, sir. 40

Q What was said by Mr. Greenberg to your husband in your presence? A He says that "If I can't get the other man" he says, "I got to take your husband."

Q What other man did he refer to? A My husband's brother Walter.

Anna Helstowski, Direct.

Q And as a result of his saying that was your husband taken away? A Yes, sir.

Q By whom? A They took him in an automobile.

Q Did they show him any papers, warrants or anything?

A Yes, but he didn't read it.

10 Q Did your husband take any steps not to be taken away by the authorities?

Objected to.

Objection sustained.

Q Had you been helping your husband in the business prior to him being arrested in Perth Amboy? A Helping him, yes.

Q Did you ever count his cash at night before he closed?

A No, he always counted it, but he always tell me.

Q Did you ever see him count it at night? A Yes, sir.

20 Q How much money would be in the register at night?

Objected to.

A Over ninety dollars.

Objection sustained.

Q Did you ever count the money at night? A Sometimes.

Mr. Braelow. She says she didn't.

Witness. Sometimes.

Q How often did you count it? A Whenever I got a chance I did it.

30 Q How many times in the last three months that you were in business did you count the money? A About four times.

Q Would you be present when your husband would be counting up the cash himself? A Yes, sir.

Q How many times would you be present at your husband's side when you would be counting up the money? A I don't understand you.

40 Q How many times were you present and beside your husband when he would count up the cash at night? How many times did you see him count the money, your husband at night? A Four times.

Q You said you did that yourself, but outside of those four times that you counted it yourself did you watch your husband count it? A No, I did not.

Q Never did? A I did, but not always.

Q How many times? A I don't know.

Q Would it be once a week or once a month, or how often that you would watch your husband count the money? A Twice a week.

Anna Helstowski, Direct.

Q How much money would you see your husband count on those occasions? A Ninety dollars.

Objected to.

Q Now, do you remember the day of the week your husband was taken to jail? A No, I don't know. I don't remember the day, no. 10

Q Do you remember the day of the week? A Friday, yes.

Q What did you do the next day when you were left alone in the store? A Well, I kept the place open and then I got nervous and began to cry and got sick.

Q As the result of being sick were you confined to your bed?

Objected to as immaterial.

The Court. The answer may remain. 20

Q How many hours of the day did you have the store open for business purposes? A Until eight o'clock.

Q Morning or night? A Night.

Q What time did you usually close the store at night? A Nine o'clock.

Q When was the store opened when you took sick? A When my husband came back.

Q How many days afterwards was that? A Seven days he was in jail.

Q When your husband returned were you in the store or were you confined to your bed? A I was in the bed. 30

Q How soon after your husband returned home were you able to get up and go about your duties? A About a week.

Q When you got up did you ever go into the store? A No.

Q Did you have any opportunity of observing any transactions in the store? A Sure, everything was spoiled.

Q What do you refer to being spoiled? A The meat and everything.

Q Did you see that? A Yes, sir.

Q With reference to the customers what did you see in the store after you got up out of bed and your husband was home? A Yes, about three or four. 40

Q Would those three or four customers be there at one time? A Yes.

Q How long did you remain in the store after you did come into it?

Anna Helstowski, Direct.

The Court. She just said she was not in the store after he came back.

Witness. I wasn't able to go in the store. I was sick.

Q How do you know those customers were in there? A
10 Had a glass door there.

Q Could you see through the glass door? A Yes, sir.

Q How many customers did you see a day after you got up, after your illness? A Before my husband was taken away we had fifty.

Q After he was taken how many did you have a day? A A very few.

Q Did you see any customers act any different after your husband came back than they did before his arrest? A Yes.

Objected to.

20 Q What was it that you saw? A Because it was in the papers that he was——

Objected to.

Q Just what you saw the customers do, not what they said. A Yes, they were laughing.

Q Laughing at whom? A And pointing out.

Q At whom? A At us, that my husband was a robber.

Q Would they pass by or would they come in? A Some passed by and some came in.

30 Q How long did your husband remain at the store after he came from jail? A I don't remember.

Q Was it a month or week or period of time? A I don't remember. I was very sick. I don't remember that.

Q Was it a long or short time? A Short time.

Q Were you present when your husband sold the store? A Yes.

Q How much did you receive for the store? A \$500.

Q In reference to the size of this room, how large was this store? A I couldn't say.

40 Q Couldn't you off-hand say how long it was and how wide? A I couldn't tell you that.

Q Half the size of this room or quarter of the size? A Oh, no.

Q Do you know how many feet frontage your store had? Can you point out from where you sit how wide it was with reference to the benches or seats in this room? A No, I cannot.

Anna Helstowski, Direct.

Q What kind of a store was it that your husband had?
A Butcher shop and grocer.

Q Grocery on one side and butcher on the other? A
Yes, sir.

Q And what did the butcher shop consist of with refer-
ence to fixtures, and so forth? A \$1500.

Objected to.

The Court. That will be stricken out.

Q What did it consist of? What did you call the articles
that comprised the butcher and grocery?

The Court. I think that is immaterial.

Q Do you remember what your husband paid for these
fixtures and stock? A \$5000.

Objected to.

Objection sustained.

Mr. Twardus. I have no other way of proving this
except by the people who expended this money.

The Court. An exception may be noted.

Plaintiff's counsel prays an exception to this ruling
of the court.

Exception noted as ground of appeal.

Cross Examination by Mr. Braelow.

Q How long have you been married? A Fifteen years.

Q Have you lived with your husband in Newark, New Jer-
sey, all that time? A Yes, sir.

Q How long are you in this country? A I am in this
country thirty-five years.

Q How old are you? A Thirty-five.

Q You were born here? A No, I was born in Germany.

Q Did you ever live with your husband on Chambers
street, Newark? A Yes.

Q What number? A 100.

Q And that was where a grocery and butcher store was
kept; and was your brother-in-law in that store, too? A
That was the store.

Q Do you remember when your brother-in-law, as you
say, opened that store?

Mr. Twardus. I object to that as incompetent, ir-
relevant and immaterial and as not proper cross ex-
amination. I referred to the Perth Amboy store on
direct examination.

The Court. Objection sustained.

Anton Walter Helstowski, Direct.

Q When did you go to Perth Amboy? A I don't remember.

Q Do you remember what month it was? A No.

Q Do you remember what year it was? A No.

10 Q Was it after your brother-in-law closed the store in Newark? A What do you mean?

Q Did you go to Perth Amboy after the store in Chambers street in Newark was sold? A Yes, sir.

Q Winter after that? A I went after that because I was looking for a place three months ago.

Q How long after?

20 *The Court.* I will strike out everything that was asked of this witness prior to the taking of the husband away, except the mere question of how many customers they had before that time. That is not proper cross examination.

Mr. Braelow. I would like to make this woman my witness.

The Court. Then you may call her later on.

ANTON WALTER HELSTOWSKI sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q Where do you live? A 12 Monroe street.

30 Q Did you ever have a store on Chambers street? A Yes, sir.

Q How long did you conduct your store there? A About seven months, something like that.

Q Who did all the buying for that store, all the meats and groceries? A I take care myself of the business.

Q Did you authorize or allow anybody else to buy articles for you? A No, I took care of it myself.

Q Who paid all the bills? A I did.

Q Your brother worked for you there? A Yes, sir.

40 Q What was his duty there? A Well, I tell him to help me out, everything, butcher, he got to do everything, butcher, help out on butcher side and grocery side.

Q He sold goods? A Anybody signed the books. I had about a hundred customers on books. On butcher side was register, and on the butcher side he had the register. Sometimes I was out to the toilet or sometimes I go out for business.

Q Nobody took care of the cash register but you? A Sometimes the butcher was out.

Anton Walter Helstowski, Direct.

Q The cash register? A Yes, sir; on the butcher side.

Q Do you remember the time your brother opened up a store in Perth Amboy? A I think I do because at that time I was selling store 100 Chambers street, and then my brother asked me if I can go to Perth Amboy to buy fixtures.

Objected to.

10

The Court. It will be stricken out.

Q Do you remember when your brother opened the store in Perth Amboy? A Yes, sir.

Q Did you go there with him at any time? A Yes, sir; one time.

Q When? A That time he went to buy fixtures.

Q Did you see him buy fixtures? A Yes, sir.

Q Did you see him pay any money for the fixtures? A Yes, sir.

Q How much money did you see him pay?

20

Objected to.

Objection sustained.

Plaintiff's counsel prays an exception to this ruling of the court.

Objection noted as ground of appeal.

Q What did the fixtures consist of that your brother bought? A Icebox, front bar and back bar and there was a back railing and there was two scales or knives, grinder for meat. Everything was complete for butcher.

30

Q What did your brother do with all those fixtures? What store did he put them into? A Perth Amboy.

Q Is that where your brother conducted his business as butcher and grocer? A Yes, sir.

Q Did you ever have any occasion of visiting your brother's store while he conducted his business there prior to his arrest? A I was about two or three times. I couldn't remember exactly.

Q On those two or three occasions how long did you remain in the store? A Not very long. About an hour and a half, two hours; something like that.

40

Q In that hour and a half how many customers would you see come into that store to buy?

Objected to.

Objection overruled.

A At that time I see about six customers. One lady she pay five dollars for goods, and another lady for three dollars

Anton Walter Helstowski, Direct.

because I am in business and I always take a look how business is going.

Q Those are cash transactions, they paid cash? A I see pay cash.

10 Q On the other occasions that you were there did you see anybody buying in your brother's store? A I see a good deal of people was in the house; I never count them; I never paid any attention to that.

Q Were you present when your brother was arrested in Mr. Greenberg's presence with some detectives in Newark? A No, I have been in Newark.

Q When your brother had been in Newark street jail did you see him there? A Never been in jail.

Q Did you see your brother in jail? A Yes, he was on Newark street, but I couldn't get in there.

20 Q When you knew that your brother was in jail did you do anything to secure his release? A I sign a paper. He was arrested and it was——

Q Did you secure bail for your brother? A Mr. Bonavita signed \$500 for him.

Q Who secured Mr. Bonavita to go the bail, who told him? A I asked Mr. Bonavita. I asked in the barber shop.

30 Q When Mr. Bonavita put up the bail what happened to your brother? A Me and Mr. Bonavita went on Van Buren street; we couldn't get him out; it was Monday; about nine or ten o'clock sometime—I couldn't tell exactly what time it was—But Mr. Bonavita get in Van Buren street Court House, and we couldn't get him out a couple of days after that. "That is the right man," he says, "That owes me money."

Q Who said that? A Mr. Yuill. I couldn't exactly know his name, because that man was on the Court House. They wanted to have me locked up. He says, "I know him for many years."

40 Q When your brother was released from jail did you go to Perth Amboy with him? A Yes,

Q How long did you remain in Perth Amboy with your brother? A I was about three or four hours.

Q What did you see in the three or four hours that you were there? A No business in the store. The meat was spoiled and take that meat on a wagon going some place and dump it; it was no good; can't sell it to customers.

Q When did you return to your brother's store after that?

Anton Walter Helstowski, Cross..

A After that I don't go down any more because I work every day.

Q How big a store was that in reference to size? A That store was about like a little further over there, that picture to the end; it was pretty big size, that store; I couldn't judge exactly how big it was. 10

Q Did you see Mr. Helstowski's wife when you came back with her husband from jail? A She was lying in bed.

Cross Examination by Mr. Braelow.

Q How old are you? A Thirty years.

Q How long are you in this country? A Fifteen years.

Q Did you ever work in a factory? A Yes, sir.

Q Is that the first place of business that you ever had, in Chambers street? A The first place in my life; the first place I take for myself in business. 20

Q Did you ever work in a grocery store or butcher store before? A I know from my father; he is in that kind of business.

Q Did you open that place of business yourself? A Yes, sir; and after I buy all fixtures and open up the store.

Q Did your brother open that store with you? A I opened myself.

Q And did you then take your brother in? A I go maybe a couple of weeks after that, I take my brother for to help me to work. It was big business down there.

Q Where was your brother working then? A Celluloid Company, down Ferry street. 30

Q How many rooms back of that store? A Three small rooms.

Q And you lived there? A Yes, sir.

Q And your brother and his wife? A Yes, sir.

Q And children? A Yes, sir; two children.

Q And he worked in the store and his wife helped out in the store? A No, his wife take care of the house.

Q Who cooked the meals for you folks? A She did. 40

Q So you do say that you went out of the store other times besides going to the toilet. You said, on direct examination, that the butcher took the cash when you went out of the store to go to the toilet or elsewhere? A Yes, sir; there was a register on that side.

Q So you did go somewhere else while you kept that store? A The salesman came to my store. I didn't go out.

Anton Walter Helstowski, Cross..

Q Did you give orders that your butcher should take the cash and not your brother? A Yes, because he speak English and my brother don't speak English good because if I go to the toilet or step out on the street.

10 Q A lot of people who were Polish? A Yes, sir; there was Slavish, Polish and English.

Q (By the Court.) Russian, too? A He can't talk Russian. Maybe some word out of a hundred. He can't talk very good.

Q (By Mr. Braelow.) Do you remember ever seeing this man Greenberg in your store? A Yes, sir; I did business with him.

Q When did you start doing business with him? A About two months after I opened the store.

20 Q How many bills of goods did you buy from him? A I don't remember. I leave all bills in the store because the man who bought the store from me they want receipts and I leave the bills in the store.

Q Didn't your brother ever order goods from Greenberg? A No, sir.

Q And he never paid any bills to Greenberg? A How can he? He don't own the business.

Q How much money did you pay Greenberg when you sold this store? A Can I say one word?

30 Objected to.

The Court. The question is, how much did you owe Mr. Greenberg.

Witness. \$37.

Q Do you remember when you sold that store making an affidavit before Justice of the Peace Marano to a bill of sale? A About five or six days before I sold the store I owe Mr. Greenberg \$37 because he makes a mistake on the other bill—

40 Q I asked you if you remember making an affidavit before Justice Marano when you sold your store? A I can't understand.

Q You remember swearing to something before Justice of the Peace Marano? A Yes, sir.

Q And did you sign a paper at the time you swore? A Yes, sir.

Q And did you swear to the statement that the business— A Oh, yes, I can remember everything.

Q Did you swear to the statement that the goods and chattels mentioned in the bill of sale disposed of to the party of

Anton Walter Helstowski, Cross..

the second part are free and clear of such bills, mortgages and other claims? Did you swear to that? A I swore to that, but before I sold the store I paid him money and he refused money.

Q Did you swear to that? A Yes, I swear.

Q Didn't you know that even though you agreed to pay Greenberg the \$37 that you say you owed him you still owed it to him? A He made a mistake on the bill. It was \$62 and he take off \$70. It was Monday, on that day, about two weeks before I sell out the store and I tell Mr. Greenberg it was \$45 on another bill. I said, "Mr. Greenberg, you got a big mistake on that bill. You charged me eight dollars too much." And he said, "On the other bill I will fix it up"; and he said, "There is \$48 on that bill"—— 10

Q Just a minute. How much money did you say you owed Greenberg when you signed this paper? A \$37. 20

Q Then what did you mean by swearing that you didn't owe anybody anything? A I gave him money before I swore and he refused to take the money.

Q You mean you gave him the money? A I put on the bar. I said, "That \$37 belongs to you, I want to pay you before I sell the store." He refuses to take it, and he owes me \$8.

Q You said he didn't take it, so you still owed him the \$37? A Mr. Bonavita paid that money for me.

Q When you signed the bill of sale you owed \$37? A He refused to take that money. 30

Q Didn't you still owe it to him? A He didn't want to take it. I want to square it up before I sell the store and he refused it.

Q When you signed this bill of sale did you or did you not owe Greenberg \$37?

Objected to as repetition.

Q (By the Court.) Q At the time you signed the bill of sale did you owe him \$37? A I owe him \$37 because he refused to take that money. 40

Q (By Mr. Braelow.) Did you tell Justice of the Peace Marano that you owed this man \$37?

Objected to.

Objection overruled.

A I tell Marano I owe him that. He tell me he going to have me locked up. I tell him I go to Van Buren street to the court and he refused.

The Court. You will have to strike that out.

Anton Walter Helstowski, Cross..

Q (By the Court.) The question is, did you tell Marano that you owed this man \$37? A No, I didn't tell him that.

Q (By Mr. Braelow.) Did you leave the \$37 with Marano to pay this man Greenberg? A No, Mr. Bonavita paid that money for me.

10 Q I mean, when you signed the bill of sale in Judge Marano's office did you leave with Judge Marano \$37 for Greenberg? A No.

Q What time did your brother go to work in the morning in the store? A I get up five o'clock in the morning every morning and he come up about six o'clock in the morning. I couldn't remember exactly what time it was.

Q What time did he close the store for you at night? A I close the store sometimes ten o'clock, sometimes eleven o'clock, since people come in; sometimes I kept open until
20 twelve o'clock.

Q Did he work for you during those hours? A Yes, sir.

Q How long were you open on Sunday? A Eleven o'clock. After eleven o'clock I go to church.

Q Do you work on Sunday, too? A Yes.

Q Holidays also? A Sometimes he feel like taking off I let him take off.

Q Did you ever take off any holidays? A Some of the big holidays I keep open until twelve o'clock.

Q Did you ever take off any part of a holiday and leave
30 your brother with the butcher? A No, I never take off.

Q How much did you pay your brother? A \$25.

Q Did you have a checking account? A I pay cash.

Q You never had any check account? A One time I was short and my friend lend me \$200.

Q Who loaned you that? A Mr. Golder.

Q You got Bonavita to get your brother out; is that correct? A Yes, sir.

Q Do you know that this criminal complaint against your
4) brother mentioned you too as a defendant? Do you know that you were charged in this criminal complaint, too? A I don't understand what you mean.

Q Did you know that there was a warrant out for your arrest, also? A That time I find out in Van Burean street. Before that I don't know.

Q Were you arrested? A No.

Q They never arrested you? A They wanted to have me arrested and Bonavita says, "He is a good man, don't arrest him."

Anton Walter Helstowski, Cross..

Q After you sold your business in Chambers street where did you go to live? A 319 Lafayette street.

Q Is that near Chambers street? A That is near Van Buren street.

Q How near to your store? A About three minutes walk. 10

Q Did you ever trade in that store afterwards? Did you ever buy and sell in that store? A No, I was selling. How could I buy anything? My Missus cooked everything for me.

Q And did your brother know where you lived? A A couple of weeks afterwards he found out where I lived.

Q That couple of times when you visited him in Perth Amboy he knew where you lived? A He met me on Market street—

Q You don't understand my question. The time you visited your brother's store in Perth Amboy—you said you went there several times—he then at that time knew where you lived? A Yes, I told him where I lived. 20

Q Did your brother know that you had dealt with Greenberg? A Oh, I don't know that.

Objected to.

Objection sustained.

Q Did your brother ever see you talk to Mr. Greenberg?

The Court. I suppose, you mean, was he ever present? 30

Q Was your brother present when you spoke to Greenberg and ordered goods? A I don't know. I never paid attention, because I paid attention to my business.

Q You say you never left the store except to go to the toilet except on one or two occasions? A Sometimes. If I was going on the street, but I watched the store.

Q You don't know whether your brother was present when he bought goods from Greenberg? A I don't know if he knew that or not.

Q How much money did you get for the sale of the store? A \$1520. I collect \$100 deposit. I give to Mr. Smith on the lease for the store. I got \$1520. 40

Q How much of that money did you give to your brother to go into business in Perth Amboy? A I don't give him nothing. He got the money himself.

Q Where did he get it? A I don't know—he is working for it.

Anton Walter Helstowski, Re-direct.

Q Did his wife pay you for the stuff she got in your store?

A Yes, sir; anything she wants she got to pay.

Re-direct Examination by Mr. Twardus.

Q How much board did you pay your brother for eating and sleeping in the rooms?

10 Objected to as leading.

Q Did you pay any board to your brother? A Yes, sir.

Q How much? A I was paying that time eight dollars a week. I have good meals and good wash and everything.

Q When you would buy merchandise from Greenberg what would your brother be doing?

Mr. Braelow. I object. He says he doesn't know whether his brother was present or not.

FELIX ZESKOWSKY sworn in behalf of plaintiff.

Direct Examination by Mr. Twardus.

20 Q Where do you live? A I live 17 Van Buren street.

Q What is your business? A Butcher.

Q Did you work for Walter Helstowski? A Yes, sir.

Q Where did you work for him? A 100 Chambers street.

Q How long ago was that? A It was around three years or a little more.

Q Did you ever see Walter Helstowski buy any goods from anybody? A Yes, sir.

30 Q Did you ever see him deal with Mr. Greenberg here? A Yes, sir.

Q Who would do the ordering of goods from Mr. Greenberg? A Walter Helstowski.

Q Did you ever see Alexander order any goods from Greenberg? A No.

Q Who would pay for the merchandise when the goods would come in? A Walter Helstowski.

Q Who had charge of all the money from the business? A Walter Helstowski.

4 Q Who carried on all transactions in the store? Who collected the money and paid it out? A Any meat I take I took the money from the butcher's side.

Q Whom did you give the money to? A After the night, through the work, Walter Helstowski come to take his money.

Q Did you ever pay out any money for goods? A No.

Cross Examination by Mr. Braelow.

Q How long did you work for Walter Helstowski? A About four and a half months.

Felix Zeskowsky, Cross.

Q Do you know whether a butcher worked there before you? A Yes.

Q After you? A No.

Q How long after you left him did he sell the store? A I was right to the point.

Q Who bought the meat for that store? A Walter Helstowski. 10

Q He himself bought the meat? A He himself.

Q Did he go out to buy it? A Yes, sir, certainly; Swift & Company, Armour, Morrison.

Q Alexander never bought any meat? A No.

Q Who went to the slaughter houses? A Walter.

Q And he cut meat? A Yes, sir.

Q Did he ever cut meat in that store? A Yes, sir.

Q Did Alexander cut meat? A Not much. He just cut up a little bit. 20

Q So when you left the store Alexander wasn't a meat cutter? A No. I start six o'clock in the morning and finish seven at night.

Q But you said that Alexander picked up a little meat cutting from you? A Yes, sir.

Q He didn't know much about meat cutting when Walter sold the store? A Yes, sir; he picked up a little by me.

Q Did he cut meat in the store? A Yes, sir.

Q How many days in the week do you work? A Seven. 30

Q The store stayed open after you left? A I don't know if he was closing or keeping open. I finished my hours and I went home.

Q You don't know what happened after that? A No.

Q And you are sure that Alexander Helstowski never had any conversation or transactions with Mr. Greenberg? A Buying.

Q Well, did he have any conversations? A Mr. Greenberg comes in the store to talk to each other. but no buying.

Q How do you know that there was no buying? A I was seeing. I can see who was buying the groceries, too. 40

Q How do you know they were not talking about buying? A I wasn't blind; I could see.

Q You couldn't see conversations? A That is what I knew.

Q That is the reason I asked you how do you know that Greenberg and Alexander didn't talk about buying merchan-

Felix Zeskowsky, Cross.

dise? A I don't know that, what they have been talking, I don't know.

Q How many times did you see Greenberg and Alexander talking to each other? A Any time he comes in the store.

10 Q Did you ever see Greenberg talk to Alexander when Walter was in the store? A No, not at the time when Walter was in the store, so Mr Greenberg speaks to Walter.

Q Was Walter ever out of the store? A He went to buy the stuff.

Q He did go away? A Yes, sir.

Q He went out to the slaughter house to buy meat? A Yes, sir.

Q He had to buy meat a couple of times a week? A Pretty nearly every second day.

Q And Walter went out to buy it? A That is all.

20 Q How long would he be gone? A An hour or an hour and a half.

Q And when Greenberg would come into the store and Walter was out buying meat, Greenberg would talk to Alexander, is that right? A Greenberg would talk to Alexander and he would talk to me.

Q And you didn't hear that conversation? A I was on the next side.

30 Q Who bought that store, do you know, when Helstowski sold it? A There is two partners from New York. The first party I know, Wilskansky.

Q Polish people? A They are Russian.

