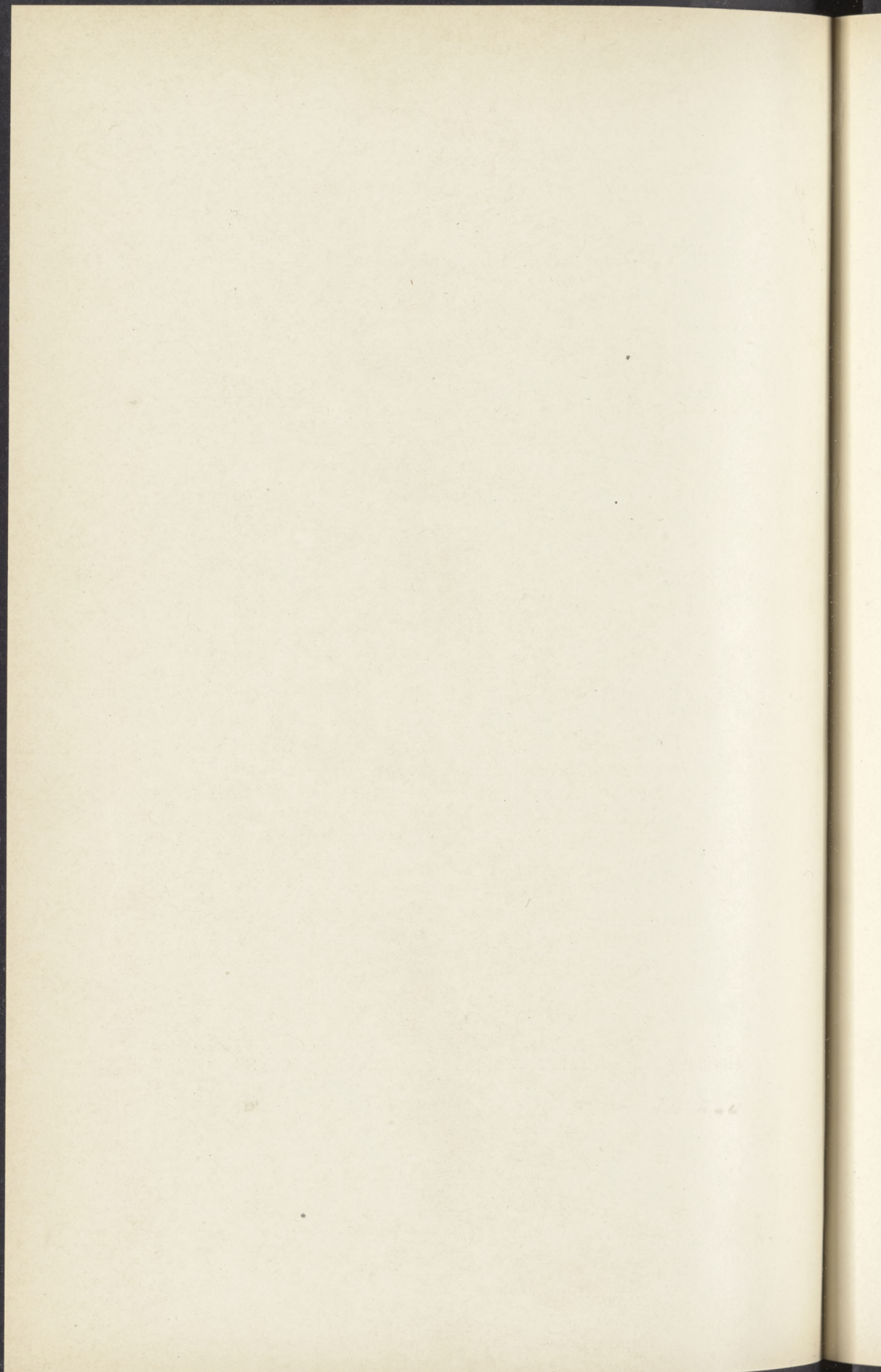


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COMPLAINT.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

COLLETTE A. O'CONNOR,	}	Action at Law.	10
<i>Plaintiff,</i>			
v.	}	Complaint.	
HOTEL TRAYMORE COMPANY,			
a corporation,			
<i>Defendant.</i>			

Plaintiff, Collette A. O'Connor, residing in the City of Buffalo, State of New York, says that: 20

FIRST COUNT.

1. The defendant, Hotel Traymore Company, a corporation, before and at the time of the loss hereinafter mentioned, was and still is engaged in the business of keeping a hotel, and as such hotel keeper, the said defendant has, during all that time kept and still does keep a certain hotel for the reception, lodging and entertainment of travelers at the City of Atlantic City, in the County of Atlantic and State of New Jersey. 30

2. While the said defendant, Hotel Traymore Company, was such hotel keeper, as aforesaid, the plaintiff, Collette A. O'Connor, heretofore, to wit, on the

13th day of August, 1927, put up at and was then and there received in the said hotel as a traveler for a certain reward in that behalf to the said defendant.

3. That from the aforesaid day up until and including the 15th day of August, 1927, the said plaintiff, during all that time abided as a traveler therein.

10 4. That on the 15th day of August, 1927, the plaintiff, Collette A. O'Connor, deposited with the defendant, Hotel Traymore Company, at its request, a certain diamond ring to be placed in its safe deposit box or vault.

20 5. The said defendant, not regarding its duty, as such hotel keeper, did not, nor would, while it had the care and custody of the said ring, take due and proper care of the same, but wholly neglected and failed so to do; and took such bad care thereof, that on the aforesaid day, to wit, the 15th day of August, 1927, the aforesaid ring was wholly lost to the said plaintiff.

Plaintiff demands as damages on this count the sum of nine hundred and five (\$905.00) dollars with interest and costs of suit.

30

SECOND COUNT.

1. Plaintiff repeats the allegations contained in paragraphs 1, 2 and 3 of the first count herein, and hereby makes them a part of this count.

2. On the 15th day of August, 1927, the plaintiff,

at the special instance and request of the said defendant, Hotel Traymore Company, had caused to be delivered to the said defendant, a certain diamond ring belonging to the said plaintiff of great value, to wit, of the value of nine hundred and five (\$905.00) dollars, to be taken care of and safely and securely kept by the said defendant, for the said plaintiff, Collette A. O'Connor, and to be re-delivered by the said defendant, Hotel Traymore Company, to the said plaintiff, when the defendant should be so requested. 10

3. Said defendant, Hotel Traymore Company, received the said diamond ring for the purpose aforesaid, and it thereupon became and was the duty of the said defendant, Hotel Traymore Company, to safely and securely keep same for the said plaintiff, and to re-deliver the same to the said plaintiff, when it, the said defendant, should be thereunto afterwards requested. 20

4. The said defendant was afterward, to wit, on the 15th day of August, 1927, requested by the said plaintiff to re-deliver the said diamond ring to the said plaintiff.

5. The defendant, not regarding its duty, in that behalf, did not safely and securely keep the aforesaid diamond ring for the plaintiff, nor would, when it was so requested, as aforesaid, or at any time afterward, re-deliver the same to the said plaintiff, but on the contrary thereof, the said defendant so conducted itself with respect to the said ring, that the said diamond ring became and was wholly lost to the said plaintiff. 30

Plaintiff demands as damages on this count the sum of nine hundred and five (\$905.00) dollars with interest and costs of suit.

SUMMARY.

10 Damages will be asked by the plaintiff on the above first and second counts in the sum of nine hundred and five (\$905.00) dollars, with interest and costs of suit.

BOLTE & TRIPICIAN,
Attorneys for the Plaintiff.

ANSWER.

20

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

	COLLETTE A. O'CONNOR,	}	Action at Law.
	<i>Plaintiff,</i>		
	v.	}	Answer.
30	HOTEL TRAYMORE COMPANY,		
	a corp., &c.,		
	<i>Defendant.</i>		

Defendant, Hotel Traymore Company, a corporation of the State of New Jersey, engaged in the hotel

business in the City of Atlantic City, New Jersey,
answering the complaint, says :

FIRST COUNT.

- 1 It admits paragraph 1.
2. It admits paragraph 2.
3. It admits paragraph 3. 10
4. It denies paragraph 4.
5. It denies paragraph 5.

SECOND COUNT.

1. It admits paragraph 1. 20
2. It denies paragraph 2.
3. It denies paragraph 3.
4. It denies paragraph 4.
5. It denies paragraph 5.

COLE & COLE,
Attorneys for Defendant. 30

TESTIMONY.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

10

 COLLETTE A. O'CONNOR,
Plaintiff,

v.

 HOTEL TRAYMORE COMPANY,
 a corporation,
Defendant.

} At Law.

20

 The above-entitled case was tried October 23, 1929,
 before HONORABLE WILLIAM FRANK SOOY, Judge, and
 a jury.)

APPEARANCES:

MESSRS. BOLTE & TRIPICIAN, for the plaintiff.

MESSRS. COLE & COLE, for the defendant.

30

 (Mr. Bolte opens plaintiff's case to the jury.)

(Mr. Cole opens defendant's case to the jury.)

TESTIMONY.

JAMES L. O'CONNOR, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

10

By Mr. Bolte:

Q. Where do you reside, Mr. O'Connor?

A. Buffalo, New York.

Q. Are you employed there?

A. Yes, I am.

Q. By whom?

A. The American Brass Company, the Buffalo Branch.

Q. Employed by them how long?

20

A. Twelve years.

Q. What is your position with them today?

A. Chief clerk.

Q. Collette A. O'Connor any relation to you?

A. My wife.

Q. Married when?

A. August 10, 1927.

Q. Prior to your marriage to her, did you present her with a ring?

A. I did; December, 1926.

30

Q. What kind of ring was it?

A. A diamond in a platinum setting.

Q. How much did you pay for the ring?

A. \$850.

Q. Where did you purchase it?

A. Fred Doby on Genesee Street in Buffalo.

- Q. A jeweler?
A. Yes.
Q. How long had he been in business there, do you know?
A. Probably close on to fifty years.
Q. Shortly after your marriage, where did you go? Where did you go on your honeymoon?
A. Atlantic City.
Q. Where did you stop?
10 A. At the Traymore.
Q. You and Mrs. O'Connor?
A. Yes, sir.
Q. Was the ring with her at that time?
A. Yes, sir.
Q. Who had possession of it?
A. My wife.
Q. On the 15th day of August, 1927, were you stopping at the Traymore that day?
A. I was.
20 Q. Where is the Traymore located, do you know?
A. I don't know the—the Boardwalk. The cross street I don't know the name of it.
Q. A large hotel on the Boardwalk, is it?
A. Yes.
Q. Were you registered there as a guest?
A. Yes.
Q. Mrs. O'Connor there, too, as a guest?
A. Yes.
Q. What date did you register?
30 A. Saturday afternoon, August 13th.
Q. And you were assigned to a room, were you?
A. Yes.
Q. Took your meals at the Hotel Traymore?
A. No.
Q. On the 15th day of August, 1927—did you have the ring that day?

- A. Yes.
- Q. Do you know whether Mrs. O'Connor had it that day?
- A. Yes.
- Q. Can you tell what occurred, Mr. O'Connor, with the ring some time early in the afternoon?
- A. We got ready to go in for a swim.
- Q. Who did?
- A. Mrs. O'Connor and I.
- Q. Where? 10
- A. Up in our room. She gave me her ring and her watch. Those two articles with my own watch and bill fold I put in my coat pocket. We locked the door and took the elevator down to the main floor.
- Q. And where did you go?
- A. I went to the desk.
- Q. With whom did you talk at the desk?
- A. The cashier.
- Q. Do you know what his name is? 20
- A. Mr. Bell.
- Q. And what did you request from him?
- A. The safety deposit box.
- Q. Did you get it?
- A. Yes.
- Q. What did you do after you received it?
- A. Put the two watches and my purse and the last article was the ring.
- Q. Those four articles you put in there? 30
- A. Yes.
- Q. Where was Mrs. O'Connor?
- A. A few feet away, over towards the stairs leading to the street, to the side street.
- Q. Did Mr. Bell take the box down and put it away or was there any conversation that took place there?
- A. He folded over the lid that covered the box

and started away. Mrs. O'Connor said, "Jim, is the ring O. K.?" and I juggled the box slightly. She was always—she was always more or less —

Q. Never mind. What did you do?

A. I shook the box slightly to be sure the ring was there without answering her question, and closed the box—the top of the lid back myself, and pushed the box over to Mr. Bell.

10 Q. When you opened the box again did you see the ring there then?

A. No.

Q. I mean when you showed it to her?

A. Yes, I did.

Q. And it was turned over then in that condition with these articles in it to Mr. Bell?

A. Yes.

Q. Did you get anything from him?

A. I got a key and a slip of paper.

Q. Where did you go after that?

20 A. Up the boardwalk, to one of the bath-houses. It is past the Central Pier.

Q. Do you know what bath-house that was?

A. I think it was Peikin's.

Q. Did Mrs. O'Connor go with you?

A. Yes.

Q. Did you go after those articles that were in this box—did you go after them later in the day?

A. About six o'clock.

Q. Did Mrs. O'Connor go with you?

30 A. No. I went up to the desk alone. She stayed down on the stairs leading to the street. We were going out to one of the seafood houses for supper.

Q. Did you get the box?

A. Yes.

Q. Make an examination of it?

A. Lifted up—the lid had been lifted when the box

was given me, and the other three articles were right in front of me, and there was no ring.

Q. When you went to the Traymore to get the box on this occasion, to whom did you first make the request for the box?

A. A lady that waited on me.

Q. Do you know her name?

A. No, I don't.

Q. Did she attempt to wait on you?

A. Yes. She took a slip of paper and key and 10 went back to open the box.

Q. Could you see her do it?

A. Yes.

Q. Did she succeed in opening it?

A. No, she didn't.

Q. Did she come back to you?

A. Yes, she did.

Q. What did she say —

A. Pardon me.

Q. Go ahead.

20

A. She said, "This box seems stuck. I will have to get the cashier to wait on you."

Q. She came back and told you that, and did she remain right there at the box?

A. Right there at the box.

Q. What was done then?

A. She went back of the desk and very shortly Mr. Bell came out.

Q. What did he do?

A. He went over and unlocked the box and 30 brought it over to us.

Q. And was it, you say, then, as it was—who lifted the lid on it?

A. Mr. Bell.

Q. Was he near you when he lifted the lid?

A. On the way over.

Q. And did you examine—you made an investigation of what was in there at once; did you?

A. Very thoroughly.

Q. Did you say anything to him—to Mr. Bell when you found that there were only three articles in there and that the ring was not in there?

A. The first thing I remember saying was, "My God! My wife's ring is gone."

Q. Did Mr. Bell say anything?

10 A. I don't remember.

Q. What did you do?

A. Somebody must—I said, "something must have happened to the box. Get the detective here at once."

Q. Did you get Mrs. O'Connor?

A. Then I went over to the stairs and called Mrs. O'Connor and said, "Your ring is gone."

Q. And where did you go then when Mrs. O'Connor came up?

A. Stayed at the desk.

20 Q. How long did you remain at the desk?

A. I probably was around that desk maybe a couple of hours.

Q. Did Mrs. O'Connor stay there during all that time?

A. No, she was taken up to her room by the house detective.

Q. When did he come there?

A. Probably within five or ten minutes after the loss was noticed.

30 Q. Have you ever had the ring returned?

A. No.

Q. Ever get the ring back?

A. No.

Mr. Bolte: Cross-examine.

