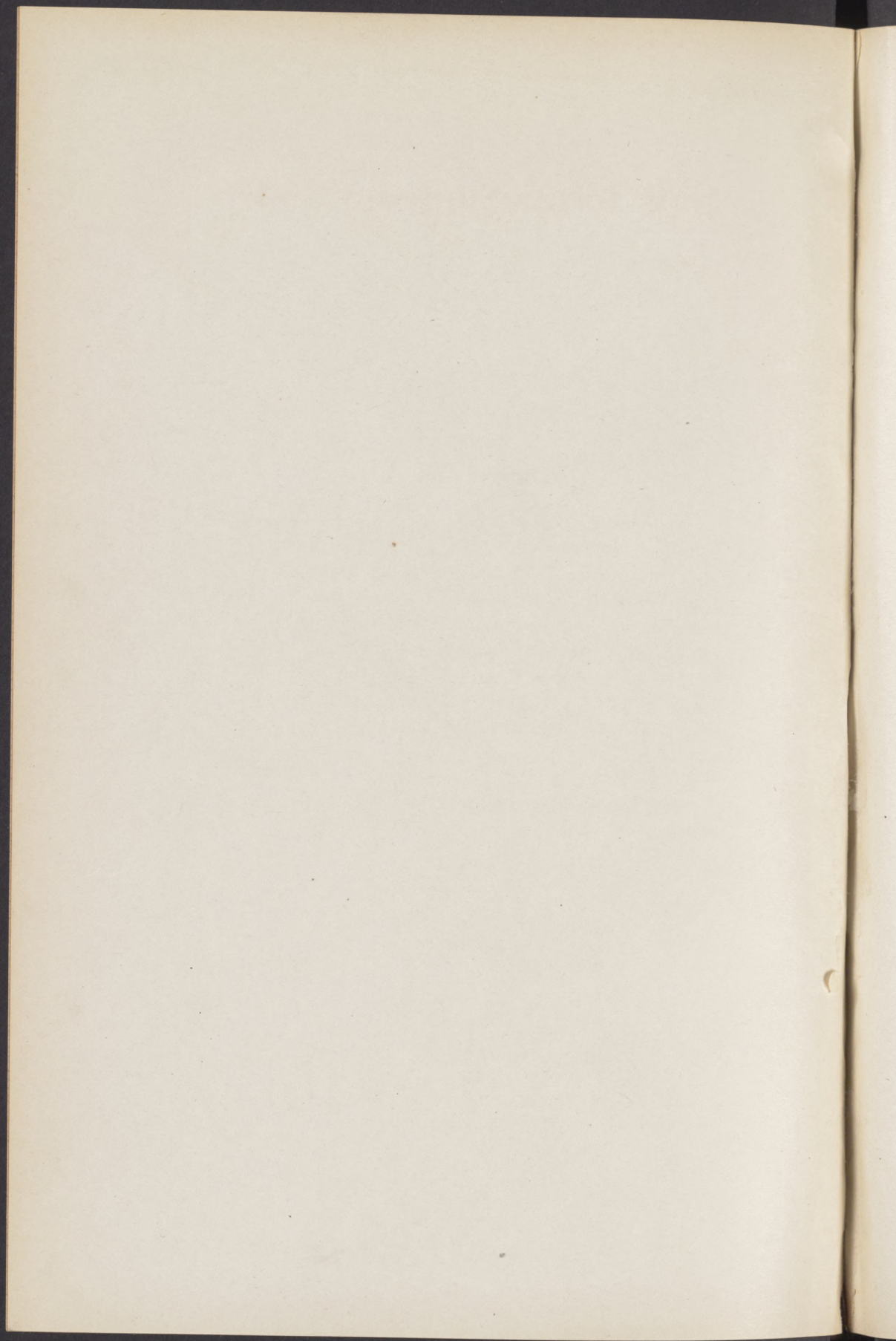


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(Filed March 15, 1916.)

New Jersey Supreme Court

GEORGE HEMION,

Plaintiff-Appellee,

vs.

JOHN W. RUDOLPH,

Defendant-Appellant.

In Tort.

10

Notice of Appeal.

To George Hemion, the above named Plaintiff-Appellee, or Frederick V. Watson, his attorney : —

Take notice that the defendant, John W. Rudolph, appeals to the Court of Errors and Appeals from the whole of the judgment or order of the New Jersey Supreme Court dismissing the appeal, entered in this cause in said Supreme Court. 20

Hudson & Joelson,
Attorneys of Defendant-Appellant.

Dated March 13th, 1916.

Service of the within notice is acknowledged this 14th day of March, 1916.

Frederick V. Watson,
Attorney of Plaintiff-Appellee. 30

New Jersey State Library

(Filed April 13, 1916.)

COURT OF ERRORS AND APPEALS OF
NEW JERSEY.

| | | | |
|----|---|---|---------------------|
| 10 | GEORGE HEMION, <i>Plaintiff-Appellee,</i> <i>vs.</i> JOHN W. RUDOLPH, <i>Defendant-Appellant.</i> | } | <i>On Contract.</i> |
|----|---|---|---------------------|

Grounds of Appeal.

20 The Appellant states the following grounds of appeal :

1. The Supreme Court dismissed the appeal upon a technicality, whereas the same should have been heard by that court upon its merits.

2. Chapter 138 of the Pamphlet Laws of 1905, and the act amendatory thereof, requiring the appellant in an appeal to the Supreme Court from a District Court to transmit the transcript and testimony taken in said District Court to the Clerk of the Supreme Court within fifteen days from the rendition of judgment in said District Court, was repealed by
 30 Chapter 305 of the Pamphlet Laws of 1915, and the Supreme Court could not lawfully dismiss the appeal in this case for failure of the appellant to transmit such record to the Clerk of the Supreme Court within said time.

3. By Chapter 305 of the Pamphlet Laws of 1915, in appeals from the District Court to the Supreme Court, the party aggrieved by the judgment

of the District Court has twenty days from the rendition of the judgment within which to serve his notice of appeal and file his bond; and no time is set in said act in which the transcript and record of the District Court shall be transmitted to the Clerk of the Supreme Court; and the Supreme Court, therefore, erred in refusing appellant his offer to file forthwith said transcript and proceedings of the court below with the clerk of the Supreme Court, and in refusing him his offer to argue, upon terms, the case upon such offered record. 10

4. Appellant served upon the appellee the requisite copies of the state of the case in conformity with the rules of the Supreme Court, and appellee was therefore fully apprised of the grounds of appeal and raised no objection to the form of the state of the case. At the argument, copies of the state of the case were also presented to each of the Justices in compliance with the rules of the Court; and the Court should, therefore, have heard the appeal upon its merits, or adjourned the matter to the next term or to such reasonable time as the record in the office of the Clerk of the Supreme Court in this case could have been completed. 20

5. At the argument, as required by the rules of the Supreme Court, the Justices of that court had a complete printed record of all the pleadings, evidence, notices, etc., required by the statute or the rules of that court on an appeal from a District Court; and they erred in dismissing the appeal because the appellant inadvertently failed to have the original of said pleadings, evidence, notices, &c., on file in the office of the Clerk of the Supreme Court, and notwithstanding the fact that appellant offered at said argument to complete said record at once. 30

6. The appeal, for the reasons for reversal filed

by the appellant in this cause, was well grounded in law; and appellant should have been given an opportunity to be heard thereon.

7. A complete state of the case was physically, if not technically at the time of the argument, in the possession of the court as well as in the possession of the attorney for the appellant and of the attorney for the appellee, and had been in possession of the attorney of the appellee for the requisite number of days before the argument, according to the rules of court. There was no abandonment of the appeal, the record being incomplete solely through inadvertence; and the court was without right to dismiss the appeal under the circumstances.

Hudson & Joelson,

Attorneys for Appellant.

20 (Service of copy of above grounds of appeal acknowledged April 11, 1916.)

Frederick V. Watson,

Attorney of Appellee.

(Filed April 12, 1916.)

NEW JERSEY SUPREME COURT.