Q Do you know whether or not when Helstowski sold his store he still owed Greenberg any money? A No, don't know.

Q After Helstowski went to the justice of the peace for the purpose of selling the store did Greenberg come in there to collect the money? A About a week later.

Q Greenberg was in there a week later? A Yes, sir.

40 Q Whom did he see? A The new party, the boss.

Q Were you still there? A Yes, sir.

Q And he spoke to them, did he, to the new people? A Yes.

Q Did you hear the conversation? Did you hear the words that were spoken? A I don't remember what was said.

Q Do you remember whether Greenberg asked where the Helstowskis were? A He asked me.

Q Did you know where they were? A I didn't know.

Court's Charge to Jury.

Felix Zeskowsky, Cross.

Q Where did they go? Did you have any idea? A I don't know. I have been work for the new people. I haven't got any time to butt in.

Q Did you hear Greenberg ask where the Helstowskis were? A No.

Q But you saw them talking? A I saw them talking. 10

Q Did his son come in with him, this young man here (indicating)? A I couldn't remember exactly.

Q Did you ever see him coming into the store? A He was coming into my store.

Q Have you ever seen him at the Helstowski store? A Not the son.

Q You never saw him at all? A I don't remember him exactly. I don't remember ever there.

Q Did you ever see this young man here (indicating), Mr. Kaplan, in that store? A No. 20

Q Did he come in that store after the store was sold and have a conversation with you or Mr. Wilksanski? A Mr. Greenberg?

Q And this man (indicating)? A I didn't see him.

Q Did Helstowski tell you, either of them, where they were going when they left the place? A No.

Q They didn't tell you? A No.

Q Which one of the two brothers left the store first? A Both of them at once.

Q They kept their rooms in the back of the store for a while? A They bought the place in the middle of the month; they stayed to the first and on the first they got to empty the rooms for the new people. 30

Q Did you ever cut any meat for Mrs. Helstowski? A Yes, when I was working in the store.

Q And you gave her some meat? A Yes, sir; whatever she wants.

Q Did she have a little book? A Yes.

Q Did Alexander ever carry any meat or provisions back in the rooms of that store? A No, she always came in. 40

Q She never did? A No.

Q You say that about a week after the store was sold Greenberg came into the store and saw you and you only? A Yes, sir.

Q And asked you where Helstowskis were and you said you didn't know? A That is right.

Felix Zeskowsky, Re-direct.

Q Weren't they in the back rooms then? A No, they moved out already. They didn't live there at that time.

Q You said that they stayed there until the first of the following month? A That is right; that is what I said.

10 Q Do you happen to know whether it was on the 11th day of June, the date of this bill of sale, that this place was sold?

A I couldn't exactly tell you.

Q But you say that they stayed there until the first of the month? A Yes, sir.

Q And the week after they sold the store Greenberg came and asked you where the Helstowskis were and you said you didn't know? A Yes.

Re-direct Examination by Mr. Twardus.

Q As a matter of fact, didn't Greenberg come to you and the new owners when Helstowski already moved out of there?

20 A Yes, sir.

Q And then the rooms were empty in back of the store?

A Yes.

Q Was any merchandise ever ordered when Walter was out buying meats or any goods ordered from Greenberg at any time when Walter would be out buying? A No.

Mr. Braelow. I object to that. The witness said he didn't hear the conversation between Alexander and the defendant.

30 *The Court.* I suppose the question means that to his knowledge.

Q Did Walter ever owe you any money or were you paid regularly? A Paid me every Saturday.

Q Did you ever see Walter order any goods from Greenberg? A Yes.

Q And if he would order would Greenberg take a pad and write it down? A Yes, sir.

Q Did you ever see Greenberg writing on his book when he spoke to Alexander? A No.

40 JOSEPH JARENSZENSKI sworn in behalf of plaintiff. (Through the Interpreter.)

Direct Examination by Mr. Twardus.

Q Where do you live? A Perth Amboy.

Q What street? A Charles street.

Q What number? A 614.

Q Is that the same house in which Mr. Helstowski had his store in Perth Amboy? A Yes.

Joseph Jarenszenski, Direct.

Q Are you the owner of that house? A Yes.

Q Do you remember the time Alexander Helstowski was arrested? A Yes.

Q Were you in the store at the time? A No.

Q Were you employed in any factory or any business while Mr. Alexander Helstowski was your tenant? A Well, I am by trade a carpenter. 10

Q Were you working at that time? A Yes.

Q Did you ever pay any visits to Alexander's store during the time that he was your tenant prior to his arrest? A Every day.

Q How many hours would you spend there every day? A I didn't spend any hours there. I went down and purchased something, that is about all.

Q How long did it take you to complete your purchase? A A few minutes. 20

Q When you went to buy did you notice any customers in the store? A Yes.

Q And how many would you see on an average? A That is hard to explain. Sometimes I would go down the store; there were a number of customers; sometimes there was no one there.

Q Would you find the store busy with customers or the store empty?

Objected to as a conclusion.

Objection overruled. 30

A Well, I see this, that the purchases that I have made and he was in possession of that store a number of times and there was quite a number which would purchase stuff there in that place.

Q Did you ever notice his store on Saturday afternoons after the time Mr. Helstowski returned from jail? A Yes

Q Did you notice any change in his business after his return from jail? A There was no business there then. The place was practically locked up for several days.

Q But when Mr. Helstowski returned did he open up the store? A Yes. 40

Q And although the store was open did you see any customers in there?

Objected to as leading.

Objection overruled.

A No one came there. His name was spoiled.

Q Did you see the customers do anything to Mr. Hel-

Joseph Jarenszenski, Direct.

stowski or did you see them make any actions at the time?

Mr. Braelow. I object. He said no one came there.

If the customers didn't come there how could he see them?

The Court. The question may be answered.

10 A Myself, and I heard a number of them talk that his business will be ruined, he was locked up.

Mr. Braelow. I object. The answer is inadmissible.

The Court. The answer may remain.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q What was Mr. Helstowski's reputation in that community for truth and honesty?

Objected to.

20 Objection sustained.

Q How long after Mr. Helstowski returned from jail did he remain in possession of that store in your house? A I can't say positively. I will say probably within two and three weeks.

The Court. I do not mean to say that you may not show his reputation for truth and honesty, but it must be first shown that the witness understands what that is and that he knows his reputation.

30 Q In the two or three weeks Mr. Helstowski had his store in your house after he returned was it opened daily? A Yes.

Q And you came to buy in this store after he returned from jail? A Yes.

Q Did you notice anybody buying anything in this store when you went there at that time? A Very little.

Q How many would you say? A What can I say about? I haven't seen no one there—in other words. I haven't watched the store very close.

Cross Examination waived.

40 FELIX ZESKOWSKY recalled in behalf of plaintiff.

Direct Examination by Mr. Twardus.

Q How many years do you know Mr. Alexander Helstowski? A Well, I know him from the other side.

Q How many years is that? A Since I was a little boy, about thirty years old.

Q How old are you? A Thirty years.

Q You know him about twenty-five years? A About that much.

Felix Zeskowsky, Re-called.

Q How often are you in the habit of seeing Alexander Helstowski—once a day, once a week? A The time I worked for him?

Q Yes. A I seen him every day.

Q And when you didn't work for him did you visit him at his house? A No.

Q What is his reputation for truth, veracity, honesty in the neighborhood in which he lives? 10

Objected to.

Objection sustained.

Q What was his reputation for truth and honesty—

The Court. That question cannot, over objection, be permitted to be answered. A witness must always be qualified to permit him to testify as to reputation.

Q Are you acquainted with the friends of Mr. Alexander Helstowski? A No. 20

Q Do you know any people that he knows? A One or two families I know.

Q How long have those two families known Alexander Helstowski? A Since he got married. I know his wife, brothers.

Q That is something about eighteen years? A Something like that.

Q What is his reputation as to truth and honesty with reference to those people?

Objected to. 30

Objection sustained.

Q What was his reputation among the people with whom you traded in that store of Walter Helstowski?

Objected to.

Objection sustained.

PLAINTIFF RESTS.

Mr. Braelow. I desire at this time to move for a nonsuit on the following grounds: The first ground, that the arrest complained of the charge complained of in the complaint in this cause, alleges the malicious making of a criminal complaint against this plaintiff charging that the present plaintiff had defrauded the defendant in the payment of a claim of \$145 alleged to be due by the brother of the plaintiff or by the plaintiff himself. Also on the ground that there is no proof in the case of such a complaint as is set forth in the complaint filed in this cause. My ground is that the 40

Motion of Non-Suit.

10 proof varies from the pleading, from the amended
pleading as amended by the plaintiff in the cause. I
haven't the counts here and I can't read it. It was
the amendment wherein the complaint was made to
state that the Grand Jury had dismissed the criminal
complaint made and had in this cause, and I submit,
if your Honor please, that the proofs show not that
it had been dismissed, but that it had been considered
and no indictment found. I think, in view particularly
of the fact that we had no notice of this and that we
came into court without knowing what manner of
proof was going to be offered or what the allegation
was as to the criminal complaint, that that is a fatal
variance. In other words, the allegation in the plead-
ings, as it stands amended, is that the Grand Jury dis-
missed the complaint and the proof given by the clerk
20 of the Grand Jury was that the Grand Jury considered
the matter and found no indictment.

The Court. The motion will be denied. In a case of
this kind the pleadings can always be amended to cor-
respond to the facts, and that will be done at the close
of the case, if found necessary.

Defendant's exception noted as ground of appeal.

30 *Mr. Braelow.* I move now that the plaintiff be com-
pelled to elect as to which of these two counts he
chooses to proceed under. The counts are practically
the same, the only addition being that the count con-
tains words—

The Court. The court will decide that matter. It
is malicious prosecution and not false arrest. The
proofs do not warrant a charge of false imprisonment
the proofs only warrant a charge of malicious prosecu-
tion.

40 *Mr. Braelow.* May I ask for a nonsuit as to one
count?

The Court. All that you are obliged to meet is
malicious prosecution. You are not obliged to meet
false imprisonment.

ISRAEL GREENBERG, defendant, sworn in his own be-
half.

Direct Examination by Mr. Braelow.

Q You are the defendant in this case? A Yes, sir.

Q How old are you? A Sixty.

Israel Greenberg, Direct.

Q Where do you live? A 232 Belmont avenue.

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

Q Which? A Married.

Q Have you any children? A Yes, sir.

Q How many? A Five children.

Q What is your business? A Wholesale grocer.

10

Q How long have you been in that business? A Thirty-three years.

Q Do you know the plaintiff, Alexander Helstowski? A I know the two brothers, 100 Chambers street.

Q I asked you if you know them? A Yes, sir; both of them.

Q How long have you known them? A Four and a half years.

Q How did you come to know them? A I passed in Chambers street and I saw a grocery store and I went in looking for an order.

20

Q You went in to sell them goods? A Yes, sir.

Q Whom did you see when you got in there? A Both of them, the two brothers.

Q Did you see anybody else there? A The butcher was there that was on the stand.

Q Did you sell them any goods? A Yes.

Q Whom did you talk to? A Both of them.

Q What did you sell them? A A bill of goods.

Q How big was the bill of goods? A In the beginning it was between \$12, \$15; \$18 was the biggest.

30

Q I am asking about the first time? A The first time, yes, sir.

Q Did you tell them what goods you had for sale? A Yes, I told them; I told them everything what I sell.

Q And did they tell you what they wanted? A Yes.

Q Who told you? A One asked the other one if they shall buy from me; so long as it is cheaper he tell me he shall buy from me.

Q Who talked? A The younger one was the buyer and he went in and asked the other one if should give me the order.

40

Q You say he asked Alexander if he should give you the order? A Yes, sir.

Q And did they give you the order? A Yes, sir.

Q Did you deliver that bill of goods? A The next day.

Q Who delivered it? A My son.

Israel Greenberg, Direct.

Q When were you in that place again? A Every week. I stopped years there.

Q When were you paid for the first bill of goods? A Was paid every week.

10 Q Who paid you for the first bill of goods? A The older one.

Q Alexander? A Yes, sir.

Q Where did he get the money? A From the drawer.

Q From his pocket? A Sometimes from his pocket and sometimes from the register.

Q You say sometimes from the register? A I think there was a register, too.

Q When did they order the next bill of goods? A Sometimes the first week and sometimes the second week.

20 Q Whom did you see when you went in there? A Every-time both of them was there.

Q Did you ever see Alexander there alone? A Sometimes there was only one.

Q Which one? A The younger one was there.

Q How did you bill these people? A Helstowski Brothers, that was on the window; he tell me that is his name.

Q And who brought that bill around each week? A No, the bill we will send with the goods.

Q And when you came around for the new order you collected the old bill? A Yes, sir; the first bill.

30 Q Did you ever see Mrs. Helstowski there? A Sometimes she was in the store, too.

Q Did you ever see her wait on trade there? A No, I didn't see that.

Q What is the next bill of goods that you sold them? A \$55.70 was the last bill.

Q Who did you think was the owner of the place?
Objected to.

A The both of them was there.

40 *The Court.* The objection is sustained.

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q Did the butcher ever buy any goods from you? A No.

Q Did you ever see Helstowski, Alexander, the older brother, wait on any customers while you were there? A Sure, always.

Q Did you ever see him get any cash from his customers?
A Yes, sir.

Israel Greenberg, Direct.

Q What did he do with it? A Put it in the pocket.

Q Do you remember when you got an order from that store for the last bill of goods? A It was about June 1st.

Q How much was that order? A \$55.70.

Q Who gave you that order? A The younger one.

Q Was the older one there then? A He don't give me the order. Before, when I passed there Monday, he is sitting outside on a chair, and I told him, "Good morning" and he said "Good morning," and I said, "Are you mad? You didn't bought in three weeks already." He said—— 10

The Court. This is a conversation with the younger one. It appears to have been out of the presence of the older one.

Q You say you met him outside of the store on the day that list bill of goods was ordered? A Yes, sir.

Q You had a conversation with him. Don't tell us the conversation, but as the result of that conversation did you go in the store? A Yes, sir. 20

Q Who was in the store? A The other brother was.

Q Who do you mean, Alexander? A Alexander.

Q And then what happened in there? Each one asked the other, which one did the asking? A Alexander asked the older one——

Q Alexander is the older one?

Objected to.

A He asked him if he could give me an order—— 30

The Court. Tell the conversation between you in the store and tell which one said the various things that you are going to tell us about.

Witness. Weli, the both of them.

The Court. You are asked to tell a conversation, and I want you to tell us which one said the various things that you are going to tell us about.

Q You say he asked him about the order. Did the younger ask the older one or the older one ask the younger one? A The older one went in the store, asked him if he should give me an order—— 40

Q You said you met Walter outside of the store. Which one is Walter? A The younger one. He was outside.

Q You went in with him? A Yes, I went in and the other one was inside and I went in and asked him if he should give me an order——

Israel Greenberg, Direct.

Q Which one did the asking, the one that went in with you? A Yes, he asked the other one, and then he tell me when I sell cheaper than the other wholesalers he shall give me the order. Then he looked around, "What is missing?" And he gave me the order. That was the last order I got.

10 Q That order amounted to over \$55? A Yes, sir; I delivered it the second day.

Q Who did the delivering? A My son.

Q Did you go around there the next week? A Next week was Jewish holiday and I was there a week or ten days later and I came in and I see a new store keeper in the store.

Q What did you do? A I asked him if he is the owner of the store and he said he bought the place. I asked him, "I got a bill here." He says, "He is inside there, he lives there in the back."

20 Q He said Helstowski lived in the back? A Yes; and I went in there and Mrs. Helstowski was there.

Q And who else? A Nobody else was there. I said, "About the money for the last bill?" She said, "You will get your money. He went to the gas company to settle the gas bill and one is sick in the back," I couldn't see him.

Q Do you know which one was sick? A She told me I couldn't see him, he was very sick.

30 Q She said that one was in the gas company? A Yes, sir.

Q And one was sick in the back room? A Yes, sir.

Q And that is why you wouldn't get the bill that day, is that right? A Yes, sir.

Q The brother that just testified, was he there that day? A Yes, sir.

Q Did you ask him anything about the bill? A I asked him. I didn't ask him right away because he was in the back. I got nothing to do with the workman—

40 Q (By the Court.) Did you ask him anything about the bill? A No, sir.

Q (By Mr. Braelow.) Didn't ask him anything at all? A The second week I asked him why he didn't pay the bill.

Q Did you come back to the store? A The next week I sent my son to the store.

Q You sent your son? A Yes, sir; the next day, in the morning.

Q Did he collect the money? A No, he couldn't collect it because he didn't see him.

Israel Greenberg, Direct.

Q What did he tell you?

Objected to.

Mr. Braelow. The boy may have told him something that would lead him as a reasonable man to believe that this man had committed a crime, and I think the answer would be admissible.

10

The Court. I think I will permit this.

Q What did your son tell you when you came back after trying to collect that last bill? A He tell me he went in there Chamber street, 100, to see Mr. Helstowski; when he came there he was not home, she told him the same story, and he went out looking for rooms, and after he went in to Mr. Marano in Market street—

Q Who went to Marano? A My son, he went, and he handed him the statement that he leave the money there, and he didn't leave the money there and he don't know.

20

Q He said what? A He said he don't leave any money, he didn't mention the bill.

Q Didn't mention the bill? A Mr. Helstowski to Mr. Marano, he said, "I going in business again and I going in business in the city." The next day he moved away.

Q What happened the next day after your boy came back and said that he didn't collect the money and that he had been to the justice of the peace for the money and it wasn't there? A He went back there to find if he be back again because he told him he is going to look for rooms and he came and he is not in and he didn't have no time to spend there all day—

30

Q Wait a minute. You say that your boy left Justice of the Peace Marano and he went back to the store, is that correct? A Yes, sir.

Q What did he say he found when he got there? A She was there and her husband wasn't home.

Q Did he tell you that he had collected the money there? A I don't know what he done.

Q Did he tell you? A No, he don't collect it.

Q What did you do after? A After the next morning he went in again at eight o'clock and moved out.

40

Q Your boy? A Yes, sir; my son.

Q What did your boy tell you he found there? A Three empty rooms and asked him if he left any word where he moved and he don't leave any word as to where he moved.

Q The second day when you sent your boy down to Hel-

Israel Greenberg, Direct.

stowski's and he came back and he told you that the rooms were empty, who asked if he left any word, you or your boy?

A My son.

10 Q What did they tell him? A They told him there was no word, they moved away early in the morning when they were sleeping.

Q Did you go there again? A Every week I passed there and I went in the store and I asked the butcher if he knew where Helstowski moved. He didn't leave any word.

Q Did you ask him if there was any money left there for you? A Sure. I told him he owe me that money and he didn't pay it.

Q Did you ever go to Justice of the Peace Marano? A Yes, sir.

20 Q When? A I was right away when he sell the store, the same time I was there, and I was a week later again.

Q You say he sold the store and you were there a week later? A Yes.

Q What did Justice of the Peace Marano tell you the first time he went there?

Mr. Twardus. I object to that as not binding upon us.

The Court. The question may be answered.

Plaintiff's counsel prays an exception to this ruling of the court.

30 Exception noted as ground of appeal.

Q What did Justice of the Peace Marano tell you when you were there the first time? A He told me he don't give no money for me, he don't bring me bill and he didn't mention it.

Q Who didn't leave any money? A Helstowski.

Q Who didn't bring any bill? A Mr. Helstowski.

Q Who didn't tell him anything about your bill? A Helstowski.

40 Q Did you ask him who bought the store? A Yes, sir.

Q What did he say? A I couldn't remember the name.

Q Did you ask him if all the money had been paid over for the purchase of the store? A Yes, sir; he told me he swore to an affidavit by the justice that everything was paid.

Q The storekeeper told him? A Yes, sir.

Q Who swore to the affidavit? A That Mr. Helstowski swore that he has got a clear——

Israel Greenberg, Direct.

Q Did you ask him which one swore to it? A I didn't ask him which one.

Q He said that Helstowski swore to an affidavit? A Yes, sir.

Q That what? A That everything is settled in a clear bill of sale.

Q What do you mean by everything is settled, that he didn't owe anybody any money? A That is what he told him.

Q The first time that you went to Justice of the Peace Marano who was with you? A Myself.

Q When did you go the second time? A The second time I was there, the second week, I was trying to find out where he lived, and I went again by Mr. Marano and told him what I am going to do and I didn't know where to look for him.

Q Did you go alone to Justice of the Peace Marano the second time? A Yes, sir.

Q What did you do after that? A After that I went in by the lawyer, Mr. Kaplan, and asked him what to do.

Q You went in to see which lawyer? A Mr. Kaplan.

Q Where did you go to see him, in his office? A In his office.

Q Where is his office? A My son he take care of this.

Q Was it in Broad street? A Market street.

Q Did you tell Mr. Kaplan this story? A I didn't tell him nothing, my son told him.

Q While you were there? A No, sir.

Q Your son told him? A Yes, sir.

Q Didn't you go to Kaplan yourself? A No.

Q When did you see Mr. Kaplan? A A couple of weeks later.

Q Where did you see him? A I see him in his house.

Q You then talked about this matter? A I asked him what to do and he said, "We will find where he lives and locate him."

Q What was the next thing you found out about the case? A About four months later he found out he was in Perth Amboy.

Q Then what did you do? A Then my son went in there to find out if he is there for sure.

Q Who went there? A My son.

Israel Greenberg, Direct.

Q Whom did he go with, himself? A Himself.

Q He went where? A He went to Perth Amboy to see Mr. Helstowski.

Q When he came back what did he tell you? A He told me he is there and he has got a butcher and grocery.

10 Q How did he know Helstowski.

Objected to.

Objection sustained.

A He don't know.

Q Did your son tell you after he got back from Perth Amboy? A He tell me he went in and asked for an order and he asked the name and he said Helstowski, and he don't know him, he never see him, he tell him he is a salesman and he sells canned goods and different kind of stuff and he asked him the name and he gave him the name, he didn't give him no order, and he asked him where he keeps before a store and he said he keep in Chambers street a store.

Q Who told your son that? A The older one that was arrested, and after he sent him a bill to pay that bill what he owed.

Q Who sent who a bill? A We sent a bill.

Q Who did you send it to? A Helstowski.

Q How much was the bill for? A \$55.

Q Did you send it by mail? A Yes.

Q Did you hear anything in reply to that? A No.

30 Q What did you do then? A Then Mr. Kaplan sent him a subpoena to come to court.

Q Did you go to court at the time that subpoena was made out? A Yes, sir.

Q And did you see the clerk who testified here yesterday in that court? A Yes, sir.

Q And did he make the subpoena out? A Yes, sir.

Q For what day was that subpoena to come up, do you know? A I guess about Wednesday or something.

Q Were you in court that Wednesday? A Yes, sir.

40 Q (By the Court.) What month? A It was about September; I think that was four months later, four or five months.

Israel Greenberg, Cross.

Q (By Mr. Braelow.) Are you sure? A I am not sure; I cannot remember four years.

Q Did he come to court on that day, Helstowski? A No, sir.

Q Was Mr. Kaplan with you then? A Yes, sir.

Q And did Mr. Kaplan say anything to you then after he saw they didn't come there? A He said he didn't come to the court, what to do, and I told him going to see him, maybe this is not the right man. 10

Q Who said that? A Mr. Kaplan.

Q Said "We will go to see him, maybe that is not the right man?" A Yes, sir.

Q Did you go to see him? A Yes, sir.

Q Who? A Mr. Kaplan and my son and Mr. Conron was there.

Q How did he come to go with you? A Because he had a claim, too. 20

Q Did he tell you he had a claim, too? A Yes, he was in the court at the same time.

Q How much did he tell you his claim was? A I don't remember that.

Q Did he tell you that it was paid? A It was not paid.

Q And what day of the week did you go to Perth Amboy? A The same day when the trial shall be.

Q That Wednesday? A Yes, sir; after dinner.