Cross-examination.

By Mr. Cole:

Q. What room did you occupy?

A. I don't remember the number.

Q. When did you arrive?

A. Saturday afternoon, August 13, 1927.

Q. And what day of the week did you lose the ring? 10

A. The following Monday, August 15th.

Q. Now, where were you when your wife gave you the ring?

A. In our room.

Q. And at the same time gave you her watch?

A. Yes, sir.

Q. What did you do with her ring and her watch, if anything, immediately after she gave them to you?

A. Put them in my right-hand coat pocket. 20

Q. Are you sure you put them in your coat pocket?

A. Yes.

Q. Did you tell anybody that you had put them in your hip pocket?

A. I don't think so.

Q. Well, now, think a moment. Didn't you tell the detective, the house detective, that you had placed those things in your hip pocket?

A. As I remember, I put them in my right-hand coat pocket. It is two years back, and it is quite a while back to remember. 30

Q. You may have said that?

A. Yes.

Q. Of course, if you said to the detective that you placed them in the hip pocket, you meant the hip pocket, of course, of your trousers?

A. Yes.

Q. Well, now, did you place your own articles in whatever place you did put her ring and watch at the same time?

A. Yes.

Q. And what were they?

A. My wife's watch, my own and my bill fold.

Q. Did that have money in it?

A. Yes.

10 Q. Where had you that bill fold before you put it in the other pocket?

A. In my hip pocket.

Q. Then, the folder was in your trousers pocket?

A. The bill fold, yes.

Q. Now, is it your idea that you removed this bill fold from your trousers pocket and put it in your coat pocket with the other articles?

A. It seems to me it was.

20 Q. All right. Now, was that done up-stairs in the room?

A. Yes, yes.

Q. Then, you and your wife came down to the room at the desk, to the desk?

A. Yes.

Q. Who was inside of the desk when you arrived?

A. I don't remember except Mr. Bell.

Q. Mr. Bell was there?

A. Of course.

Q. Was the lady in charge of the post-office there?

30 A. I don't remember.

Q. Was there a lady who came there?

A. I don't remember.

Q. The only person you remember being there at the time was Mr. Bell?

A. Yes.

Q. Now, did you take these things out of the pocket where they were?

- A. Yes.
- Q. What did you do with them?
- A. Put them in the box.
- Q. Directly from your pocket?
- A. Absolutely.
- Q. Didn't you put them on the desk?
- A. No.
- Q. And handed the box to Mr. Bell?
- A. Yes.
- Q. What did he do with it? 10
- A. He started away with it, lifting it up from the desk.
- Q. The box was on top of the desk, wasn't it?
- A. Yes.
- Q. You placed the articles in the box?
- A. Yes.
- Q. And he lifted the box and started away.
- Started away where?
- A. Started for the vault back of the desk.
- Q. You saw him all the time, didn't you? 20
- A. Yes.
- Q. You saw him put the box away?
- A. Yes.
- Q. Did he remove that key between the time you put it in the box and the time he put it in the safe?
- A. When he locked it he gave me the key back.
- Q. You didn't see him take the key out of the box, did you?
- A. I don't remember that, no.
- Q. Well, you were watching? 30
- A. Yes.
- Q. You were looking at him all the time?
- A. Yes.
- Q. Now is this a box of the kind in which you say you placed the articles?
- A. Yes, that is about the type box.

Q. That is the type of the box, isn't it?

A. Yes.

Mr. Cole: Mark it for identification—in evidence.

(A box is marked in evidence for the defendant, D1.)

10 Q. Did you see him lock the box? Did you see him lock the box?

A. Yes.

Q. Then he gave you a key?

A. Yes.

Q. And you took that away with you?

A. Yes.

Q. I show you a photograph and ask you if you recognize what that photograph shows?

20 A. Why, I am not so sure that all this glass work was on the counter at that time. I haven't seen the hotel in two years—these glass partitions here. I am not sure —

Q. Well, does it correctly portray the vault, the boxes?

A. As I remember the vault was a little over towards the center, and back here was some other offices, or some place back here where Mr. Bell stood. I couldn't see Mr. Bell when the lady that waited on me went to get him.

30 Q. I am not asking you that. I am asking you whether or not that photograph correctly portrays the place in back of the desk where the articles were.

A. I am not absolutely sure.

Q. You say it does not?

A. I am not absolutely sure.

Mr. Bolte: He did not say that.

Mr. Cole: I am asking him whether he says it does not.

Q. Do you say it does not?

A. I would not say that it does.

Q. Does it look anything like —

A. That system looks familiar, yes.

Mr. Cole: Mark that for identification.

10

(Marked D2 for identification.)

Q. Did you notice that there was a post-office there?

A. Yes, there was.

Q. I show you another picture and ask you whether that correctly portrays the situation behind the desk?

A. I don't remember that, either.

20

Mr. Cole: Mark that for identification.

(Marked D3 for identification.)

Q. Had you been to this desk before the day that you left the articles?

A. Yes.

Q. How many times the day before?

A. Once.

Q. What did you do with the key that they gave you?

A. Put it in my pocket.

Q. And where was it when you were in bathing?

Mr. Bolte: What difference does that make, if the Court please?

A. I am pretty sure I took the key with me. I don't think I trusted the key to the bath people.

Q. You had the key with you all the time?

A. I am pretty sure that I did.

Q. Now, did you and your wife occupy the same or separate bathrooms?

A. I think—I am pretty sure we had separate rooms. It is reasonable we had separate lockers.

10 Q. Now, when you came back to the hotel to get these articles, did you come directly from the bath-houses to the desk?

A. Yes.

Q. When you arrived, who was behind the desk?

A. A lady who waited on me.

Q. A clerk?

A. I think she was.

Q. Anyone else?

A. I don't remember anyone else.

20 Q. How long was it after you arrived before Mr. Bell came in?

A. A minute or two.

Q. And you say that the clerk or whoever it was there couldn't get the box open?

A. That is what she told me.

Q. Had you noticed—was she in your sight all the time?

A. Yes.

Q. While she was trying to get the box open?

A. Yes.

30 Q. You saw her all the time?

A. I saw her.

Q. How far would you say that this vault was away from where you stood?

A. Why, probably from here to the wooden railing back there.

Q. And in your plain sight all the time, wasn't it?

A. Yes.

Q. Did she tell you why she couldn't get the box open?

A. She said, "I can't open the box. I will have to get the cashier."

Q. When Mr. Bell came, did he have any trouble getting it open?

A. No.

Q. Do you know whether the reason the clerk didn't get it open was because she had not first used the master key?

A. I would not know that.

Q. I am trying to find out. Did you know that?

A. No.

Q. But when Mr. Bell came he used that key; didn't he?

A. I presume he did.

Q. And had no trouble opening the box?

A. Apparently not.

Q. Then he brought the box out to you in your sight; didn't he?

A. Yes.

Q. And as he came toward you lifted the lid?

A. Yes.

Q. Then, as you say, you put your hand in to take these things out, and you didn't find the ring?

A. No.

Q. Now, after you thought you had lost the ring, did you and your wife go to your room with the detective?

30

A. Yes.

Q. Did the detective search the room for this ring?

A. Yes.

Q. Were you there?

A. Yes.

Q. And your wife?

A. Yes.

Q. How long was he there searching?

A. Twenty minutes or half an hour.

Q. Was that the house detective?

A. On that occasion the house and the city detective. I was present.

Q. Mr. Scherer, city detective, was there, wasn't he?

A. That was his name.

10 Q. On that occasion, was one of the maids examined to see whether she had the ring?

A. She was brought in and questioned. I don't know about the examination.

Q. Was she examined in her clothing to see whether she had the ring on her person?

A. No.

Q. What, if anything, did you say to the detective during that examination and investigation?

A. The house detective did most of the talking.

20 I did very little.

Q. All right.

A. The city detective, Scherer, he had little to say to me. Just before he left he turned to Mrs. O'Connor and —

Q. I didn't ask what he said. I asked what you said during that investigation.

A. I offered myself up for any examination or degree that they might want to put me through.

30 Q. Now, do you know whether the next day after the supposed loss of this ring, that an article appeared in the Atlantic City Press advertising the loss?

A. I suppose it did.

Q. Did you see the advertisement?

A. I forget.

Q. Do you mean you don't now remember whether you saw it or not?

A. No, I don't.

Q. Well, I show you what we claim is the advertisement and ask you to look at it, under the caption of "Lost and Found," and tell me whether you ever saw that before.

A. That is similar to the ad, yes; that is similar to the ad.

Mr. Cole: Mark it for identification.

10

(Marked D4 for identification.)

Q. Do you know how that came to get in the Atlantic City paper?

A. Yes. I dictated it to the clerk at the hotel and he phoned it in for me.

Q. Do you remember what clerk that was that you dictated it to?

A. No, I don't.

Q. Did you pay the bill for the printing?

20

A. I did.

Q. \$5.25?

A. I don't remember.

Q. You don't happen to have your bill here, do you?

A. Mr. Bolte may have it amongst the papers.

Mr. Cole: Have you the bill that he paid, Mr. Bolte?

Mr. Bolte: I don't think it is there. I am pretty sure it is not there. 30

Q. I show what we say is a copy of the bill you paid, which we say includes the cost of the advertising, and ask you whether by looking at it, you think that is a copy of your receipted bill.

A. On my hotel bill I don't remember this addition of \$5.25 for advertising. The bill was given me by a lady clerk and I handed it back to her, asked her if I was not entitled to a discount. She made that deduction and, as I remember, I paid for the bill for this advertising separately.

Q. You mean you paid it by a separate check?

A. Cash.

Q. Separate cash; is that what you mean?

10 A. As I remember it.

Q. Did you get a receipt for that?

A. Yes; I got a receipt for it.

Q. So that you did pay the advertising bill and got a receipt for it?

A. Yes.

Q. Did you tell the house detective that you might have lost your ring between the Traymore Hotel and the Central Pier?

A. No, I did not.

20 Q. Now, why—where did you say your wife was when you went back and discovered the loss?

A. Somewheres on the stairs leading to the street; or around the landing.

Q. Had you gotten back to your room?

A. No.

Q. You were just going in to get the jewelry and going out again?

A. Going out for supper.

Q. You didn't eat your meals in the hotel?

30 A. No.

Q. Who was it said something must have happened to the box?

A. I don't remember.

Q. Well, who was there who could have said that? I understand there was nobody there except Mr. Bell.

Mr. Bolte: There was no testimony at all that some one said something must have happened to the box.

The Court: He testified that the girl said the box must have stuck. She couldn't open it.

Mr. Cole: No, my recollection is that he said something—somebody said something must have happened to the box. If I am wrong about that — 10

The Witness: I didn't say that.

Mr. Cole: I think that is all.

Re-direct examination.

By Mr. Bolte:

Q. You say you inserted an ad in the Atlantic City Press. How soon or how long after this loss was discovered was the ad phoned in? 20

A. I think it was phoned in late that same evening.

Q. About how long after the loss was discovered?

A. Three or four hours.

Q. By whom was it phoned in?

A. One of the hotel clerks.

Q. Had you prior to that time had any conversation with any one connected with the management of the hotel? 30

A. I had an interview with Mr. Montgomery in his office.

Q. Whose thought was it that that ad should be sent in?

A. May I answer that at length or shortly?

Q. Was there a suggestion made to you by some one that the ad should be put in?

A. Yes, Mr. Montgomery said, "You might advertise for it."

Q. Was it—had the thought been in your mind prior to that?

A. No.

Q. Was it his thought that it should be done, at his suggestion?

10 A. Yes.

Q. And it was at his suggestion that this ad was placed in the paper?

A. Yes, after talking with my wife.

Q. In the meantime had you been all this time at the desk for your ring?

A. Except a little while I was up-stairs with the detectives who were examining the room.

Q. How long were you up there?

A. Oh, probably half an hour.

20 Q. During that time, when you found that the ring was lost, were you a little bit excited?

A. Why, it seemed like a dream.

Q. Answer the question. Were you or weren't you?

A. Yes, terribly.

Q. Did that continue all that evening?

A. Yes.

Q. And while you had the interview with the detective, and so forth?

30 A. Yes.

Q. You say that you offered yourself, in reply to a question of Judge Cole, you stated that up in the room you offered yourself to the detective to be examined?

A. Yes.

Q. Was that in response to something the detective had stated to you or to your wife?

A. He said to Mrs. O'Connor just before he left, "Don't worry about your ring, it will be returned _____"

Mr. Cole: I object to the detective binding the company.

The Court: Sustained.

Mr. Bolte: If your Honor please, what he said 10
is in response to something. We are entitled to have
what occurred there, not just what this man said.
We are entitled to the entire conversation and cir-
cumstances that took place in that room that oc-
casioned this response.

The Court: You are entitled to show just what
occurred in the room, but I don't think the Hotel
Traymore Company would be bound by a statement
of Mr. Scherer—surely not of Mr. Scherer, and that 20
was the person with whom I understood him to say
he was having the conversation. It might well be
that under some circumstances you would be entitled
to show the whole conversation, but at the present
time it does not seem to me you are. All he has
been asked is to say what he said, and he said, "I
am willing to submit myself to any kind of an exami-
nation." At the present time I will overrule your
question; but on the other hand if after-develop-
ments make it appear necessary that that should be 30
gone into, I will permit you to recall him for that
purpose.

Mr. Bolte: Very well. And you will allow me an
exception at the present time?

The Court: Yes.

Q. At the time you made that statement, to whom was it made?

A. Mr. Scherer.

Q. Anyone else in the room at the time?

A. My offer was made —

Q. Was anyone else in the room at the time?

A. No.

Q. Who was there?

A. This was not made in the room.

10 Q. Where was it made?

A. Right in front of the desk.

Mr. Cole: I object to the further reason.

The Court: I will permit it to stand in relation to his former testimony.

Q. Who was present then at the desk when that statement was made?

20

Mr. Cole: This is not re-direct now.

The Court: But you on cross-examination asked him if he made a statement. He said he did. Now then, he is entitled to show where he made it. The impression I got was—and perhaps the impression the jury got was—that it was in the room. Now, he is trying to show where it was made, and I will permit it.

30

Mr. Cole: Allow me an exception.

The Court: Yes.