GEORGE HEMION,

*Plaintiff-Appellee,**vs.*

JOHN W. RUDOLPH,

*Defendant-Appellant.**On Contract.*

10

On Appeal, &c.State of New Jersey, }
County of Passaic. } ss.

20

Be it remembered, that on this 11th day of April, 1916, personally appeared before me, Edmund B. Randall, one of the Commissioners appointed by the Supreme Court to take recognizances of bail, etc., John W. Rudolph, of the Borough of Allendale, in the County of Bergen and State of New Jersey, and Cornelius Koopman and Morris Kushner, both of the City of Paterson, in the County of Passaic and State aforesaid, who jointly and severally acknowledge themselves to owe unto George Hemion, the plaintiff above named, the sum of Two Hundred Dollars, to be made and levied of their and each of their goods and chattels, lands and tenements, hereditaments and real estate, to the use of the said George Hemion, his executors, administrators and assigns, if failure be made in the following condition :

30

Whereas the said John W. Rudolph has appealed to the Court of Errors and Appeals from the whole of

the judgment entered in this cause on the twenty-eighth day of February, 1916,

Now, therefore, the condition of this recognizance is such that if the said John W. Rudolph, defendant-appellant, shall prosecute the said appeal with effect, and also pay and satisfy (if the judgment be affirmed), all the damages and costs adjudged in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to remain in full force.

John W. Rudolph, (L. S.)
Cornelius Koopman (L. S.)
Morris Kushner, (L. S.)

Taken and acknowledged the day and year above written, before me,
Edmund B. Randall,
Supreme Court Commissioner.

(Filed November 23, 1915.)

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF BERGEN.

GEORGE HEMION,

Plaintiff,

vs.

JOHN W. RUDOLPH,

Defendant.

10

Reasons.

The following is a specification of the determinations of the District Court with which appellant is dissatisfied in point of law :

20

1. The plaintiff did not prove malice.
2. The plaintiff did not prove want of probable cause.
3. The suit was for malicious prosecution and the plaintiff failed to prove malice and want of probable cause.

1. At the close of the plaintiff's case, appellant's attorney made a motion for a non-suit on the grounds that plaintiff had failed to prove malice.

30

2. That plaintiff had failed to prove want of probable cause.
3. That plaintiff was required to prove malice and want of probable cause and had failed so to do.
4. The Court admitted hearsay as evidence.
5. The Court declined to receive competent evidence on the part of the defendant from the wit-

nesses Valentine, Braun and Ira Dutton and the defendant.

The Court denied the motion and appellant asked for an exception and same was granted. The Court erred in its determinations and appellant is dissatisfied with same in point of law.

10

Hudson & Joelson,
Attorneys of Defendant-Appellant.

(Service of the above specifications acknowledged by Attorney of Defendant-Appellant on November 23, 1915.)

20

30

Notice of Motion to dismiss Appeal.

(Filed January 27, 1916.)

NEW JERSEY SUPREME COURT.

| | | | |
|---|---|--|----|
| GEORGE HEMION, <i>Plaintiff-Appellee,</i> <i>vs.</i> JOHN W. RUDOLPH, <i>Defendant-Appellant.</i> | } | <i>On Appeal from the Third Judicial District Court of Bergen County.</i> | 10 |
|---|---|--|----|

Notice of Motion to dismiss Appeal.

To the above named John W. Rudolph, Defendant-Appellant;

Or to Hudson & Joelson, his attorneys; 20

Or to Whom it may concern ;

Take notice, that I shall move before the above stated Court, holden at the State House, in the City of Trenton, on Tuesday, the fifteenth day of February next, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, to dismiss the appeal taken in the above stated cause, with costs of this motion, for the following reasons :

First : Because the bond given on appeal does not show when the same was executed. 30

Second : Because the affidavit of the surety attached to said bond, does not show that such surety was a freeholder of the County of Bergen nor of the State of New Jersey.

Third : Because the said bond was not approved of by the Judge of the Court below.

Notice of Motion to dismiss Appeal.

Fourth : Because the bond on appeal was filed November 16th, 1915, twenty-one days after the determination of the cause below, in the District Court of the Third Judicial District of the County of Bergen.

10 Fifth : Because the testimony taken by the stenographer appointed for such purpose in the Court below, under the provisions of the Public Laws of the State of New Jersey, A. D. 1912, page 318, together with the transcript of the proceedings in the Court below, were not certified by the said Judge of the said District Court nor by any other Judge of any District Court, within fifteen days after the rendition of said judgment or the determination of the cause in the Court below.

20 Sixth : Because said testimony taken by said stenographer and the said transcript of said proceedings taken as aforesaid; and after same had been certified by the said Judge of the said Court below, were not transmitted by the party appealing, to the Clerk of the Supreme Court of the State of New Jersey, within fifteen days after the determination of the said cause in the Court below as required by law.

30 Seventh : Because the party appealing did not request the appellee or his attorney, to settle the case on appeal within fifteen days after the determination of the cause below, or at any other time.

Eighth : Because the party appealing, or his attorney, did not apply to the Judge of the Court below, after an inability to agree on the form of the case, with the appellee or his attorney, and within fifteen days after the determination of the cause in the Court below, or at any other time thereafter, to settle the case and sign it, nor did the party appealing secure a grant of further time from the Judge of

Notice of Motion to dismiss Appeal.

the Court below or any other Judge of any District Court, for such purpose.

Ninth : Because the appellant did not transmit any form of the case, after agreed upon by the appellee or his attorney and the appellant or his attorney, or any case settled and signed by the Judge of the Court below, to the Clerk of the Supreme Court of the State of New Jersey, to be filed with his office. 10

Respectfully yours,
 Frederick V. Watson,
Attorney and of Counsel with
 George Hemion, *Plaintiff-Appellee.*

Dated January twenty-fifth (25th)

A. D., Nineteen Hundred and
 Sixteen. (1916). 20

Due, legal and timely service of a copy of the within notice is hereby acknowledged this twenty-fifth day of January, 1916.

Hudson & Joelson,
Attorneys for Defendant-Appellant.

(Filed Feb. 28, 1916.)

NEW JERSEY SUPREME COURT.

GEORGE HEMION,

*Plaintiff-Appellee,**vs.*

JOHN W. RUDOLPH,

Defendant-Appellant.

*On Appeal from
the Third Judicial
District Court of
Bergen County.*

On Motion to Dismiss Appeal. Order.

This cause having been duly argued at the February term of this Court by Frederick V. Watson, of counsel for the plaintiff-appellee, and Walter R. Hudson, of Hudson & Joelson, of counsel for the defendant-appellant, and the Court having considered the arguments of counsel, it is on this 28th day of February, A. D. 1916,

Ordered that the Appeal taken from the District Court of the Third Judicial District of the County of Bergen, in the above entitled cause, be and the same is hereby dismissed, with the costs of this Court to be taxed, in accordance with the statute in such case made and provided. Entered Feb. 28, 1916.

On motion of Frederick V. Watson,
Of Counsel for Plaintiff-Appellee.

A true copy,
Wm. C. Gebhardt,
Clerk.

New Jersey Court of Errors and Appeals

GEORGE HEMION,
Plaintiff-Appellee,

vs.

JOHN W. RUDOLPH,
Defendant-Appellant.

On Appeal
from Su-
preme Court.

BRIEF OF HUDSON & JOELSON, AT- TORNEYS FOR AND OF COUNSEL WITH DEFENDANT-APPELLANT.

This is an appeal from an order or judgment of the Supreme Court, dismissing an appeal from a judgment of the District Court of the Third Judicial District of the County of Bergen. The ground for the dismissal of the appeal was purely a technical one. Judgment was entered in the District Court on October 26, 1915, and the notice of appeal and bond on appeal were duly served and filed. The evidence in the District Court was taken down by stenographer and his transcript of the same, with copies of the exhibits, was duly certified by the Judge of the District Court as the state of the case on appeal. Notice of the argument of the appeal before the Supreme Court was duly served, and likewise a notice by the plaintiff of an application to dismiss the appeal. When the matter came on for

argument, the Court refused to consider the merits of the case and dismissed the appeal, because the state of the case was not filed with the Clerk of the Supreme Court within fifteen days after the rendition of judgment in the District Court, notwithstanding the fact that the attorneys for the defendant-appellant had duly served the requisite number of printed copies of the state of the case upon the plaintiff-appellee and had placed in the hands of the Clerk of the Supreme Court printed copies of said state of the case for the use of the Court on the argument.