Q Then what happened in Perth Amboy? A I came there to Perth Amboy and we went in the store and asked him, "How do you do"— 30

Q Who was there when you came in? A Mr. Helstowski was there and his nephew. I walked in there and asked him for the money and he just opened the business. "How is it that you didn't pay me the bill in Chambers street," he said, "I don't owe nothing."

Q What language did you talk to him in? A I talked English and after he say he couldn't answer good I started talking Polish to him. 40

Israel Greenberg, Direct.

Q What did he say to you about the bill? A Don't know, he was with the brother, he don't know nothing.

Q Nothing about the bill? A Yes, sir.

Q Did you tell him how much the bill was? A Sure I told him.

10 Q Did he offer to pay you anything? A He say he don't want to do nothing, started to make so much fuss about this, give me half.

Q He said he was a partner and he would give you half? A He didn't give me nothing. I was satisfied to take half. Well, he didn't have any money and he wouldn't bother, leave him go.

Q Did you ask if he had gotten a subpoena or did anybody else ask him? A Yes.

Q Who asked him? A Mr. Kaplan was there alone.

20 Q Did Mr. Kaplan ask him? A He asked him if he received a subpoena from the court.

Q What did he say? A He said he don't know nothing.

Q What did you do then? A Then asked him, "Don't you get any letters yesterday?" He say, "Well, maybe I get a letter." "Well, where is the letter?" "My wife tore it." "Where is your wife, call in the wife and tell her, 'Did you receive any letter?'" "Yes, I don't know what that means." That is what he asked me.

30 Q What letter did he mean, the subpoena? A The subpoena.

Q You mailed that? A Yes, sir.

Q Did he tell you that he had been to the court with that subpoena? A Yes, he tell me he don't know what that means, he couldn't read no English.

Q Did he say to you, "I went to the court when I got the subpoena?" A No, he didn't went.

Q What did you do after that, go back to Newark? A After we came to Newark again next day I went in the court—

40 Q How did you come back into the court? A Mr. Kaplan told me to go in the court and swear to an affidavit that he owe me that money.

Q Mr. Kaplan told you to do that? A Yes, sir.

Q Did you go to court with Mr. Kaplan? A Yes, sir.

Q What happened then? Did you swear to a complaint? A Yes, that he owed me money.

Israel Greenberg, Cross.

Q Who wrote up the complaint? Was it that clerk that was here yesterday? A Yes, sir.

Q And did Mr. Kaplan look at that complaint before you signed it? A I couldn't remember that.

Q You signed that complaint? A Yes, sir.

Q And then you went away, did you? A After I didn't see him no more. 10

Q You never saw Helstowski after that? A No, sir.

Q Didn't you go down when he was arrested? A No.

Q Were you along when he was arrested? A No, sir, never.

Q Did you see him in the court? A No, I didn't go. I didn't see him no more.

Q You don't know what happened after that? A No, nothing at all.

Q How is it you didn't take care of the matter after that? A The lawyer got it in the hand. 20

Q You relied on the lawyer, is that what you mean? A Yes.

Q Did you ever ask Mr. Conron whether he knew what had become of Helstowski after the place was sold?

Objected to.

A I didn't ask him nothing.

Objection sustained.

Q Did you ever have any conversation with Conron concerning Helstowski? A No. 30

Q You never talked to him about it at all? A No.

Q Who suggested that Conron come along to Perth Amboy? A He was in the car, he was coming there to make a claim too because Mr. Kaplan taking care of his bill to.

Cross Examination by Mr. Twardus.

Q How many months were you looking for Helstowski after you sold him the last bill of goods? A Four months.

Q In what manner did you try to locate him? What did you do in those four months? A I didn't do nothing—attend to my business. 40

Q You didn't look for him, did you? A I don't look for him. The lawyer took that matter and he looked for him.

Q And the lawyer was looking for him four months before he found him? A Yes, sir.

Q And when you found him what did you do first? A I sent him a letter to show up the bill.

Q Who wrote that letter? A The attorney.

Israel Greenberg, Cross.

Q How long after that did you then come in contact with your attorney about the case? A I couldn't remember how soon that happened.

Q Was it a week or two? A I couldn't tell you exactly the date. It was four years past.

10 Q What did you do next after the letter was written? A I didn't do nothing.

Q Did you order anybody to do anything for you? A No, I didn't order nobody.

Q Was Helstowski already arrested when the letter was written or not? A That was before he was arrested.

Q How many weeks before his arrest was the letter written? A About two weeks.

Q Then you knew where Helstowski was for a period of two weeks? A The lawyer found out. He wrote him a letter.

Q Did the lawyer advise you to start a civil suit to recover your money against Helstowski? A Yes, when he found out he didn't give him any answer.

Q Didn't your lawyer tell you it was cheaper to have a criminal complaint than a civil action in a civil court? A He had the business in Van Buren street, in that court.

Q Didn't you talk to your lawyer about what kind of a case to start? A I don't know nothing. My son takes care of that.

30 Q Then you don't know anything about that? A No.

Q Were you told what you were signing in the Third Precinct when you signed the complaint for a warrant? A When I was in court I see it.

Q Was it explained to you? A Wasn't explained me nothing, just to sign.

Q Then you signed something that wasn't read to you and you don't know what it was? A Just to sign asking to come to court. I didn't sign to arrest him.

40 Q How many months did you deal with Helstowski at Chambers street? A About five months.

Q The first account was \$14? A Yes, sir.

Q And then the second week \$18? A Yes, sir.

Q And then it was \$20? A No, all small bills.

Q It came rising gradually up? A Between ten and fifteen dollars, or something.

Q And then it got so high that he ordered as high as \$40 or \$50 worth of goods? A Yes, sir, the last bill.

Israel Greenberg, Cross.

Q You were paid every week for your merchandise, were you not? A The first bill, sure.

Q The first four months you were paid every week? A Yes, sir.

Q Then there was some dispute about so many dollars over-charge on some bill, wasn't there? A I didn't see him after at all. There was no dispute. 10

Q Didn't Walter Helstowski offer you some money for the last bill? A No, sir, I didn't see him at all.

Q Didn't he tell you, "I owe you some money, I am going to sell the store, and if you want for this money sue me because I have some claims against you for over-charges?" A I didn't see me, how could he tell me.

Q (By the Court.) Did he tell you? A No, sir.

Q (By Mr. Twardus.) You did all your transactions with the younger brother? A With the both of them every time. 20

Q How many times would the younger man order goods from you? A Every time when I came the both of them was in the store. They both bought it.

Q But the younger one gave you the list of goods that he wanted? A The younger one paid.

Q Did you make any investigation as to who the owner of the store was before you gave credit? A I didn't make no investigation because he tell me, "Here is the name on the window, Helstowski Brothers." 30

Q Can you read English? A Yes, sir.

Q Do you write English? A Yes, sir.

Q Tell me what kind of a sign was on the window front. What did you see on the front of the front window? Write on there. (Handing witness pad.) A I couldn't write that way. I could read "Helstowski Brothers." That is what I see on the window right on Chambers street, it was on the corner.

Q And you can't write what you saw on the window there? A I can write. (Witness writes.) 40

Q At what address did you find this name? A 100 Chambers street.

Q Have you any books or records with you to show that the account was with the brothers? A Yes, got a copy what I gave them of the articles.

Q (By the Court.) Have you books of accounts here? A The last bill, duplicate of the way make up bills.

Q Have you your books of account here with you? A

Israel Greenberg, Cross.

We haven't got the books along here. That is the last bill I got.

Q (By Mr. Twardus.) Do you keep a set of books? A Yes.

Q Where are the books now? A Home.

10 Q Can you bring them this afternoon with you? A I don't know—if you need them I will bring them.

Q Who keeps your books for you? A My son.

Q You keep a separate account of every customer that you deal with? A No, sir; everything, I bring it in the office, everything is marked in, so long as it is paid, we get that bill paid.

Q Are your creditors' bills kept in alphabetical order? A What does that mean?

20 Q How do you put down your orders in your books? A In a little book, an account book.

Q Where do you put the bills in that? A The bills, after we send it in the next day, when we make out the bills and we send the bill and one part we send it to the customer.

Q Who keeps a record of the bills, you or your son? A My son.

Q And you take the orders? A Yes, sir.

Q Then when you communicate to your son what somebody ordered he makes out a bill for it? A Yes, sir.

30 Q Does he keep copies of those bills? A We keep duplicate bills.

Q Then you enter the items in the books? A Sometimes.

Q He doesn't do it all the time? A Yes; when a customer pays one bill or two he don't keep it in the book.

Q Helstowski bought for four and a half months. Did you keep him in the book? A I couldn't tell. Have you got him in the book there?

40 Q Since when do you think that the brothers owned this business? A Well, he keep there about six or seven months, eight months.

Q (By the Court.) Did you commence charging to Helstowski Brothers right away, your first bill? A Yes, sir.

Q And from the first bill to the last one you charged them to Helstowski Brothers? A Yes, sir.

Q (By Mr. Twardus.) Your first bills were paid in cash, weren't they? A I couldn't remember the cash or not. I couldn't tell you exactly. It is a long time; I don't remember.

Q Didn't you go to Perth Amboy two weeks before you

Israel Greenberg, Cross.

signed this warrant and there talk about the question of this money? A I didn't go there.

Q Were you ever in Perth Amboy before you signed this warrant? A My son was there. I didn't go there.

Q Were you ever there yourself? A Before that warrant was, the day before we was, when the trial was.

Q And you saw Alexander Helstowski a day before you signed the written complaint for a warrant? A A day before, yes, sir; I see him.

Q And he denied having any transaction with you? A In the beginning he said he don't owe me nothing and after he says he was partner with the brother, he only wants to pay half, and I was satisfied to take half and after he refused to take half.

Q You say first he promised to pay half and then didn't pay you anything; is that right? A Yes, sir.

Q Were you not put on your guard at that time that Alexander had nothing to do with this business and that your remedy would be a civil one? A What?

Q Were you not put on your guard at that time that Alexander had nothing to do with this business and that your remedy would be a civil one and that he didn't owe you any money?

Objected to.

Objection sustained.

Q Notwithstanding the fact that Alexander told you that he had nothing to do with the business you signed a written complaint for that one? A He tells me himself he is going to pay half; I took his word. In the beginning he said he don't know nothing and after he said he pay half.

Q Why didn't you take half? A I was supposed to take it. He didn't give it to me.

Q You arrived at Helstowski's old store on Chambers street when he already moved out after the Jewish holiday, is that right? A If I was there after?

Q You went to Helstowski's store on Chambers street when he moved out? A Yes, sir.

Q And that was the only time you ever came there for your money personally, wasn't it? A Yes.

Q How many times did you go to Perth Amboy for your money? A One time.

Q How many times did your son go for the money? A

Charles Greenberg, Direct.

He didn't go for no money there. He went to find out if Helstowski lives there and ask him for money and he didn't give him.

10 Q And you relied in this case on your son and Mr. Kaplan, the lawyer, didn't you? A He takes care of the credit—
The Court. Answer the question.

Q (Question read.) A Yes, sir.

Mr. Braelow. I want to offer this handwriting in evidence.

Marked Ex. D-1.

Re-direct Examination by Mr. Braelow.

Q Did you ask Alexander Helstowski when you saw him in Perth Amboy where his brother was? A Yes, sir.

Q What did he say? A He don't know.

20 Q He said he didn't know? A Yes, sir.

Q Did he tell you that his brother was living in Market street, Newark? A No.

Q If Mr. Kaplan had not told you to sign the complaint would you have signed it?

Objected to.

Objection sustained.

CHARLES GREENBERG sworn in behalf of defendant.

Direct Examination by Mr. Braelow.

30 Q You are a son of Israel Greenberg? A Yes, sir.

Q How old are you? A Twenty-three.

Q Are you married or single? A Single.

Q Whom do you work for? A For my dad, Mr. Israel Greenberg.

Q Did you work for him in 1919? A Yes, sir.

Q In what capacity do you work for him? A I don't understand.

Q What do you do? A I sell and deliver orders.

Q Did you ever deliver any orders to a store at Chambers street, Newark? A Yes, sir.

40 Q How many times? A Why, I couldn't tell you just how many times. Almost every week from the time Mr. Helstowski had a store.

Q Was it several months? A Yes, sir.

Q Did you ever see the name on the window of that store?

A Yes, sir.

Q What was it? A Helstowski Brothers.

Charles Greenberg, Direct.

Q What window was that on? A On the Chambers street side.

Q Is this a corner of the store? A Yes, sir.

Q What corner? What is the other street, do you know? Is it Clover street? A Clover.

Q Whom did you deliver the goods to? A To Helstowski Brothers. 10

Q And who was there when you got there? A Both brothers was in the store at the time.

Q Whom did you give the goods to? A Anybody that wasn't busy took the goods.

Q Did Walter ever take them, the young one? A Yes, sir.

Q Did Alexander ever take them? A Yes, sir.

Q You never took any orders? A No, sir.

Q Did you ever collect any money there? A No, sir, not that I remember. 20

Q Did you deliver the last bill of goods there? A Yes, sir.

Q Do you remember whether it was a bill that was larger than usual or smaller? A Much larger than usual.

Q Do you remember the amount of the bill? A \$55.70.

Q How big had the other bills averaged? A Very small in comparison with the last bill.

Q Tell us about how much? A From ten dollars to twenty dollars. 30

Q And that is all the previous bills were; is that correct? A Exactly.

Q Your line is canned goods? A Food products.

Q The last time that you delivered that bill of goods who was in the store? A Both brothers were in the store at the last time.

Cross Examination by Mr. Twardus.

Q You don't talk to anybody when you deliver goods? A I simply check up the goods, that is all; I bring it in, whoever takes care of it. 40

Q That is as far as you go in checking up, no other conversation? A No, sir.

Q All that anybody does is to see that the proper amounts are brought to the store as a charge? A Yes, sir.

Q Didn't he on one occasion tell you there was eight dollars worth of goods missing for which you charged him? A No, sir.

Charles Greenberg, Cross.

Q How many accounts were carried by your father in 1919 at the time you were delivering goods to Helstowski Brothers? A The number of accounts in the ledger, you mean?

Q Yes. A I don't know.

10 Q Were there a hundred or fifty or three hundred? A Why, between two and three hundred.

Q Do you remember how much in merchandise you delivered to any another customer besides Helstowski? A At that particular time do you mean? No.

Q How is it that you so well recall the amounts delivered and ordered by Walter Helstowski and not by anybody else? A I looked up the duplicate bills for this particular bill.

Q (By the Court.) Have you the duplicate bill? A It was given over to our lawyer. I don't know whether he has them with him or not.

Q (By Mr. Twardus.) In whose names were the duplicate bills? A Helstowski Brothers.

Q Have you any bill? A Personally I haven't.

Q Did you have any within the last few weeks? A Yes, sir; we did.

Q You don't know whether he has it now? A I don't know whether he has it with him; I guess he has.

Mr. Twardus. May I request a copy of that bill? No order of production was asked. May I ask for this?

30 *Mr. Braelow.* I saw the bill and it was in a little book, and I read it and I have mislaid it. The best evidence are the bills. The bills were sent and delivered to the plaintiff.

The Court. Your argument fails in view of the testimony of Walter that the bills were left in the store and that he does not know where they are.

Mr. Braelow. Then I will have to offer to account for the non production of the duplicates. I haven't got them.

40 Q Do you remember just exactly when you gave your lawyer that duplicate bill that you speak of? A Yes; the time that the case was given over to him.

Q (By the Court.) To which lawyer did you give it? A To Mr. Braelow.

Q (By Mr. Twardus.) Do you recall the names on windows of any other customers that you deal with? At that particular time?

Charles Greenberg, Re-direct.

Q Yes. A Why, yes, I do.

Q Remember all of them? A Most of them.

Q How was it that you took such particular notice to the Helstowski sign on that window? A I will tell you. My father does not write a very good English and when he gets his orders it is hard to understand and usually at the first order I take the bills down without the name and address on, and I put it on personally myself, either asking or looking for it on the window. 10

Q Then the first bill of goods you had there was no name and no address you say? A Well, I knew it was on the corner of Chambers and Clover street, and showed him where to deliver the goods.

Q How did you find this particular store, what identity did you have? A I would walk in and ask for Helstowski Brothers, knowing it was something of that sort. 20

Q What would they say? A That was us.

Q Would both of them say that was us? A Not exactly.

Q What would the conversation be when you walked in? Objected to.

Objection sustained.

Re-direct Examination by Mr. Braelow.

Q Was it at my request that you gave me bills, if you remember? A I don't know. My brother asked me to look up that particular duplicate and I did. What his purpose was I don't know. 30

Q Do you refer to a little bound book with paper cover? A Fifty duplicate bills.

Q (By the Court.) Were those bills duplicates of the bills of goods that had been sold to Helstowski? A Yes, sir; one of them was.

Q And the others were what? A Orders delivered to customers that particular day.

Q That was the lost bill? A Yes, sir.

Q Where are the others? A Previous to that? 40

Q Yes. A We have them, yes, sir.

Q In the store? A Yes, we have.

Q The bills themselves or your ledger? A The bills themselves.

Q Have you books of accounts showing it too? A I don't know whether it is there or not. It might be there or it might not.

Charles Greenberg, Re-direct.

Q You don't post them? A Yes, I do myself, I usually do in that ledger sheet the first of each year.

Q How long have you kept the books? A This is a pretty old account.

Q Did you keep the books at that time? A Yes, sir.

10 Q Don't you remember if you put it on the books? A Yes, I entered them into a ledger from the bills.

Q What is your system of bookkeeping? When you make a sale like this what is your first entry? A The month and date.

Q Where is your first entry? A I have an alphabet with each customer's name.

Q Do you put it on the order sheet? A The order itself goes on the original and duplicate.

20 Q Where do you post it first from that? A Dad has an order book and my brother has an order book.

Q I thought you did have order slips, orders and duplicates? A We have a duplicate system, an original and a duplicate.

Q What is it? Tell us what you do? A Pop comes home and gives the order from his order book and it is put on a pad.

Q What is the pad? A It is a book of fifty sheets, original and duplicate.

Q Original and duplicate what? A Orders.

30 Q What is the next thing you do? A The order is delivered. The customer gets the original and signs the duplicate and it is brought home and then it is entered into that ledger.

Q Directly from the duplicate order slip to the ledger? A Yes, sir.

Q You have a loose leaf ledger? A Yes, sir.

Q And then if they get old you file them away, I suppose? A Yes, sir.

40 Q Do you keep a file of the loose leaf sheets that you eliminate in your ledger? A Yes, sir.

Q You keep them permanently? A I don't know. Sometimes when we look up a duplicate they are all disarranged.

Q I just wondered if you could find the ledger entries? A I imagine I could.

Q And do you think you could find these other duplicate orders? A By the ledger sheet I could.

Q (By Mr. Braelow.) Could you find them by this afternoon, do you think? A I couldn't promise you.

Herman Greenberg, Direct.

Q (By the Court.) By going right away, now? A I guess I could.

Q (By Mr. Braelow.) Was it you who brought home that duplicate order slip? A Personally it was not.

Q It was your brother? A My brother.

Q Did you say anything when you gave it to your brother, the duplicate order slip? A Yes, sir; I believe so, and I gave it to him. 10

Q Did you read it? A I read it, yes.

Q Do you remember what it said, to whom it was billed? A Helstowski Brothers, 100 Chambers street.

Q Do you remember the amount? A Fifty dollars and some change, I don't remember exactly.

HERMAN GREENBERG sworn in behalf of defendant.

Direct Examination by Mr. Braelow.

Q You are a son of the defendant, Israel Greenberg? A Yes, sir. 20

Q How old are you? A Twenty-eight.

Q Married or single? A Married.

Q By whom are you employed? A Israel Greenberg.

Q How long have you been with your father? A About twelve years.

Q What is your position with him? A Salesman, general solicitor.

Q You are selling like your father? A Yes, sir. 30

Q Did you ever visit the store at the corner of Clover and Chambers street? A Not until the time it was sold.

Q After it was sold? A That is the only occasion.

Q How long after, do you remember? A Well, about within a week or ten days.

Q Did you see any sign on that store, any lettering? A Yes, sir.

Q What did you see? A On the Chambers street side, on the right-hand corner, "Helstowsky Brothers."

Q Did you ever go into that store? A Yes, sir. 40

Q (By the Court.) Just tell that which you found there. A Helstowsky.

Q Now spell that. That is your father's writing? A (Spelling) H-e-l-s-t-a-s-k-y.

Q Isn't that an f, just as it is pronounced? How would you pronounce that? A Helstasky Bro.

Q That is, you think that is? A Yes, sir.

Herman Greenberg, Direct.

Q (By Mr. Braelow.) You went inside that store, did you? A Yes.

Q Whom did you see in there? A I saw the new proprietor and I don't remember seeing the butcher and I had a conversation with the new proprietor.

10 Q Were there one or two proprietors that you saw? A One new proprietor.

Q Do you know his name? A Yes.

Q What? A Wilksanski.

Q How did you come to go down to that store? A There was a bill of goods due us which was unpaid. I made an attempt to go down there and collect it.

Q Who told you to go down? A My father.

Q He told you the place was sold? A He told me the store was sold.

20 Q And who were you going to collect it from? A Helstowski Brothers.

Q Did you expect to find them there? A Yes, sir.

Q Why? A Because, as I understood, they were living in the back.

Q Did you go into the back? A Yes, sir.

Q Did you see anybody there? A I only met Mrs. Helstowski, the wife of Alexander.

Q Did you talk to her? A I spoke to her personally.

30 Q What did she say to you? A I inquired where her husband was and she told me he was out looking for rooms at that particular time and she advised me to come back the following morning, and in the meantime I asked her about the bill of goods, the money that was due us. She said, "Were you over to the justice of the peace?" and I said, "Yes, but the money isn't there." She said, "Well, you come back in the morning, my husband will pay you."

Q She said that? A Yes, sir.

40 Q Did you talk to Wilkanski, the proprietor at all? A Yes, sir.

Q Did you ask him anything about where the Helstowskis were? A Several times I asked him.

Q What did he say? A He said he didn't know. He had been looking for them himself.

Q Did you ask him if there had been left any money with him to pay your father? A I don't recall exactly.

Q Does your father read and write English well? A No, sir.

Herman Greenberg, Direct.

Q Does he often attempt to read and write English? A The only occasion he has to write is when he is taking his orders and then he writes that in Jewish—Hebrew.

Q (By the Court.) Do you boys read Hebrew? A Yes, sir; slightly.

Q (By Mr. Braelow.) Who copies those orders into the order book, your brother or your father? You say he writes them in Hebrew and Jewish, you mean German Hebrew or Jewish? A Jewish. 10

Q He writes them in Jewish in his own memorandum? A Yes, sir.

Q How are they copied into the order slip? A When he gets home the following morning he dictates his orders to either one who happens to be at the office.

Q Did you go back and tell your father of your conversation with Mrs. Helstowski? A Yes. 20

Q And what happened then? A He told me to be prompt in going down the following morning as Mrs. Helstowski advised me to do.

Q Did you go down the following morning? A I went down the following morning.

Q And what happened then? Whom did you see there? A The following morning there wasn't anybody there. The rooms were vacant.

Q The back rooms were vacant? A Yes, sir.

Q Were the names still on the window? A That I don't know. 30

Q Have you seen that store since? A Yes, sir.

Q Is the name on there now? A No, it is not.

Q Did you talk to the new owner when you got down there the following morning? A Yes, sir.

Q What did you say to him? A I asked him what became of the people that lived in the back. He says he doesn't know, they evidently moved away during the night, he said he was looking for him himself because they removed some of the stuff that was in the store. 40

Mr. Twardus. I object and ask that it be stricken out.

The Court. The objection comes too late. I expected you to object to the question. You did not object and the answer will remain.

Q Did you report to your father the result of that visit?

A I went back home immediately and told him that the people had removed from the premises.

Herman Greenberg, Direct.

Q And then what happened? A Then I went down on several occasions after that to see whether I could get some information from the new proprietor.

Q Did you get any? A Couldn't get a thing from him.

10 Q Do you happen to know how your father came to consult a lawyer in this matter?

Objected to.

Objection overruled.