Q. Where was the statement made by you?

A. Right near the desk.

Q. Was it before or after you had been up in the room?

A. After.

Q. Who was present when that statement was made?

A. Mrs. O'Connor and the house detective and detective Scherer.

Q. Had you been up more than once to the room before that?

A. No.

10

Q. Just once?

A. Just once.

Q. And about how long had you been up there?

A. About half an hour.

Q. Had Mrs. O'Connor been up there more than once?

A. Yes.

Q. How often was she up there?

A. Two or three times.

Q. Do you know who went up with her the first 20 time?

A. Only the house detective.

Q. Do you know who went up—who went up the time that you went up?

A. The house detective; Detective Scherer, Mrs. O'Connor and myself.

Q. And that is the occasion that you say you were in the room a half an hour?

A. Yes.

Q. And is that the occasion that the maid was 30 called in?

A. I think so, yes.

Q. Do you know who called her in?

A. I think the house detective.

Q. Had you and Mrs. O'Connor at that time made any charge against the maid at all?

A. No, no.

Q. Did you suggest to the house detective or to Mr. Scherer that the maid may have taken this ring?

A. No, no.

Q. You paid your bill at the Traymore; did you?

A. Yes.

Q. How long did you stay there all together?

A. I think it was—let me see, Saturday, Sunday, Monday—I think it was three nights; three or four.

10

Re-cross examination.

By Mr. Cole:

Q. Is it not a fact that the suggestion to advertise the loss of this ring came from Detective Scherer?

A. No.

20

Q. He didn't suggest it at all?

A. I don't remember it.

Q. You say he didn't?

A. I don't remember that he did.

Mr. Cole: All right.

(Witness excused.)

30

COLLETTE A. O'CONNOR, the plaintiff, called as a witness in her own behalf, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bolte:

- Q. Mrs. O'Connor, how old are you? 10
A. Twenty-six.
Q. And you have been married how long?
A. Two years.
Q. Who is your husband?
A. James L. O'Connor.
Q. You live where?
A. Buffalo, New York.
Q. How long have you lived there?
A. All my life.
Q. You are living in Buffalo now? 20
A. Yes.
Q. And your husband is employed there?
A. Yes.
Q. Was employed during the time of your engagement and since that time?
A. Yes, sir.
Q. Is he with the same concern that he was with prior to his marriage?
A. Yes.
Q. Were the owner of a ring? 30
A. Yes, sir.
Q. What kind of ring was it?
A. Diamond platinum ring.
Q. Was it your engagement ring?
A. Yes.
Q. Did you go with your husband when he bought it?

- A. Yes.
- Q. Do you know how much was paid for it?
- A. Yes.
- Q. How much was paid for it?
- A. \$850.
- Q. How much?
- A. \$850.
- Q. From whom was it purchased?
- A. Fred Dorn.
- 10 Q. Is he a jeweler there?
- A. Yes, on Genesee Street.
- Q. In Buffalo?
- A. In Buffalo.
- Q. And on your honeymoon you came here to the Hotel Traymore, did you?
- A. Yes.
- Q. Were you there on the 15th of August, 1927?
- A. Yes.
- Q. Do you remember that day?
- 20 A. I should say I do.
- Q. Did you have your ring that day?
- A. Yes, I do.
- Q. Did you have it in the morning?
- A. Yes.
- Q. Until about what time did you have it in your possession?
- A. Till just before I went down to the desk.
- Q. Before you went down to the desk, did you give it to some one?
- 30 A. I gave it to my husband.
- Q. What was the purpose of giving it to him?
- A. I never flashed it very much. I was always more or less careful of it, and I just gave it to him for protection, to take down for me. I had that habit of doing that.
- Q. What was he to do with it that day?

- A. Put it in his pocket.
- Q. And after he put it in his pocket, where did he go?
- A. He went down the desk.
- Q. Did you go with him?
- A. Yes.
- Q. What was done by him that day so far as the ring was concerned, while you were at the desk?
- A. He put the ring in the box and after the ring was put in the box the lid was closed and I said to him, "Jim, is my ring there?" He didn't answer me, just opened the lid with a snap. I looked and there was the ring on the left-hand side of the corner, the stone facing the right-hand side. 10
- Q. You saw that?
- A. I saw it.
- Q. Was that your ring?
- A. My ring.
- Q. Was it the same ring you had given your husband that day? 20
- A. Yes.
- Q. The same ring he had given to you as an engagement present?
- A. Same one.
- Q. And that was bought from this jeweler for \$850?
- A. Yes.
- Q. And you saw it in the box on the 15th day of August, 1927?
- A. Yes. 30
- Q. Who had charge of the box at that time?
- A. Mr. Bell.
- Q. Do you know who Mr. Bell is?
- A. I could recognize him all right.
- Q. Where was he?
- A. Right at the desk.

- Q. Behind the desk?
A. Yes.
- Q. And to all appearances seemed to have been an employe of the Hotel Traymore?
A. Yes.
- Q. Was there anyone else present there behind the desk that you remember?
A. Not that I remember.
- Q. There might have been other people there?
10 A. Yes. I didn't notice them.
- Q. You were at that time entirely centered on the placing of this ring in this box with Mr. Bell?
A. Yes.
- Q. Do you know what was done after the lid was put down and it was turned over to Mr. Bell?
A. You mean the second time?
Q. Yes.
- A. Why, he just took and put it in the locker and gave Mr. O'Connor the key and a slip of paper.
- 20 Q. Did you after that leave the Traymore?
A. Yes.
- Q. Where did you go?
A. To the Peikin Baths.
- Q. Do you know how long you remained there?
A. Couple of hours.
- Q. You went bathing, did you?
A. Yes.
- Q. Who remained longer—that is, in bathing—
you or your husband?
30 A. My husband.
- Q. Where did you go?
A. I went to the hair dresser's.
- Q. From Peikin's baths?
A. Yes.
- Q. Came back there again and met your husband?
A. Yes.

Q. And from Peikin's baths, then where did you go?

A. To the hotel.

Q. Did you go up on the office floor?

A. No, I did not.

Q. Who did?

A. My husband.

Q. Did you wait down-stairs?

A. Yes, I waited down-stairs.

Q. Any word come to you at all from your husband after that? 10

A. Yes, he came down and said, "Collette, your ring is gone," and I went up immediately and looked myself and it was gone.

Q. What was his condition? Was he calm?

A. Oh, terrible; awful nervous, very excitable.

Q. Somewhat excited. Where did you go then after you went up-stairs?

A. You mean —

Q. Toward the office floor? 20

A. Right to the desk.

Q. Anything said there at all?

A. Why, yes.

Q. Do you remember anything that was said there at the time?

A. I wanted to know where my ring was.

Q. Any one come there at the desk?

A. Mr. Bell—well, first there was a girl.

Q. Anyone come there to the desk from the outside? 30

A. Not that I know of.

Q. Did you see the detective?

A. Oh, yes.

Q. When did he come?

A. When Mr. O'Connor called for him.

Q. To whom did Mr. O'Connor make the request for the detective?

A. To Mr. Bell.

Q. Do you know the name of the detective?

A. House detective.

Q. Beg pardon?

A. House detective.

Q. Yes.

A. Mr. Lempke.

Q. How long were you at the desk before the detective came there?

10 A. Maybe about five minutes.

Q. After the house detective came there, where did you go?

A. He took me up to my room.

Q. Up to your room?

A. Up to my room.

Q. What did he say?

A. Well, he looked all over the room and he took my face powder and put it on the dresser and went through it with a nail file.

20

Mr. Cole: I object.

The Court: I think she is entitled to show what was done in the room. I will permit it.

Mr. Cole: I want to object to anything that may have been said.

The Court: This was what was done.

30

Mr. Cole: Well, all right.

The Witness: He took the nail file and had the face powder.

Q. Don't say anything that the detective said, only what he did.

A. He examined the room, looked under the bed, under the castors, under the mattress, and face powder, and through my grips and boxes.

Q. Did you do any searching up there?

A. No, I just stood there.

Q. During that time, that first visit, was the maid sent for at all?

A. No, not that first visit.

Q. How long were you up there with him?

A. Only about fifteen minutes.

10

Q. Did you go up again after that?

A. Yes, I did.

Q. Who went up the second time?

A. Mr. O'Connor and the two detectives—house detective and Mr. Scherer.

Q. On that occasion there were the maids sent for?

A. Yes, they were.

Q. How many maids were sent for?

A. Two.

20

Q. Was there any suggestion from you that the maids should be sent for?

A. Yes. After they told me that I left the ring in the room, then they insisted I left the ring in the room. I said, "Well, I will have the room searched," and I said, "Have the maids questioned, if there is any doubt that I left the ring in the room."

Q. Did you at any time charge the maids with having ——

30

A. No.

Q. —taken this ring?

A. No, I did not.

Q. Was there any thought in your mind that the maids had taken it?

A. Not any at all.

Q. Did you ever get the ring back?

A. No, I didn't.

Mr. Bolte: Cross-examine.

Cross-examination.

By Mr. Cole:

10

Q. How did it happen that you asked your husband if he had put your ring in the box?

A. I was right in the habit of doing that. I was always very careful of it and I wanted to be sure it was there, and I did it previous to that, the day before, and the day again. I wanted to be sure the ring was there.

Q. Weren't you standing by when he turned the things over?

20

A. Yes, I was right there.

Q. You saw him?

A. Yes.

Q. What occasion was there for you asking him if he had put the ring in the box if you were there and saw what he did put in the box?

A. I wanted to see it again.

Q. What?

A. I wanted to see it again.

Q. Well, did you see him put it in the box?

30

A. Yes.

Q. And having seen him put it in the box, you asked him whether he had put it there. Now, is that so?

A. Yes.

Q. And then in answer to your question the box was opened and you looked in and saw it there?

A. Yes, it was right there.

Q. Was Mr. Bell by when he heard you ask your husband if he had put that ring in the box?

A. Mr. Bell was right there.

Q. Was the box on the desk all the time?

A. No, he started to walk away with it; then he brought it back after my husband called him.

Q. Started to walk away with the box?

A. Yes.

Q. Was the lid down?

A. Yes.

10

Q. And when you made your request Mr. Bell brought the box back?

A. Yes.

Q. And put it on the desk?

A. Yes.

Q. And your husband lifted the lid up?

A. Yes.

Q. And you saw the ring there?

A. Yes, saw the ring.

Q. And were you afraid there was some mistake; 20 that you had not seen the ring the first time, that made you ask whether it was there?

A. No, I knew it was there.

Q. What?

A. I knew it was there.

Q. You knew it was there when?

A. The first time.

Q. But notwithstanding that, you asked him to be sure it was there?

A. Yes.

30

Q. Did you see Mr. Bell put the box in the vault?

A. Yes.

Q. Lock the door?

A. Yes.

Q. And gave the key to your husband?

A. Yes.

Q. Now, you had put these things away the day before; hadn't you?

A. Yes.

Q. You got the ring back all right?

A. Yes.

Q. Was the same performance gone through the first day as it was the second?

A. Well, I don't remember asking the day before about the ring; but I looked twice, I know.

10 Q. A little while ago I think you did say the day before you asked the same thing, whether he put the ring in the box. Now, were you wrong about that?

A. I don't remember asking, but I remember looking twice before the lid was put down to see it was there.

Q. Were you afraid that maybe your husband might overlook your ring?

A. No.

20 Q. Where do you recall that he put your ring when you handed it to him?

A. You mean when he put the ring in the box?

Q. No, when you first gave it to him up-stairs, where did he put it?

A. I remember him putting it in the side pocket of his coat.

Q. Did you hear him tell anybody that he put it in his hip pocket?

A. Not that I recall.

30 Q. You knew he had his pocketbook in the hip pocket?

A. Yes.

Q. Now, what did Mr. O'Connor say when he requested a detective be sent for?

A. He said, "Get a detective here at once."

Q. He said that to Mr. Bell?

A. Yes. That is as I remember.

Q. And did the detective arrive while you were there?

A. Yes.

Q. And what was the first thing that the detective did after he arrived?

A. He looked over the box and he talked with us.

Q. Then what next?

A. Well, after that the house detective talked with me and he brought me up-stairs to my room. 10

Q. Then what occurred—then there occurred what you have already stated?

A. Yes.

Mr. Cole: That is all.

(Witness excused.)

Mr. Bolte: Now, if the Court please, we took some testimony as to value of the ring. I would like 20 to read the interrogatories and answers.

Mr. Cole: I have no doubt they bought this ring and paid \$850 for it. We don't know anything about it, but we are satisfied.

(Interrogatories and answers referred to by Mr. Bolte are marked in evidence as an exhibit for the plaintiff, P1.)

PLAINTIFF RESTS.

DEFENDANT'S CASE.

GEORGE SCHERER, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

10 Direct examination.

By Mr. Cole:

Q. Are you in the detective bureau of Atlantic City?

A. Yes, sir.

Q. How long have you been there?

A. Eighteen years.

20 Q. Were you called upon to go to the Traymore to investigate about the loss of the ring?

A. Yes, sir.

Q. Did you go?

A. I did.

Q. Do you recall whether you met Mr. O'Connor?

A. Yes, sir.

Q. Did you meet Mrs. O'Connor?

A. Yes, sir.

Q. Did you talk with both of them?

A. Yes, sir.

30 Q. In any of your talks did you suggest to Mr. O'Connor that he advertise for the loss of this ring?

A. Yes, sir.

Mr. Bolte: I object.

The Court: One second.

Mr. Bolte: What difference does that make?

The Court: You have asked Mr. O'Connor whether or not the advertisement of the ring was the thought of his own, and he said that it was not; that it was the thought of Mr. Montgomery.

Mr. Bolte: Suggestion of Mr. Montgomery.

The Court: Suggestion of Mr. Montgomery. 10

Mr. Cole: And he denied —

Mr. Bolte: No, he did not.

The Court: My recollection was that he said none of the detectives had suggested that. Now, I may be mistaken about that.

Mr. Bolte: He said he didn't remember. 20

The Court: Maybe he said that he did not remember. I am not sure about that.

Mr. Cole: I mentioned Mr. Scherer to him.

The Court: I will permit it.

Mr. Bolte: Exception. 30

Q. Now, state what you said and how it came about?

A. Well, it was about 6:40 I received a phone message.

Q. Never mind about all that. State how it came

about that you suggested the advertisement to Mr. O'Connor.

A. When I got to the hotel I went to the room —

Mr. Bolte: I think that question is entirely too broad. I think when he says how it came about —

The Court: I think the question is entirely too
10 broad.

Mr. Cole: I will withdraw that.

Q. What did you say to Mr. O'Connor about advertising the loss of the ring?

A. I told him —

Mr. Bolte: I object to that, if the Court please, because what he may have said to him I do not
20 think makes a bit of difference. If Judge Cole has a right to go into this at all, he can only go as far as whether he did or didn't suggest it.

The Court: I will permit the examination and allow an exception.

Mr. Bolte: Exception.

A. I told him that he should put an ad in the paper
30 stating the loss of his ring, and also to mention a liberal reward at the bottom, and he didn't have to give much if the ring was returned.