In compliance with Rule No. 145 of the Supreme Court, defendant-appellant, within ten days from the expiration of the time limited by the statute for the giving of his notice of appeal, filed with the Clerk of the Supreme Court a specification of the determinations or directions of the District Court with respect to which he is dissatisfied in point of law, a copy of which was included in the printed state of the case, with a copy of the judgment record, and furnished to the Court.

The state of the case, although fully completed, in time, through the inadvertence of the attorneys for the defendant-appellant, was not sent to the Clerk of the Supreme Court within fifteen days from the rendition of the District Court judgment, and, for this reason, the Supreme Court dismissed the appeal.

A.

We contend that the Supreme Court should not have dismissed the appeal for failure to file the state of the case within fifteen days from the rendition of judgment in the District Court.

This takes up the second and third reasons of appeal mentioned in the grounds of appeal in this court.

As the law stands to-day, it would be absurd for the Court to hold that the state of the case on appeal from the District Court must be filed within fifteen days from the rendition of judgment. By the most recent legislation in respect to appeals from the District Court, the defeated party has twenty full days in which to decide whether he will appeal or not, and he certainly cannot be forced by prior legislation to file with the Clerk of the Supreme Court his state of the case on appeal five days previous to the expiration of the time allowed him by a subsequent statute to determine whether he will appeal or no. In fact, all previous legislation in conflict with the act giving twenty days after rendition of judgment to determine whether or not an appeal shall be taken, is expressly repealed, so far as in conflict with that statute.

The history of the legislation in respect to this matter will show the absurdity of the contention that the state of the case must be filed with the Clerk of the Supreme Court within fifteen days after rendition of judgment.

History of Legislation.

An appeal from a District Court to the Supreme Court of New Jersey was first authorized under the

Pamphlet Laws of 1902, page 565. Before that time such appeals were either to the Court of Common Pleas or the Circuit Court. The Act of 1902 was at first applicable only to District Courts in cities, but was afterwards extended by an act passed in 1910 to all District Courts. Under the Act of 1902, the District Court Judge on an appeal to the Supreme Court was neither authorized nor bound to certify to such court the stenographic notes taken at the trial. This was decided in the case of *Boland v. Kaveny*, 71 *N. J. L.*, page 488, on June 13, 1904, and thereafter the Legislature in the following session passed a law authorizing the Judge to certify such stenographic record as a state of the case (*P. L.* 1905, p. 259). This act first applied only to District Courts in cities, but by the Act of the Legislature of 1912, page 318, of Pamphlet Laws, was made to apply to all District Courts. The only other legislation, so far as we can find pertaining to appeals to the Supreme Court, is in the Pamphlet Laws of 1915, page 549.

We will take up the various acts chronologically.

I.

Act of 1902, P. L., page 565, approved April 3, 1902.

“An act to provide for and regulate appeals from any District Court in any city of the State to the Supreme Court.”

Under this act, we note the following pertinent matters:

A.

Notice of appeal and bond must be within ten days after judgment.

B.

State of case must be agreed upon or settled within fifteen days after judgment unless the Court shall grant further time.

C.

Nothing said as to when papers shall be sent to Supreme Court, but the case shall be heard by the Supreme Court at the next term after such determination or judgment, unless said Court shall, on good cause, postpone the hearing thereof to some subsequent term, provided that there shall be twenty days between such judgment and said next term.

Note: Under this state of the law, in the case of *Boland v. Kaveny*, 71 N. J. L., page 488, the contention was made that the appellant was entitled to have certified by the Judge, as a state of the case on appeal, the transcribed stenographic notes taken on the trial of the cause in the District Court. The Court there held that under the Act of 1902, the Judge of the District Court is not required to certify the transcribed stenographic notes of the trial as the state of the case upon appeal, and that he is to certify the facts found by him, in addition to the formal record showing the judgment in the cause, as the state of the case on appeal. The Court further held that Sections 206-213, inclusive of the District Court Act (Revision of 1898), have no application to appeals to the Supreme Court under the Act of 1902. It stated that these sections relate solely to appeals to the Circuit Court and were declared unconstitutional in *Green v. Heritage*, 35 Vroom, 567.

On account of this decision the following act was passed by the Legislature the next year.

II.

Act of 1905, P. L., 1905, page 259, approved April 12, 1905.

“A supplement to an act entitled, ‘An act concerning District Courts (Revision of 1898),’ approved June 14, 1898.” Provides stenographer to be appointed in District Court upon application of either party and if an appeal be taken, the transcript of said proceedings and said testimony, made by the stenographer, shall be certified by the Judge *as the state of the case, and shall be transmitted by the party so appealing to the Clerk of the Supreme Court within fifteen days after judgment.*

III and IV.

Laws of 1910, P. L., 1910, page 236, approved April 8, 1910.

“An act to amend an act entitled, ‘An act to provide for and regulate appeals from any District Court in any city of the State to the Supreme Court, approved April 3, 1902.’” This act amends the title of the Act of 1902 so as to embrace all District Courts throughout the State, and further amends, by Section 2 of this Act, Section 1 of the Act of 1902 so as to include within its purview all District Courts.

Laws of 1912, P. L., 1912, page 318, approved March 28, 1912.

“An act to amend an act entitled, ‘A supplement to an act entitled, “An Act concerning District Courts (Revision of 1898),” approved June 14, 1898,’ approved April 12, 1905.”

Amends the Act of 1905, above set forth under Roman numerals II, so as to include all District Courts, whether in cities or otherwise.

Remarks.

This is the way the legislation in regard to the matter stood until the year 1915.

Whether stenographic notes were taken at the trial or not, the time for the settlement of the state of the case was the same; the only distinction being that if there was no stenographer, the acts were silent as to when the record was to be transmitted to the Clerk of the Supreme Court. In either instance, the party aggrieved had ten days in which to serve his notice of appeal and have his bond approved, and five additional days in which to have the case determined upon either in one manner or the other; and there were no inconsistencies as to time.

V.

Law of 1915, P. L., 1915, page 549, approved April 14, 1915.

“An act to amend an act entitled, ‘An act to amend an act entitled, “An act to provide for and regulate appeals from any District Court in any city of the State to the Supreme Court, approved April 3, 1902,”’ which amending act was approved April 8, 1910.”

The following are pertinent matters in this act:

A.

Notice of appeal and bond must be within twenty days after judgment.

B.

All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Remarks.

The party aggrieved being allowed by the Act of 1915, just above cited, twenty days in which to make up his mind whether to appeal or not, it would seem inconsistent to say that the state of the case (in accordance with Section 3 of the Act of 1902, or Section 1 of the Act of 1905) must be made within fifteen days after the rendition of judgment.

It would seem that under the repealer in this Act of 1915 the fifteen days' limitation from the foregoing acts were made null and void, and consequently that part of the Act of 1905 requiring the stenographic notes to be certified by the Court and transmitted to the Clerk of the Supreme Court within fifteen days became inoperative.

Under an Act of the Legislature, approved March 8, 1916, the stenographic transcript is required to be filed on or before the opening day of the next term of the Supreme Court following the date of filing the appeal (*P. L.*, 1916, Chap. 183, p. 385).

B.

We further contend that the Supreme Court, under the status of this case at the time of the argument, should either have heard the case on its merits or have adjourned the hearing of the case on its merits to a future day in the same Term of the Court or to the next Term.

This takes up reasons 1, 4, 5, 6 and 7 of the grounds of appeal filed with the Clerk of this court.