Q How did your father come to consult a lawyer in this matter? Do you know how your father came to consult a lawyer? A My father consults me about all those cases—

The Court. The question is, do you know how your father came to consult a lawyer. How did he come to consult the lawyer? By your advice was it?

Witness. Partly through my advice.

20 Q And who was the lawyer you consulted? A Mr. Kaplan.

Q Did you go with him to Mr. Kaplan or how was it arranged? A Mr. Kaplan called at my place several times, interviewed him during my presence, and my dad asked me to have Mr. Kaplan and myself take care of the case, and several times Mr. Kaplan went down to Helstowski's place to get some information. We threatened—

30 Q Were you with him when he went down? A Yes, sir. We went down in my car. We tried to threaten the new proprietor, telling him that he would be responsible for the debt, but he seemed to be a very good sort of a chap and we didn't want to make—

Objected to.

The Court. That will be stricken out.

Q Did you tell Mr. Kaplan all of the facts in this case as you knew them? A Yes, sir.

Q Did your father tell him what he knew about the matter in your presence? A Not very specific, no, sir.

40 Q Why didn't he tell him? A He couldn't explain the situation.

Q And did you explain it? A Yes, sir.

Q Was your father there when you did it? A Yes, sir.

Q Did you withhold from Mr. Kaplan any information or knowledge that you had about this matter at all? A No, sir.

Q You told him all that your father and you knew so far as you knew? A Yes, sir.

Q And what did Mr. Kaplan advise you to do?

Herman Greenberg, Direct.

Mr. Twardus. I object to that as hearsay.

The Court. Objection overruled.

A Mr. Kaplan started suit after he located the Helstowskis.

Q What did he advise you to do? A He advised me to start suit.

Q Did you know where Helstowski was then? A No. 10

Q How did you find out? A Mr. Kaplan addressed him.

Q He found out? A Yes, sir.

Q When did you learn that Mr. Kaplan had found out where Mr. Helstowski was? A Within a radius of four or five months—I don't just exactly recall what month, time it was—it took about four or five months.

Q And he found out? A He located him.

Q What did you do after he found out? Where did you go and what did you do? A I went to Perth Amboy.

Q You yourself? A I went out to Perth Amboy. 20

Q Who suggested that? A Well, I did that of my own accord. I didn't know Mr. Helstowski, that was the first time I met him, when I went out to Perth Amboy after the address I obtained from the chief of police of Perth Amboy, and I went out there and told him I represented some company as general solicitor.

Q Did you try to sell him goods? A Yes, sir; he said he didn't need anything at that particular time. Then I tried to reveal his name. He sort of first hesitated in giving it to me; then he finally gave me his name. He said, "What do you want my name for?" And I said I had to make a stub of all the names I stopped at. 30

Q Did you ask him if he had ever been in business in Newark? A No, I didn't ask him.

Q What did he tell you his name was? A He just told me his last name, Helstowski.

Q Did you tell that to Mr. Kaplan when you came back? Did you report that to Mr. Kaplan? A Yes, sir.

Q And did you tell your father? A Yes, sir.

Q And what, if anything, did Mr. Kaplan advise you to do, you and your father? A The second time I went out there with my dad and Kaplan. 40

Q Who else? A Mr. Conron.

Q What day of the week was that, do you remember? A I don't just recall what day of the week that was.

Q Wasn't there a summons sent from the police court to Helstowski before you went out there, or was it after? A After the first occasion.

Herman Greenberg, Direct.

Q Is this the sequence: first, you went out there? A First I went out there alone.

Q Then what came, the summons or the second visit? A I don't recall. I think it was the second visit. First I was alone and then I went out there with a party.

10 Q Was the summons between those two visits or after the second? A After the second.

Q Did you have any conversation with Helstowski the second time about the summons? A No, I didn't say anything to him.

Q What happened when you got out there? A The second occasion?

Q Yes, when Mr. Kaplan was along? A The second occasion when we got out there I had very little words with him. Mr. Conron and my dad did most of the speaking to him. Of course, they spoke in Polish. Part of the conversation I didn't understand what they were talking about.

Q Do you understand any Polish? A No, not at all.

Q Did they speak any English? A Yes.

Q What did you hear said in English? A My father approached him and asked him how business was and how long he has been out there and later on he approached him about the money that was due him.

Q By "approached him" I suppose you mean asked him? A Yes, sir.

30 Q What did Alexander say? A There was a furious conversation because my father had sworn out a summons or started suit and he talked of paying my father and he was willing to pay Mr. Conron because he was a gentleman.

Q Conron had a claim against him at the same time? A Yes, sir.

Q Did you hear him make any offer to him in English about any payment? A No, sir; I didn't hear.

Q Did you hear anything in English about paying off? A Yes, sir.

40 Q What was that conversation? A He made an attempt to go in the back to get some money, I believe, and then several moments he came out. It seems he must have held a conversation with his wife. He came back and said, "I haven't got any money now."

Q What was the conversation about the payment of the bill?

Objected to as leading.

Herman Greenberg, Direct.

The Court. The question may be answered.

A I don't just recall what the conversation was.

Q Did you hear the word "partner" used there anywhere?

A Yes, sir.

Q Who said it? A Alexander Helstowski.

Q What did he say about partners? A He said his brother was a partner, he is willing to pay half, and he wouldn't tell us where his brother was located. 10

Q Who asked him where his brother was located? A I asked him. We all asked him.

Q He refused to tell you or did he say he didn't know? A He said he didn't know where he was.

Q You say there was some talk about the summons, so this visit of yours must have been after the summons was sent, is that correct? A I believe so.

Q How could there have been talk about a summons if there wasn't any? A I was down there three times. 20

Q You were down there three times? A Yes, sir.

At one o'clock P. M. the court took a recess of one hour.

AFTER RECESS.

Q After you left Perth Amboy the second time—I mean the second time you went there with your father and your counsel, Mr. Kaplan—did you go there again? A I went there the third time.

Q What did you do in between the second and third visits, if anything? Did you go to the police court on any of the occasions? A No, not at all. 30

Q You never appeared at the police court? A No.

Q How long after the second time you were there did you go there? A I don't remember how long a time had elapsed.

Q A week? A Probably a week.

Q Whom did you go with the third time? A With Detective McGrath and a friend of mine, Dr. Kaplan.

Q Did Detective McGrath have a warrant? A Yes, sir.

Q How did you happen to go with him? A Mr. McGrath got in touch with me over the telephone and told me he had a warrant to go to Perth Amboy and asked me if I could provide a car for him to have Mr. Helstowski brought back to Newark. 40

Q Did you provide the car? A Yes, sir.

Q And who else went along besides Mr. McGrath and yourself and this Dr. Kaplan? A I don't think there was anybody else.

Herman Greenberg, Direct.

Q Did you go right to Helstowski's place of business? A Yes, sir.

Q What, if anything, occurred there? A The only thing that occurred, Mr. McGrath told Mr. Helstowski he had a warrant for his arrest and Mr. Helstowski says, "Do I have to go right away?" and Mr. McGrath says, "Yes, unless you pay your bills we are going to have you brought back to Newark immediately." And Mrs. Helstowski was in the store at the same time.

Q Did he make any statement to Detective McGrath or to you at that time that he didn't owe the money or anything of that kind?

Objected to as leading.

Objection sustained.

Q Did he make any statement of that kind at all? A He said we could look to his brother for part of the money and I asked where his brother was.

Q What did he say? A He said he didn't know where his brother was, he was at home and I should go and look for him myself.

Q Did you have anything further to do with the matter after the arrest? A After the arrest I had no dealings with the situation.

Q With Helstowski? A No, sir.

Q With this man Bonavita? A Yes, sir.

Q After he left? A After he left Mr. Bonavita took up the situation up about paying the bill.

Q With you? A No, with Mr. Kaplan.

Q Were you there? A No, sir.

Q You yourself I am talking about? A No, I didn't have anything to do with it.

Q I don't remember whether you testified this morning to having gone to Justice of the Peace Marano? A Several times I appeared before Justice Marano.

Cross Examination by Mr. Twardus.

Q You were most concerned getting your money, \$55, all your bill, were you not?

Objected to.

Objection overruled.

A I didn't hear you quite clearly.

Q (Question read.) A Yes, sir.

Q If you would have obtained \$55 then Helstowski wouldn't be arrested in Perth Amboy?

Herman Greenberg, Cross.

Mr. Braelow. I object. This is not the defendant.
The Court. He seems to have had full charge of it for the defendant.

Q If you had received \$55 in Perth Amboy you wouldn't have ordered his arrest, would you? A Either that or part of it.

10

Mr. Braelow. I object. Here was an officer with a warrant authorizing and compelling him to bring the defendant.

The Court. He just said that the officer said to him, "Unless you pay your bill you will have to go right away." I think it is a pertinent inquiry to find out whether it was a collection or arrest in the interest of the public.

Mr. Braelow. I don't see how that binds us.

The Court. The testimony was given and the conversation was given in the presence of the father and I think it is quite pertinent to inquire the instructions that were given to the officer and the matters to which he assented when the arrest was made.

20

Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q (Question read.) A No, sir.

Q Did you and Mr. Kaplan ever have a conversation about the best way of collecting this money? A We had several conversations.

30

Q Were you ever advised starting a civil suit? A I don't know.

Q You understand the difference between a civil suit and a criminal action? A No, I don't understand the distinction.

Q Did you and Mr. Kaplan go into the costs of obtaining this money from Mr. Helstowski for your father? A The course?

Q The cost? A The cost of collecting the account?

Q Yes. A That case under the Israel Greenberg account?

40

Q (By the Court.) Was that discussed by Mr. Kaplan? A No, that was not discussed.

Q (By Mr. Twardus.) Did Mr. Kaplan advise you to have a criminal complaint sworn out against Helstowski in Perth Amboy? A I don't know the difference between a civil and a criminal offense, so I can't answer that question.

Herman Greenberg, Cross.

Q How many letters did Mr. Kaplan write to Mr. Helstowski about this money? A I don't know how much correspondence there was with Mr. Helstowski.

10 Q How long a period of time did your conversations extend with Mr. Helstowski about this money? A From the time we located him and until the time of his arrest.

Q How many weeks was that? A I don't know how many weeks that was.

Q Was it a month? A I haven't the least conception.

Q Did you ever talk with Mr. Helstowski about this money on your visit or second visit to him? A No, I didn't.

20 Q What conversations did you have with him the first time you went there? A I asked him whether he was interested in anything in the way of that he was selling in his store, and he said he wasn't interested, and I asked him his name and he wouldn't give me his name. He asked me what I wanted his name for and I said, "I had to make a report of the routine of my work."

Q He didn't say anything about the money he owed your father? A I didn't know he was the man that owed the money. I just tried to verify if he was the party I was looking for.

Q How soon after your first visit did you go back there again? A Probably a week or ten days.

30 Q And what made you wait ten days before you went there again? A That is the first occasion I had to get away from my business.

Q How soon before or after your first visit did Mr. Kaplan write the letter? A I don't know.

Q (By the Court.) How long after your second visit was your third visit? A Very shortly, within a few days, I should say.

Q (By Mr. Twardus.) On your third visit did you converse with Mr. Helstowski? A Very little.

40 Q What was the conversation? A I asked him whether he was willing to pay the bill. He said well, he would pay half of it, we should go and look for his brother, but I didn't know where his brother was; he said he was at home, but didn't know where he was, I should look for him myself.

Q The conversation about owing your father money was after the sale of the Chambers street store? A Yes, sir.

Q You had made just two visits to the Chambers street store? A I had been there several times after the two times you have reference to.

Herman Greenberg, Cross.

Q When Helstowski was living there you were there once?

A The first time I saw Mrs. Helstowski, the next time there were no Helstowskis around, they moved the next morning.

Q What is the first thing you noticed when you went to that Chambers street store? What did you do first? A I walked right into the store, consulted as to the new proprietor, Mr. Wilsanski; I asked whether any of the Helstowskis were around and he told me they are living in the back and I went in the back and I met Mrs. Helstowski. 10

Q Did you have any conversation with the man in charge of the store as to whether he actually took over the store in his name? A Well, there was a little conversation held there, explained the situation about him selling the store, and why he didn't present my claim to the justice of the peace as well as anybody else's at that particular time.

Q I ask whether you inquired of the owners at that time how long they had had occupancy of the store on the day that you came there for your collection? A I don't know how long the Helstowskis occupied the premises after they disposed of the store. 20

Q But how long had the new owners been in possession on the day that you went for your collection the first time? A Probably four or five days; a week, the most.

Q Then you want us to believe that the new owners took over the store and left the so-called Helstowski Brothers name on the window; is that right? A Yes, sir. 30

Q Then the next day you came that lettering was no longer on the windows? A I didn't say so.

Q You did say so on direct examination.

Mr. Braelow. I object. He didn't say that.

The Court. That is not the way I understand it.

He was later asked if it was there now and he said no.

Q You made three or four visits to that store after Helstowski moved out? A Probably half a dozen. I didn't say three or four.

Q Did you notice the windows on those occasions? A On several occasions I did. The inscription on the window didn't interest me at the time I went down there. 40

Q On direct examination the first thing you said you saw was this name? A Yes, the first occasion that I went down there I recall it very distinctly.

Q A moment ago you said the first thing you did was that

Herman Greenberg, Cross.

you went to the store without looking at the windows.

Objected to.

The Court. That is not a question.

10 Q Do you know of this transaction between Bonavita and your father's claim? A All that I know is that I collected the debts. Every time the note was due that Bonavita had made between Helstowski and Bonavita, that is all I know about it.

Q Which Helstowski? A I don't know which Helstowski it was made to.

Q (By the Court.) Who made the payments? Your father has been paid in full. A Yes, sir.

Q Who made the payment to him? A Bonavita.

20 Q (By Mr. Braelow.) As a matter of fact, a civil suit was started against Alexander Helstowski in Perth Amboy by your father. Do you or don't you know that? A I know Mr. Kaplan started a civil suit.

Q Started a civil suit in the district court. Do you happen to know whether that is so? A Yes, I do recall it.

Q (By Mr. Twardus.) And when was the original complaint signed?

The Court. August 14th.

Q Did you notice the lettering on that window? Was it painted guilt or was it raised lettering? A If I recall it correctly, I think it was gilted.

30 Q Gold? A Yes.

DAVID CONRON sworn in behalf of defendant.

Direct Examination by Mr. Braelow.

Q Where do you live? A 812 Bergen street.

Q Newark? A Yes.

Q What is your business? A Butter and cheese, selling.

Q Wholesale or retail? A Wholesale.

Q Are you married or single? A Married.

Q How long have you lived in Newark? A Seven years.

40 Q Do you know Alexander Helstowski, the plaintiff in this suit? A Yes.

Q Do you know which one Alexander is—the older one? A Yes, sir.

Q Do you know that? A Yes.

Q What is his brother's name? A There was two, Walter and Alexander.

Q Which one is Walter? A The blond fellow.

David Conron, Direct.

Q How long do you know them? A Since I deal with him.

Q How long was that? A The deal was in 1919.

Q Was that when you first met them? A Yes, sir.

Q How did you come to know them? A I saw a sign there going to be a butcher and grocery and I entered to sell my merchandise. 10

Q Where was that store? A Chambers and Clover street.

Q Did you notice any lettering or sign on the store? A I did.

Q What did you notice on the store? A Helstowski Brothers.

Q Did you sell them any merchandise? A Yes, sir.

Q How many times? A Well, twice a week.

Q For how many weeks? A It was about sixteen weeks, I believe. 20

Q Whom did you deal with in that store? A Both.

Q Whom do you mean by both? A Both brothers.

Q When is the first time that you sold them a bill of goods, do you remember? How long after the store opened? A I believe the second week.

Q What kind of goods did you sell them? A Butter and cheese.

Q How much was your first bill, about, do you remember? A About eight or ten dollars. 30

Q And who gave you the order, which one of the brothers? A The fat fellow, I call him.

Q Which is it, the blond or the other one? A The other one, the dark one.

Q Do you know their names? A Sure.

Q What is the blond one's name? A Walter.

Q Which one dealt with you, Walter or Alexander? They bought.

Q The first bill? A The first bill, Alexander.

Q Was Walter in the store when he bought that bill of goods? A I don't remember. 40

Q Did you deliver the goods to him? A Yes, sir.

Q Who collected your bills? A Myself.

Q How often would you collect your bills? A Some customers pay weekly, some pays every second week.

Q This particular customer, Helstowski Brothers? A I believe the first order they paid me cash.

David Conron, Direct.

Q You mean before you delivered the goods? A No; when I bring down the merchandise.

Q You brought it yourself? A Yes, sir.

Q Who paid you the money? A The same party which bought it.

10 Q Alexander? A Yes, sir.

Q Did Walter ever pay you money for goods? A Sometimes.

Q And Alexander paid you, too? A Yes.

Q And you said you dealt with both of them from time to time as you sold them goods? A Yes, sir.

Q Did you send them bills? A No, sir; I delivered the bills.

Q How did you make out the bills? A Helstowski Brothers.

20 Q Have you a book of accounts? A Yes, sir; I have a small account.

Q Who wrote in that book? A I did.

Q What did you put in there? What entries did you make? What did you put in there? A The name and address and then had the merchandise that I buy—not exactly the merchandise, but the amount of the bill.

Q Each bill as they bought it? A Yes, sir.

Q Would you mark it when they paid it? A Surely.

30 Q Can you find an account in here for Helstowski? A Well, I am sorry to say that these leaves have been gone, but I have one of those bills which is marked Walter and Alexander Helstowski, 100 Chambers street.

Q How is it that this book has the pages on the right-hand side marked up and not so many lines up? Did you keep it in Jewish fashion? A Yes, sir.

Mr. Twardus. I object to the book going in evidence and not binding upon this plaintiff.

The Court. The objection will be sustained.

40 Defendant's counsel prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q You delivered the bills yourself? A Yes, sir.

Q And you made it out Helstowski Brothers? A Yes, sir.

Q Did Alexander ever tell you you shouldn't bill it that way? A No, sir.

David Conron, Direct.

Q When is the first time you ever sold these people merchandise? A June 10th.

Q How much was your bill of goods then? A On the 10th, \$4.20, it is marked in the book.

Q Did they owe you any money at that time? A Twenty-five dollars they owed me in June, before the 21st, merchandise, and on the 10th. 10

Q How much? A Fifty dollars and change.

Q Did you go to collect that bill for \$50? A I go to collect that bill; I left the goods on the 10th.

Q What happened on the 10th? A And the 11th I came in there again.

Q Whom did you find there? A I find a new storekeeper there.

Q Do you know his name? A Wilksanski.

Q Did you deal with that storekeeper afterwards? A Yes, sure. 20

Q Did you ask for the Helstowskis?? A Sure, I asked for them.

Q What did they tell you? A They had lived there.

Q Did you go in there? A Yes, sir.

Q Who did you find in there? A Helstowski and his wife.

Q Which one? A Alex.

Q The married one? A Yes, sir.

Q Did you ask him about your bills? A Yes, sir. 30

Q Did he pay it to you? A No.

Q Did you ask him if he sold the store? A Surely.

Q What did he say? A He sold the store.

Q He said he sold the store? A He said he sold the store.

Q Did he tell you anything about his bill? A He said he is going to pay me tomorrow.

Q Did he pay you tomorrow? A No, sir; he didn't.

Q Did you ever tell Mr. Greenberg or Mr. Kaplan about this, that he hadn't paid you your bill? A Mr. Kaplan took care of my different cases, so I called there and told him that one of my customers sold the store and I wanted to collect my money from him. 40

Q Did you have any conversation with Helstowski about Greenberg? A I didn't.

Q Did you go down to the justice of the peace? A I have been there.

David Conron, Direct.

Q And there was no money there? A There was no money left.

Q You went along with Mr. Greenberg when your party went down to Perth Amboy, didn't you? A Yes.

10 Q Will you tell us what happened there? A When I called on Mr. Greenberg, so we asked him all at once——

Q You mean you all spoke at once? A Yes, about our money.

Q Who spoke? A Mr. Greenberg spoke and I spoke and young Mr. Greenberg and he started to argue that he wouldn't pay.

Q Didn't he give you any reason? A He didn't give any reason at all, but he wouldn't pay.

Q Did he say that he didn't owe the money? A No, he didn't say anything.

20 Q Go ahead. A But then they called me in the rear, in the kitchen, and told me——

Q Who told you? A Helstowski and his wife.

Q He called you in alone? A Called me in alone, and said he was going to pay me on Friday; this was Wednesday, we was there, I should come down there and I will get my money, but I didn't call there Friday.

Q Did he say anything about paying Greenberg? A He will not pay Mr. Greenberg.

30 Q Why did he say he will not pay Mr. Greenberg? A He didn't say anything; he said he wouldn't pay him.

Q Did you hear him say anything about a partner? A I don't remember.

Q Did you hear him make any kind of an offer to pay half of the debt?

Objected to as leading.

Objection sustained.

Q Did you hear him make any kind of an offer?

Objected to.

Objection sustained.

4) Q What else, if anything, did he say? A I don't remember.

Q Did you see him again after you went to Perth Amboy?
A I didn't see him no more.

Q You were not in the police court? A No.

Q You told Mr. Kaplan, didn't you, of your experience with Mr. Helstowski? A In what respect?

Q About his owing you the money and having gone away, and so forth?

David Conron, Cross.

Objected to as leading.

Objection sustained.

Q Did you tell Mr. Kaplan about your dealings with Helstowski? A When they sold the store; they sold it the 11th of June.

Q (By the Court.) Did you tell Mr. Kaplan is the question? A I believe I told him. 10

Q (By Mr. Braelow.) When? A A couple of days later.

Q (By Mr. Twardus.) What kind of letters did you notice on the windows with Helstowski's name? A Handwriting.

Q And on how many windows was this handwriting? A On one window.

Q On Clover street or on Chambers street? A On Chambers street. 20

Q And were they white letters or red ones? A I believe they were yellow and white.

Q How high were they, five or six, twelve inches? A Two and a half, three inches.

Q Very small letters? A Two, two and a half.

Q Show us how much you think two and a half inches is on that card there. Make a mark there. A (Illustrating) that high.

Q How many front windows were there in that store? A Two. 30

Q How do they face? A One on Chambers and one on Clover.

Cross Examination by Mr. Twardus.

Q You began dealing with the Helstowski store two weeks after they opened it? A I believe so.

Q And you dealt with them sixteen weeks? A I am not sure about it.

Q That is a period of four months? A I believe so.

Q Don't you know as a matter of fact they had the store there three and a half months? A Maybe. 40

Q You are not sure whether it was sixteen weeks or more weeks? A I can't remember.

Q What made you say sixteen weeks before? A I can't remember.

Q You are just as sure of that as you are about Helstowski on the windows? A Could I speak to him?

David Conron, Cross.

Q When did you first notice the name on the window? A I don't remember.

Q Was it before you started selling them goods or after you started selling them goods? A I can't remember. I looked at the window and I saw the name.

10 Q Who told you to say that today, that you saw Helstowski's name on the window? A Nobody told me.

Q And the only reason that you say you saw Helstowski's name on the window is because somebody told you that; is that right? A No, sir.

Q Who spoke loudest in the store in Perth Amboy when everybody started talking about money, whom did you hear most? A Maybe I, myself.

Q But your fifty dollars you didn't get paid yet? A Yes, I got it.

20 Q Is it paid now? A Yes.

Q Who gave the money to you? A My lawyer, who takes care of my business.

Q Were you present at the time the money was collected or not? A I don't know.

Re-direct by Mr. Braelow.

Q How long ago did you get your money? A Something about a few months after the case happened.

Q That is almost four years ago, three and a half or so? A Yes, sir.

30 HARRY KAPLAN sworn in behalf of the defendant.

Direct Examination by Mr. Braelow.

Q Where do you live? A 326 Clinton avenue, Newark, New Jersey.

Q Married or single? A Married.

Q What is your occupation? A Lawyer.

Q Are you a member of the bar of the State of New Jersey? A Yes, sir.