Q. What, if anything, did he say in reply to what you said to him?

A. He said, "What papers should I put it in?" I told him the Press—the Atlantic City Press.

Q. Now, what did you do in the presence of either Mr. O'Connor or his wife after you arrived at the hotel?

A. I went up to the room with Mr. Lempke, Mr. O'Connor and Mrs. O'Connor, and one of the maids. We turned everything upside down in the room, looked all around the room to see if we could find the ring, and questioned the maid at the same time. I talked to Mr. O'Connor and Mrs. O'Connor stood on the side there and Mr. O'Connor helped us to look for the ring also. Mrs. O'Connor stood on the side. 10

Q. Was either of the maids examined to see if they had the ring while you were there?

A. Well, the maids were questioned.

Mr. Cole: Cross-examine.

Cross-examination.

By Mr. Bolte:

20

Q. So you made a thorough search of the room?

A. Thorough search.

Q. Went everywhere, didn't you, Mr. Scherer?

A. Yes.

Q. And the ring wasn't in the room?

A. No.

Q. It was not anywhere in the room, was it?

A. No, sir.

Q. You questioned the maids, didn't you? 30

A. Yes.

Q. You made no examination of the maids?

A. No.

Q. No?

A. No.

Q. There was no thought that the maids had it?

A. Well, the thought came up through Mr. O'Connor to me to question the maids.

Q. The thought came through Mr. O'Connor asking you to question the maids?

A. Yes.

Q. And he charged that the maids had it?

A. He didn't exactly charge. He suggested that the maids be questioned.

Q. So that as a result—was that as a result of
10 your insisting that the ring was there in the place?

A. Why, no, we didn't insist the ring was in the place.

Q. Didn't—wasn't the insistment made by Mr. Lempke in your presence that that ring was in that room?

A. Not in my presence.

Q. Didn't Mr. Lempke in your presence make the statement that that ring was there and that is the usual way that actresses do, put them away?

20 A. He didn't say that in my presence, because I did most of the talking when I got there.

Q. It was not said in your presence at all?

A. No, not in my presence.

Q. That that is the usual place where actresses put it?

A. No.

Q. And intimated that this woman was an actress and put it away?

30 A. I wasn't there when he searched the powder box and that stuff. I wasn't there then.

Q. And didn't you because of the fact that there was an insistment constantly that the ring was there in the room—wasn't it because of the fact that there was an insistment constantly that the ring was there in the room that you were told to bring the maids in to show that it could not have been there?

A. It was only the suggestion Mr. O'Connor that I questioned the maids.

Q. And you suggested that the ad be put in the paper?

A. Yes.

Q. You don't know but what Mr. Meade had previously also suggested it, do you?

A. I don't know anything about that.

Q. Or Mr. Montgomery, I mean?

A. No.

10

Q. So that it was not Mr. O'Connor's thought at all about putting an ad in the paper?

A. No.

Q. No. It was yours or Mr. Montgomery's.

Mr. Cole: I object to "Mr. Montgomery." I simply asked this witness a simple question.

The Court: Of course, he cannot say anything about Mr. Montgomery. He has already testified 20 it was his thought and not Mr. O'Connor's thought.

Mr. Bolte: That is all.

Re-direct examination.

By Mr. Cole:

Q. What is the name of the house detective?

A. Mr. Lempke.

30

Q. Do you know whether he is dead?

A. He is dead.

(Witness excused.)

G. CLINTON BELL, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

10 Q. What is your position with the Hotel Traymore?

A. Cashier.

Q. How long have you been cashier?

A. Since January, 1924.

Q. Continuously?

A. Continuously.

Q. Has there been any change in the desk or back of the desk of that hotel the last four or five years?

A. No, sir.

20 Q. I show you a photograph and ask you if you know what that photograph portrays?

A. Why, that is a view of the cashier's desk from the lobby facing the safe.

Q. Is it correct?

A. It is absolutely correct.

Mr. Cole: I offer that.

30 Cross-examination on the offer.

By Mr. Bolte:

Q. Isn't there more to this office? This is just a portion?

A. Well, that is the cashier's section.

Q. But the office is considerably larger, isn't it?

A. Well, around to the front clerk's desk and bill clerk's desk.

Q. They are not separated at all?

A. There is just a separating partition.

Q. You mean a partition that runs all the way up or just a glass?

A. Just a short partition.

Q. Low, short partition? Then there is a great deal more to the office than that, isn't there?

A. To the whole front office, or just the cashier's 10 part?

Q. Yes, the entire office?

A. Yes, it is much larger.

Mr. Bolte: I have no objection.

(Photograph heretofore marked D2 for identification is received in evidence.)

Direct examination (resumed).

20

By Mr. Cole:

Q. I show you another photograph and ask you if you know what that portrays?

A. That is a view showing the space between the cashier's desk and the safe, looking back of the cashier's desk.

Q. Is that correct?

A. That is correct; yes, sir.

30

Q. What is the distance from the cashier's desk to the safe?

A. Well, it is between four and five feet; between four and five feet.

Mr. Cole: I offer that.

(The photograph proffered, heretofore marked D3 for identification, is received in evidence.)

Q. On the day that Mr. O'Connor left some articles with you to be put in the box, was there anything to prevent his seeing you from the time you took the box from him and put it in the safe and the time you took it out of the safe and handed it to him?

10 A. No, sir.

Q. Were you always in plain view of him?

A. Absolutely in plain view.

Q. Do you remember the number of the box that he had that day?

A. Yes. It was number 304.

Q. Do you remember his leaving articles on that day?

A. He put articles in the box that day.

Q. Handed them to you?

20 A. No, sir, I didn't handle them.

Q. Were you there?

A. I was there.

Q. To whom were they handed?

A. He put them in the box himself.

Q. I don't mean that. He put them in the box himself?

A. Yes.

Q. But who handled the box after he did?

A. I handled the box after he did.

30 Q. Did you put the box in the safe?

A. I put the box in the safe immediately.

Q. Do the doors lock themselves or do you have to use a key?

A. You have to use a combination of the key for the box and also a master key.

Q. Did you have to do that when you locked it?

A. When you lock it, yes, sir.

Q. As well as unlock it?

A. Yes. You cannot take the key out without throwing the two locks.

Q. After you had locked, it what did you do with the key?

A. The key to the box was given to Mr. O'Connor

Q. And where is the other key kept?

A. The master key is kept in the office.

Q. Which of the two keys did you have to first use? 10

A. That is the master key.

Q. Can you get the box open without using the master key?

A. No, sir.

Q. Can you get the box open without using the key that Mr. O'Connor had?

A. No, sir.

Q. Did you take any notice as to what was in the box on the day the articles were placed in it? 20

A. No particular notice, no.

Q. Do you remember whether you saw a ring or not?

A. I don't recall seeing the ring.

Q. Now, about what time of the day was it that the things were left there?

A. I should say it was some time a little after two, as near as I can recollect.

Q. And what time did Mr. O'Connor call for the articles? 30

A. Somewhere near six o'clock.

Q. Were you there at the moment he called?

A. No.

Q. How long were you out of the office—just a moment now—between the time that he left the things there and the time you came back and saw there was some confusion about it?

A. Why, I left the office there, and I was out of the office probably two minutes.

Q. Were you out any other time than that from the time he left the things until he came after them?

A. Not that I recall.

Q. Now, was there anyone else behind the desk at any time during the period of the leaving of the articles and Mr. O'Connor calling for them?

A. Why, yes, the postmistress came on duty in the
10 office next to me about five-thirty.

Q. Is that office shown in the photograph?

A. Yes, that is shown in the photograph.

Q. Is that to the far left of the picture?

A. I believe to the far right of the picture, on this side.

Q. Oh, the far right?

A. Yes.

Q. What is her name?

A. Mrs. Weyman.

20 Q. Does she have anything to do with checking articles or returning them?

A. Not supposed to, no, sir.

Q. She is not in the employ of the hotel?

A. Well, she is in the employ of the hotel, but only in the post-office department.

Q. Does she have possession of the master key?

A. She has the use of the master key for the compartment in her safe.

30 Q. Now, do you recall whether any clerk was present at the time these articles were delivered?

A. That I cannot say.

Q. Was there a clerk there at the time that Mr. O'Connor called for them?

A. Mrs. Weyman was there in her part of the office.

Q. Now, there has been something said —

A. And also a bill clerk working at her side.

Q. Something was said about trouble getting this box open. Had there been some trouble getting it open, to your knowledge?

A. When I came up there, Mrs. Weyman was trying to open the box as Mr. O'Connor was insisting upon getting the box. Mrs. Weyman had the one key only, not the master key, for some reason, and when I came in she said, "I can't open this box." I said, "No, you haven't the master key." So I reached over and took the master key and the other key and opened the box without any trouble. 10

Q. Did you take the box out?

A. I took the box out.

Q. What did you do with it?

A. Placed it on the desk in front of Mr. O'Connor then at the little hole in the glass there, the window. I lifted back the lid and shoved it through so he could take the contents out. 20

Q. Now, then, what took place at that time?

A. Almost immediately Mr. O'Connor said, "Where is my wife's ring?" I said, "Your wife's ring?" He said, "Yes." I said, "It must be in the box. Did you put it in?" He said, "I put it in." "Well," I said, "It must be there." I said, "Where is your wife?" He said, "Down in the lower lobby." I said, "You ask your wife if she gave it to you to put it in." He said, "I will." In the meantime I sent for Mr. Lempke, the house officer. 30

Q. Right there, they say that they requested.

A. I sent for him immediately as soon as I saw there was any trouble there.

Q. Did Mr. O'Connor suggest that you send for the house detective, or did you do it on your own initiative?

A. I did it on my own initiative.

Q. And did he come?

A. He came within a very few minutes, maybe a space of four or five minutes.

Q. Then what happened to Mr. and Mrs. O'Connor?

A. They walked a little way from the desk and talked to the house officer. I didn't hear any of that conversation. I stayed behind my desk.

10 Q. Do you have any personal knowledge of what happened, so far as the detectives were concerned?

A. No, I don't.

Q. Did you have anything to do with putting the advertisement in the newspaper?

A. I knew nothing about it at the time.

Q. Has this same safety vault been in that hotel since it was built?

A. Well, it was there before I came there.

20 Q. Is there any way that you know of whereby that box could have been opened except by the use of these two keys?

Mr. Bolte: I object.

The Court: I will permit it.

Mr. Bolte: Allow me an exception.

30 The Court: Yes.

Q. Do you know of any way that box 304 could be opened except by the use of these two keys?

A. No way to my knowledge.

Q. Did you take that ring?

A. I did not.

Q. Do you know of anybody else taking it?

A. I do not.

Mr. Bolte: I object to that. I don't see that that is —

The Court: I will permit it to stand.

Mr. Bolte: I didn't get a chance to put in an objection, but I don't think it is relevant.

Mr. Cole: It might be, if he knew.

10

The Court: Yes, if he knew it might help a whole lot.

Mr. Bolte: Allow me an exception. I don't think it is direct examination.

The Court: Yes.

Q. Have you told us all that was said to you by Mr. O'Connor and all that you said to him that you recall? 20

A. I believe so.

Q. Mrs. O'Connor said she saw the ring in the box and that then she said to her husband in your presence, "Is the ring in the box?" and he opened the box after that and looked in and said, "Yes, it is there." Did you hear that conversation?

A. I did not.

Q. Did any such conversation as that take place in your presence? 30

A. No, sir.

Cross-examination in chief.

By Mr. Bolte:

Q. August 15th, Mr. Bell, is about the busiest time that the Hotel Traymore has, isn't it?

A. Well, it is our busy season.

Q. Isn't it the height of the season?

10 A. Well, it is in the high part of the season.

Q. You handle thousands of people?

A. We handle many, yes, sir.

Q. Don't you handle thousands of them?

A. I never counted them.

Q. Don't you know whether you handle thousands without counting them?

A. I know there are a great many guests there at the hotel.

20 Q. And you don't know whether you handle thousands?

A. I never counted up either thousands or hundreds.

Q. You don't know? Is that as much as you know about the hotel?

A. I don't know how many they handle.

Q. You don't know whether they handle hundreds or thousands?

A. I don't have the records. I know they handle a great many people, but how many I don't know. I don't handle records.

30 Q. Do you think they handle more than one?

A. I think they handle more than one.

Q. But you don't know whether that runs in August 15th —

A. I have no idea whatever what the house count is.

Q. You don't discuss that?

- A. I don't discuss it.
- Q. You don't discuss it?
- A. I have no occasion.
- Q. You hotel people don't discuss what your house count is?
- A. That is not my department.
- Q. I am simply asking whether you don't, whether it is your department or not.
- A. No.
- Q. You don't know. You handle a good many 10 people—a good many people come up to your desk on August 15th?
- A. I handled quite a few people that day.
- Q. Hundreds?
- A. I don't know whether it was a hundred or two hundred.
- Q. Do you pay attention to what they say, the conversation that takes place?
- A. Very little conversation takes place.
- Q. Do you pay attention to what is said by them? 20
- A. If it is to me, yes.
- Q. If it is not addressed to you, do you pay —
- A. I don't pay attention to other people's business, no.
- Q. And a good deal may be said that you don't hear?
- A. There might be something said beside the desk that I don't hear.
- Q. And there is a glass partition between you and the outside? 30
- A. Yes.
- Q. And this conversation may have taken place between this man and wife and you not have heard it?
- A. It might have taken place between them, but it was not in my presence.

Q. Right there where you were and you not heard it?

A. I didn't see Mr. O'Connor or Mrs. O'Connor on that date.

Q. You didn't see them at all?

A. Not on that date.

Q. You mean to say she was not there?

A. She was not there as far as I could say.

10 Q. So she was not there? Then Mrs. O'Connor is wrong when she says she was there at the desk?

A. She was wrong as far as I can tell on that date.

Q. Just as far as you can tell, but you are not certain?

A. She was not at the window with Mr. O'Connor, by his side.

Q. You are positive of that?

A. I am positive.

Q. And there wasn't anyone there with you?

20 A. No one with me, no.

Q. These lock boxes, how do they lock?

A. They lock with a master key and a key to the box; same as a safe deposit vault box.

Q. Do you have to lock them with a master key?

A. You have to lock them with both keys.

Q. Put the master key in and lock it and put the other key in and lock it?

A. Master key, and turn the other key before you can lock them.

30 Q. Does it go in the same slot or keyhole?

A. No; there is two distinct keyholes.

Q. Are you a mechanic?

A. I am not a mechanic.

Q. So far as your knowing whether they can be opened in any other way, it is just from your observation of seeing this particular safety vault?

- A. I know the safe deposit box.
- Q. Do you know as an expert that it cannot be opened?
- A. I don't qualify as an expert.
- Q. You don't know whether it can be opened by some one else?
- A. There is no possible way that I know of.
- Q. But you don't know that it could not be opened and you not know?
- A. I say it could not be done, as far as I know. 10
- Q. But that is only as far as you know; that some one else who may know more about them might be able to open them and you not know anything about them; isn't that true?
- A. That I couldn't say.
- Q. How big is your office?
- A. Well, that office—you mean the cashier's office?
- Q. No, the entire office.
- A. What do you mean by the entire office?
- Q. Whatever part you work in and those that 20 are associated with you?
- A. In the cashier's cage there is two cashiers' desks and post office desk. Each window is about three or three and a half feet and it is about four and a half feet back to the safe.
- Q. Going around front, how much more space is there where people can come up?
- A. You mean the window?
- Q. Yes.
- A. This counter runs around quite a large space. 30
- Q. About how many feet, do you think?
- A. I don't know.
- Q. How many people are employed there?
- A. Oh, there is a dozen or more.
- Q. And they get into that cage?
- A. They can get in through the door.