Appellant served upon the appellee the requisite printed copies of the state of the case in conformity with the rules of the Supreme Court, and appellee was, therefore, fully apprised of the grounds of appeal and raised no objection to the form of the

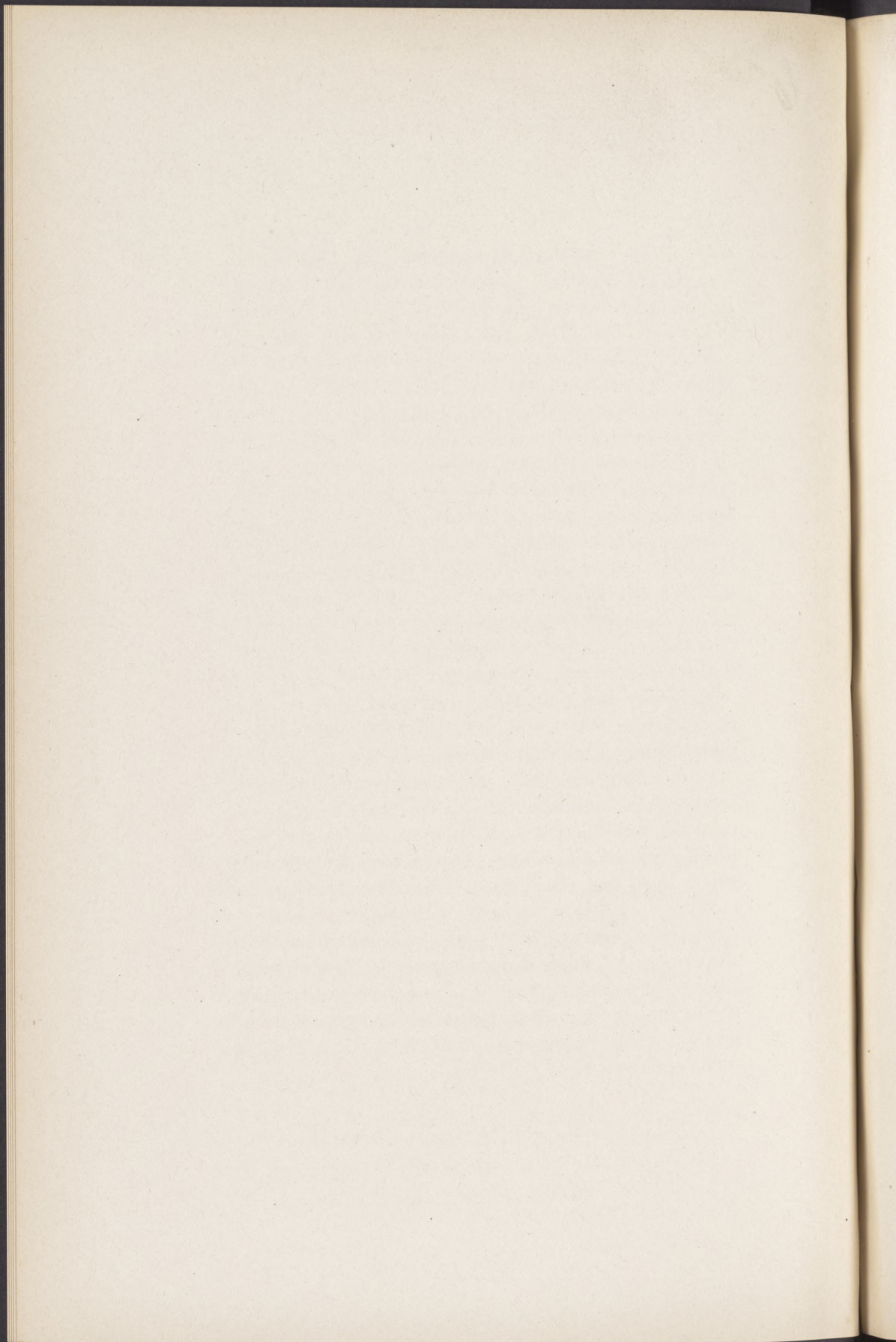
state of the case. At the argument, copies of the state of the case were in the hands of the Justices of the Supreme Court, and the Court had a complete printed record of all the pleadings, evidence, notices, etc., required by the statute or the rules of that court on an appeal from the District Court. A complete state of the case was, therefore, physically, if not technically at the time of the argument, in the possession of the Court, as well as in the possession of the attorney for the appellee, and had been in the possession of the attorney of the appellee for the requisite number of days before the argument. There was no abandonment of the appeal, and the record was incomplete solely through the inadvertence of the attorneys for the defendant-appellant to have filed the state of the case with the Clerk of the Supreme Court. Furthermore, the appeal, for the reasons for reversal filed by the appellant in this cause with the Clerk of the Supreme Court, was well grounded in law.

Under this condition of affairs, the appellant should have been allowed to have filed the state of the case with the Clerk of the Supreme Court, and should further have been allowed his day in court, when the case could have been heard upon its merits.

In conclusion, we say that the facts show that the case was dismissed upon a technicality, and the history of legislation, as above set forth, further shows that the appeal was dismissed erroneously on account of a seeming technicality which has, in fact, no existence in law.

Respectfully submitted,

HUDSON & JOELSON,
Attorneys for Defendant-Appellant.



62

New Jersey Court of Errors and Appeals

GEORGE HEMION,
Plaintiff-Appellee,

vs.

JOHN W. RUDOLPH,
Defendant-Appellant.

On Appeal from
the Supreme Court.
Brief of
Plaintiff-Appellee.

Statement of Facts.

The above-stated case was tried in the District Court of the Third Judicial District, of the County of Bergen, on the 26th day of October, A. D. 1915, and judgment was entered therein, in favor of the plaintiff, on the same day, in the sum of Fifty dollars (\$50) damages and Ten dollars (\$10) costs. The case was brought for the malicious prosecution of the plaintiff below, by the defendant below; in that the said defendant below swore out a complaint against the plaintiff below, before IRA W. DUTTON, Recorder of the Borough of Allendale, in the County of Bergen and State of New Jersey, on the 30th day of July, A. D. 1915, charging the plaintiff below as follows:

“That George Hemion did act in a disorderly manner and also indulged in loud and offensive and indecent language and also

made offensive remarks to persons at the Public Park."

That the plaintiff below was arrested on the warrant issued thereunder by IRA W. DUTTON, Recorder; that he gave bond before such Recorder, and was subsequently tried before said Recorder and found not guilty and discharged.

That after the proceedings in said Recorder's Court, the aforementioned suit for malicious prosecution was started in the District Court of the Third Judicial District of the County of Bergen; that the said trial was had as aforesaid; that testimony was taken stenographically by Judson B. Salisbury, Clerk of said District Court, who was orally appointed and sworn by the Judge thereof, with the consent of counsel for the parties plaintiff and defendant. A verbatim copy of said testimony was made and is set forth in the state of the case filed in this cause in the New Jersey Supreme Court. *attached to*

Thereafter, and within the time required by law, the notice of appeal from the Third Judicial District Court of Bergen County to the New Jersey Supreme Court, of the said defendant-appellant, was served upon the counsel for the plaintiff-appellee, which said notice was filed on the 15th day of November, A. D. 1915.

The bond required by the Public Laws of New Jersey, 1915, page 549 (and by all statutes preceding said enactment pertaining to the procedure of appeal from the District Court) was undated. The affidavit of the surety attached to said bond, does not show that such surety was or is a freeholder of the County of Bergen, or of any County in this State, the same being left blank; nor does it state that his property is located anywhere within the State of New Jersey; this affidavit was sworn to on the 15th day of November, A. D. 1915. And

while counsel for the plaintiff-appellee has since been informed that said bond was approved on the 15th day of November, A. D. 1915, by the Judge of said District Court, said bond was not filed until November 16th, A. D. 1915, twenty-one days after the determination of the cause in said District Court.