40 Q How long have you been such a member? A Since 1918, the latter part of 1918.

Q Are you a counsellor at law? A Just passed my counsellor's examination.

Q Do you practice in the city? A I do.

Q Have you practiced since you were admitted? A Yes.

Q Where is your office? A 116 Market street, Proctor's Theatre Building.

Q Do you know Greenberg, the defendant in this case? I do.

Harry Kaplan, Direct.

Q Do you know Helstowski, the plaintiff? A I do.

Q Were you consulted in the matter wherein Greenberg claimed that some money was due him from Helstowski? A I was.

Q Will you tell us about it? A I think in the early part of July, Herman Greenberg, the son of Mr. Israel Greenberg, the defendant in this case, came to me and informed me that an unpaid bill was due from Helstowski Brothers on Chambers and Clover street in this city. 10

The Court. It appears in this case that the son, Herman, was charged by his father with the investigation of this matter and took it up with this attorney and perhaps the conversations with Herman which were communicated to the father, and as a basis upon which he made the complaint would be proper, but I do not think his conversations with people aside from that ought to be given in evidence. 20

Mr. Braelow. I am speaking of Herman Greenberg.

Witness. Herman Greenberg I am speaking of, too. Herman submitted the claim to me and asked me to collect it for his father. Herman informed me at the time that the Helstowskis had gone from the city, but he had ascertained from the present owner of the business, Mr. Wilksanski, that a bill of sale had been executed in the office of Mr. Marano, a justice of the peace on Market street. I suggested to Herman that I be brought down to Mr. Marano to interview Mr. Marano, and Herman took me down in the automobile to Mr. Marano's office. I inquired about the whereabouts of the Helstowski brothers and Mr. Marano said he knew nothing about their whereabouts at that time. I asked him to let me see the bill of sale and the bill of sale was drawn from Walter Helstowski alone over to Wilksanski and others. 30

The Court. It is in evidence.

Witness. And from Mr. Marano's place, not getting the information as to the then whereabouts of the Helstowskis, I suggested to Herman that we go to Wilksanski, the new owner who purchased the store. I went to Clover street and Chamber street. 40

Q You say you went to the store there. Did you observe the window there? A I did.

Q What name did you see on the window? A Helstowski Bros.

Harry Kaplan, Direct.

Q You saw that? A In the lower left hand corner of the plate glass window on the Chamber street side of the store. I told Mr. Wilksanski that under the Bulk and Sales Act, no notice having been given to Mr. Greenberg—

The Court. How do you think that is relevant?

10 Q Did you inquire there after the Helstowskis? A I did. from Mr. Wilsanski.

Q What did they tell you? A Knew nothing in the world about them; he himself was looking for the Helstowskis.

Q Did you ask whether any money was left there for the account of Greenberg? A I did also of Wilksanski and Mr. Marano and both replied that nothing had been left for Greenberg or any creditor.

Q Did you have any conversation with Wilksanski with respect to who sold him the store?

20 *Mr. Twardus.* I object to the conversation with Wilksanski.

A I did speak to Wilsanski.

The Court. The objection will be sustained.

Q Who did you inquire of when you came there from Wilksanski? A For Helstowski Bros.

Q What did he tell you?

Objected to.

Objection sustained.

30 Q After you went down to the place in Chambers street what did you do then? A I made efforts, with the assistance of Mr. Wilksanski, who was also looking for the Helstowski Brothers, to locate the Helstowski brothers.

Q What efforts did you make? A There was information given me—

Mr. Twardus. I object to the information.

The Court. Objection sustained. It will be stricken out.

40 Q As the result of something you did what? A I wrote to the chief of police of Rahway asking whether there was any Helstowski had moved into his town about the time—immediately prior to the time that letter had been sent down to the chief of police I received a reply—

Objected to.

Objection sustained.

Q What did you do as the result of that reply? A I made further investigation.

Q How? A I kept in touch with Mr. Wilksanski and

Harry Kaplan, Direct.

subsequently I wrote to the chief of police of Perth Amboy.

Q What did you ask him? A Also asked whether any Helstowski had moved in his town within the last few months.

Q Did you get a reply? A Yes, sir.

Q What did you do as the result of that reply, if anything? A I asked Herman Greenberg to go down to Perth Amboy and to find out whether Helstowski resided at 613 Charles street, Perth Amboy. 10

Q You sent him down there? A I did.

Q Did he report back to you or his father? A To both.

Q What was his report?

Objected to.

Objection overruled.

A That he had spoken to a gentleman in the butcher and grocery store 614 Charles street, Perth Amboy and that gentleman had admitted to Herman that his name was Alex Helstowski. 20

Q What did you do after that? A I suggested to Mr. Greenberg that we go down to Perth Amboy personally and endeavor to collect this bill from Mr. Helstowski.

Q There is some testimony here about a summons being sent. Do you know anything about that, a summons of the criminal court? A I do.

Q What do you know about it, how did it come to be sent, if you know? A I appeared before acting Judge Yuill— 30

Q Yourself? A Myself, together with Herman Greenberg, and related to Acting Judge Yuill the facts concerning the situation as I was then informed and Judge Yuill suggested the making of a complaint by Mr. Greenberg.

Q Never mind what he suggested, what was done? A Acting Judge Yuill sent the summons down to Perth Amboy.

Q To Alexander Helstowski? A To Alexander Helstowski, requiring his appearance.

Q Were you informed of the return day of that summons? A I received a 'phone message to appear in the court. 40

Q Was Helstowski there? A He was not.

Q Who was with you when you went down? A Herman Greenberg and his father.

Q This visit which you took yourself to Perth Amboy, when did that occur with respect to the sending of the summons, before or after, do you recollect? A After the sending of the summons.

Harry Kaplan, Direct.

Q After the return day? A After the return day, after the failure of Helstowski to appear in court.

Q Who went with you? A Mr. Greenberg, Sr., Herman Greenberg and Mr. Conron; those three gentlemen.

10 Q What happened down there? A The four of us went in the store. Mr. Herman Greenberg stayed in the background, and at the time Mr. Helstowski was cutting some meat for a customer and he said, "Just wait a moment." After getting through with this customer a general conversation was commenced and the exact words I cannot recall.

Q What was the subject of that conversation?

Mr. Twardus. I object unless he lays a foundation of who said it.

A The conversation chiefly took place between Mr. Greenberg and Mr. Helstowski and myself.

20 Q Did you hear it? A I did.

Q What language was it in? A Initially in English.

Q And then? A And then there was a conversation in Polish between Mr. Greenberg and Mr. Helstowski.

Q What was the conversation in English; who said what?

A I asked Mr. Helstowski why he didn't appear in the criminal court at Newark, having asked him prior to that if he hadn't received a summons for him to appear in the court at Newark. He responded that he received some letter from Newark, but what it contained he didn't know.

30 Q Did he say that he had gone to Newark, showed the summons to a police officer there and was told to wait and then, not being called, he went home? A No, sir.

Q Did he say anything like that? A Nothing whatsoever of that kind.

40 Q Go ahead. What then was said? A Well, Mr. Greenberg and Mr. Conron chimed in and asked Helstowski why he didn't pay the bill. He says "Why do you come after me alone? My brother is also liable in this matter, he was my partner, he got more money out of the transaction than I did; you should go for him first and I only owe one-half of the sum." Mr. Greenberg said, "Well, why don't you pay one-half?" Helstowski responded, "You get it from my brother first. If he pays you first then I will pay you my one-half."

Q Then what happened? A Mr. Greenberg says "Where is your brother located at?" He says, "I don't know," he says "When the store was sold we separated and I don't know where he is now."

Harry Kaplan, Direct.

Q Did he say anything about his brother living at Lafayette street? A He didn't He gave no information whatever as to his brother's address.

Q Then what did you do? Where did you go? A Prior to leaving Mr. Helstowski called Mr. Conron aside, that is, in the rear room—

Q Did you hear that conversation? A No, sir.

Q Did you then leave? A Before leaving I spoke to Mr. Helstowski again and told him that I believed that he had no intention of paying the bill, but I believed that he intentionally absconded from Newark, and that in my mind it was his intention to defraud his creditors. I told him of the information given me by Mr. Conron and Mr. Greenberg that he promised payments immediately prior to leaving Newark and that on the day he promised to make payment, the morning of that day, he had left Newark and in my mind he had never intended to pay that money.

Q What did he say? A Then he reiterated to me, "I don't care what you do. That summons sent me from Newark, that doesn't mean anything to me, they can't get me in Newark out here."

Q Then what happened? A Then I cautioned Mr. Helstowski that I was going to advise my client to swear to a complaint against him. He said, "Go ahead and do what you like, I don't care."

Q What happened then? A I went back to Acting Judge Yuill.

Q You went back to Newark? A Yes, sir.

Q All of you? A Yes, sir.

Q Then what did you do? A I requested Mr. Greenberg to appear with me before Acting Judge Yuill.

Q And who spoke before Judge Yuill? A I did.

Q What happened there? A I think immediately prior or about the same day of my appearance before Acting Judge Yuill I instituted an action of the First District Court of Perth Amboy.

Q For the recovery of damages? A For the recovery of money due Mr. Greenberg.

Q Against whom? A Against Alexander Helstowski.

Q What became of that action, do you know? A The action was discontinued.

Q Why? A Mr. Bonavita assumed the obligation of Helstowski Bros.

Harry Kaplan, Direct.

Q You then discontinued the action at Perth Amboy? A Perth Amboy.

Q How did you discontinue it, personally or by going to the clerk? A Wrote a letter to the clerk.

10 Q What did you do after that? A I brought Mr. Greenberg, as I stated, before Acting Judge Yuill and presented the facts myself to Acting Judge Yuill and we both agreed that—

Q Who is both? A Acting Judge Yuill and myself agreed that a count would prevail for obtaining wares or goods against Mr. Helstowski alone.

Q Did Mr. Greenberg take part in that conversation himself? A Except to present him the facts that the bill was due him, an unpaid bill was due him, but nothing concerning the nature of the complaint to be held against Helstowski.

20 Q Was a complaint drawn? A A complaint was drawn.

Q Who drew it? A Acting Judge Yuill.

Q Who signed it? A Mr. Greenberg.

Q How did he come to sign it? A At my request.

Q Was it a request? A I advised him to do that.

Q What was done after that? A A warrant was issued both as to Walter and Alexander Helstowski.

Q Did you read the complaint before it was signed? A Yes, sir.

30 Q I notice the first count charges Alexander and Walter and the second count charges only Walter.

The Court. Your claim then is that the plaintiff in this case was arrested under the first charge.

Mr. Braelow. I think so. I don't think the second count in the indictment would justify it.

The Court. It seems to me that is a very dangerous admission for you. As I view it, that is the only portion upon which there is any reasonable or probable cause in this case.

40 Q Did you know whether or not Alexander Helstowski had been served in the civil suit when the criminal suit was instituted?

Objected to.

Objection overruled.

A I merely received a reply from the clerk of the Perth Amboy District Court.

Q Were you informed of the apprehension of Helstowski by the police? A I cannot recall.

Harry Kaplan, Direct.

Q Did you go back to court after the date the complaint was issued? A I did.

Q How did you come to go back? A At the request of Mr. Bonavita.

Q Tell us about that? A Mr. Bonavita was the bondsman who had executed the bond for the release of Walter Helstowski. Walter Helstowski appeared in the situation when he learned that his brother Alexander had been apprehended. 10

Q And was he arrested, too? A Yes, sir.

Q And Bonavita went his bail? A Bonavita went the bail of Helstowski.

Q When did he come to see you? A Several days after Alexander had been apprehended.

Q What happened then? A Bonavita requested me to make an application to the court to have Alexander Helstowski paroled. I told Bonavita that I would gladly appear at the court, but would abide by the advice of the judge of the court. 20

Q Did you appear at the court? A I did.

Q Did you request the parole of Alexander Helstowski? A I informed the court that I would gladly abide by any determination of the court, as decided by the court.

Q Did you ask the court to hold him under bail on that day? A I made no request whatsoever to the court.

Q What became of the claim that Greenberg had against Helstowski? A Bonavita, the bondsman, made a note to the order of Greenberg, for the full amount, to Greenberg. 30

Q Were those notes paid? A Eventually, yes.

Q How were they paid? A By Bonavita.

Q But in what manner did you have to enforce collection?

The Court. What difference does that make.

Cross Examination by Mr. Twardus.

Q What amount did Bonavita have to pay to satisfy Greenberg's claim? A A little in excess of a hundred dollars.

Q I show you a letter from your office. Does this recall your memory? A That is a correct statement. 40

Q How much was it? A A hundred and eighty-one dollars and forty-six cents, including the fee deposited with the sheriff.

Q Notwithstanding the fact that Greenberg's claim was only \$55, you claimed \$181? A No, sir; Greenberg had had assigned to him the claim of Conron and also the claim of the Columbia Cheese Company, also unpaid.

Harry Kaplan, Cross.

Q You obtained from Bonavita \$181? A I believe he paid that sum, less the sheriff's fees.

Q Did you say the judgment was \$126; that includes the sheriff's fee on November 11, 1921. A You see distinctly in that letter a charge of \$30 for sheriff's fee.

10 Q I am referring to your judgment of \$126. Just how was that made up? A Just the principal and interest due on these three claims.

Q What was the third? A The Columbia Cheese Company.

Q How much was the claim of the Columbia Cheese Company? A I can't recall the exact amount, but it would be the difference between the claim of Mr. Greenberg and the claim of Mr. Conron and \$126 judgment there; it would be approximately \$25.

20 Q When did Bonavita send you notes to pay up this claim? A I believe subsequent—

The Court. What is the importance of that?

Mr. Twardus. I want to show that Bonavita guaranteed the payment by note, and being a property owner, that notwithstanding that, the criminal complaint proceeded against Alexander, although prior to that they were sufficiently guaranteed as to the payment of the debt.

30 *Witness.* I believe subsequent to the arrest of Alexander.

Q What conversation was had between Alexander and Walter Helstowski prior to giving over these notes? A I don't know what you mean when you say conversation was had. When and where if you please?

Q At the third precinct at the time the notes were given over to Israel Greenberg by Bonavita.

Mr. Braelow. I didn't hear if there was any conversation.

A I can't recall any such conversation.

40 Q Were you in the third precinct when Greenberg made this remark, "It is Walter that owes me the money and not Alexander," and it was a mistake that Alexander was arrested? A I don't recall the passing of any such remark. I don't recall that Greenberg was confronted with Walter at the third precinct police court.

Q Did Greenberg ever make any statement that Walter should have been arrested and not Alexander? A Not to me.

Harry Kaplan, Cross.

Q To you or to whom were the words, "defrauding creditors" used as under examination you stated? A To what conversation are you referring to?

The Court. He stated that himself to Alexander at Perth Amboy.

Q You yourself told Alexander about the creditors at that time? A Yes, I told Alexander at Perth Amboy that it was my belief that he intended wilfully to defraud his creditors. 10

Q What was the response to that? A Just a shrug of the shoulders, noncomittal.

Q He didn't understand what you were saying? A I don't know whether he clearly understood me.

Q Wasn't he talking to Greenberg in Polish at that time? A This was a conversation in Polish between Mr. Greenberg and Helstowski. This was the last conversation I had with Helstowski prior to my leaving Newark. 20

Q How soon after Herman's first visit to Perth Amboy did you commence your civil suit? A It must have been ten days or two weeks, I believe, subsequent to the first visit of Herman.

Q How soon after determining Helstowski's address in Perth Amboy did you commence your civil proceedings? A Do you mean the swearing out of the complaint or merely getting the issuance of the summons?

Q The first beginning of your criminal action? A I advised Mr. Greenberg to swear out the complaint immediately subsequent to the trip to Perth Amboy. 30

Q How many days after you found his address? A It must have been the next morning, I believe; the next morning after I visited Perth Amboy I had Mr. Greenberg brought down to the third criminal court.

Q You had already been to Perth Amboy and seen Helstowski personally? A Yes, sir.

Q How long was that after finding out Helstowski's address? A Two or three days subsequent to Herman's visit. 40

Q You want us to believe that three days after visiting Helstowski at Perth Amboy you went to Perth Amboy and started a civil suit? A About that time; correct.

Q And the day after you started the criminal action? A If I remember correctly, both actions were started concurrently, the same time.

Q Which was started first? A I can't recall which was started first.

Harry Kaplan, Cross.

Q (By the Court.) I thought you said you started your civil suit when you were in Perth Amboy? A I didn't say so.

Q How did you start your suit? A By sending a letter with the necessary fee to the clerk at Perth Amboy.

10 Q When was that with reference to the criminal action? A I think that morning that I had Mr. Greenberg in court, just prior to going to court, I had the letter sent from the office.

Q (By Mr. Twardus.) Did you advise Mr. Greenberg to await the outcome of your civil suit before starting any criminal action? A I didn't.

Q You say you noticed some lettering on the windows; what kind of lettering was that? A Helstowski Bros.

20 Q And what portion of the glass did you see that lettering? A I believe the left-hand corner of the window on the Chambers street side.

Q How far from the bottom of the pane of glass, how many inches? A I can't recall exactly this time, but probably from the bottom about one foot.

Q This was quite a big pane of glass, wasn't it? A It was.

Q Approximately how many feet in height and width? A Ten feet by six feet.

30 Q And you wouldn't change your answer if you were told that the letters were right in the centre of the window, would you? A My recollection is vivid that the lettering was in the left-hand lower corner.

Q Was it script or print? A I think printed.

Q What color? A I think gold lettering.

Q What height were the letters? A Small letters, well, I should judge from three to four inch letters.

40 Q Which were they, what the previous witness says, three or four inches, or what you say? A I can't tell you the exact measurements. I believe three to four inches.

Q The previous witness said the lettering was script and you said printed. Was it script or printed? A To my knowledge, it was printed. I don't know what the other witness meant by script; I don't know if he knows what that means.

Harry Kaplan, Cross.

Q The witness wrote on the bottom of this Ex. D1. Will you print that? A I can't tell you the exact kind of letters that was used at that time. It is a matter over four years.

Q You wouldn't change your answer if I told you there was an F in that name, would you? A Those are the letters I recall on that window. 10

Q With a W in it? A With a W.

Q How many days after instituting your civil suit did the summons at the third precinct become returnable? A The summons was returnable prior to the institution of the civil suit.

Q How many days prior to that? A About eleven days or two weeks time.

Q Then your return day of your civil suit was prior to your determination of your criminal action and arrest, wasn't it? A I cannot recall the return dates of the civil action. I merely instructed the clerk to discontinue the suit, settlement having been made. 20

Q When did you first, in reference to date, go to the third precinct in reference to the criminal complaint? A About the early part of August, 1919.

Q Do you remember when Helstowski was arrested? A I remember being informed by Mr. Bonavita that he was arrested. 30

Q Do you recall the date? A I do not know.

Q Did you endeavor to have your return day of your civil action prior to the date of arrest? A I merely requested the clerk to inform me of the return day in the civil action.

Q What day were you informed the civil action would come up? A I don't recall.

Q Although you started civil suit you advised your client to start a criminal action? A I did.

Q (By the Court.) Did you advise a criminal complaint? A I did, your Honor. 40

Q And it was you who arranged with the clerk of the criminal court as to what the criminal complaint should contain? A Yes, sir.

Q Before you advised your client to sign the criminal complaint you knew what was in it? A I did.

Q Prior to that time you had seen the bill of sale? A I had.

Harry Kaplan, Cross.

Q At that time you knew that the bill of sale had been executed by Walter Helstowsky? A I did.

10 Q How is it, then, that you had this criminal complaint drawn on June 11, 1919, "The said Alexander Helstowsky and Walter Helstowsky executed the bill of sale?" A An apparent oversight on my part is the only explanation I can make.

Q How do you account for it that further down you say "That the said Walter Helstowsky swore in his affidavit incorporated in the bill of sale?" A That was my error. At the time the complaint was made only Walter had sworn to the affidavit and therefore the statement of the execution of the bill of sale was jointly, that Alexander was supposed to execute that bill of sale.

20 Q You say that Walter and Alexander executed a bill of sale and that you had seen the bill of sale and inspected it; is that correct? A I had, yes.

Q I notice in the first part of the complaint you say that Alexander and Walter had obtained wares and merchandise of Greenberg by false pretenses? A Yes, sir.

30 Q What was the false pretense? A In my opinion, ordering an excessive amount of goods, far more than the ordinary amount, the usual amount had been ordered, on absconding to parts unknown by both brothers without leaving any information, seems to me to be such a state of facts as to warrant my conclusion that this man intended to order an excess amount of goods and intended never to pay their creditors.

Q As a lawyer, before you advised your client to sign this, had you examined the decisions and the law of the State of New Jersey on the subject? A Yes, sir.

40 Q Have you been able to find a case anywhere that would warrant such action? A I believe I did. I have a little scrap there in my overcoat pocket.

Q Didn't your examination of the law show you that in order to constitute obtaining of goods by false pretense that it must have been a false statement of an existing fact to warrant a criminal complaint? A I don't recall that. The conclusion I came to, the decisions that my mind was directed to in examining this particular point in question.

Q I wish, if you have such a memorandum as that in your

Harry Kaplan, Cross.

overcoat pocket, you would just let us know what that is.

A I have here section 180 of the Crimes Act, volume two of the compiled statute. (Reading) "A verbal pretense sufficient to impose the person upon whom it was made with intent to cheat and defraud and which induced him to part with his property or give a credit is an offense within the statute." I have on that "Alexander Helstowsky would pay one-half if brother were apprehended." 10

Q That is the only citation you have? A Yes, sir.

Q What was there, if anything, what representation, if any, what pretense, if anything, did you find in your investigation had been made by the Helstowskis to Greenberg prior to that last sale which was false? A The pretense in my mind constituted of buying this excess or abnormal amount.

Q Had Greenberg told you that at the time he purchased that last bill of goods he had made any representation to him at all? A Representation that business would be continued as heretofore. 20

Q Did Greenberg tell you that? A I think it was Mr. Conron who told me that and Mr. Greenberg also.

Q You think that they told you that they had made that representation to them? A Yes, sir.

Q Why is it we haven't heard that before? A I have not been interrogated on that particular point. 30

Q (By Mr. Braelow.) Are you sure that Mr. Greenberg told you that or was it Mr. Conron? A Both, to my recollection.

Q When did they tell you? A Mr. Greenberg I spoke too, at Mr. Greenberg's home, after I interview Mr. Wilksanski and Mr. Conron was brought into the situation a bit later. Mr. Conron informed me that one time immediately preceding the sale of the business when he came in Mrs. Helstowsky lifted her hand and said, "Keep quiet." He said, "What is the trouble?" "We have got a very good customer in the store." 40

Q (By the Court.) You think then, do you, that the statement made by Greenberg and Conron to you that the business would be continued as before constituted a false representation of an existing fact? A A statement made at the time when the business was practically sold in my mind constituted that false pretense.

Q (By Mr. Braelow.) You were telling us that Conron

Harry Kaplan, Cross.

10 told you something. What did he tell you about this while Mrs. Helstowsky raised her hand and said they had a good customer, if you kept quiet. What is that? A Conron came to collect his bill that day, from information given to me by him, she put up her hand and told him to keep quiet and not say a word about his bill, told him to come around the next morning. Conron came the next day and apparently Helstowsky was in bed and when he called later the Helstowskis had gone.

Q There was nothing in the conversation that the Helstowskis had represented that they were going to keep the business going, was there? A I recall the statement made by Mr. Conron that when he submitted to the Helstowskis that that amount of goods and the quantity being ordered was in 20 excess of the usual amount, that they told him there was nothing to fear, that the business was in good, substantial condition, that he would be later paid.

Q And there is nothing in the conversation about them continuing the business, is there? A Except what I have just stated.

Q And then, in fact, Mr. Greenberg didn't tell you that they represented that the business would be continued? A Mr. Greenberg did tell me that.

30 Q What did he tell you and when? A Mr. Greenberg told me at the the time I appeared at his home.

Q What did he tell you? A That prior to the taking of the last order, which was a larger amount, and unusual amount, he had been assured by the Helstowskys that the business would continue on just as same as before, that his bill would be paid, there is nothing to be afraid of, and that, relying upon that representation, Mr. Greenberg had the goods sent down.