- Q. And the door is opened? It is not locked?
A. It is not locked.
Q. And it may be possible that this afternoon you were out some time?
A. I was not out before a few minutes of six.
Q. You weren't out of the cage at all?
A. No.
Q. For any occasion at all?
A. No occasion.
- 10 Q. From two to a few minutes of six o'clock you weren't out?
A. No.
Q. And you just happened to be out just once when Mrs. Weyman came?
A. Yes. I just left Mrs. Weyman there so that if anyone wanted some stamps she could get it for them.
Q. Were you busy?
A. Not so very busy that afternoon, no.
- 20 Q. And you could tell all the time whether a man came in or didn't?
A. Yes.
Q. And you could tell all the time whether some one came in or not?
A. Yes.
Q. You are positive of that?
A. Yes.
Q. You are absolutely confident of that. Now, where did you keep the keys when they were not in
- 30 use?
A. Which keys do you mean?
Q. Either one, the master key or the other one.
A. The master key is in use all the time in the safe, either opening one box or another for somebody.
Q. So it is always at hand?

- A. It is always at hand.
- Q. Where is it kept?
- A. Right at the safe.
- Q. So that any one coming along can use it?
- A. Well, only the cashiers use it.
- Q. Any one who could come along can use it?
- A. What do you mean; anybody comes along?
- Q. If I were stepping back to your desk, I could use it, couldn't I? The key is there?
- A. How would you get back of my desk? 10
- Q. I am asking you if I were back there I could use it; couldn't I?
- A. You would have no business to use it.
- Q. But I could if I were back there?
- A. I don't know whether you could or not.
- Q. Why not?
- A. Because you would have no access to the office.
- Q. But if I were back there, if I was actually there?
- A. Well, you are not there. 20
- Q. That may be true.
- A. What is the idea of the supposition?
- Q. I will ask you to answer the question irrespective of what the idea or the supposition is. If I were back of that cashier's desk, actually back there, there would be nothing to stop me from using that master key; would there?
- A. If you knew the master key.
- Q. Exactly. Nothing to stop me; it is right there, free access, isn't it? 30
- A. Yes.
- Q. Where do you keep the rest of the keys?
- A. The unoccupied boxes, the keys remain in the box.
- Q. In what box?
- A. In the box to which they belong.

Q. So that anyone who could get back there could get those keys, couldn't they?

A. The unoccupied boxes?

Q. Yes.

A. I suppose they could.

Q. And if a person did get them, there would be no trouble of making a duplicate key, would there, while you are not in there? You are not there twenty-four hours?

10 A. No, I am not there twenty-four hours.

Q. And during some part that you are not there, somebody who could get hold of that and make a duplicate of it—couldn't they?

A. I suppose so.

Q. And if they did make a duplicate key, the master key being accessible, that person could get in the box; couldn't they?

A. Yes.

20 Q. How many people did you say were employed at the Traymore in the office?

A. Oh, I would say—all together?

Q. Yes.

A. I guess pretty near twenty.

Q. And you take on additional employes in the summer, don't you?

A. One or two.

Q. Is that all they take on?

A. Yes, sir.

Q. One or two?

30 A. Well, one or two; maybe two or three.

Q. Three or four?

A. No.

Q. Four or five?

A. No.

Q. You say that the postmistress has the master key, the use of it?

- A. She has the use of the master key.
- Q. And her box locks the same way, doesn't it?
- A. Same way, yes.
- Q. She has to put the master key in a lock and put the other key in a lock, and when she unlocks she has to put the master key in a lock and put the other key in a lock?
- A. Yes.
- Q. So that she has had some experience? 10
- A. Some experience.
- Q. And she has had some experience unlocking other boxes?
- A. I don't know about that. I never saw her giving a box to anybody before.
- Q. She is not supposed to do it?
- A. She is not supposed to do it.
- Q. But she did attempt to do it on this occasion?
- A. Yes.
- Q. And despite the fact that she knew how her box unlocked, you say she didn't use the master key? 20
- A. She didn't have the master key in her hand.
- Q. Do you know whether she tried to use it?
- A. I don't know that; I couldn't say.
- Q. You don't know?
- A. I don't know whether she had tried to use it before.
- Q. Did Mr. O'Connor stay around the desk any length of time after he notified you of his loss? 30
- A. As soon as he had—at first he went off to get his wife. When he came back in a moment or two the detective was there and he went with the detective and they conversed away from the desk.
- Q. You took no part in the conversation?
- A. I took no part in the conversation.
- Q. Paid no attention to it at all?

A. No.

Q. The man was not excited?

A. He was very much excited when he first came up to get the box.

Q. And when the ring wasn't there?

A. He was excited before he found the ring wasn't there.

Q. He was excited before?

A. Yes, he was more or less agitated, yes.

10 Q. Before you even gave him the box?

A. I noticed that because he couldn't wait until I got up to give him the box.

Q. Then afterwards what did he do, come over to the desk to you because he couldn't wait?

A. When he found he couldn't get the box open, then I came in.

Q. Well, how did you know that he couldn't wait? You weren't there?

A. Well, he asked the postmistress.

20 Q. How do you know?

A. She told me.

Q. But you, yourself, don't know it?

A. No.

Q. How do you know, then, that he was agitated before?

A. He was in an agitated condition when I came in the office; was more or less excited.

Q. What did he do that indicated that?

A. Rather nervous.

30 Q. In what way?

A. Jumpy, quick.

Q. What did he do, jump up?

A. Well, he was jumpy, excitable.

Q. What did he do, jump?

A. Just an excitable nature.

Q. Did he jump?

- A. No, he didn't jump.
- Q. Well, you say he was jumpy. What do you mean by jumpy?
- A. I say he was a little jumpy in his talk, excitable.
- Q. In his talk?
- A. Yes.
- Q. And that was all before you even asked for the ring?
- A. Yes. 10
- Q. And was he more so when he found the ring wasn't there?
- A. Very excited then.
- Q. And insisted that the ring had been in there?
- A. Yes.
- Q. And the first thing he said when he found the ring wasn't there —
- A. As soon as he opened the box he said, "Where is my wife's ring?"
- Q. He looked in there? 20
- A. Yes.
- Q. And examined—got the rest of the stuff out?
- A. He left the stuff in the box till he went downstairs and brought his wife up.
- Q. After he made an examination of it?
- A. Yes.
- Q. You mean he went down—you mean to intimate that he went downstairs before he even made an examination of the box?
- A. No. 30
- Q. How long did he stay around the desk?
- A. What do you mean? After I saw the diamond?
- Q. Near the desk there, near your desk.
- A. When, before or after?
- Q. After.
- A. After the detective came?

Q. Yes.

A. Why, they drew off to the side right away.

Q. You could see him?

A. Maybe ten or twelve feet away.

Q. You could see him?

A. I could see him, yes.

Q. How long did they stay there?

A. That I don't know.

Q. You didn't pay any attention at all?

10 A. No; I left the matter up to the house detective.

Q. Here is a man claimed he had lost his wife's engagement ring. You knew it was his wife's engagement ring, didn't you?

A. He didn't tell me so.

Q. You knew, though?

A. How would I know it if he didn't tell me?

Q. Didn't you notice the type ring it was?

20 A. I knew it was a ring. I didn't examine the ring.

Q. When did you first find out that was his wife's engagement ring?

A. After the statements came out.

Q. What do you mean?

A. After he told the house detective it was an engagement ring.

Q. And you paid no attention to the matter at all, weren't interested at all?

A. What do you mean?

30 Q. After you turned it over to the house detective?

A. I had nothing to do after I turned it over to the house detective.

Q. Answer the question.

A. I was interested. The man said he put a ring in there and it was not there when it came out.

Q. That was the end of it, so far as you were concerned?

A. So far as I was concerned.

Mr. Bolte: That is all.

Re-direct examination.

By Mr. Cole:

Q Mr. Bell, can you mark on the photographs or either of them where it is the master key is placed? If you can I wish you would take a pen and make a cross.

10

A. You mean the master key is where, in opening the safe or what?

Q. I understood you to say that when it is not in use it is in a certain place.

A. No, we stick it in one of the unoccupied boxes. It is stuck in there so we can take it and use it on another box.

Q. When you said it was in the safe, did you mean you have it in some unoccupied box?

A. Sticking in some of the unoccupied boxes.

Q. Now, did you say that the other key, the key that is given at the desk, in the case of an unoccupied box —

A. That is in the box until it is given out.

Q. Now, what is the name of the lady who came— what is the name of the lady clerk who was there some time during this?

30

A. The postmistress?

Q. Isn't there a clerk besides?

A. There is a bill clerk over in this other office, "Miss MacAlon."

Q. Well, now, immediately in the space which you

occupy, which is the cashier's space, as I understand, do you have any other people?

A. Just the postmistress.

Q. The postmistress. No one else?

A. No one else.

Q. Well, who takes care of the receipt of cash when you are not there?

A. Well, there is another cashier always.

10 Q. You mean off day or off night—you have so many hours?

A. Yes.

Q. Do you work the same hours every day?

A. We alternate.

Q. What are your hours?

A. One day from eight in the morning to 1:30 in the afternoon; the next day from eight in the morning to 1:30 in the afternoon; then from 6:30 to 11 at night; the next day the other cashier works the afternoon.

20 Q. On this day in question, was this other cashier behind your desk at any time while you were there?

A. Not after I came on duty.

Q. I mean after you came on duty?

A. No.

Q. Any time between the time you received the articles and turned them back?

A. No.

30 Q. And so far as you know, was there anybody else behind that desk during that period other than the postmistress?

A. No, sir.

Q. Now, is there more than one master key?

A. Not that I know of. I have never seen one.

Q. Where is that key now?

A. As far as I know it is down at the Traymore in the safe.

Q. Is that in constant use?

A. Yes.

Mr. Cole: I would like to ask counsel whether you require us to produce that key? It is going to be very inconvenient to the hotel to bring it up here, because while it is here they probably could not get in any of the boxes. Do you want that produced?

10

The Witness: Couldn't get in any of the boxes.

Mr. Bolte: Certainly do not.

Mr. Cole: All right.

Q. Now, when you sent for the house detective on this day that Mr. O'Connor said that the ring was missing, did you pursue the usual course?

20

Mr. Bolte: I object to that.

The Court: I sustain the objection.

Mr. Cole: Allow me an exception?

The Court: Yes.

Q. Was it any part of your duty as cashier to follow up the loss after you notified the house detective?

30

Mr. Bolte: I object to that, if the Court pleases.

Mr. Cole: The inference is that he was not interested in this matter.

The Court: It doesn't seem to me that it makes any difference whether he was interested in the matter after reporting the loss and turning it over to the house detective at all. The whole question is whether the ring was placed in the safe deposit box.

Q. Now, do you have anything to do with rooming guests?

10 A. No, sir.

Q. Do you have anything to do with making up the bills?

A. No, sir.

Q. Just what is your duty?

A. To take in the cash and give a receipt and pay out cash.

Q. Do bills come to you made up by the room clerk?

A. By the bill clerk.

20

Mr. Cole: That is all.

The Court: Do you have any distinct recollection of the circumstances leading up to the renting of this particular box on that day?

The Witness: On that day?

30 The Court: Yes. I don't mean what happened after the alleged loss, but do you have any distinct recollection of Mr. O'Connor coming up to the desk and actually renting a box?

The Witness: Well, as near as I can recall, Mr. O'Connor came down. I believe he had a bathing suit or something in his hand, and said, "I want a box." He had given up the box the day before. I

reached in, got the box, brought it out, threw the lid back for him to put the contents in.

The Court: Now, he put the contents in and shut the lid down, I assume?

The Witness: Shut the lid down, and I put the box in the safe.

The Court: After you started towards the safe, 10 did you bring the box back?

The Witness: Not that day.

By Mr. Bolte:

Q. The first day?

A. The first day when I started back with the box he took it to put his knife in, which he didn't put in the first day. 20

Q. And that didn't happen the second day?

A. That didn't happen the second day.

Q. And you say that O'Connor came there that day to the best of your recollection with a bathing suit or something in his arm?

A. I say that O'Connor came there that day to the best of my recollection with a bathing suit or something in his arm.

Q. You are positive about that?

A. Pretty positive. 30

Q. Isn't it a fact that Mrs. O'Connor had the grip that day?

A. I didn't see Mrs. O'Connor that day at the window with him.

Q. And that Mr. O'Connor didn't have a thing?

A. Mr. O'Connor had something under his arm.

Q. You are positive of it?

A. I am positive.

Q. Absolutely certain? You are as certain of that as you are of the rest of your testimony?

Mr. Cole: I object.

The Court: Yes.

10 Q. The bills that are made up are brought to you and the people who stop at the hotel pay them to you?

A. They pay them to me, yes.

Q. They come up to your desk?

A. Yes.

Q. And do you know whether there were one or two or three persons for whom that person is paying or don't you?

20 A. I don't look over the bill. I simply take the total of the bill.

Q. You never look at the bill at all?

A. I don't examine the bill; no, sir.

Q. All you do is just take in money and pay it out?

A. Take in money and pay it out.

Q. Don't look at the guests or anything else?

A. Not especially.

30 Q. How many are around; just take money, pay it out, and that is all you do.

By Mr. Cole:

Q. Had you ever before this occasion been accused of stealing?

Mr. Bolte: I object.

A. Never.

Mr. Bolte: In the first place, there is no accusation here so far as Mr. Bell is concerned.

The Court: I will sustain the objection.

Mr. Cole: You mean so far as the evidence is concerned?

10

The Court: Yes.

Mr. Cole: Suppose I ask the question; because I think such an accusation was made. Now, the purpose of this question is to show why he should remember this particular transaction.

The Court: There is no testimony in this case that Mr. Bell has ever been accused of stealing this ring.

20

Mr. Cole: Allow me an exception.

Q. I notice this photograph and I want you to explain. There appears to be one of the boxes opened and also there is a circle in that photograph. Do you know how that came to be placed there and what it means?

A. That box with the circle is to indicate the box that Mr. O'Connor had, box 304. That box that is open, that was the box that the key was lost some time ago, and the box has been left open so that it would not be used.

30

Q. Do you say that Mr. O'Connor gave up the box that he originally had?

A. Yes, sir.

Q. Was the box that he got the second time a different box than what he had at first?

A. A different box.

Q. Do you recall whether any reason was assigned by him as to why he gave up the box?

A. When Mr. O'Connor came back the first day to get his box, I said, "Do you want to use the box again?" He said, "No."

10 Mr. Bolte: I object to that. What difference does that make?

Mr. Cole: That is all.

(Witness excused.)