That the testimony of the witnesses at said trial was, at the request of the defendant-appellant, transcribed, verbatim, by the stenographer appointed as aforesaid, which, together with the copies of the pleadings as well as the exhibits offered in evidence (which included a copy of the docket of the Recorder of the Borough of Allendale covering the proceedings had in said court on the complaint made by the defendant-appellant against the plaintiff-appellee, together with a copy of said complaint and endorsements, and a copy of the warrant issued thereout, and a copy of the recognizance entered therein), were certified as a transcript of the State of the Case on appeal to the New Jersey Supreme Court, by the Judge of said District Court, on the 30th day of November, A. D. 1915; which said transcript of testimony and exhibits, so certified, were not filed with the Clerk of the said Supreme Court at any time up to and including the time of the hearing of the motion in the New Jersey Supreme Court of the plaintiff-appellee, to dismiss the said appeal; which said notice of motion to dismiss said appeal, for the reasons therein stated, was dated the 25th day of January, A. D. 1916, and due and legal and timely service of a copy thereof was acknowledged on the 25th day of January, A. D. 1916, by the attorneys of and counsel with the defendant-appellant, and was filed in the New Jersey Supreme Court on the 27th day of January, A. D. 1916, as appears by the Statement of

the Case in this Court as served by the defendant-appellant herein on counsel of plaintiff-appellee, on pages 9, 10 and 11 thereof.

That before the opening of the February Term, 1916, of the New Jersey Supreme Court, counsel with the defendant-appellant served upon the counsel for the plaintiff-appellee three copies of said State of the Case in the New Jersey Supreme Court, referred to as aforesaid; and which also contained copies of the notice of appeal and of the bond on appeal to said Supreme Court, including date of executing, serving and filing same, all of which is certified, as aforesaid, as the State of the Case on appeal, by the Judge of said District Court, together with a copy of the opinion rendered by the said Judge in said action for malicious prosecution had therein. Said State of the Case in the Supreme Court so served as aforesaid also contained a copy of the docket of the Third Judicial District Court of the County of Bergen, and a copy of the reasons for the appeal of the defendant-appellant from the judgment of the said District Court, containing a specification of the determinations of the District Court with which said defendant-appellant was dissatisfied in point of law.

That thereafter and on the 25th day of January, A. D. 1916, the plaintiff-appellee served notice upon the defendant-appellant of his intention to move to dismiss said appeal of the plaintiff-appellee referred to above.

The only application listed to be heard in the Supreme Court, concerning the above-stated cause, on the opening day of said February Term of said court, was the application of the plaintiff-appellee on motion to dismiss the appeal. The said appeal from the judgment of the District Court, on the part of the defendant-appellant had not been so listed in the said Supreme Court, because of the

failure of the defendant-appellant to prosecute his appeal as required by law ; he not having filed there-
in any State of the Case or transcript of the pro-
ceedings and pleadings in the Court below, but
had merely filed his specification of reasons of
appeal.

The application of the said plaintiff-appellee to dismiss the said appeal for the reasons set forth in the notice of motion, was heard in Part Three of the said Supreme Court on the opening day thereof of the February Term, 1916, in the presence of the counsel for the defendant-appellant who was heard in opposition thereto ; and said Court granted said motion to dismiss, and an order was entered therein in the said Supreme Court in conformity with the judgment of the said Supreme Court, on the 28th day of February, A. D. 1916, dismissing the appeal of the said defendant-appellant from the said District Court, a copy of which said order is set forth on page 12 of the Statement of the Case in this court served as aforesaid on the attorney of and of counsel with the plaintiff-appellee, on the 24th day of May, A. D. 1916.

On the 14th day of March, A. D. 1916, notice of appeal to this Court from the New Jersey Supreme Court, was served by the defendant-appellant, by his counsel, upon the plaintiff-appellee, service of which was acknowledged by his attorney and counsel, a copy of which notice of appeal is set forth on page 1 of said Statement of the Case in this court served as aforesaid.

On April 11th, A. D. 1916, defendant-appellant served a copy of the grounds of appeal, upon plaintiff-appellee, through the respective counsel thereof, a copy of which is set forth on pages 2, 3 and 4 of said Statement of the Case in this court served as aforesaid.

That thereafter and on the 24th day of May, A. D. 1916, the defendant-appellant, by his counsel, served upon the plaintiff-appellee, through his counsel, two copies of the Statement of the Case in this court, although the rules of this Honorable Court require that three copies be served.

That on the 26th day of May, A. D. 1916, the plaintiff-appellee, by his attorney and counsel, served upon the defendant-appellant, through his attorney and counsel, notice of objections to the statement of the case served upon the plaintiff-appellee, notifying him that the Statement of the Case in this Court was incomplete, and should contain all the records and proceedings in the District Court of the Third Judicial District of the County of Bergen, together with the pleadings, evidence, exhibits, findings, dockets, etc., as set forth in the State of the Case served upon the plaintiff-appellee by the defendant-appellant for the purpose of the appeal of the defendant-appellant to the New Jersey Supreme Court, and used as the basis for the motion to dismiss said appeal and the argument thereon by the plaintiff-appellee in the said Supreme Court at the February Term, 1916. Service was duly admitted by the defendant-appellant of the said notice of objections, and the same is on file with the Clerk in this Honorable Court.

That thereafter and on or about the 3rd day of June, A. D. 1916, the said plaintiff-appellee and defendant-appellant, by and through their respective counsel, entered into a stipulation, a copy of which is as follows:

NEW JERSEY COURT OF ERRORS AND
APPEALS.

GEORGE HEMION,
Plaintiff-Appellee,

vs.

JOHN W. RUDOLPH,
Defendant-Appellant.

On Appeal
from Supreme
Court.
Stipulation.

It is stipulated and agreed by and between Frederick V. Watson, attorney for plaintiff-appellee, and Hudson & Joelson, attorneys for defendant-appellant, that the printed state of the case prepared for use at the hearing of this appeal in New Jersey Supreme Court at February term, be used as part of the statement of the case prepared for use in this court at the argument.

FREDERICK V. WATSON,
Attorney for Plaintiff-Appellee.

HUDSON & JOELSON,
Attorneys for Defendant-Appellant.

which said stipulation was on or about the 6th day of June, A. D. 1916, filed in the office of the Clerk of the New Jersey Court of Errors and Appeals; that said stipulation is intended to comply with the objections raised by the plaintiff-appellee to the statement of the case heretofore filed in this court by the defendant-appellant, and it is intended that the said appeal of the defendant-appellant be heard and considered upon the pleadings and transcript,

as set forth in the state of the case, ^{*intended to be*} filed in the New Jersey Supreme Court, together with the statement of the case filed in this court.

BRIEF.

The plaintiff-appellee contends that No. 1 of the Grounds of Appeal as served by the defendant-appellant upon the plaintiff-appellee in the above-stated Court (see p. 2, Statement of the Case) is too general to be specifically answered.

Answering the Grounds of Appeal No. 2, as served by the defendant-appellant upon the plaintiff-appellee, as above set forth, the said plaintiff-appellee, answering, contends that the enactment of the Legislature of the State of New Jersey set forth in Chapter 305 of Pamphlet Laws 1915, does not repeal, either directly or by implication, the provisions of Chapter 138, Laws of New Jersey, 1905, page 259, with the amendments thereto (Public Laws of New Jersey, 1912, p. 318); nor does said Public Laws of New Jersey, 1915, page 549, Chapter 305, repeal directly or by implication the provisions of the Public Laws of New Jersey, 1902, page 566, with the amendments and supplements enacted thereto, because these acts or portions thereof are not inconsistent with the said Act of 1915. An appellant can prepare his case either under the Act of 1902 and the supplements and amendments thereto, or the Act of 1905 and the amendments and supplements thereto, and defer the service of his notice of appeal and the entering of his bond until within twenty days after the rendition of judgment. It is no prerequisite of the preparing of his State of the Case, under either of the methods prescribed by the above-mentioned

acts, that such case should not be prepared and the transcript of the proceedings thereof, together with the pleadings, should not be certified and filed until after the notice of appeal has been served and filed, and the bond entered into and filed as required by law. It is true that such procedure may not seem to be orderly, but in the face of the mandate of the law, it cannot be presumed to be improper or unnecessary. The Act of 1915 repeals directly the act (Public Laws 1902, p. 565), as amended by the act (Public Laws 1910, p. 236), which merely prescribes the time within which either party may give notice of appeal, and within which they shall file the requisite bond or deposit moneys in lieu thereof conditioned to the prosecution of the appeal. The Act of 1915 aforesaid does not repeal the above-mentioned Acts of 1902 and 1905 and the respective supplements and amendments thereto by implication, because such last-mentioned acts are not inconsistent with the said Act of 1915; their provisions can be complied with, together with the compliance of the provisions of the said Act of 1915. That the Legislature had not such contemplation in mind seems quite evident to the plaintiff-appellee, in that it had, therefore, provided for the contingency of the appellant's not preparing his State of the Case and filing the same within the time required by the laws existing prior to 1915 pertaining thereto, in that it had enacted (Public Laws 1902, p. 566, and amendments and supplements thereto) :

“Such case shall be agreed upon or settled within fifteen days (then allowed) after such determination or direction, *unless the Judge grant further time for that purpose.*”

See :

Franz-Milton Co. v. Hall, 73 N. J. L., 96.