40 Q (By the Court.) That is what he told you? A Yes.

Q (By Mr. Braelow.) You know that is not a representation of anything but a future credit, isn't it, that he would continue the business? A Yes.

Q (By Mr. Twardus). How many months had you been practicing law when this case came to your attention? A One year.

Q You were admitted to practice when? A The latter part of 1918.

Israel Greenberg, Direct.

Q What month? A About either August or September.

Q When did you go for your examination, in June? A 1917, prior to being sent down to the Canal Zone during the war period; I wasn't sworn until 1918.

Q What month? A I think I went down by special dispensation with the Supreme Court Clerk. 10

Q When was that? A I believe the early part of 1918.

Q (By the Court.) You are represented as having been admitted in June, 1917? A I passed my bar examination, but I wasn't sworn until 1918 when I came back from service.

Q (By Mr. Twardus.) You began practicing law in December, 1918? A Yes, sir, I did.

Q (By Mr. Braelow.) Are you a graduate of any institute of law? A I am.

Q Where? A New Jersey Law School.

Q What year? A June, 1917. 20

ISRAEL GREENBERG, defendant, recalled in his own behalf.

Direct Examination by Mr. Braelow.

Q Did you ever tell Mr. Kaplan that Helstowsky had told you he was going to keep the business up or continue the business?

Objected to as leading.

Objection overruled.

A No, sir.

Q Did you ever tell him anything like that? A Nothing. 30
I never talked about this at all.

DEFENDANT RESTS.

ANTON WALTER HELSTOWSKI recalled in behalf of plaintiff in rebuttal.

Direct Examination by Mr. Twardus.

Q What kind of lettering did you have on your front window of the store on Chambers street? A It was gold, about an inch and a half wide.

Q How wide were they? A They wasn't very high, but they was in the middle of the window, the glass. 40

Q What was the name on the window? A It was A. W. Helstosky.

Q What was between the "A" and "W"? A A mark like that, just touched with a pin.

Q Did you ever tell anybody that Alexander was your partner? A I never told anybody because he wasn't.

Q In whose name did Greenberg send you goods, in whose

Felix Zeskowsky, Cross.

name were the bills? A A. W. Helstowsky; that was my name.

Q What was between the "A" and "W"? A Just like a pin.

Q You didn't take any bills? A No, sir.

10 Q Did you go down and try to get them? A That man asked me if I leave all bills. I leave all bills in the box.

Q Did you go down to the store and try to get any of those bills? A Now?

Q Yes, since the suit has been instituted? A No, I have not been down.

Q And this suit is pending a couple of years, isn't it? A 1919, something like that, but I couldn't tell you exactly which month it was—about June.

20 Q Did you have the words "brothers" in back of A. W. Helstowsky? A No, sir.

FELIX ZESKOWSKY recalled in behalf of plaintiff in rebuttal.

Direct Examination by Mr. Twardus.

Q You worked in this butcher shop? A Yes, sir.

Q Four and a half months? A Yes, sir.

Q What name did you see on the window? A A. W. Helstowsky.

Q Was anything back of the Helstowsky? A No, sir.

30 Q Did you ever see the bills that came in there from Mr. Greenberg? A Yes, sir.

Q Whose name were the bills in? A A. W. Helstowsky.

Q Did you ever hear Alexander tell Greenberg that he was Walter's partner? A No.

Q Did you ever see Alexander order any goods from Mr. Greenberg when Walter was away? A No.

The Court. You went all through that.

Cross Examination by Mr. Braelow.

4 Q How do you spell Helstowsky? A I can't spell American.

Q How do you spell brothers? A I couldn't spell it.

Q Can you write the name brothers? A Not in English; in Polish.

Re-direct Examination by Mr. Twardus.

Q Can you write just what was on the window there? A Yes.

Q What else was on that window? A Nothing else.

Q Just A. W. Helstowsky? A That is all.

Anna Helstowski, Direct.

Q (By the Court.) Didn't it say on the window butcher or grocer or anything like that? A No, sir.

ANNA HELSTOWSKY recalled in behalf of the plaintiff in rebuttal.

Direct Examination by Mr. Twardus.

Q Did you ever look at the window owned by Walter Helstowsky? A Yes, sir. 10

Q On any part of that window did Helstowsky brothers appear? A No, sir.

Q What did appear? A A. W. Helstowsky.

JOHN SIEDRZGIA sworn in behalf of plaintiff in rebuttal.

Direct Examination by Mr. Twardus.

Q Where do you live? A 101 Ferguson street.

Q Did you ever buy any groceries from Mr. Helstowsky? A Yes, I did, but my wife bought it mostly. 20

Q You were there several times? A Yes, sir.

Q Did you ever pass that store on the outside? A Once or twice a week.

Q What name did you see on the window there?

Mr. Braelow. I object unless the time is fixed.

Q Did you buy merchandise in there in the year 1919? A Yes, sir.

Q In the summer time or winter? A Summer and winter both.

Q Did you notice the name on the window?

Mr. Braelow. I object. The winter time of 1919 is very indefinite. I don't know whether he refers to the early or late part of the year. 30

The Court. Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What did you see on the window? A A. W. Helstowsky.

Cross Examination by Mr. Braelow.

Q What else did you see there? A That is all there was on there. 40

Q Nothing else? A No.

Q When did you see that? A I don't exactly remember, but before they sold out I seen it for the last six or seven months.

Q Before they sold out you saw it for the last six or seven months? A Before they sold it.

John Siedrzgia, Cross.

- Q Didn't you see the words Helstowsky Brothers there?
 A Yes, sir.
- Q Tell us just what was on there. A Just A. W. Helstowsky.
- Q You are sure? A Yes, sir.
- 10 Q There wasn't any number on there? A No, sir.
 Q Number of the street? A No, sir.
 Q Did you see the number 75 there?
Mr. Twardus. I object. He said no.
The Court. The question may be answered.
- Q Didn't you see number 75 there? A No.
- Q Didn't you see any number? A No, I think not; I believe the number was 100.
- Q Where was that? A On the entrance door.
- 20 Q Was that in gold numbers? A I don't remember.
 Q When you came to court this afternoon—— A I came just this afternoon.
 Q How do you come to be here this afternoon?
 Objected to.
 Objection overruled.
- A I was notified by Helstowsky.
- Q To come? A Yes, sir.
- Q What did Helstowsky say to you?
Mr. Twardus. I object to that as hearsay.
The Court. Objection overruled.
- 30 A Why, he asked me to come to court to witness what was on his window. He says he has got the case in the court and he wants me to witness what was on the his window.
 Q He asked you to come to court and say A. W. Helstowsky was on the window? A No, sir, he asked me to say what was on his window.
 Q And you remembered? A Yes, sir.
 Q That was four years ago? A I am living there over five.
- 40 Q And you remember that it was A. W. Helstowsky? A Yes, sir.
 Q It was A. W.? A Yes, sir.
 Q Were there two periods on there, after the A and W? A I don't remember that.
 Q How do you spell Helstowsky? A (Spelling) H-e-l-s-t-o-w-s-k-i.
 Q Are you sure of that? A Yes, sir.
 Q Sure it wasn't s-k-y? A No.

Alexander Helstowski, Direct.

Q When did you spell that name last before you were on the witness stand? A I spelled it a good many times before I came here.

Q How did you come to do that? A If anybody asked me I could spell it.

Q Did you spell it out for Helstowski this afternoon? A I did not. 10

Q He didn't tell you anything about what was on the window, just said, "Come to court and say what you saw on the window." Is that right? A That is all.

Q And you didn't tell him that the window had A. W. Helstowski on it? A No, I didn't.

Q And you didn't tell Mr. Twardus that the window had A. W. Helstowski on? A No.

Q You didn't tell this gentleman (indicating)? A Yes, sir, I did. 20

Q What did you tell him? A I told him it was (A. W. Helstowski).

Q Is that the only time you said that? A No, I said it a good many times.

Q I mean today? A That is it.

Q And you didn't tell it to Helstowski when he asked you, you are sure of that? A Yes, sir.

Q You are sure of that? A Yes, sir.

ALEXANDER HELSTOWSKI, the plaintiff, recalled in his own behalf in rebuttal. 30

Direct Examination by Mr. Twardus.

Q Did you ever tell Mr. Greenberg that you were Walter's partner and you would pay one-half of his bills? A I didn't say nothing.

Q Did any of the bills in the Chamber street store come in your name to Mr. Greenberg?

Mr. Braelow. I object. His testimony was that he never saw the bills.

The Court. So far as he knows.

A I don't know nothing about it. 40

Q Did you ever order any goods from Mr. Greenberg? A Never.

Mr. Braelow. We searched for the records this afternoon and are unable to find them, I mean the books as well as the bills, the loose leaf sheets and the duplicate bills.

Alexander Helstowski, Direct.

The Court. And the witness will testify that he looked for them and failed to find them.

Mr. Braelow. Yes.

The Court. That statement will be accepted?

Mr. Twardus. Yes.

10

PLAINTIFF RESTS.

DEFENDANT RESTS.

Adjourned until Wednesday, June 18, 1923, at ten o'clock, A. M.

THIRD DAY.

Wednesday, June 18, 1923.

20

(Continued pursuant to adjournment.)

(Present, counsel as before stated.)

Mr. Braelow. I move for the direction of a verdict in favor of the defendant in this case on the ground that there is in evidence the part of the defendant, absolutely unimpeached testimony, which has not been refuted in any way, that before the defendant made the criminal complaint upon which this suit is based he consulted a regular and duly licensed attorney of the State of New Jersey and acted solely on his advice.

30

The Court. Do you find that is a justification in New Jersey?

Mr. Braelow. Our decisions, as far as I have them, show that that is probable cause, the advice of counsel.

The Court. You have used the word "counsel" and this attorney was not a counselor until this last examination; he was just an attorney; at that time he had been in practice only nine months. As I read our cases, there is some difference between an attorney and counselor. Where an attorney has only been practicing nine months and advised the making of a complaint in this case for obtaining goods on false pretenses, when there was not a scintilla of proof which would justify that complaint, makes it, I think, a question for the jury, as to whether he was counsel learned in the law. The motion will be denied.

40

Alexander Helstowski, Direct.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Braelow. I move that the plaintiff be compelled to select upon which of these two counts he intends to proceed upon. Both state the same grounds. I see practically no difference in them, yet they total the sum of \$20,000, whereas, if only one count is proceeded on, it is only \$10,000. 10

The Court. What do you say about that?

Mr. Twardus. The first count calls for fifty days imprisonment, which is separate and distinct. The second count calls for damages as the result of business loss, of reputation, loss of name and humiliation. They are three separate and distinct counts.

Mr. Braelow. The entire first count is incorporated in the second. 20

The Court. I do not think that the counts are so inconsistent as to require an election and I will deny the motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court. The complaint may also be amended in those particulars which make it necessary to conform to the facts in the case. 30

Mr. Twardus. Will your Honor request that that amendment be made now?

The Court. If you have it.

Mr. Twardus. In the complaint the amount is \$145. There is a dispute. Greenberg said \$55 was due him, although Mr. Kaplan, his attorney, said he collected \$145. I believe the \$145 should be amended to read \$55.

The Court. It may be amended to read \$55.76. 40

Mr. Twardus. That is in the last line of the third paragraph on page one.

Defendant's counsel prays an exception to this ruling of the Court.

Alexander Helstowski, Direct.

Exception noted as ground appeal.

10 *Mr. Twardus.* In paragraph two of count one which reads, "In said month of June, 1919, the defendant, Israel Greenberg, maliciously made a complaint and caused a warrant to be issued in the City of Newark," and so forth. I move to amend that to read, "In the month of August, 1919."

The Court. It will be amended.

Mr. Braelow sums up in behalf of Defendant.

Mr. Twardus sums up in behalf of Plaintiff.

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Court's Charge to Jury.

The Court charges the jury as follows:

DUNGAN, J.

Gentlemen of the jury. In the month of August, 1919, the defendant in this suit swore to a criminal complaint against the plaintiff, the result of which was that the plaintiff was arrested, brought to Newark, held here in jail for six days, finally paroled, and eventually the complaint dismissed by the Grand Jury, or, more accurately, although the result was the same, no indictment was found against him, and he brings this suit against this defendant for malicious prosecution.

In order to put the law in motion in cases of this kind six things must appear: first, the commencement or continuance of an original criminal complaint; second, that it was caused by the present defendant against the plaintiff, who was the defendant in the original proceedings; third, its bona fide termination in favor of the plaintiff; fourth, the absence of probable cause for said proceedings; fifth, the presence of malice therein; sixth, damage conforming to legal standards resulting to the plaintiff.

There is no question in this case but that a criminal proceeding was commenced against this plaintiff nor that it was caused by the defendant in this suit, or that the criminal proceeding has bona fide terminated in favor of the present plaintiff, because if an indictment be not found within two years after a crime has been committed, then there may never be an indictment. The statute of limitations after that time bars an indictment, and this complaint charges that the offense occurred in June, 1919. The clerk of the Grand Jury tells us that the matter was presented to the Grand Jury, no action taken by the Grand Jury, that it was never presented to any subsequent Grand Jury, and, of course, cannot now be presented to any Grand Jury because of the statute of limitations. Therefore, as I have said, all of these three elements which I have mentioned are established in this case. Only two questions therefore remain on the subject of liability. The first is whether there was want of reasonable and probable cause in making the complaint, and, second, whether there was malice; but since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability.

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Court's Charge to Jury.

ity, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts which resulted in his arrest and imprisonment. The complaint is in two paragraphs and charges two separate offenses; first, that
 10 goods which the defendant in this suit had sold to Alexander Helstowski were obtained by false pretenses; and, second, a violation of that provision of what is known as the bulk sales law, which makes it a misdemeanor for a person who sells his whole stock of merchandise and fixtures in bulk to make false answers to inquiries by the buyer as to the names and places of residence or business of his creditors and the amount of indebtedness to each.

The Helstowski business was sold in bulk and a statement
 20 was made that the goods and chattels sold were free and clear from all debts, bills, mortgages and other claims, and it was sworn to; but the fact is that the affidavit was not made by this plaintiff, Alexander Helstowski, but was, in fact, made by Walter Helstowski, and the complaint so states, and the defendant's attorney disclaims, and I think properly so, that the last charge in the complaint is a charge against Walter Helstowski only; but that is not very important in your determination of this case in view of what I shall presently say about the other charge, which is against Alexander, because I
 30 should be obliged to charge you that if, by any possibility, the second charge should be construed as being against Alexander, the defendant had no reasonable or probable cause for making such a charge against him for the reason I have stated—that is, that he, Alexander, did not make the false affidavit, and there is no proof in the case that the affidavit was made by any collusion with Alexander.

You come then to a consideration of the first charge in the complaint, that of obtaining, in the words of the
 40 complaint, "wares, merchandise from the complainant"—who is the defendant here—"to the value of \$55.76 with intent to cheat and defraud the complainant," the defendant here.

A false representation, in order to warrant a criminal charge, must be a false representation of a then present existing fact, and the goods must have been sold in reliance upon the false representation.

In the first place, the case is barren of a particle of proof

Court's Charge to Jury.

that the goods which were last sold by the defendant to Helstowski were obtained by any false representation of any then existing fact, and, in the second place, there is not a word of testimony that anything was said by either of the Helstowskis, when the last bill of goods was purchased by way of representation of any fact upon which the defendant says he relied or from which you would be justified in finding that he did rely. He had been selling, as he says, goods to the two Helstowskis, the brothers, both of them, insisting that it was only Walter who was running the business there, for four and a half months, and the only thing about this transaction that distinguished it from all the transactions which had gone before for which the defendant had been paid was that this bill was a little larger than usual, but there is no proof that there was any representation made by the Helstowskis, or either of them, to the defendant in this suit to induce him to sell a larger bill than usual or to sell these particular goods. Under these circumstances, there was absolutely no reasonable or probable cause for the defendant to make a complaint against Alexander unless he is justified on the ground of advice of counsel.

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I am requested by the defendant's attorney to charge you in behalf of the defendant, first:

"If the jury believes that the defendant, before signing the criminal complaint in this cause, made a full and complete statement of all the material facts to competent counsel, learned in the law, then the jury must find a verdict for the defendant."

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5. "If you believe that the defendant consulted competent counsel and made a full and fair and complete statement of all the material facts that came to his knowledge, or caused such a full, fair and complete statement of facts to be communicated to competent counsel, then you must find a verdict for the defendant."

40

That is not strictly accurate. To these requests should be added these words: that in good faith he received advice justifying the prosecution and acted on that advice in instituting the criminal proceedings. If these words be added those requests are perfectly good requests, and, if these things appear, he then is entitled to immunity from damages for having made this criminal complaint, which otherwise was without reasonable and probable cause.

Court's Charge to Jury.

10 You will observe that in these requests to charge, defendant's attorney himself had used these words, "and competent counsel learned in the law," and, in the second request, has used the words, "competent counsel." We have decisions in New Jersey defining the kind of counsel to whom the state-
ment should be made and whose advice will justify making a criminal complaint, one of which speaks of counsel of competency and integrity—that is, he must be competent and he must be honest. Other cases use the words, "Counsel learned in the law." In a well known and much used authority in various states it is stated: "The advice, to avail as a defense" (26 Cyc. page 32) "must have been given by competent"—again using the word "competent"—"disinterested, regularly admitted and practicing attorney and counsellor-at-law in good standing."

20 Did the defendant here state to his attorney, either himself or by his son, who appears to have been his prosecuting agent, all the facts bearing upon the guilt or innocence of Alexander Helstowski?

30 This same book from which I have quoted says, "To justify by advice of counsel defendant must show that he or his prosecuting agent truly and correctly, fully and fairly, and in good faith stated to such counsel all the facts bearing upon the guilt or innocence of the accused. The making of an exaggerated, misrepresented, incorrect statement, or the withholding of any material fact, is inconsistent with probable cause. It must appear what information was in fact imparted so that the jury may determine whether it was a full, truthful statement of all the facts." If he had stated to competent counsel that no false representation of an existing fact was made, and that this sale was made precisely as all previous sales had been made by the defendant to the plaintiff, is it likely that such a counsel—that is, a competent counsel—
40 would have advised him to make a criminal complaint against Alexander Helstowski for obtaining goods under false pretenses? Mr. Kaplan himself says, in answer to the court's questions, that he understood there was no such representation made, except he does say that Mr. Greenberg told him that when the size of this bill was questioned, Alexander told him they would continue in business, need not be afraid, he would be paid, that he would continue in business as theretofore. Mr. Greenberg comes to the stand and emphatically

Court's Charge to Jury.

denies that he ever told his counsel any such thing. If that be true—that is, that the attorney at that time knew that there was no misrepresentation made by Alexander or Walter of a then existing fact, and that there was nothing said upon which the defendant in this suit had a right to rely in making this sale any different from what was said when previous sales were made—did the attorney meet the requirements of the law sufficiently to justify the defendant making the complaint and to relieve him from liability in this case? Many, many years ago imprisonment for debt in New Jersey was abolished. There are certain circumstances defined by our statute whereby by making a complaint to a judge or Supreme Court Commissioner of certain things that a warrant may issue for the arrest of person in a civil case. That is not this case. People cannot be frivolously arrested and put in jail. The collection of debts through criminal prosecution is not favored or permitted in New Jersey. The making of a criminal complaint is because of the wrong done to the public, not for private use. Sharp collection cases through criminal process are to be discouraged and frowned upon by court and jury. Was this such a case and was it instituted because of the advice of incompetent counsel? As I said, counsel whose advice will justify a defendant in a malicious prosecution case must have been competent counsel. Was he competent? He says he was admitted to the Bar in September, 1918, and the advice which he says resulted in this complaint was given in August, 1919, eleven months after he was admitted to the bar. That does not mean that he was incompetent. I would not for a minute belittle the young lawyer, many of whom are graduates of colleges, or graduates of law schools, or have studied in the school of experience, a great many of them were soldiers who fought in the World War in your place and in mine, and it is not for me to belittle the young lawyer just because he is young; that is a fault which we all too soon get over, if it be a fault.

In New Jersey there is a difference between an attorney and a counsellor. The first admission, to the Bar is an attorney, which permits the person admitted to the Bar to do certain things. The next admission which is as a counsellor-at-law, cannot come until three years later; he must have served as an attorney at law for three years. This attorney, Mr. Kaplan, tells us that he has just successfully passed his

Court's Charge to Jury.

counsellor examination at the present term of the Supreme Court, but at that time he was not a counsellor-at-law. I do not mean either to belittle persons who are merely attorneys-at-law, because many men who are admitted as attorneys-at-law, and who are in active practice, never take the time, or never have the courage, whichever it may be, to take the second examination and are never admitted as counsellors-at-law. One of the most competent lawyers who in former days, when I first came here, appeared in this court, if I could characterize anybody as the best trial lawyer, I would certainly say he was one of the best, and he was never admitted as a counsellor-at-law. So I am not citing that, either, for the purpose of belittling attorneys who were never admitted as counsellors-at-law, and it may be that the public or person seeking advice of an attorney may not know anything about that difference and may not know whether the person whose advice he is seeking is an attorney or whether he is both an attorney and counsellor-at-law, but you may take into consideration in this case the advice which was given by the attorney upon the facts which were stated to him and which the court has already told you did not justify the complaint which was made by Mr. Greenberg against Mr. Helstowski, and I do not mean by that to belittle Mr. Kaplan either. As I said awhile ago, we all have to start, and Mr. Kaplan may in time be one of the greatest lawyers in the State of New Jersey or in the United States. I have no intention in what I am saying to belittle either Mr. Kaplan or his ability, but I am stating all of the facts to enable you to determine this question of whether or not the facts which were submitted were submitted by the defendant to competent counsel. If you decide that the facts were fully and fairly stated to competent counsel, and competent counsel advised this complaint, and that the defendant here acted upon that advice, that is a complete justification and the plaintiff in this suit cannot recover. If you find that this advice was not justified, then you come to the consideration of the question of damages. What damage has this plaintiff been subjected to? He was in business in Perth Amboy and had been for three months; he had fifty customers, he says, at that time; officers went to Perth Amboy and brought him to Newark; he could not get bail; he was six days in jail here in Newark, when he was released; he returned to his store in Perth Amboy only to find that \$200 worth of meat which he purchased just before he left was entirely destroyed,

Court's Charge to Jury.

that is, it was unusable, unfit for use, it was necessary to throw it away. He found that his store had been closed during that period because of the illness of his wife; he found that those who had formerly been his customers had deserted him. He endeavored to run the store for about a week and the lack of business closed his store. All of those things, if the plaintiff is entitled to your verdict, may be taken into consideration by you in determining what would compensate him for his loss of time, for his loss of liberty, for the injury to his reputation and character, for his mental suffering, and for the general impairment of social and mercantile standing, also the actual loss and injury to his business, and the decrease, if any, of his earning capacity. All these things may be considered by you if you decide that he is entitled to your verdict, in determining the amount which it will take to compensate him.

I have told you that malice is an element that enters into malicious prosecution. The term, "malicious prosecution implies that, but the malice, as I have already told you, sufficient to justify an action for malicious prosecution is presumed from want of reasonable and probable cause, and does not necessarily mean actual malice, spite and ill will, but only means what is known as legal malice, that is, a wrongful act intentionally done, which constitutes a legal malice; but where there is more than that, where there is actual malice, and where a criminal prosecution is actuated by spite and ill will, then the law permits the punitive damages. So in this case, if you find that this criminal action was instituted by the defendant maliciously, that is, with actual malice, with actual spite and ill will against this plaintiff, then, in addition to such damages as will compensate him for these elements which I have given you, you may award a sum which will serve as an example to others to deter them from committing like offenses and as a punishment to the defendant for his wrongful act.