20 MARY WEYMAN, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

Q. Are you presently employed?

A. Yes.

Q. Where?

30 A. With the Dixie Candy Company.

Q. Where?

A. Right on the Boardwalk.

Q. Were you at one time employed at the Hotel Traymore?

A. Yes.

Q. What was your position?

A. Postmistress.

Q. Were you there in August, 1927, when this ring was lost?

A. Yes, sir.

Q. How long had you been there before this occurrence?

A. About eight months.

Q. Now, what were your duties?

A. Well, my duties were simply the post-office; that is to say, to sell stamps and money orders; any- 10
thing pertaining to the post-office.

Q. Sub-post-office, was it?

A. Sub-post-office.

Q. Now, your office was in the same box or cage that the cashier's?

A. Right next to the cashier.

Q. Do you remember Mr. O'Connor?

A. Very well.

Q. Were you there on this August 15th, at the time that the articles were delivered to Mr. Bell? 20

A. Yes, sir.

Q. Were you there when Mr. O'Connor came back after them?

A. Yes, sir.

Q. Were you out of the office between the time that Mr. O'Connor left the articles and when he came back after them?

A. Yes, that was my time home in the afternoon.

Q. And how long were you gone?

A. From 2:30 until 5:30. 30

Q. Now, during the time that you were there, was there anyone back of the cage, cashier's cage and yours, other than yourself and Mr. Bell?

A. None at all.

Q. Was Mr. Bell there at the very minute that Mr. O'Connor came for the articles?

A. No, he was not.

Q. Was anyone there besides you?

A. No.

Q. Tell us what happened so far as you were concerned.

10 A. Well, Mr. Bell was in a hurry, I guess, and he asked if he could get his box and I said, "If you will just wait for the cashier," and I guess he was in a hurry, so he asked me again if I couldn't get the box, and I said, "Well, I will try." But I was not supposed to get the boxes. I just did it to accommodate the guests. So I tried to open the box but I was not very tall and I suppose being in a hurry I didn't get the box opened, and I said, "I guess it won't open," and just then Mr. Bell came in and he took the key and opened the box.

Q. How long do you think Mr. Bell was out of the office?

20 A. Very shortly; a very short time; probably three to five minutes; not any longer.

Q. Did Mr. Bell have any trouble opening the box when he came?

A. No, not at all.

Q. So far as you know, was there anything wrong with the box?

A. Nothing.

Q. Had you before that opened some of the boxes for anybody?

30 A. Occasionally when there was people that I knew.

Q. How did you do it? How is it done?

A. Well, you take the master key and the key that belongs to the box; you turn the master key and then turn the key of the box, and that opens the door. You pull the box out and hand it to the guest.

Q. Where is the master key kept?

A. In different parts of the safe, wherever it has been used last.

Q. Now, did you notice what happened when Mr. O'Connor came with the articles to put them in the box?

A. No, I don't remember that.

Q. You don't remember that at all?

A. No.

Q. Do you remember what happened after Mr. O'Connor or Mr. Bell removed the box? 10

A. Well, I remember Mr. O'Connor said something about his ring being gone.

Q. Now, was Mr. Bell in your sight after he came to open this box?

A. Yes, right alongside of me.

Q. Did you see him take the box out?

A. Yes.

Q. Did you see him take it to the desk?

A. Yes.

Q. Did you notice that he took anything out of that 20
box?

A. No.

Q. Now, if you can recall, state just what was said after Mr. O'Connor made some statement about the loss of the ring. What happened after that?

A. Well, I couldn't really recall anything that was said. It has been too long.

Q. Well, do you recall whether the house detective was sent for or not?

A. Yes, I recall that. 30

Q. How long were you on duty after Mr. O'Connor came with these keys?

A. Probably—I was there until after eight o'clock.

Q. Now, have you any present recollection whether anybody came to that cage or near that vault while you were there between the time the articles were

placed in Mr. Bell's hand or box, and the time they were taken away?

A. No one came in the cage except those that were supposed to be in there—Mr. Bell.

Q. I want to know if you have any present recollection of anybody being in that cage other than Mr. Bell and yourself while you were there during that period?

10 A. I have no recollection.

Mr. Cole: Cross-examine.

(Recess until 1:30 P. M.)

AFTER RECESS.

20 MARY WEYMAN, recalled.

Cross-examination.

By Mr. Bolte:

Q. From 2:30 to 5:30 you weren't there?

A. No.

Q. And who may have been in there during that period you don't know?

30 A. No.

Q. There are quite a few people employed at the Traymore Hotel in the office during the summer months, are there not?

A. Yes, sir.

Q. And there were on August 15th. Have you any idea how many were there?

A. Well, I really haven't any idea of the exact number.

Q. Well, would twenty or so cover it?

A. Oh, I think there were more than that; because there are two shifts of workers, you see.

Q. And the opportunity for walking from one compartment or whatever you might want to call it, to another, or from one desk to another, is there; isn't it? The door is open?

A. Well, there are very few that have access to the cashier's cage. 10

Q. Well, isn't it open?

A. They are not allowed to go in, though.

Q. They could, though; there is nothing to stop them from going in so far as the doors being locked or anything of that form?

A. No; the doors are not locked.

Q. How many doors are there to the cashier's cage? 20

A. One door.

Q. Just one?

A. Yes.

Q. Where does that lead?

A. That leads to the outer offices.

Q. I show you what purports to be a picture. Is this the door here, right there?

A. I cannot see very good without my glasses. Yes, this is the door. This is a wall. This is all walled in. My desk was right here. 30

Q. What is this?

A. That is a partition.

Q. Is it not similar to this, to the other one right next, which is a door, too?

A. Well, yes; this is all one partition. This is a door that leads out.

Q. But there is no door here?

A. No.

Q. But there is a door here?

A. Yes.

Q. Do you know where the box was located that belonged for that day to Mr. and Mrs. O'Connor or Mr. O'Connor? Do you know which box it was?

A. Well, I don't remember that. I have an idea about the location, but I couldn't specify it.

10 Q. I show you on the picture a box with a white mark around it. Is that its location?

A. About, approximately, yes.

Q. About how high is that?

A. That was a little high for me. I always had to stand on the ledge. That is higher than I am. I had to reach up high to get to that box.

Q. About where would your head come if you stood at your desk?

A. If I stood?

20 Q. If you stood at your desk? This glass was on the left, just in front of you?

A. Yes. My head would not come any higher than there, I don't think, at the desk. Those desks were high, quite high.

Q. And you said you couldn't reach up here?

A. No, I couldn't reach up very good.

Q. Did Mr. Bell have to stand on something?

A. No, I don't think Mr. Bell had to stand.

Q. He had no difficulty in reaching it; did he?

A. No.

30 Q. You used the master key, you say?

A. I couldn't remember whether I used the master key or not. I know I had trouble getting the box open.

Q. You used the master key?

A. Oh, yes; I had boxes; I was responsible for boxes.

- Q. How many boxes were you responsible for?
A. Three boxes.
- Q. And you used the master key on them?
A. Yes.
- Q. And you would take it, wherever it happened to be around the safe—you would take the master key and open up your box?
A. Yes.
- Q. Without any notice to Mr. Bell that you were doing it; you didn't have to tell him; did you? 10
A. No.
- Q. Didn't have to get his assistance, did you?
A. No.
- Q. And your method of opening your boxes was how? Just the same as the other boxes, you say?
A. Just the same as the other boxes; use the master key.
- Q. How do you mean, just the same as the other boxes?
A. All the boxes opened alike. 20
- Q. You knew how the other boxes opened?
A. Yes.
- Q. You were experienced through having opened them?
A. Yes.
- Q. And you had opened them on more than one occasion, the other boxes?
A. Yes.
- Q. You knew exactly how they worked, too; didn't you? 30
A. Yes.
- Q. You knew that the master key had to be inserted first and then the other key afterwards?
A. Yes; I knew that.
- Q. Those keys were not inserted in this box, were they?

A. No.

Q. This was a box that went inside of the box that you referred to as the box; wasn't it?

A. Yes; there is a space that that box fits in.

Q. And after this is in, you call the whole thing the box, too; don't you?

A. Yes.

Q. And when some one wants something you insert the master key in the box that is on here; don't
10 you; that is shown on here?

A. In the door.

Q. And then you insert in the same box—you insert the other key?

A. Yes.

Q. Then you open the box and you take this box out?

A. That is right.

Q. Then the valuables or whatever it may be are placed in this box; are they not?
20

A. Yes.

Q. And that box, of course, can be moved from the safe or safety vault over to a desk or any other place?

A. Yes.

Q. Could be carried all over the hotel, so far as that is concerned; couldn't it?

A. Yes.

Q. After the valables are put in, it is placed back in this box here, isn't it?
30

A. Yes.

Q. And then they are locked—must you lock them in the same way that you unlocked them?

A. Same way.

Q. You lock them with a master key and with the other key which afterward is given to the guest of the hotel?

A. Yes.

Q. And you had done that for a number of guests to allow them to get in the box?

A. Very few guests.

Q. But you had done it for other guests?

A. I always opened my own boxes.

Q. But you had done it for other guests?

A. One or two, probably.

Q. And on this day did Mr. O'Connor say anything to you besides asking you to open up this 10 box?

A. I couldn't remember that.

Q. You cannot remember anything about that?

A. I don't remember him saying anything.

Q. He did give his slip and his key to you?

A. No; he didn't give me the slip. He gave me the key because I tried to open it for him; but he didn't give me the slip.

Q. Do you know whether he had the slip there?

A. I don't remember that.

Q. Isn't it the usual practice for guests to do that?

A. Yes, to have the slip and key.

Q. You usually get the slip from them; when they receive their articles they sign the slip, and the key after the guests finishes with the box, where is the key put?

A. Back in the empty box in the door.

Q. And they are open to view; anybody from outside can see them; that the boxes are there; anybody who might get the master key can tell where that is; can't they?

A. Yes.

Q. Looking at it?

A. Well, the master key looks like the other keys. They couldn't tell it.

Q. If there were two keys in a box, they would know one had to be the master key and the other the other key?

A. They might be able to tell that.

Q. Are there any duplicate keys to these?

A. Not that I know of.

Q. If a guest loses a key, do you know what is done then?

10 A. Why, they have to have an expert locksmith and the guest has to be present and some of the hotel officials, and they are all opened in their presence.

Q. Then a new key is made?

A. Then a new key is made.

Q. Do you know whether there was just one master key?

A. Only one master key.

Q. You are positive of that?

20 A. Yes.

Q. Did Mr. Montgomery have a master key in addition to the other one?

A. No one has any that I ever heard of.

Mr. Bolte: That is all.

(Witness excused.)

DEFENDANT RESTS.

PLAINTIFF'S REBUTTAL.

COLLETTE A. O'CONNOR, recalled in rebuttal, testified as follows:

Direct examination in rebuttal.

By Mr. Bolte:

Q. On the day of August 15th, the day that the ring disappeared, when Mr. O'Connor was at the desk, did he have a package in his arm? 10

A. No, he didn't.

Q. Did you have the package?

A. I had a satchel.

Q. What was in the satchel?

A. Our bathing suits.

Q. For both of you?

A. For both of us.

Q. Did Mr. O'Connor stand at the desk with a package or with a bathing suit under his arm that day? 20

A. No; I had it.

Q. In your presence?

A. I had it all the time.

Q. When the ring was placed in the box, was he there with anything under his arm at all?

A. No, he was not.

Mr. Bolte: That is all.

Mr. Cole: No questions. 30

(Witness excused.)

PLAINTIFF RESTS.

(Counsel for the respective parties summed up to the jury).

COURT'S CHARGE TO THE JURY.

Sooy, J.:

Ladies and gentlemen of the jury: Let me say at the outset that I have no fear that you will bring in a verdict because of sympathy for one side or the other; nor have I any fear that you will
10 bring in a verdict for one side because you fear if you bring it in for the other side you might be accusing some one of theft. I have enough confidence to realize that this jury is going to return a verdict solely on the evidence, and I charge you that if you should bring in a verdict against the defendant you are not charging anyone with theft. You are to consider this case the same as every other case that comes before you—merely on the
20 evidence and it makes no difference which way the verdict falls, just so long as in your own mind you are satisfied that you have done, as between the parties, exact justice.

When whatever articles were deposited in the safe deposit vault of the safe of the hotel company, there arose a contract between the plaintiffs in this case, or the plaintiff in this case, and the hotel company, and that contract is sometimes referred to as a bailment, and that contract is that the hotel
30 company will receive and use ordinary care in keeping, and will redeliver those articles to the person who deposited them.

The defendant in this case does not quarrel at all with that proposition, and says frankly that it did not redeliver the diamond ring sued for because it says that the diamond ring was not deposited, and that you are justified from the evidence in so finding.

It is true that in a bailment where there is a failure to redeliver the article put in for deposit, that failure unexplained would justify the inference that the bailee (in this case the hotel company) had failed to exercise the ordinary care required of it. That the hotel company does not quarrel with, but they say that the reason the delivery was not made was not by reason of the failure to exercise the care required of them, but because the plaintiff did not deposit the ring; and as Judge Cole said in his opening and as he has said in his closing argument, the basic question for your determination is, did the plaintiff deposit this ring with the hotel company? If she did, then she is entitled to recover. 10

The burden of proving that the ring was, in fact, deposited in the care of the hotel company is on the plaintiff and she must satisfy you by the greater weight of the believable evidence that the ring was, in fact, deposited in that box, and I might call your attention to this: that by the greater weight of the believable evidence is not necessarily meant the greater number of witnesses, but the old illustration of the scales that I used at the first day of the term and which you heard, you will apply in determining where the weight of evidence lies. 20

In addition to the evidence of witnesses in this case, as in all other cases, you are to consider the probabilities arising from their testimony, and consider the likelihood of the truthfulness of their stories. Consider their conduct on the stand, consider their action at and after the time of the deposit of these articles, whatever articles were deposited, and from that arrive at a conclusion on the basic facts: was this diamond ring deposited with the other articles? There is no dispute that if the plaintiff is entitled to recover, she should recover 30

the sum of \$850 with interest from August 15, 1927. If she does recover you will have to figure that interest at the rate of six per cent and add it to the \$850, your verdict being, in case the interest was \$100, for instance, \$950.

If your verdict is in favor of the defendant, your verdict will be no cause of action. It is entirely a question of fact, and as a question of fact I leave it with you.

10

(The jury retired.)

Mr. Cole: Exception to what I characterize as the broad statement of the Court that nobody is charged with theft; secondly, that if the jury find by the test given that the articles were placed in the box, plaintiff is entitled to recover.

20

Verdict for plaintiff for \$963.19.

30

RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

COLETTE A. O'CONNOR, 10
Plaintiff, }
v. } Action at Law.
HOTEL TRAYMORE COMPANY, } Rule to Show Cause.
a corp., &c., }
Defendant. }

Defendant having made application within the 20
time required; it is on this twenty-fourth day of
October, 1929, on motion of Cole & Cole, attorneys
of defendant, ordered that the plaintiff show cause
before the Supreme Court at the next ensuing term,
why the verdict should not be set aside and a new
trial granted.

Let this rule be entered in the minutes of the
Court.