Syring v. Zelenski, 77 N. J. L., 406.

Answering the Grounds of Appeal No. 3, as served by the defendant-appellant upon the plaintiff-appellee as above set forth, the said plaintiff-appellee admits that the defendant-appellant had twenty days within which to serve notice of appeal and to execute and file the bond required in such appeal, but contends that the time set in which the transcript and record of the District Court should be certified to and transmitted to the Supreme Court is the time prescribed in the enactments of the Legislature of the State of New Jersey thereto pertaining, and that the said defendant-appellant, having failed so to do, the Court was justified in dismissing said appeal. The plaintiff-appellee contends that the defendant-appellant made no attempt to comply with either "the form or the letter of the law," as the record of the Supreme Court will show, and that at no time up to the hearing of the motion to dismiss said appeal in the Supreme Court had he filed any record whatsoever from the Court below, or any transcript of the proceedings and pleadings therein, in the said Supreme Court; and that the only pleadings filed by him were the Specifications of Reasons for Appeal. That by reason of such neglect upon his part, the Clerk of said Supreme Court, under the rules of said Court, did not list the said appeal in the calendar of the February Term, 1916, and that, as a matter of fact, the said appeal could not have been moved by the said defendant-appellant at said term. That the plaintiff-appellee, having properly noticed and moved to dismiss said appeal, the Clerk of the Supreme Court had placed upon the calendar at the said February Term, 1916, the plaintiff-appel-

lee's motion to dismiss, and it was only through the plaintiff-appellee that the transcript and the proceedings of the Court below were delivered to the Court above, or Part Three thereof, for the purpose of intelligently adjudicating upon his argument upon his motion to dismiss. There was, in fact, no appeal of the defendant-appellant before the Court at that time on which the defendant-appellant could offer to argue upon terms or otherwise, or could offer to file any transcript of proceedings in the Court below.

Answering the Grounds of Appeal No. 4, etc., the plaintiff-appellee admits that he was served with a requisite number of copies of the State of the Case, but maintains that he did raise objection to the form, in that the same were incomplete, and that said notice of objections was served upon counsel for the defendant-appellant and service thereof was admitted by Hudson & Joelson, such counsel, a copy of which notice of objections is herein set forth as follows:

NEW JERSEY SUPREME COURT.

| | |
|---|--|
| <p style="text-align: center;">GEORGE HEMION, Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN W. RUDOLPH, Defendant-Appellant.</p> | <p>On Appeal from the Third Judicial District Court of Bergen County.</p> <p>Notice of Objec- tions.</p> |
|---|--|

*To John W. Rudolph, Defendant-Appellant,
Or to Hudson & Joelson, his attorneys:*

TAKE NOTICE, that I hereby take exception to the transcript of the case in the above-entitled cause,

which has been served upon me, in that the same does not show the date of filing with the Clerk of the above-stated Court of the stenographer's transcript of the testimony, as certified by the Judge of the District Court; and further, that such transcript shows that said transcript of testimony was certified by PETER W. STAGG, Judge of the District Court of the Third Judicial District of the County of Bergen, on the thirtieth day of November, A. D. Nineteen Hundred and Fifteen, and that in consequence thereof could not have been filed with the Clerk of the Supreme Court prior thereto; and that consequently was not filed with the Clerk of the Supreme Court within fifteen days from the date of judgment, according to the statute in such case made and provided; and that the whole of said transcript is incomplete in that it does not show the date of filing with the Supreme Court, if filed at all, and said State of Case does not show that Bond has been approved by the Court below, nor filed within time required by law.

Dated December 30th, A. D.
Nineteen Hundred and Fifteen.

Yours respectfully,

FREDERICK V. WATSON,
Attorney for Plaintiff-Appellee.

Service admitted January 5th, A. D. 1916, by Hudson & Joelson, Attorneys of Defendant-Appellant.

And furthermore, objection to the form of the State of the Case was raised by the motion to dismiss the appeal itself. That said plaintiff-appellee did not consent to such form of the State of the Case is apparent from the fact that he did not wait

until the defendant-appellant brought on the argument on said appeal, but of his own motion proceeded in the said ~~District~~^{Supreme} Court to dismiss the said appeal. That the Supreme Court was entirely within its right and privilege and the law of the State when it dismissed the said appeal for the failure of the defendant-appellant's complying with the law and rules of said Court, and of his failure to properly bring on the said appeal to be argued at said February Term, 1916, of Court.

Answering the Grounds of Appeal No. 5, the plaintiff-appellee contends that the only record of the pleadings, evidence, notice, etc., which Part Three of the Supreme Court had on the opening day thereof were such as were handed it by counsel for the plaintiff-appellee for the purpose of adjudicating upon his motion to dismiss, and the plaintiff-appellee contends that the said defendant-appellant could not offer to complete a record for argument, which record or the matter pertaining thereto was not at that time up for adjudication, there being no appeal of the defendant-appellant on the calendar of the February Term of the Supreme Court for argument, as the said defendant-appellant had not properly prepared, nor filed with the Clerk of the Supreme Court the record of said appeal, and the Clerk of the said Supreme Court, under the rules thereof, could not and did not notice the said appeal on said calendar.

Answering the Grounds of Appeal No. 6, the plaintiff-appellee contends that the contention of the defendant-appellant as therein set forth is a conclusion of law which cannot on this appeal be argued, and as a matter of fact could only be heard in the Supreme Court, if at all; that the questions raised therein have never been adjudicated thereon by the Supreme Court, and as a matter of fact have never been presented to them for such adju-

dication; that the said defendant-appellant did not properly seek the opportunity to be heard thereon in the Court below, and as the record of said Court will show, no such appeal that could decide such question was ever completed, either within fifteen days after the determination of the suit in the District Court of the Third Judicial District of the County of Bergen, or at any time up to and including the opening of the February Term, 1916, of the said Supreme Court.

Answering the Grounds of Appeal No. 7, the plaintiff-appellee contends that the complete State of the Case, as asserted in said 7th Grounds of Appeal, was subject to the objection previously made by the plaintiff-appellee, and while copies thereof were handed in the said Part Three of said Court for the purpose of argument of the motion to dismiss, yet they were not within possession of the Court, as required by its rules. And that even subsequent to January 5th, A. D. 1916, the date of the acknowledgment of service of such notice of objections by the counsel for the defendant-appellant, and up to and including the opening day of February Term, 1916, of the Supreme Court (although said notice of objections informed said defendant-appellant of his defect in failing to file with the Clerk of the Supreme Court the record of the Court below, together with the transcript and pleadings); the said defendant-appellant did not file a State of the Case with the Clerk of said Supreme Court, nor a transcript of the proceedings, pleadings and record in the Court below; and that consequently his conduct, therefore, in the opinion of the plaintiff-appellee, was not through inadvertence, as maintained in said 7th Grounds of Appeal.

The plaintiff-appellee further contends that the said dismissal of the said appeal by the Supreme

*heard as no transcript or case
in effect
was filed*

Court below was justified because of the reasons set forth in his brief filed in the said Supreme Court below, notice of which said reasons was given by said plaintiff-appellee to the defendant-appellant in his notice of motion to dismiss the appeal which was served on the 25th day of January, A. D. 1916, and which notice of motion is set forth on page 9 of the Statement of the Case in this Court. Said reasons of dismissal are as follows:

Re: Reasons of Dismissal 1, 2 and 3 of Plaintiff-Appellee in New Jersey Supreme Court.