I have here several requests to charge. The first and fifth I have already dealt with. The second and third I decline to charge. The fourth is:

"In order to find a verdict for the plaintiff, you must find that there was malice on the part of the defendant when he made the criminal complaint." That I have covered in the

Court's Charge to Jury.

last words that I have used and decline to charge except as I have charged. The sixth request is:

- 10 "Even though the defendant may cause the arrest of a man innocent of crime, this will not itself warrant a verdict for the plaintiff unless the making of the criminal complaint by the defendant was without any probable cause therefor."

That I charge you.

Seventh. "The plaintiff is absolutely not entitled to recover any damages against this defendant by reason of any illness of his wife or any injury or loss by her under any circumstances whatsoever in this case."

That I charge you.

- 20 Eighth. "The statement of the detective made at the time of the arrest, when he had a state warrant for the apprehension of the plaintiff, is in no way binding upon the defendant and cannot be considered against the defendant, either on the subject of malice or want of probable cause or otherwise."

That I charge you.

(The jury retires.)

- 30 *Mr. Braelow.* I want to except to your Honor's failure to charge requests No. 2 and 3.

Exception noted as ground of appeal.

Mr. Braelow. I also want to except to that portion of your Honor's charge in which your Honor said there was no question that a criminal proceeding had been commenced, and so forth.

Exception noted as ground of appeal.

Mr. Braelow. I pray an exception to that portion in which your Honor said that only two questions remained, want of probable cause and of malice.

- 40 Exception noted as ground of appeal.

Mr. Braelow. To that portion of your Honor's charge in which you said: "One question now remains for determination and that is want of reasonable and probable cause."

Exception noted as ground of appeal.

Mr. Braelow. To that portion of your Honor's charge in which your Honor said the first count charged

Court's Charge to Jury.

that the goods were sold to the defendant, that he obtained them by false pretenses, that the first count of the criminal complaint charged that the goods were sold to the defendant, and so forth.

Exception noted as ground of appeal.

Mr. Braelow. To that portion of your Honor's charge in which your Honor charged the defendant had no reasonable or probable cause for instituting the second count of the criminal complaint. 10

Exception noted as ground of appeal.

Mr. Braelow. I pray an exception to that portion of your Honor's charge in which your Honor charged that there was absolutely no reasonable or probable cause for the institution of a criminal complaint.

Exception noted as ground of appeal.

Mr. Braelow. I pray an exception to that part of your Honor's charge wherein you charge that the advice must have been given by an attorney and counselor-at-law, as quoted from the volume of Cyc. 20

Exception noted as ground of appeal.

Mr. Braelow. Also to that portion of your Honor's charge in which your Honor charged if defendant had told counsel that there was no misrepresentation is it likely that competent counsel would have advised, and so forth.

Exception noted as ground of appeal. 30

Mr. Braelow. To that portion of your Honor's charge wherein you said that if that be true that he told the attorney that there was no misrepresentation, did that justify the attorney in making the complaint, and so forth.

Exception noted as ground of appeal.

Mr. Braelow. To that portion of your Honor's charge wherein your Honor charged: "If you find that the advice was not justified, then you come to the consideration of damages." 40

Exception noted as ground of appeal.

Mr. Braelow. And to that portion where your Honor charged that malice is presumed from want of probable cause.

Exception noted as ground of appeal.

Court's Charge to Jury.

DEFENDANT'S REQUEST TO CHARGE.

10 1. If the jury believes that the defendant, before signing the criminal complaint in this cause, made a full and complete statement of all the material facts to competent counsel, learned in the law, then the jury must find a verdict for the defendant.

2. The statutes of New Jersey provide that it is the duty of a seller, who sells his goods or fixtures, or both, in bulk and not in the ordinary course of trade, if requested by the buyer, to give a full and complete list of all creditors to whom he, the said seller, owes money, and a failure to do this is a violation of the criminal laws of the State of New Jersey and warrants a criminal complaint being issued for the arrest of the seller.

20 3. If the jury believes that the defendant had reasonable ground to believe from the facts that came to his knowledge, that the plaintiff was guilty of the criminal offense charged in the criminal complaint in this cause, they must find a verdict for the defendant.

4. In order to find a verdict for the plaintiff, you must find that there was malice on the part of the defendant when he made the criminal complaint.

30 5. If you believe that the defendant consulted competent counsel and made a full and fair and complete statement of all the material facts that came to his knowledge, or caused such a full, fair and complete statement of facts to be communicated to competent counsel, then you must find a verdict for the defendant.

6. Even though the defendant may cause the arrest of a man innocent of crime, this will not of itself warrant a verdict for the plaintiff unless the making of the criminal complaint was without any probable cause therefor.

40 7. The plaintiff is absolutely not entitled to recover any damages against this defendant by reason of any illness of his wife or any injury or loss by her under any circumstances whatsoever in this case.

8. The statement of the detective made at the time of the arrest, when he had a state warrant for the apprehension of the plaintiff, is in no way binding upon the defendant and cannot be considered against the defendant, either on the subject of malice or want of probable cause or otherwise.

Warrant.

Second Criminal Court of the City of Newark

PART II.

STATE OF NEW JERSEY, }

CITY OF NEWARK, }

ESSEX COUNTY }

ss.

10

Israel Greenberg, residing at No. 232 Belmont Avenue in the City of Newark, complains of Alexander Helstowsky (Cherltowsky) of 614 Charles Street, Perth Amboy, N. J., and Walter Helstowsky (Cherltowsky) who is to be found, deponent thinks, at No. 341 McCandle Street, Bay Way, N. J. in said City, and said complainant being duly sworn, on oath doth depose and say, that on the 4th day of June A. D., 1919, at the City of Newark, the said Alexander Helstowsky and Walter Helstowsky did on June 4, 1919 knowingly and designedly by false pretense obtain from the complainant, wares and merchandise to the value of fifty-five dollars and seventy-six cents, with intent to cheat and defraud said complainant.

20

2. That on June 11, 1919 the said Alexander Helstowsky and Walter Helstowsky executed a bill of sale of all the stock and chattels in grocery store at Chambers and Clover Sts., Newark, N. J. to John Marszycki and John Wilkseynski; that the said Walter Helstowsky swore in his affidavit incorporated in the bill of sale that there were no creditors of the aforementioned business to whom debts were due and owing.

30

3. Defendants still owe complainant \$55.76.

Deponent therefore prays that the said Alexander and Walter Helstowsky may be apprehended and held to answer said complaint, and dealt with as Law and Justice may require.

40

Subscribed and sworn August 14, 1919 before me, Wm. Yuill, Clerk of the Second Criminal Court of the City of Newark.

ISRAEL GREENBERG.

37

New Jersey Court of Errors and Appeals

ALEXANDER HELSTOWSKI,

Plaintiff-Appellee,

vs.

ISRAEL GREENBERG,

Defendant-Appellant.

Action at Law.

*On Appeal from
Supreme Court.*

BRIEF FOR DEFENDANT-APPELLANT

Alexander Helstowski, the Plaintiff-Appellee herein, instituted suit against Israel Greenberg, the Defendant-Appellant herein, in the Essex County Circuit Court. Trial was had and judgment entered in favor of the plaintiff below and against the defendant below in the sum, of \$3500.00. Defendant appealed to the New Jersey Supreme Court and the judgment was affirmed. The case comes to this Court on appeal from the judgment of the Supreme Court.

THE FACTS

Alexander Helstowski testified that he was employed by his brother, Anton Walter Helstowski, in the latter's grocer and butcher shop in Chamber Street, Newark, in the summer of 1919; that his brother dealt with the defendant, who was a wholesale grocer; that during the summer of 1919, his brother sold the business; that subsequently thereto, the defendant came to him and demanded from him the payment of a debt due from his brother for merchandise, which the plaintiff says was really due from his brother; that upon the plaintiff's refusal to pay this debt, he was summoned to the Police Court and that subsequently, he was arrested in his store in Perth Amboy, on August 14th, 1919, or thereabouts, incarcerated for several days and then paroled for the grand jury, and that the grand jury found no indictment.

The defendant contended that the business was represented

to him by the plaintiff and the plaintiff's brother, as being a partnership; that the goods were purchased from him on that representation; that he, the plaintiff verily believed it to be a partnership; that subsequently he discovered that the business had been sold and that an affidavit was falsely made alleging that there were no creditors of the business, when in fact, he, the defendant, was at that time a creditor in the sum of \$55.76; that no money was left or posted to pay his claim and that subsequently the plaintiff and his brother absconded. It appears there was in fact no partnership. The defendant further testified that he thereupon endeavored to locate the plaintiff and his brother and finally found the plaintiff in Perth Amboy; that he requested payment of the claim several times from the plaintiff and that then he consulted a regular and duly licensed attorney of the State of New Jersey, stated to him all of the facts in the matter; that the attorney advised him to issue a criminal summons from the Police Court, which was ignored by the plaintiff, and that subsequently, the attorney advised him to sign a complaint which he, the defendant could not read, and that as a result thereof, the plaintiff was apprehended, and that subsequently, the plaintiff and his brother procured the payment of the claim to him through a third party named Bonavita.

THE LAW

Point I

The trial court erred in not submitting the question of malice to the jury. (Grounds of Appeal No. 29; 6; 7; and 8).

The trial Court charged the jury as follows:

"But the malice as I have already told you, sufficient to justify an action for malicious prosecution is presumed from want of reasonable and probable cause." (Case, page 133, line 24). (Grounds of Appeal No. 29).

"Only two questions therefore remain on the subject

of liability. The first is whether there was want of reasonable and probable cause in making the complaint, and, second, whether there was malice; but since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment." (Case, page 127, line 42). (Grounds of Appeal No. 6).

"But since malice is presumed where there is want of reasonable and probable cause, unless that has been rebutted, there is really but one question on the subject of liability, and that is, had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts which resulted in his arrest and imprisonment." (Case, page 127, line 46). (Grounds of Appeal No. 7).

"There is really but one question on the subject of liability and that is had the defendant reasonable and probable cause for making the complaint against the plaintiff in setting in motion the machinery of the criminal courts, which resulted in his arrest and imprisonment." (Case, page 127, line 48), (Grounds of Appeal No. 8).

The rule is pretty general that malice may be inferred from the want of probable cause, but at most this is a mere inference, or as some put it, a rebuttable presumption. The jury is not bound to find the evidence of malice from the want of probable cause nor is the presumption irrebuttable.

The charge of the court in this case amounts almost to a direction to the jury to find in favor of the plaintiff and against the defendant, leaving to the jury merely the question of assessing damages.

“Want of probable cause being merely evidence of malice, not malice itself, the jury must find the evidence of malice to support a judgment for the plaintiff.” (Miller v. Lai, 77 N. J. L. 135).

“The court having taken from the jury the question of malice, submitted only the question of probable cause, against the defendant’s request for binding instructions. This was error. As there must be malice shown, and the court distinctly found that malice was present, an essential element was absent, and there should have been direction for the defendant. (Stewart vs. Sonneborn, 98 U. S. 187, 25 L. Ed. 116; Crescent City, etc., Co. vs. Butchers’ Union, 120 U. S. 149, 7 Sup. Ct. 472, 30 L. Ed. 614).

“The existence of malice is always a question exclusively for the jury. It must be found by them, or the action cannot be sustained. Hence it must always be submitted to them to find whether it existed. The court has no right to find it, nor to instruct the jury that they may return a verdict for the plaintiff without it. Even the inference of *malice*, from the want of probable cause, is one which the jury alone can draw.” (Wheeler vs. Nesbitt, 65 U. S. 24 How. 545, 16 L. Ed. 765; Newell v. Downs, 8 Black, 523; Johnson v. Chambers, 32 N. 13 L. R. A. C. 287; Van Voorhees v. Leonard, 1 Thomp. &c. 148; Schoefield v. Ferrars, 47 Pa. 194).

“The plaintiff cannot support the judgment, except there be evidence of malice, from which the jury has found its existence. (Schoefield v. Ferrars, 47 Pa. 194, 86 Am. Dec. 523). There seems to be an entire absence of any facts from which malice could be imputed to the defendant.”

“In an action for malicious prosecution, defendant’s malice is the prima facie inference from the proof of want of probable cause.”

“The defendant may show probable cause on his defense, and also rebut the presumption of malice by a fact showing there was no malice.” (Toth v. Greisen, 51 Atl. 927).

The law seems to be that the question of the want of reasonable and probable cause is one for the court, and that the question of malice is for the jury. The court in this case seems to have decided the question of malice and left the question of probable cause to the jury.

That malice may be inferred from the want of reasonable and probable cause is a mere prima facie presumption, sufficient only to shift the burden of going forward with the evidence to the defendant, leaving, however, the burden of proof on the whole case on the plaintiff.

The defendant should be given his opportunity to rebut malice and the question should be left to the jury to determine whether or not, at the end of the whole case, malice existed. The jury may find malice solely from the want of probable cause, but the contention of the defendant-appellant is that the question should be left to the jury to determine and not be determined by the court as was done in this case.

Point II

The Trial Court erred in refusing to direct a verdict for the defendant on the ground “that the defendant in consulting a regular and duly licensed attorney of the State of New Jersey and laying before him all the facts in the case, fully and fairly, thereby had probable cause for the institution of the original criminal procedure.” (Grounds of Appeal No. 2, case, page A-1, line 42; Grounds of Appeal No. 3, case, page A-2, line 12).

The trial court erroneously charged the jury (Grounds of Appeal No. 16): “The advice, to avail as a defense” (26 Cyc. page 32) “must have been given by competent”—again using the word “competent”—“disinterested, regularly admitted and

practicing attorney and counsellor-at-law in good standing.” (Case page 130, line 15).

“The protecting power of the rule that one who fully and fairly submits to learned counsel all the facts which he knows or by proper diligence could know, and is advised that they are sufficient to sustain the prosecution, and, acting in good faith upon such opinion, does institute criminal proceedings, cannot be held liable in an action for malicious prosecution although the legal opinion given is erroneous,—is limited to the advice of licensed *attorneys* in good standing and of reputed learning and competency. It should not be extended beyond these limitations.” (Marks v. Hastings, 101 Ala. 165, 13 So. 297).

“Advice of counsel is not a sufficient defense in an action for malicious prosecution, unless the advice was given by a competent and reliable *attorney*.” (Davie v. Wisner, 72 Ill. 262).

“If the advice of a respectable practising *attorney* fully informed, is a valid defense in an action for malicious prosecution, the advice of the district attorney, who testifies that he would have taken the oath himself as of probable cause, is entitled to at least as much, if not greater, weight.” (Kirk v. Wiener-Loeb Laundry Co., 120 La. 820; 45 So. 738).

“The attorney consulted must have been in good standing for skill, prudence, and fairness.” (Schattgen v. Holnback, 149 Ill. 646, 36 N. E. 969, affirming 52 Ill. App. 54).

Advice of counsel becomes a defense in an action for malicious prosecution, only when it appears that the prosecutor consulted a reputable attorney in good standing. This seems to be the rule.

18 L. R. A., N. S. (page 69), carries a long series of notes wherein numerous decisions are given concerning this question, and in a great majority the term "attorney" is used and not attorney and counsellor-at-law. In a few cases, of course, mention is made of the fact that the person consulted must be a counsellor-at-law, but a careful scrutiny of these cases will lead one to the conclusion that in the jurisdictions in which these cases were decided a person applying for the privilege of practicing law is licensed as an attorney and counsellor-at-law at the same time and there is no such distinction between the offices as prevails in this state.

18 Ruling Case Law (page 45) carries the following statement under the title of Malicious Prosecution (Sec. 27) :

"Advice of Attorney. It is the general rule that advice of counsel is a complete defense to an action for a malicious prosecution either of civil or criminal action where it appears that the prosecution was instituted in reliance in good faith upon such advice, given after a full and fair statement to the attorney of all the facts."

The cases mentioned in the notes support this contention.

Point III

The Trial Court erred in charging the Jury: "If you find that this advice was not justified then you come to the consideration of damages." (Case, page 132, line 37). (Grounds of Appeal No. 19, Case, page A-5, line 43).

The Supreme Court in its opinion recognizes the rule that if a complaining witness consults competent counsel and states the facts fully and fairly to him and he advises that the complaint be made and the defendant, acting upon such advice, makes the complaint, the complaining witness has a complete defense when sued for malicious prosecution, and the plaintiff cannot recover against him.

The objection of the defendant-appellant to the opinion of

the Supreme Court on this point therefore is directed to that portion of the opinion wherein the Court says:

“The next ground of appeal relied on and argued is number nineteen and is found upon an exception of an expression in the Judge’s charge, which was as follows: ‘If you find that this advice was not justified, then you come to the consideration of damages.’ This does not convey any idea whether what was said by the trial judge was correct as a proposition of law or not. For immediately preceding the statement complained of the court said: ‘If you decide that the facts were fully and fairly stated to competent counsel, and competent counsel advised this complaint, and that the defendant here acted upon that advice, that is a complete justification and the plaintiff in this suit cannot recover.’”

The difficulty with this instruction of the trial court lies in this, that the jury might be misled into believing that the court meant that before a complaining witness can, with impunity, swear out a criminal complaint and rest upon the advice of competent counsel for his defense of reasonable and probable cause the advice must be justified. If the attorney to whom the facts are stated must be justified in rendering his opinion upon those facts, of what avail is the defense?

When one fully and fairly makes a statement of all the facts in the case to competent counsel he shall be deemed to have had reasonable and probable cause for the making of the criminal complaint. (*Magowan v. Rickey*, 45 Atl. 804, 64 N. J. L. 403). If there is reasonable and probable cause in the evidence sufficient to justify the making of the complaint no defense of “advice of counsel” is necessary. This defense comes into play only in cases wherein there is no reasonable or probable cause in fact, but where reasonable and probable cause is injected into the case by the “advice of counsel” rule.

The authorities overwhelmingly hold that one who acts in good faith upon the opinion of counsel fairly obtained, how-

ever erroneous it may be, is not liable in an action for malicious prosecution:

“One who acts in good faith upon the opinion of counsel fairly obtained; however erroneous it may be, is not liable in an action for malicious prosecution.” *Steed vs. Knowles*, 79 Ala. 446; *Potter v. Seale*, 8 Cal. 217; *Ames v. Snider*, 69 Ill. 376; *Neufeld v. Rodeminski*, 114 Ill. 83, 32 N. E. 913; *Paddock v. Watts*, 116 Ind. 147, 9 Am. St. Rep. 832, 18 N. E. 518; *Center v. Spring*, 2 Iowa, 383; *Turner v. Walker*, 3 Gill. & J. 377, 22 Am. Dec. 329; *Cooper v. Utterbach*, 37 Mr. 282; *Wills vs. Noyes*, 12 Pick. 327; *Tryon v. Pingree*, 112 Mich. 338, 37 L. R. A. 226, 67 Am. St. Rep. 398, 70 N. W. 905; *Compass v. Light*, 122 Mich. 86, 80 N. W. 1008; *Fleckinger v. Taffee*, 149 Mich. 678, 113 N. W. 311; *Alexander v. Harrison*, 38 Mo. 265, 90 Am. Dec. 431; *Richardson v. Virtue*, 2 Hunter 208; *Hall vs. Suydam*, 6 Barb. 83; *Johnson vs. McDaniel*, 7 Ohio, N. P. 457; *Walter vs. Sample*, 25 Pa. 275; *Palmer vs. Broder*, 78 Dis. 483, 47 N. W. 744; *Ravenga v. Macintosh*, 2 Barn. & C. 693.

18 L. R. A. 67, 68. Although the counsel to whom one makes a full and honest statement of the facts concerning an alleged crime mistakes the law or the legal inference to be drawn from the facts, the prosecutor will nevertheless be protected by the advice given him, in an action brought against him for malicious prosecution. *Brown v. Smith*, 83 Ill. 291; *Stone v. Swift*, 4 Pick. 389, 16 Am. Dec. 349; *Sutton v. McConnell*, 46 Wis. 269, 50 N. W. 414.

A person who caused the arrest of another upon a criminal charge, after taking professional advice in accordance with which he proceeded, is not liable in an action for malicious prosecution, although the criminal proceeding failed because of a misnomer of the offense charged, since there was probable cause. *Bartlett v. Brown*, R. I. 37, 75 Am. Dec. 675.

If the prosecuting officers of the state, who appointed on account of their legal learning, consider that a given state of facts is sufficient evidence of probable cause to warrant a criminal prosecution, a private citizen should not be held in fault for acting upon such facts, or be condemned to pay damages in an action for malicious prosecution for so doing. *Laughlin v. Clawson*, 27 Pa. 330; *Smith v. Austin*, 49 Mich. 289, 13 N. W. 593; *Warren v. Flood* 72 Mo. App. 199; *Sebastian v. Chency*, 86 Tex. 504, 25 S. W. 691.

A collector of a port, who acted upon the advice of the district attorney in instituting a suit in which the defendant was held to bail, acted upon probable cause where the facts were truly stated, although the district attorney was mistaken. *Murray v. M'Lane*, 4 N. C. (a car. Law. Repos.) 186.

Advice of the district attorney, based upon an honest and full presentation of all the material facts, constitutes probable cause, and a complete defense in an action for malicious prosecution, although such advice was based upon an erroneous construction of the statute governing the offense charged. *Cooper v. Flemming* 114 Tenn. 40, 68 L. R. A. 849, 84 S. W. 801.

That a knowledge of the law must be imputed to the prosecutor will not deprive him of the right to say that he proceeded upon probable cause, although the advice of counsel was contrary to the law. *Cooper v. Flemming*, *supra*.

The trial judge in his charge to the jury first enumerated the elements of malicious prosecution (Case page 127, line 18), next told them that the facts show the institution of a criminal complaint and its termination (case, page 127, line 27). He then told the jury that there were three questions open: Malice, want of probable cause and damages (case, page 127, line 42). The court thereupon proceeded to tell the jury that

since malice is presumed from want of probable cause only one question was left open on the subject of liability, to wit: Want of probable cause (case, page 127, line 36).

Later on in the charge the trial court said to the jury that no probable cause existed unless the defense of "advice of counsel" had been made out (case, page 129, line 22).

The charge on this point limited the defense on the question of liability to but one point: The question of advice of counsel whereupon the court said: "If you find that this advice was not justified then you come to the consideration of the question of damages" (case, page 132, line 37).

The whole question of liability was made to turn upon the defense of "the advice of counsel" and when the court charged the jury that if the advice of counsel was not justified, it must then consider damages, surely in our opinion that part of the charge constituted harmful error.

To hold any different rule would be to say to a prospective criminal complainant in one breath "Even though you have no probable cause for your complaint advice of counsel is available to you for your protection" and in the very next breath: "but if you avail yourself of advice of counsel you will be protected only if that advice is justified."

Point IV

The Trial Court erred in refusing to grant a non-suit at the close of plaintiff's case. (Ground of Appeal No. 26, Case, page A-7, line 10).

Defendant, at the close of plaintiff's case moved for a non-suit urging as one of the grounds that the complaint alleged that the criminal complaint had been dismissed by the September 1919 Grand Jury, whereas the evidence showed that the complaint had not been dismissed, but that no indictment had been returned.

The Supreme Court in its opinion says (page A-13 of the state of the case, line 30) :

“The contention of counsel is a restatement of what was urged by him under the twenty-fourth ground of appeal, and with the additional reason that the civil complaint, as amended, by the plaintiff, alleged that the criminal complaint in the criminal cause had been dismissed by the September 1919 Grand Jury, whereas in truth and in fact the evidence showed that it was not dismissed but that no indictment was returned. This seems to be a distinction without a material difference. The prosecution was at end so far as that grand jury was concerned. And the proof makes it clear that no further steps were taken by the defendant to prosecute his complaint.”

The defendant-appellant contends that there is very material difference. In the case of *Dalton v. Godfrey* (117 Atl. 635; 97 N. J. L. 455) relied upon by the Court in its opinion, presents quite a different proposition from the one in the present case. In the *Dalton* case a complaint was made, an appearance entered by the defendant Bigelow before a police magistrate, but no appearance was made by the complaining witness and thereafter the complaining witness announced that he would not proceed with the complaint and abandoned it. In the present case, however, the matter was presented to the Grand Jury and that body did not find a true bill.