WM. FRANK SOOY, 30
Judge.

REASONS.

NEW JERSEY SUPREME COURT.

ATLANTIC COUNTY.

10

COLLETTE A. O'CONNOR,

Plaintiff,

v.

TRAYMORE HOTEL COMPANY,

a corp., &c.,

Defendant.

Action at Law.
On Rule to Show
Cause
Reasons.

20

Defendant assigns the following reasons why the verdict should not be set aside and a new trial granted:

1. The verdict is against the clear weight of the evidence.

30

2. The verdict is excessive and in violation of the defendant's limited liability under the statute; the verdict should not have been for more than \$500 with interest.

3. Because the Court sustained the objection to the following question submitted to witness G. Clinton Bell:

“Q. Now, when you sent for the house detective on this day that Mr. O'Connor said that

the ring was missing, did you pursue the usual course?"

4. Because the Court in his charge to the jury said:

“I have enough confidence to realize that this jury is going to return a verdict solely on the evidence, and I charge you that if you should bring in a verdict against the defendant you are not charging anyone with theft.” 10

As the case stood on the evidence uncontroverted, the jury had to find that, if they found for the plaintiff, the alleged lost article had been stolen.

COLE & COLE,
Attorneys of Defendant.

20

30

Exhibit "D4"

LOST AND FOUND DEPARTMENT
ATLANTIC CITY DAILY PRESS
AUGUST 16, 1927

D-4

DIAMOND RING - LOST LADIES
PLATINUM MOUNTING MONDAY
AFTERNOON BETWEEN TRAYMORE
AND CENTRAL PIER. LIBERAL
REWARD. THE TRAYMORE HOTEL
LOST AND FOUND DEPARTMENT.

NEW JERSEY SUPREME COURT.

COLLETTE A. O'CONNOR,
Plaintiff,

v.

HOTEL TRAYMORE COMPANY, a corp., &c.,
Defendant.

ON DEFENDANT'S RULE TO SHOW CAUSE.

BRIEF FOR PLAINTIFF.

STATEMENT.

The above cause was tried before Honorable W. Frank Sooy, sitting for the Atlantic County Circuit. The jury rendered a verdict against the defendant and awarded the plaintiff the sum of \$963.19. The plaintiff, for a cause of action, alleged that while she was a guest of the defendant hotel, she deposited with a clerk a diamond ring to be placed for safe keeping in the vault of the defendant company, and that through negligence on the part of the company the ring was lost and not redelivered to the plaintiff; the value of the ring was not contested (C., p. 39, l. 20). Defendant was allowed a rule and assigns four reasons thereunder (C., p. 88).

The reason assigned, numbered 3, is not briefed by defendant and apparently abandoned and consequently can not be considered.

Manda v. U. S. Express Co., 85 New Jersey Law, 720;

Lehroff v. Continental Casualty Co., 101 New Jersey Law, 375;

Weison v. Automobile Insurance Co. of Hartford, 102 New Jersey Law, 229.

ARGUMENT.

I.

The defendant should not now be permitted to ask for nor is it entitled to any advantage under the "Hotelmen's Lien Act" (C. S., p. 3135, par. 46, Sec. 3), limiting its liability as assigned by it for the first reason and argued; because:

1. The complaint based the cause of action on the theory of a simple bailment and not on the common law liability of an innkeeper as an insurer (C., pp. 1 to 4); the statute was not pleaded by the defendant (C., p. 4); and the action was tried entirely on the theory of a bailment and not as an insurer. The opening and argument by counsel for the defendant to the jury were founded solely on the question of delivery and the creation of a bailment contract as shown and stated by the Court in its charge (C., p. 85, l. 10).

2. The Court did not err in its failure to charge the jury as to the statute, it having not

been requested to do so by the counsel for the defendant.

As to the first above reason, the theory of the complaint was entirely that of a bailment, and it was not based in any manner whatsoever on that of the common law liability of an innkeeper, which liability is limited to the sum of \$500 by virtue of the statute *when the innkeeper has complied with certain conditions*. Counsel for the defendant company and the defendant company were apparently satisfied to submit this case to the Court and jury on the theory of a bailment rather than the common law liability of an innkeeper for the reasons that counsel apparently purposely refrained from pleading the statute or make any objection to the plaintiff submitting the case on such theory. Unquestionably such statutes as that of the "Hotelmen's Lien Act" limiting liability under certain conditions must be pleaded in order for the party litigant to take advantage thereof. Further than this, counsel for the defendant in submitting the case to the jury in his opening stated definitely that the only question to be decided by them as to the facts in the case was whether or not this ring had been delivered to the defendant company and a legal bailment thereby made; and, he said nothing about the common law liability of an innkeeper; whether or not the defendant was an innkeeper; or the statutory limitation thereof and compliance with the conditions of the statute. This being the only question of fact submitted to the jury, *i. e.*, whether or not the ring had been delivered to the defendant company; although it may be inferred from the pleadings and the evidence that the defendant was an innkeeper and under certain conditions entitled to the benefits of the statute, if coun-

sel for the defendant intended to take advantage of the statutory liability of an innkeeper, then it certainly was incumbent upon him to prove that the defendant company was a hotel and operating as such to bring it within the terms of the statute and *further to show full compliance with the conditions thereof*, which were necessary to be performed by the defendant company in order to have the benefits of the statute limiting its liability. The Court, therefore, had no other alternative than to submit the case to the jury on the basic question of whether or not the ring had been delivered; consequently, this was the only question of fact to be decided by the jury.

From these circumstances it is most assuredly apparent that neither the defendant nor counsel for the defendant intended to have the case submitted on anything but a bailment theory and certainly not on the common law liability of the innkeeper as limited by the statute and further; that the defendant was satisfied to rest its case on its ability to show that the ring was not delivered and never intended to avail itself of the benefits of the statute *until the jury found against it*. It is not unusual for a litigant not to avail himself of the benefits of statutory limitations when there is a question of right and wrong which he desires submitted to a jury for possible vindication. It is certainly to be presumed in this case that from the circumstances and the attitude of the defendant and counsel for defendant that this, *i. e.*, vindication, is what they desired; then realizing it had been charged with negligence which they denied.

The State of New York and the Commonwealth of Pennsylvania have "Hotelmen's Lien Acts" similar to that of our State and sections limiting the lia-

bility of an innkeeper as an insurer when certain conditions of the Act are complied with. Although there are no decisions in our State, the Courts of both of these States have held that even though the common law liability of an innkeeper as an insurer may be limited under the statute when a verdict is sought by the plaintiff on the theory of a bailment and general negligence and not on the common law liability of an innkeeper, then, and in that event, the statute has no application whatsoever. This is exactly what happened in the instant case, it having been submitted on the bailment theory and general negligence of the defendant. In view of the fact that our statute is similar and of these decisions it is certainly apparent that our statute has no application whatsoever to the case at bar:

Benjamin v. Colonial Hotel, 112 Atlantic Reporter, 54;

Hyman v. South Coast Hotel Co., 130 New York Supplement, 766;

Chatillon v. Co-operative Apt. Co., 152 New York Supplement, 593.

Counsel for the defendant in his brief under the first argument takes the position that it was an oversight on his part not to request a charge on the statute and that the Court should have instructed the jury limiting the liability of the defendant on the theory of the statute and claims that even though this alleged oversight was made by him and the Court under the principle of law or practice as held in the case of *Kelly v. Ryan, Inc.*, reported in 6 Miscellaneous Reports, at page 69, that advantage can be taken of this oversight even though no exception was taken to the Court's charge.

This is most certainly an erroneous application of this principle of law as held in that case and of the practice of our Appellate Courts. We agree with counsel for the defendant that on a rule to show cause, erroneous instructions by the Court may be taken advantage of even though no exception was taken by counsel but this is certainly limited to the case when *the Court has made an erroneous charge and not in the event the Court has failed to charge certain legal principles which are applicable to the case at bar.* An examination of the Kelly case and of all of the opinions therein referred to readily discloses that the Appellate Court only applied this rule to permit counsel to take advantage on a rule to show cause of erroneous instructions charged by the Court when no exception had been taken thereto by counsel.

But, on the other hand, when counsel has failed to request the Court to charge certain legal principles which may be applicable to the case being tried, under no circumstances whatsoever can the failure of the Court to charge such legal principles be taken advantage of either on rule to show cause or on appeal. There are a line of decisions of our Courts making this a hard and fast principle of law and practice. Definitely in the case of *Cole v. Taylor*, reported in 22 New Jersey Law, page 59, Chief Justice Green stated:

“But when no instructions are requested by either party, the charge to the jury, and the particular points to which the charge shall be directed, rest in the sound discretion of the Court. The omission to state any legal principle which may be pertinent or applicable to the case, or the omission to give any charge whatever, when no charge is requested, affords in

itself no ground for a new trial, much less for reversal upon writ of error."

See also,

Mead v. State, 53 New Jersey Law, 606;

Osburn v. DeYoung, 99 New Jersey Law, 204
at p. 210;

Malinowski v. Phillips, 104 New Jersey Law,
130.

However, assuming for the sake of argument that counsel for the defendant had requested the Court to charge the jury on the limited statutory liability of the defendant under the common law liability theory of innkeepers, we submit that the Court would not err in its omission to do so and would not even though requested so to do be justified in instructing the jury as to the statutory liability in view of the proofs and entire theory of the case; it not being on the limited statutory liability of an innkeeper as an insurer but, on the contrary, was on the general liability for negligence and bailment theory.

We respectfully submit that in view of the theory of the case and the failure of the counsel to request the charge on the limited statutory liability as an insurer that the defendant is not now entitled to ask for advantage of the same.

II.

The defendant proposes that the verdict is against the weight of evidence as one of its reasons but this is most certainly not the situation.

Counsel for the defendant opened and argued to the jury that the only question of fact for them to

decide was whether or not the ring had been delivered to the defendant company for safe keeping and the Court so charged. Both the plaintiff and her husband testified that they were *absolutely certain* that the ring was deposited in the safe deposit box and the plaintiff, in order to make a check on her husband on the deposit of it in the box, she asked her husband whether or not he had done so, and instead of answering her, he opened the lid of the box and showed his wife, the plaintiff, the ring in the corner of the box (C., p. 9, l. 5 to C., p. 10, l. 15) (C., p. 15, ll. 1 to 23) (C., p. 36, l. 11 to C., p. 37, l. 36) and particularly (C., p. 31, ll. 8 to 24), as follows:

“Q. What was done by him that day so far as the ring was concerned, while you were at the desk?

A. He put the ring in the box and after the ring was put in the box the lid was closed and I said to him, ‘Jim, is my ring there?’ He didn’t answer me, just opened the lid with a snap. I looked and there was the ring on the left-hand side of the corner, the stone facing the right-hand side.

Q. You saw that?

A. I saw it.

Q. Was that your ring?

A. My ring.

Q. Was it the same ring you had given your husband that day?

A. Yes.

Q. The same ring he had given to you as an engagement present?

A. Same one.”

The testimony on behalf of the plaintiff as to the delivery of the ring and the depositing of it in the safe deposit box was in *no manner whatsoever denied by the defendant*, and the only manner in which the defendant attempted to do so was by proposing certain inferences from circumstances which happened after the discovery of the loss. The fact of having the maid questioned, inserting the advertisement were not unusual as the plaintiff and her husband were bride and groom and spending their honeymoon at the Hotel Traymore and the lost ring was an engagement present and these young people, as anyone would do in such circumstances, were willing to do anything to get the lost ring back. Therefore, the jury were absolutely justified in concluding that the ring had been delivered from the evidence on behalf of the plaintiff, and the failure to return the same justified the jury in finding that the defendant company had been negligent, and the verdict most assuredly was not the result of mistake, passion or prejudice as is required for the setting aside of a verdict as against the weight of evidence.

Carter v. Allenhurst, 100 New Jersey Law Reports, 138;

Kittay v. Cordasco, 103 New Jersey Law Reports, 156;

Floersch v. Donnell, 82 New Jersey Law Reports, 357.

III.

Counsel for the defendant finds fault with the charge of the Court as one of the reasons in that the Court stated to the jury in its charge that by finding for the plaintiff the jury did not charge any-

one with the theft of the ring. The Court was most justified in giving these instructions to the jury and *it was not done* by the Court on the request of the plaintiff but entirely on the Court's own initiative and in its own discretion. The apparent reason for making such instructions was that counsel for the defendant in his argument to the jury argued that in order to find for the plaintiff they must find that someone was guilty of a theft. Now, this was entirely uncalled for inasmuch as this was a civil suit based upon negligence and not a criminal suit and such statements were entirely irrelevant to the issue as the jury was not sitting to find anyone guilty of theft or of any criminal act *which were not charged by the plaintiff* (C., p. 70, l. 30 to C., p. 71, l. 21), but whether or not the defendant was guilty of negligence.

We submit that for this reason the Court was justified in giving such instructions to the jury on its own initiative and in its own discretion.

But further than this, the testimony discloses that this ring was deposited in a safe deposit box to which there were two keys, one held by the plaintiff and a general master key held by the defendant. The testimony further showed that the master key was hung near the safe and easily accessible to anyone who might be in that vicinity. It further showed that at the time the box was opened it was difficult to open it, which might have inferred, and from which the jury was justified in inferring that the box had been tampered with (C., p. 18, l. 11 to C., p. 19, l. 20). The jury were absolutely justified in finding and inferring that the defendant company was guilty of negligence, aside from any criminal theory or charging anyone with theft, and even though such instructions were made by the Court, it was

certainly not harmful to the defendant and for this reason the rule most certainly should not be made absolute.

We respectfully submit that for the foregoing reasons the rule to show cause allowed herein should be dismissed and a *venire de novo* be denied.

Respectfully submitted,

BOLTE, TRIPICIAN &
KIRKMAN,

Attorneys for Plaintiff.

New Jersey State Library

NEW JERSEY SUPREME COURT

COLLETTE A. O'CONNOR,
Plaintiff,

v.

HOTEL TRAYMORE COMPANY, a corp., &c.,
Defendant.

ON RULE TO SHOW CAUSE.

DEFENDANT'S RULE.

BRIEF FOR DEFENDANT.

STATEMENT.

Plaintiff was a guest at defendant's hotel in Atlantic City and sued to recover damages for the alleged loss of a ring committed to its care. The claim was that the ring, with other valuables, was deposited in defendant's safe by the husband of plaintiff and when called for was missing. There was a verdict for \$963.19.

ARGUMENT.

I.

THE VERDICT IS IN EXCESS OF THE AMOUNT
PERMITTED BY STATUTE.

The action is controlled by what is commonly referred to as the "Hotelmen's Lien Act," C. S. p. 3135, par. 46, Sec. C.

The Act expressly limits the liability to \$500 unless there is a special agreement to the contrary. None such was alleged in the complaint, nor attempted to be proved.

It was a plain oversight on the part of counsel not to have requested a charge limiting liability.

Apparently the Court overlooked the statutory limitation.

No exception was taken. But this does not forbid relief on a rule to show cause.