The notice of appeal was served upon the appellee within the time limited by law. The bond as required, Public Laws of New Jersey, 1915, page 549, was undated (see State of the Case on Appeal in Court below, page 2), so there is nothing to show that the same was executed within the time required by law. The affidavit of the surety does not show that such surety was a freeholder in any county of this State, same being left blank (see State of Case on Appeal in Court below, page 3). There is nothing to show in the State of the Case on Appeal in the Court below that the bond was approved by the Court below.

Re: Reason of Dismissal 4 of Plaintiff-Appellee in New Jersey Supreme Court.

The bond of appeal was filed November 16th, 1915, twenty-one days after the determination of the cause below. The statute (P. L. 1915, Chapter 305, page 549) requires, as a condition precedent to the granting of such an appeal, that a bond shall be

executed by the appellant, with sufficient surety, to the appellee, approved by the Court within twenty days from the determination of the case sought to be appealed, conditioned to the prosecution of the suit, and the payment of the amount involved; together with costs in case of failure of appeal, on the part of the appellant. That the filing of the bond in the Court is one of the necessary acts to be done, and contemplated as within the statute; because, if the bond were not filed in the Court below or, at least, delivered at some place accessible to appellee, and the appellant should lose his appeal, the appellant ~~all~~ might lose the security contemplated by the statute, for his benefit, in such contingency. Further, as the statute requires that such instrument, as a condition precedent, must be executed within twenty days of the determination of the suit, such limitation of time must of necessity apply to the filing thereof. This conclusion is further emphasized by the provision of the statute which permits the appellant to pay moneys into court in lieu of such bond, the payment of the same being, in the words of the statute, as follows:

“Nevertheless, such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge shall permit the party appealing to pay the amount of such judgment into the hands of the Clerk, *and the same shall have been paid accordingly*”;

meaning thereby that the same shall have been paid within twenty days. In other words, the statute contemplates that the bond, or its equivalent in money, must be in the hands of the Clerk of the Court below, and that the limitation of twenty days thereof applies to the filing of the bond, as well as to the payment of the moneys into Court below.

**Re: Reason of Dismissal 5 of Plaintiff-
Appellee in New Jersey Supreme
Court.**

The Judge of the Court below appointed the Clerk of his court as the stenographer to take the stenographic report of the testimony in this cause, with the consent of counsel, counsel agreeing to pay the services of the stenographer by mutual contribution. The Court suggested this proceeding, stating that it would simplify the work of the Court, and that in case of appeal, the stenographic notes could be used for purposes of the transcript of the case. The stenographer was sworn orally to impartially take the testimony as produced. Whether or not this complies with the statute, Public Laws of New Jersey, 1912, page 318, and the amendments thereto, is a matter which may be open to criticism. There was no written order appointing the stenographer, as I understand; and evidently, from the State of the Case, the stenographer did not include such appointment in transcript of his testimony as part of the stenographic record. On November 30th, 1915, the Judge of the Court below certified the said stenographic report of the testimony, together with the transcript of the proceedings, as the State of the Case on Appeal (see State of Case on Appeal in Court below, p. 56), evidently contemplating and intending such testimony of the stenographer to be within such said act, and without a doubt decreeing (at least to his satisfaction) that the transcript of the testimony was necessary to be sent up, in order that the Court above could properly adjudicate upon the reasons of appeal, and certifying that in his opinion the questions of appeal involved were not those that could be adjudicated upon by the Court above without a record of the testimony, or necessary portions thereof.

If this certification by the Court and this method of the appointment of the stenographer be, in the contemplation of this Honorable Court, within the purview of Public Laws of New Jersey, 1912, page 318, then this plaintiff-appellee, in support of this motion to dismiss, contends that the transcript of the stenographic record and of the case, not having been certified by the Judge of the Court below within fifteen days after the rendition of the judgment therein, is not usable by this Court for the purposes of said appeal, and that said appeal should be dismissed (see *Ervin v. Wohlfert*, 76 L., p. 430; see *Speiser v. North Jersey Railway Company*, 73 L., p. 413; see *Paonessa v. Ruh*, 73 Atl. Rep., p. 113; see *Hauser v. Squire*, 81 Atl. Rep., p. 263; 81 L., p. 287).

Re: Reason of Dismissal 6 of Plaintiff-Appellee in New Jersey Supreme Court.

The appellee contends, in support of Reason 6 (why the said appeal should be dismissed), that the argument and citations set forth in support of Reason 5 of his motion to dismiss this appeal are applicable herein; that said transcript of the testimony taken (as set forth under the heading, *Re: Reason 5*) and the transcript of the proceedings in said Court below were not certified to by the Judge thereof until the 30th day of November, 1915 (see State of Case on Appeal in Court below, p. 56), which was more than thirty-four days after the rendition of the judgment in the said Court below; and that the testimony of the said stenographer and the transcript of said proceedings were not filed with the Clerk of this Court with fifteen days after the rendition of said judgment, as required by Public Laws of New Jersey, 1912, page 318.

The following is a copy of the letter received January 3rd, 1916, from the Clerk of this Honorable Court:

"Supreme Court of New Jersey,
Clerk's Office, Trenton.

December 31, 1915.

Frederick V. Watson, Esq.,
Ridgewood, N. J.

Dear Sir:

Transcript has not been filed in the case of *Hemion vs. Rudolph*, neither has an order extending time to file same been filed. The specifications is the only paper on file in this case.

Dictated E. K.

Very truly yours,

WM. C. GEBHARDT,
Clerk."

The following is a copy of a further letter written by me, as follows:

"Ridgewood, N. J., Jan. 23rd, 1916.

Clerk of New Jersey,
Supreme Court,
Trenton, N. J.

Dear Sir:

In Re: case *Hemion vs. Rudolph*, on appeal from the District Court, has the transcript of testimony and of proceedings in the Court below, as yet been filed in your office? Your note of December 31, 1915, informs me that it had not been done at that date.

Respectfully yours,

FREDERICK V. WATSON."

which said letter was returned to me, the appellee's attorney, and received at my office on January 27th, 1916, with the following endorsement:

"Nothing filed but the specifications."

"WM. C. GEBHARDT."

**Re: Reasons of Dismissal 7 and 8 of
Plaintiff-Appellee in New Jersey
Supreme Court.**

If it be the contention of the appellant, and the opinion of this Honorable Court, that the stenographic report of testimony taken by the stenographer, appointed as aforesaid, was not taken within the purview of Public Laws of New Jersey, 1912, page 318, and that this case comes before this Court as if a stenographer had not been duly and legally authorized so to take such report of such testimony, and that in consequence thereof the provisions of said law as to certification and of the transcript of the proceedings, as well as the provisions of the filing of the same with the Clerk of this Court, do not apply, then this appellee contends that this appellant should have prepared his case on appeal according to the provisions of Public Laws of the State of New Jersey, 1902, page 566, and the amendments and supplements thereto since enacted; and that the State of the Case on Appeal in the Court below should be as the fact exists; that this appellant or his attorney did not apply to this appellee or his attorney to settle the said case on appeal within fifteen days after the rendition of the judgment in the Court below, or at any other time thereafter:

Further, this appellant did not apply to the Judge of the Court below, or to the Judge of any

other District Court, for an extension of time within which to agree upon the form of said case with the appellee, as provided for by said statutes; nor did said appellant avail himself of the proviso therein stated, permitting him, upon the inability of agreeing upon the form of said case with the appellee or his attorney, to have the Court below settle said case and sign it, as appears by the appellant's State of the Case on Appeal in the Court below. Such an application of the said Court below to settle such case and to sign it has not been made at any time since the rendition of the judgment below, except the application of the appellant to said Court on the 30th day of November, 1915, to certify to the transcript of the testimony taken by said stenographer appointed as aforesaid, and of the proceedings in said case.