In the *Dalton* case the Court at the foot of page 637 says :

“The instant case is not like one in which the Grand Jury ignores the bill of indictment, as mentioned in the *Apgar* case (*Apgar v. Wolston*, 43 N. J. L. at 62), for in such latter case the prosecution ends by act of the official body, the Grand Jury. But in this case the prosecution ended by the act of the defendant in refusing to press his charge against the plaintiff and her consequent discharge by the magistrate, and that conduct of the defendant, coupled with the fact that he had no evidence that the

plaintiff stole his money, but only suspicion and conjecture, bore directly upon want of probable cause for her arrest on his complaint, and the trial court was therefore right in refusing to charge his request."

"The mere fact that the complaint was rejected by the Grand Jury is not sufficient to show want of probable cause." *Magowan vs. Rickey* (45 Atl. 804; 64 N. J. L. 403).

The defendant was entitled to a non-suit.

Point V

The Court erred in refusing to let the question: "Who did you think was the owner of the place?" to be answered. (Ground of Appeal No. 27, Case, page A-7, line 13).

The plaintiff and his witnesses had testified that he had done no business with the defendant; that he had purchased no goods; that the plaintiff worked for his (plaintiff's) brother; that plaintiff's brother may have purchased goods from the defendant; that plaintiff's brother sold his business; that defendant, unable to collect from plaintiff's brother instituted, without justification, criminal proceedings against the plaintiff.

The defendant testified that he had sold goods at the store in question; that he had dealt with both the plaintiff and his brother; that the last bill of goods had been bought by both the plaintiff and his brother and that he had learned that the business had been sold and a false affidavit made under the "Bulk Sales Law."

The defendant was asked under direct examination: "Who did you think was the owner of the place?" (Case, page 68, line 36). The Court sustained the objection to the question.

The Supreme Court, in its opinion, says of this:

"The record shows that plaintiff's counsel objected to

the question but the defendant nevertheless answered it thus: 'The both of them was there.' And it was after the witness had answered as above the court said objection is sustained———. The defendant's counsel did not see fit to pursue the examination on this line, and as the question was answered the defendant had the benefit of it, even if the question was a proper one, no harm was done by the court sustaining the objection."

It is submitted that defendant's counsel did not pursue the question for the reason that the trial court clearly indicated that he would not admit such a line of testimony.

The Supreme Court continues:

"But we think the question was incompetent. It was seeking the defendant's opinion on undisclosed facts; such testimony is clearly incompetent." It was for the jury to determine from the facts introduced in evidence whether or not the defendant had reason to believe that the plaintiff was the owner of the store."

It is submitted the question was competent. It was an endeavor on the part of the defendant to show who he thought was the owner of the store and the purpose was to establish the absence of malice.

Throughout the case defendant claimed that the business had been represented to him as a partnership and that it was on the basis of partnership ownership that he did business with the establishment. It was on this misrepresentation as to ownership that defendant based his original complaint. If he had not believed the misrepresentation he would not have made the complaint.

"For the purpose of disproving malice, defendant or his agent prosecuting, may testify directly as to his relevant knowledge, purpose, motive or *belief* in instituting the original proceeding complained of as malicious." (26 Cyc. 98).

It is submitted that the question was admissible to rebut malice and to establish probable cause.

CONCLUSION

It is respectfully urged that the judgment for plaintiff-appellee should be reversed for the reasons aforesaid.

Respectfully submitted,

BRAELOW & TEPPER,
*Attorneys for and of Counsel
with Defendant-Appellant.*

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New Jersey
Court of Errors and Appeals

ALEXANDER HELSTOWSKI, Plaintiff-Respondent, vs. ISRAEL GREENBERG, Defendant-Appellant.	}	On Appeal from Su- preme Court.
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POINTS FOR RESPONDENT

This was an action at law commenced in the Essex County Circuit Court wherein the plaintiff claimed damages for malicious prosecution. The plaintiff had a verdict and from the judgment thereon, defendant appealed to the Supreme Court where it was affirmed. Although there were twenty-nine grounds of appeal set forth in the record for review, only eleven grounds were relied on and argued in the Supreme Court.

It is the settled and accepted practice that grounds of appeal not argued in the Brief will be taken as waived or abandoned. *Hahn v. Meltz*, 97 N. J. L. 159. The only proper ground of appeal is that the court erred in the judgment it rendered. *State v. Verona*, 93 N. J. L., 389. That averment appearing in the First Paragraph of the Notice of Appeal in this Court, the other grounds will be disregarded.

The facts as set forth in the Supreme Court, on which the various legal propositions presented by this appeal arise, are these: Alexander Helstowski was in the employ of his brother Anton, who carried on a butcher and grocery business in Newark, Greenberg, the defendant below, was a wholesale grocer. Greenberg sold a bill of groceries, which merchandise he claimed was sold to Anton and Alexander, as partners. This was disputed and was for the jury. Anton sold his butcher and grocery business, whereupon the plaintiff went to Perth Amboy and opened there a butcher and grocery business on his own account. Greenberg made a demand upon the plaintiff to pay a bill for \$56.76 incurred by his brother Anton in Newark. The plaintiff denied that he owed the bill and refused to pay it. Thereupon Greenberg lodged a complaint against the plaintiff in the Second Criminal Court of Newark, charging the latter with having obtained at the City of Newark, on the 4th day of June, A. D. 1919, under false pretenses, "wares and merchandise to the value of \$55.76, with intent to cheat and defraud" him. A warrant was issued, the plaintiff was arrested and brought from Perth Amboy to Newark, and was imprisoned in the Newark jail, where he was detained for six days before he was released. The case was presented to the grand jury, but that body found no bill.

The defense relied on was, in substance, that the appellant had stated all the material facts, so far as he knew them, to his attorney, Mr. Kaplan, and that the latter advised him to make the criminal complaint, upon which the plaintiff was arrested. It further appeared that, before instituting criminal proceedings against the plaintiff, the

appellant's attorney caused a summons to be sent by acting Judge Yuill of the Second Criminal Court of Newark to the plaintiff at Perth Amboy, summoning the latter to appear in said court on a certain day; that at the time fixed in the summons, the appellant, his son, and his attorney, appeared, but the plaintiff did not. Subsequent to this, Mr. Kaplan, on behalf of the appellant, commenced a civil action in the First District Court of Perth Amboy against the plaintiff, to recover the sum claimed to be due to the appellant from the latter, which action was discontinued. Before commencing the civil action, Mr. Kaplan admits that in an interview had with the plaintiff he cautioned him that he was going to advise his client to swear to a complaint against him, to which threat the plaintiff replied: "Go ahead and do what you like, I don't care." That Mr. Kaplan advised the making of the complaint against the plaintiff for obtaining goods under false pretenses, and had a second charge embodied in the complaint against the latter; that on July 11th, 1919, he and his brother executed a bill of sale of all the stock and chattels in grocery store at Chambers and Clover Streets, Newark, New Jersey, to J. M. and John W.; that the brother Walter Helstowski swore in his affidavit incorporated in the bill of sale that there were no creditors of the business to whom debts were due and owing. It further appeared before Mr. Kaplan had advised his client, the appellant, to sign the complaint, he saw the bill of sale on which the complaint was based, and knew that the bill of sale had been executed only by Walter Helstowski, the plaintiff's brother. Kaplan attempts to explain this by saying that it was an apparent oversight

on his part. There is not a scintilla of testimony in the entire case, says the Supreme Court, tending to sustain the charge that the goods for which the debt was incurred were obtained under false pretenses. So the conclusion is irresistible that the statements made in the complaint were untrue. The defense, therefore, that the defendant had fully and fairly stated all the facts within his knowledge to competent counsel, and competent counsel advised the making of the complaint, and that the appellant acted upon that advice, was not completely made out.

The above statements are found in the evidence appearing State of the Case at various pages and lines indicated as follows:

“a. The form of the complaint was not explained. (Testimony of defendant, p. 78, l. 30). He signed a paper that was not read to him. He just signed ‘Asking him to come to Court, I didn’t sign to arrest him.’ (Testimony of defendant, p. 78, l. 40).

“b. The defendant consulted his lawyer at the advice of defendant’s son. ‘Mr. Kaplan called at my place seven times, interviewed him during my presence, and my dad asked me to have Mr. Kaplan and myself to take care of the case; and several times Mr. Kaplan went to Helstowski’s place to get some information. We threatened’—(Testimony of Herman Greenberg, p. 90, l. 20). (Testimony of Israel Greenberg, p. 75, l. 12).

“c. The defendant could not explain the situation to his lawyer but had his son ex-

plain it, and Mr. Kaplan advised a suit (Testimony of Herman Greenberg, p. 91, l. 4).

“d. Policemen went over to serve the Warrent of Arrest and said to plaintiff: ‘Yes, unless you pay your bills we are going to have you brought to Newark immediately.’ (Testimony of Herman Greenberg, p. 94, l. 10).

“e. Before leaving, I spoke to Mr. Helstowski again and told him I believed that he had no intention of paying the bill but I believed that he intentionally absconded from Newark and that in my mind it was his intention to defraud his creditors. I told him of the information given me by Mr. Conron and Mr. Greenberg, that he promised payments immediately prior to leaving Newark, and that on the day he promised to make payments, the morning of that day he left Newark, and in my mind had never intended to pay that money. (Testimony of Harry Kaplan, p. 109, l. 10).

“f. Mr. Greenberg took no part in the conversation himself. Answer: Except to present him the facts that an unpaid bill was due him, but nothing concerning the nature of the complaint to be held against Helstowski. (Testimony of Harry Kaplan, p. 110, l. 15). (Testimony of Israel Greenberg, p. 75, l. 35).

“g. Before I advised my client to sign the criminal complaint, I knew what was in it and prior to that time I had seen the Bill of Sale and I knew that it had been

executed by Walter Helstowski; and an apparent oversight on my part is the only explanation I can make as to why the criminal complaint was drawn so as to charge both Alexander and Walter Helstowski.

“Q. How do you account for it that further down you said that Walter Helstowski swore in his affidavit incorporated in the Bill of Sale? A. That was my error. At the time the complaint was made, only Walter had sworn to the affidavit, and therefore the statement of the execution of the Bill of Sale was jointly; that the said Alexander Helstowski was supposed to execute the Bill of Sale. (Testimony of Harry Kaplan, p. 116, l. 12).

“h. In my opinion, ordering an excessive amount of goods, far more than the ordinary amount, the usually amount had been ordered, on account of absconding to parts unknown by both brothers without leaving any information, seems to me to be such a state of facts as to warrant my conclusion that this man intended to order an excess amount of goods and intended never to pay their creditors. (Testimony of Harry Kaplan, p. 116, l. 25).

“i. Greenberg told me that when the plaintiff had purchased the last bill of goods, he made a representation that the business would be continued as heretofore.

“By the Court: You think then, do you, that the statement made by Greenberg and Conron to you, that the business would be continued as before, constituted a false

representation of an existing fact? A. A statement made at the time when the business was practically sold, in my mind, constituted that false pretense. (Testimony of Harry Kaplan, p. 117, l. 40).

“j Q. Did you ever tell Mr. Kaplan that Helstowski had told you he was going to keep the business up or continue the business? A. No, sir.

“Q. Did you ever tell him anything like that? A. Nothing. I never talked to him about this at all. (Testimony of Israel Greenberg, p. 119, l. 22).

POINT I

It is claimed that the trial court erred in not submitting the question of malice to the Jury. Judge Dungan explicitly stated to the jury that

“in order to put the law in motion in cases of this kind, six things must appear * * * * Fifth: The presence of malice therein.”

Where the facts are undisputed, the question of probable cause is one of law for the court, and its submission to the jury is error.

Greenberg v. Rose, 121 Atl. 616, was the case of the manager of a theater who had maliciously and without probable cause charged plaintiff, who was the leader of the orchestra, with breaking into a certain locker in the theater building and stealing therefrom a violin and a certain quantity of sheet

music belonging to one of the members of the orchestra, and that he caused the arrest and confinement of the plaintiff upon this charge. The facts which induced the defendant to charge this act of larceny against the plaintiff were not in dispute and this in a *per curiam* opinion held that the question of whether or not the defendant had probable cause to make the charge was one of law to be determined by the court. The Trial Judge, however, ignoring this legal principle submitted the question of the existence or non-existence of probable cause to the Jury, and in so doing committed legal error.

POINT II

The contention that there should have been a direction of a verdict upon the ground that defendant, upon making the criminal complaint, acted upon the advice of counsel, is untenable. If defendant informed his counsel of all the facts, and all the details, as he said he did, counsel's advice would protect him only if none of the material statements were false to defendant's knowledge. The issue depends upon a question of fact. Mr. Justice Van Syckel, in *Navarino v. Dudrap*, 66 N. J. Law, 620, states the rule to be that where the affiant falsely and maliciously states the facts untruly, and procures a warrant to be issued, he becomes responsible for the prosecution and arrest because, if he had not made the false affidavit and asked for the issuing of a warrant, the officers could not and would not have decided that criminal process should issue, and Mr. Justice Pitney, in *McFadden v. Lane*, 71 N. J. Law, at page 630, 60 Atl. 365, said that malice in law is the inten-

tional doing of a wrongful act without just cause or excuse.

In 1 Am. Leading Cases 267, cited in *Potter v. Casterline*, 41 N. J. L. 22, the true rule upon this point as stated by our Supreme Court is as follows:

“If a party lays all the facts of the case fairly before counsel of competency and integrity, before beginning proceedings, and acts *bona fide*, upon the opinion given by that counsel however erroneous that opinion may be, he is not liable to this action.”

Assuming that the defendant informed his counsel of all the facts, and gave him all the details, counsel's advice would protect him only if none of the material statements were false to defendant's knowledge, and, of course, considering the diversions as to keeping the business up by the defendant and his own counsel, as shown above in the analysis of the evidence, (Items i and j) the issue depended upon a question of fact, *viz.* whether the statement of the defendant (Item i) or that of his counsel (Item j) was true. The counsel says he did, and the defendant says he did not. Therefore, the denial of the direction of a verdict on this ground was proper. *Dalton v. Godfrey*, 97 Law, 455. (Court of Errors, Opinion by Chancellor Walker).

POINT III

The next ground of appeal relied on and argued is found upon an exception to an expression in the charge, which was as follows:

“If you find that this advice was not justified, then you come to the consideration of damages.”

The Supreme Court states that this does not convey any other idea whether what was said by the Trial Judge was correct as a proposition of law, or not. For immediately preceding the statement complained of, the Court said:

“If you decide that the facts were fully and fairly stated to competent counsel, and competent counsel advised this complaint, and that the defendant here acted upon that advice, that is a complete justification; and the plaintiff in this suit cannot recover.”

We cannot add in this brief to the reasoning expressed by the Supreme Court when they say:

“Of course, if the defendant had not made a full and fair statement of the facts to his counsel, it is quite plain that the advice of counsel could not be availed of by the defendant in justification. The nature of the advice was dependent upon the facts related by the defendant to his attorney, and all this was properly left to the jury for its determination.”

And the Supreme Court continues:

“And it is further to be observed that the Court charged the jury on the point

substantially as requested by defendant's counsel in his fifth request which was as follows: 'If you believe that the defendant consulted competent counsel and made a full, fair and complete statement of all the material facts that came to his knowledge, or caused such fair and complete statement of facts to be communicated to competent counsel, then you must find a verdict for the defendant.' "

Judge Dungan in his charge was commenting upon the policy of the law which abolished imprisonment for debt in New Jersey many years ago; and he went further to say that people cannot be frivolously arrested and put in jail. The collection of debts through criminal prosecution is not favored or permitted in New Jersey. The making of a criminal complaint is because of the wrong done to the public. Not for private use. Sharp collection cases through criminal process are to be frowned upon by Court and jury. Therefore, the learned trial court stated the question for solution, namely:

"Was this such a case and was it instituted because of the advice of incompetent counsel?"

There is nothing of novel impression in the case at bar. In *Vladar v. Klopman*, 89 N. J. Law 575, Chief Justice Gummere stated the law in this Court, He said:

"It has been suggested that the rule first adverted to in this opinion, namely, that proof of the falsity of the charge justifies an inference of malice and of the absence

of probable cause for making the complaint, and that which permits the court, as a matter of law, to determine upon the undisputed facts in a case that probable cause exists are out of harmony with each other, and that, therefore, one or the other must be unsound. We think not. The first rule merely creates a presumption which the defendant must overthrow in order to defeat the plaintiff's action. The second rule permits the absolute destruction of the presumption by uncontroverted proof of facts which demonstrate that the defendant had probable cause for making the charge laid against the plaintiff. It is true that, ordinarily, where a fact is proved which raises a presumption of liability on the part of the defendant, and other facts are put in evidence which tend to overthrow that presumption a question is presented for the determination of the jury rather than of the court. But actions for malicious prosecution have always been differentiated by the courts, so far as this special feature of litigation is concerned. The rule which makes the existence or non-existence of probable cause, when the facts are not in dispute, a matter to be determined by the court, is probably the outgrowth of a public policy, the purpose of which was to encourage criminal prosecutions at the instance of private citizens, by making them certain that they might safely intervene to put in motion the machinery of a criminal law against apparent violators of its provisions without being liable to be mulcted in dam-

ages, in case the prosecution should fail through the lack of sufficient evidence, or perhaps through the vagaries of the trial juries of earlier days. But, whatever may be its foundation, and whether it be logical or not, it has been too long in existence and too universally followed to be now subject to question."

The Court has some times in some of its earlier decisions assumed the burden of giving original consideration to the question whether or not the undisputed facts did or did not exhibit probable cause for the defendant's action. The Court of Errors, however, is not under any obligation to assume this burden, for normally it does not act as a court of first instance, but merely sits to determine whether or not in a given case fundamental errors appear in the trial of the case in the court below. It is hardly necessary to add that no error of law was committed by the trial court in submitting that branch of the case to the jury.

POINT IV

The next ground of appeal relied on and argued is that the Trial Court erroneously refused to grant a non-suit. The Supreme Court treated this contention as a restatement of the point urged for a refusal to direct a verdict. The defendant contends that there is a difference between *Dalton v. Godfrey*, 97 N. J. L. 455, and *Apgar v. Wolston*, 43 N. J. L. 64. In the case at bar there was no question but that the criminal proceeding was *bona fide* terminated in favor of the present plaintiff because if an indictment be not found within two years after a crime has been committed, then there may never be an indictment. The statute of limitations after that time bars an indictment, and this complaint charges that the offense occurred in June 1919. The case was tried in April 1923. The Supreme Court properly said:

“The contention that there should be a non-suit to be the prosecution was not at an end where the proofs made it clear that no further steps were taken by the defendant to prosecute his complaint, seemed to be a distinction without a material difference. Therefore, the defendant should take nothing upon this ground of appeal.”

POINT V

The next ground relied on and argued is that the court erred in refusing to permit an answer to the question "Who did you think was the owner of the place?" The answer to this proposition is that the question was answered: "The both of them was there." (Testimony of Israel Greenberg, p. 58, l. 36). Assuming that the answer should go out because of sustaining an objection to the question, counsel for the defendant immediately got the benefit of the information by propounding another question, *viz.*:

"Q. Did you ever see Helstowski, Alexander, the older brother, wait on any customers while you were there? A. Sure, always.

"Q. Did you ever see him get any cash from his customers? A. Yes, sir.

"Q. What did he do with it? A. Put it in the pocket."

(Testimony of Israel Greenberg, bottom p. 68.)

The Supreme Court sustained the ruling of the Trial Court because counsel was seeking his client's opinion on undisclosed facts, for it was for the jury to determine from the facts introduced in evidence whether or not the defendant had reason to believe that the plaintiff was the owner of the store.

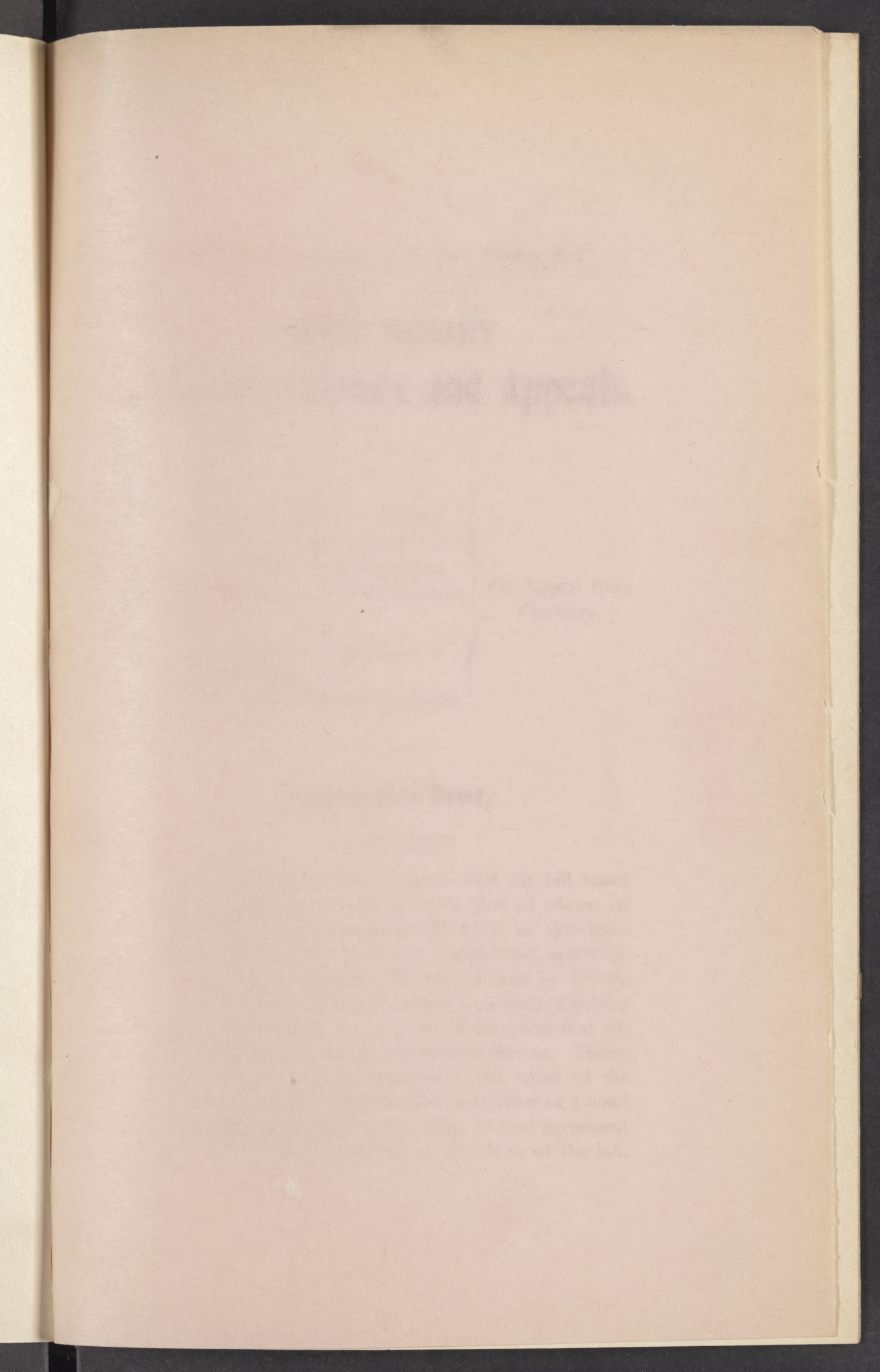
This disposes of all the questions raised and argued in the Appellant's Brief here under five points. The case was clearly one of the perverse use of the authority of an agency of the State designed only for the administration of justice; and

no injurious error appearing or any ruling made against the defendant dealing with a fundamental factor of the case at bar, it is respectfully submitted that the judgment of the Supreme Court affirming the Essex Circuit Court to be also here affirmed.

March Term, 1925.

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Of Counsel with Plaintiff-Respondent.

EDWARD B. TWARDUS,
Attorney.



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March Term, 1886.

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