In a precisely similar situation, in the law, this Court granted a new trial in *Kelley v. Ryan, Inc.* 6 N. J. A. R. 69, citing cases.

Plaintiff has not been harmed by the obvious slip of Court and counsel. A tender of \$500, before suit, would have disentitled plaintiff to costs and interest, had the amount tendered been paid into court under a rule.

II.

THE VERDICT IS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE.

The day before the alleged loss the husband of the plaintiff (according to his story) had deposited in defendant's safe, the identical articles he deposited the day of the alleged loss. The articles were deposited by plaintiff's husband in a box produced at the counter by the cashier, and by him placed in the safe, the door locked and the key handed to the husband. The safe was behind the desk or counter, and in plain sight at all times. In order to remove the box it was necessary to use a master key, always in possession of the defendant, and the duplicate key, handed to the husband after the safe was locked.

The distance between the desk and the safe (undisputed) is between four and five feet (p. 47). The cashier was in plain sight of the husband who could see if he (cashier) removed anything from the box, either while carrying it to the safe to be deposited, or from the safe to hand to him. The husband does not claim he saw the cashier attempt to remove anything. As the evidence stands, if the ring was deposited in the box, it must have been removed between the time the box was locked and opened for the purpose of delivering the articles. Other articles were deposited beside the ring; only the ring was missing.

So far as the evidence discloses, no one was in the cage or partition where the safe was located except the cashier and the postmistress between the time of the deposit and the delivery (pp. 49-54). The husband placed the articles in the box and re-

moved them. They were never touched by the cashier, according to his unmet testimony. The cashier testified (p. 52) that the lock could not be opened save by using both the master key and the key retained by the husband. His testimony was not challenged.

In order to find to the contrary the jury had to indulge in pure speculation.

The articles alleged to have been deposited consisted of two watches, a bill fold and the ring. Plaintiff handed her watch and the ring to her husband in their bedroom (p. 13). At that time the bill fold was in the hip pocket of his trousers. He was uncertain whether he placed the other articles in the hip pocket or placed all in the pocket of his coat (pp. 13 and 14).

A number of circumstances, developed by the evidence, clearly indicate that the husband was not certain that he deposited the ring in the box. It is our contention that he did not. The high probability is that he had it in the hip pocket of his trousers and dropped it before he reached the desk. Testifying at page 31 the plaintiff was asked:

“Q. What was done by him (husband) that day so far as the ring was concerned while you were at the desk?

A. He put the ring in the box and after the ring was put in the box the lid was closed and I said to him, ‘Jim, is my ring in there?’ He didn’t answer me, just opened the lid with a snap. I looked and there was the ring,” &c.

Apparently neither was certain in the first instance that the ring was placed in the box.

After the discovery of the loss the house detective was sent for and went, with the plaintiff, to the bed-

room. She narrated what took place. She was asked (p. 35):

“Q. Was there any suggestion from you that the maids be sent for?

A. Yes. After they told me that I left the ring in the room, then they insisted I left the ring in the room. I said, ‘Well, I will have the room searched,’ and I said, ‘Have the maids questioned, if there is any doubt that I left the ring in the room.’”

It seems incredible that plaintiff and her husband should have permitted her room to be searched and the maid questioned without protesting that it was an idle gesture if they were clear the ring had been placed in the box.

When the ring could not be found Detective Schere suggested to plaintiff’s husband, that its loss be advertised (p. 40). This suggestion was followed. See copy of advertisement Exhibit D4.

On cross-examination (p. 21), the husband testified:

“Q. Do you know how that (advertisement) came to get in the Atlantic City paper?

A. Yes. I dictated it to the clerk at the hotel and he phoned it in for me.

Q. Do you remember what clerk it was that you dictated it to?

A. No, I don’t.

Q. Did you pay the bill for the printing?

A. I did.”

The husband testified that the ad was placed at the suggestion of Mr. Montgomery, the manager. But he (husband) dictated the contents without suggestion from anyone.

His testimony touching the deposit of the ring cannot be reconciled with the facts stated in the ad, which were of his making. At all events it should have created a considerable doubt in the minds of the jurors as to whether he was reasonably certain he had deposited the ring. If deposited some one stole it. By the record no one could have except the cashier or postmistress.

The cashier testified, at p. 51, as to what took place when the alleged loss was discovered.

“Q. Now, then, what took place at that time?

A. Almost immediately Mr. O'Connor said, 'Where is my wife's ring?' I said, 'Your wife's ring?' He said, 'Yes.' I said, 'It must be in the box. Did you put it in?' He said, 'I put it in.' 'Well,' I said, 'it must be there.' I said, 'Where is your wife?' He said, 'Down in the lower lobby.' I said, 'You ask your wife if she gave it to you to put it in.' He said, 'I will,' &c.”

Why should the husband say to the cashier that he would ask his wife if she gave him the ring to put in the box, after, according to his testimony, she displayed unusual caution by asking him if he had put it in the box, and he requested the cashier to return the box, in order that he and his wife might get a second look? The husband did not deny this testimony.

In addition to all the foregoing strange circumstances, it seems odd that only the ring was missing.

The plaintiff had the burden.

The complaint does not allege the theft of the ring, and theft was expressly repudiated. See Court's charge (p. 84, line 10).

The case was submitted upon the theory of bail-

ment. In the light of all the uncontroverted evidence how can it be said defendant was guilty of failure to exercise ordinary care? It was not a bailment for hire. There is no proof that there was anything wrong with the box, lock, vault or keys. Plaintiff and her husband testified they saw the ring placed in the box, the lid closed, the box placed in the vault, &c., the door locked. They had the duplicate key necessary to enable anyone to open the lock and remove the box. This was done in the presence of the husband. Only speculation could have justified a finding of lack of care.

III.

THE COURT ERRED IN ITS CHARGE TO THE JURY.

It said:

“I have enough confidence to realize that this jury is going to return a verdict solely on the evidence, and I charge you that if you should bring in a verdict against the defendant you are not charging anyone with theft.”

The conclusion of theft was inevitable if the ring was placed in the box. It was inanimate. It was not in the box when the box was removed from the vault. How did it get out? Only one answer is thinkable. Some human hand took it out and appropriated it, and that constituted *theft*.

As already indicated only one of two persons could have committed the theft.

The jury might well have hesitated to render a verdict against defendant if by so doing it indubi-

tably convicted one or the other of two persons in charge of the office.

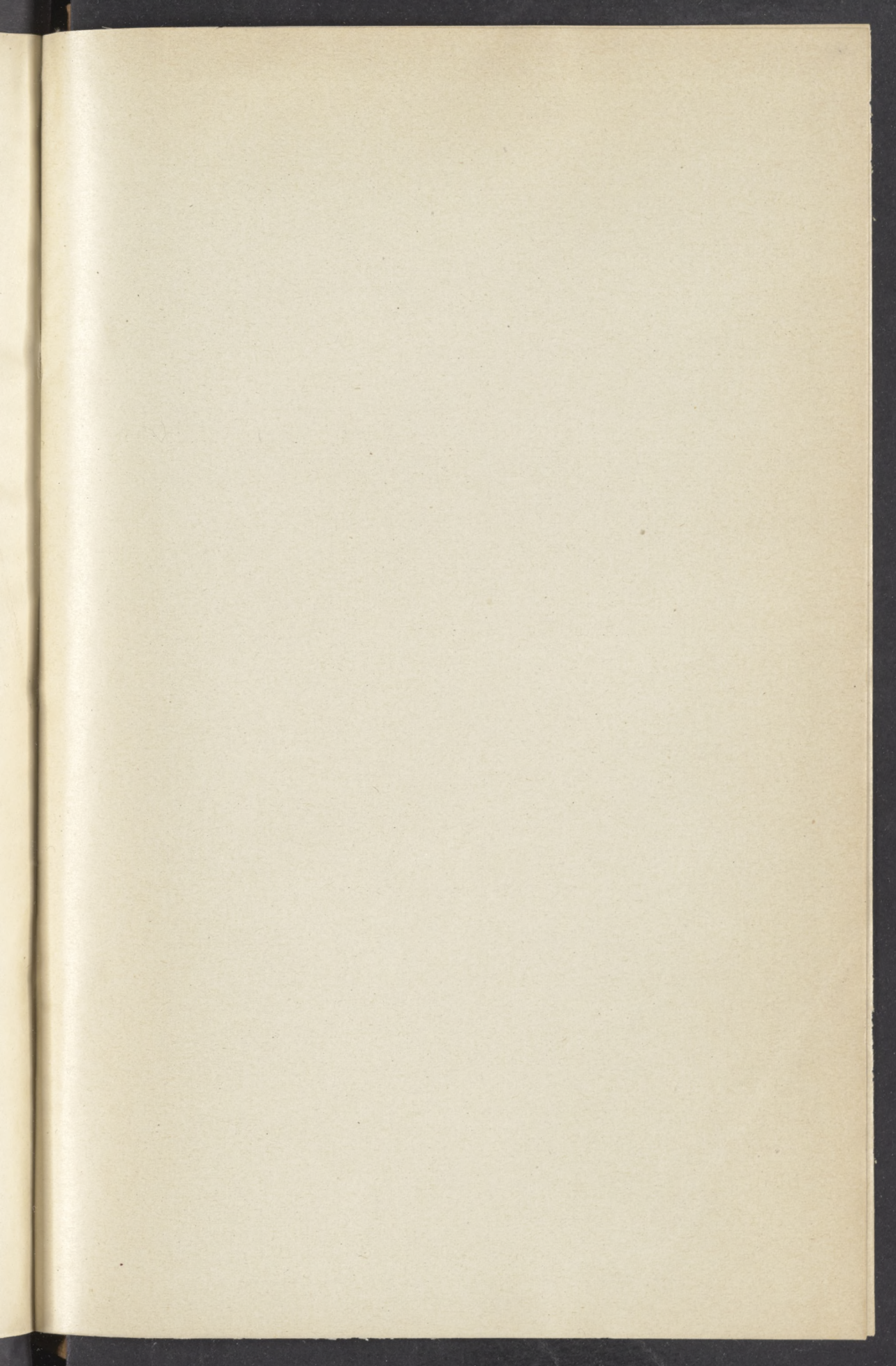
It was a misstatement of fact and harmful error to tell the jury that theft was not involved.

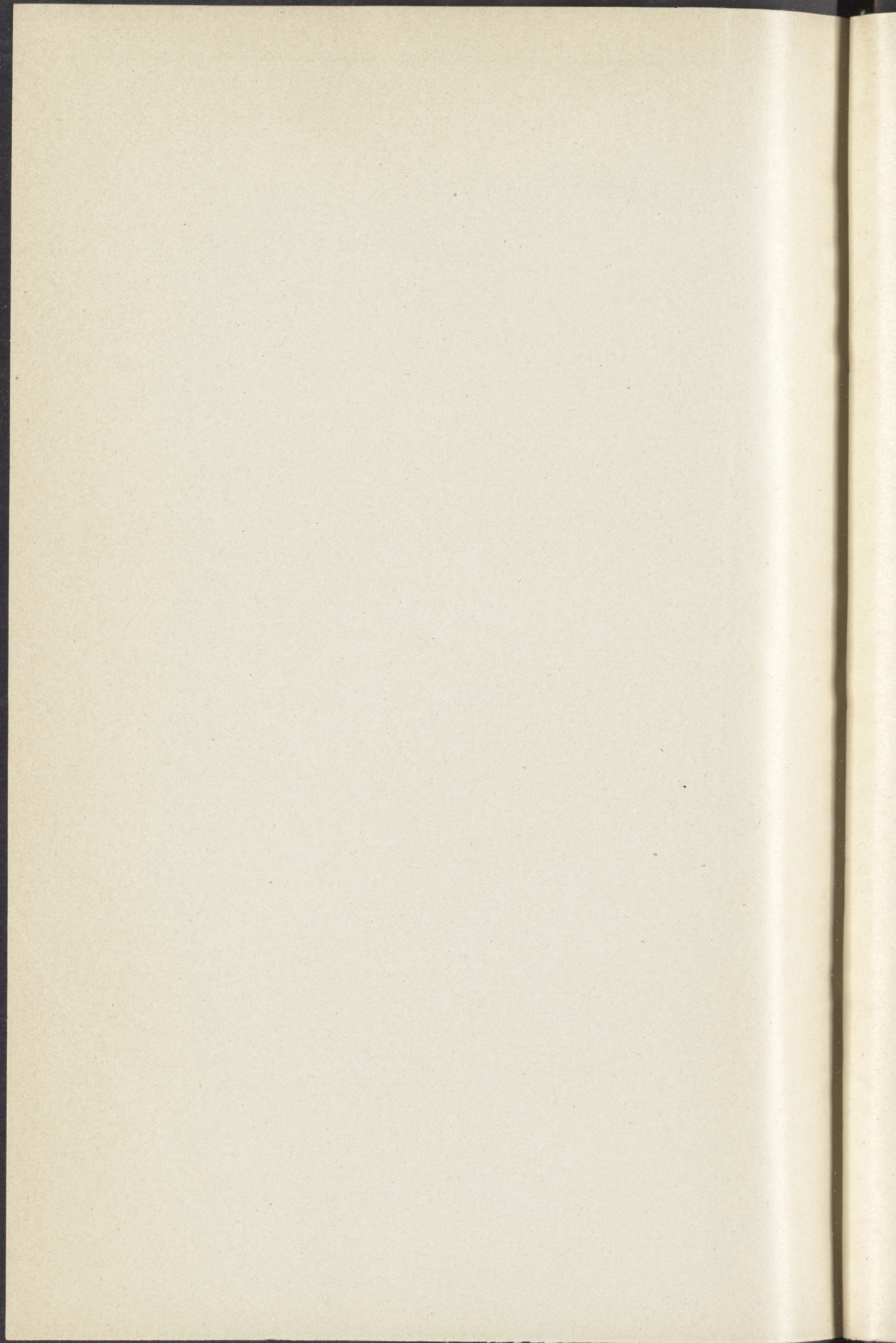
No other conclusion was reachable.

The rule should be made absolute.

Respectfully submitted,

COLE & COLE,
Attorneys for Defendant.





STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

IN THE MATTER OF THE ESTATE OF

.....
LATE OF.....
.....

**THIS WAIVER MUST BE IMMEDIATELY
FILED OR RECORDED WITH:**

In consideration of the fact that the estate of the above named decedent has been declared exempt from a Transfer Inheritance Tax or that the tax and the penalty to which the said estate is subject has been fully paid or duly provided for, the Comptroller of the Treasury hereby waives the requirements of Section Twelve, Chapter Two Hundred Twenty-eight, Laws of One Thousand Nine Hundred and Nine, and the amendments thereof and supplements thereto, with respect to the property herein described, consents to the transfer of the said property, and further releases the said property from the lien of the State of New Jersey, as provided by law:

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1021

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STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER REFERENCE TAX BUREAU
BUREAU OF TAXATION

THIS RECEIPT IS VALID ONLY WHEN
IT IS ACCOMPANIED BY THE
CORRESPONDING CHECK