This appellee, therefore, contends that this Honorable Court should dismiss this appeal, and relies in support of his motion on the principles enunciated in the following stated cases: *Wykes v. Smarak*, 87 *Atl. Rep.*, p. 333; *Maccia v. Stanzione*, 87 *Atl. Rep.*, p. 875; *Hauser v. Squire*, 81 *Atl. Rep.*, p. 263; *Paonessa v. Ruh*, 73 *Atl. Rep.*, p. 113, "wherein the court states 'there is no agreed state of the case, the stenographer's notes have been sent up in lieu thereof,' under the Statute of 1905, Public Laws 1905, page 259"; *Franz-Milton Co. v. Hale*, 62 *Atl. Rep.*, p. 269.

The Legislature of 1915 (*Public Laws of N. J.*, 1915, p. 549) enacted an amendment to the Act of 1910, which itself was an amending act to the Act of 1902, authorizing an appeal from any District Court to this Honorable Court; and therein extended the time within which an appellant may have to make such appeal; in other words, the time to give notice of such an appeal was extended from

ten to twenty days. And while such Act of 1915 contains a clause that all acts or parts of acts inconsistent therewith are repealed, this appellee contends that the portions of the aforementioned Act of 1912 (*Public Laws 1912*, p. 318) which prescribe that the record of the testimony and the transcript of the proceedings shall be returned to the Supreme Court within fifteen days, as well as the provisions of the Act of 1902, *Public Laws 1902*, which require that a case shall be settled by the appellant and appellee or, in lieu thereof, by the Judge of the Court below within fifteen days after the rendition of the judgment in the Court below, were not repealed, because these acts or such portions thereof are not inconsistent with the Act of 1915, as an appellant can prepare his case either under the Act of 1902 and the supplements and amendments thereto, or the Act of 1905 and the supplements and amendments thereto, and defer the serving of his notice of appeal and the entering of his bond until the twenty days after such rendition of judgment has expired. But if, for any reason whatever, the slightest doubt should exist as to whether or not this Act of 1915 applies to such portions of the Act of 1902 with amendments and supplements, and the Act of 1905 with amendments and supplements, the appellee contends in this particular case that the appellant has not filed a stenographic report of the testimony, together with the transcript of the proceedings, nor has he agreed with the appellee as to the form of the case upon appeal, nor has the Judge of the Court below settled the case and signed it at any time since the rendition of said judgment in the Court below, and that he is therefore entitled to have this appeal dismissed.

**Re: Reason of Dismissal 9 of Plaintiff-
Appellee in New Jersey Supreme
Court.**

The appellee contends that the appellant has not transmitted to the Clerk of this Court any case agreed upon by the appellee and the appellant or their respective attorneys, nor any case settled and signed by the Judge of the Court below, as will appear by the case on appeal and by the record of this Honorable Court, and that he is therefore entitled to have this appeal dismissed.

All of which is respectfully submitted by

FREDERICK V. WATSON,
Attorney and Counsel for Appellee.



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District Court of the Third Judicial
District of the County of Bergen

10

(Filed November 15, 1915.)

GEORGE HEMION,
Plaintiff,

vs.

JOHN W. RUDOLPH,
Defendant.

Notice of
Appeal.

20

To George Hemion, or Frederick V. Watson, Attorney of George Hemion:

Sir:

Take notice that the defendant, John W. Rudolph, hereby appeals to the New Jersey Supreme Court from the judgment of the Third Judicial District Court of the County of Bergen, rendered in the above stated action on the twenty-sixth day of October, Nineteen Hundred and Fifteen.

30

HUDSON & JOELSON,
Attorneys of Defendant.

40

Bond on Appeal.

(Filed November 16, 1915.)

KNOW ALL MEN BY THESE PRESENTS, That we,
John W. Rudolph and Gustav Nadler, are held and
firmly bound unto George Hemion, in the sum of
One Hundred and Twenty-five Dollars, for payment
10 of which sum we bind ourselves, our heirs, executors
and administrators, jointly and severally, firmly by
these presents.

Sealed with our seals and dated this _____
day of November, Nineteen Hundred and Fifteen.

WHEREAS, a judgment was rendered in the Third
District Court of the County of Bergen, on Tues-
day, the twenty-sixth day of October, in a suit
therein depending wherein George Hemion is plain-
tiff and John W. Rudolph is defendant, for the sum
20 of One Hundred Twenty-five Dollars, and the de-
fendant, John W. Rudolph, is about to appeal from
said judgment of the said Third Judicial District
Court of the County of Bergen to the New Jersey
Supreme Court;

Now, the condition of this obligation is such, that
if the said John W. Rudolph shall pay the costs of
the said appeal, whatever be the result thereof, and
shall pay to the said George Hemion the judgment
30 of the Judicial District Court of the County of
Bergen so as aforesaid rendered against the said
John W. Rudolph if the said appeal be not prose-
cuted by the said John W. Rudolph, or be dis-
missed, then this obligation to be void; otherwise,
to remain in full force and virtue.

JOHN W. RUDOLPH (SEAL)

GUSTAV NADLER (SEAL)

Signed, sealed and delivered

40 in the presence of:
IRA W. DUTTON.

Bond on Appeal.

STATE OF NEW JERSEY, }
 COUNTY OF BERGEN, } ss.:

GUSTAV NADLER, being duly sworn, on his oath says that he is the surety in the within bond named; that he is a freeholder in the County of and has property subject to execution worth the sum of One Hundred and Twenty-five Dollars over and above all his just debts and liabilities.

10

GUSTAV NADLER.

Subscribed and sworn to before me
 this 15th day of November, 1915.

IRA W. DUTTON,
 Justice of the Peace.

20

30

40

District Court Summons.

STATE OF NEW JERSEY, }
 BERGEN COUNTY, } ss.:



THE STATE OF NEW JERSEY,

10 *To the Sergeant-at-Arms of said Court, or any Con-
 stable of said County:*

SUMMON

JOHN W. RUDOLPH to appear before the District
 Court of the Third Judicial District of the County
 of Bergen to be held at the Court Room, Ridgewood,
 in said County, on the twenty-eighth day of Sep-
 20 at nine-thirty o'clock in the forenoon, to answer
 unto GEORGE HEMION, in an Action in Tort to the
 damage of the Plaintiff, Five Hundred Dollars,

30 WITNESS, PETER W. STAGG, Esq., Judge
 of the District Court of the Third Ju-
 dicial District of the County of Ber-
 gen, at Ridgewood, aforesaid, the sev-
 enteenth day of September, in the year
 One Thousand Nine Hundred and
 Fifteen.

JUDSON B. SALISBURY,
 Clerk.

F. V. WATSON,
 Ridgewood,
 Plaintiff's Attorney.

(A true copy.)

DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE COUNTY OF BERGEN.

(Filed September 17, 1915.)

| | | |
|--|---|---|
| <p style="text-align: center;">GEORGE HEMION, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN W. RUDOLPH, Defendant.</p> | } | <p>Action at Law. 10.</p> <p>In Tort.</p> <p>State of Demand.</p> |
|--|---|---|

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss. :

The plaintiff demands of the defendant the sum of Five Hundred Dollars, for that, whereas heretofore said defendant, to wit, on the 30th day of July, A. D. Nineteen Hundred and Fifteen, at the Borough of Allendale, County and State aforesaid, to wit, at Ridgewood, in the said County and State, did, contriving and maliciously intending to injure the plaintiff, falsely, maliciously, and without cause, execute a sworn complaint, before Ira W. Dutton, Recorder of said Borough of Allendale, a true copy of which is hereto attached and made part hereof, alleging that said plaintiff did, on the 29th day of July, A. D. Nineteen Hundred and Fifteen, at the Public Park of Allendale aforesaid, act in disorderly manner, and also indulged in and uttered loud and offensive and indecent language, and also made offensive remarks to persons at said Park. 20

The plaintiff further avers that, thereupon, and on the 30th day of July, A. D. Nineteen Hundred and Fifteen, a warrant for his arrest was issued by said Recorder, a copy of which is hereto at- 30 40

State of Demand.

tached and made part hereof, and he was arrested and incarcerated in the jail at Allendale, aforesaid, until admitted to bail by one Nelson Hemion, by said Recorder aforesaid.

10 And the plaintiff further avers that the public trial of said cause, set forth in said complaint, was had before said Ira W. Dutton aforesaid, at Allendale, aforesaid, on the 4th day of August, A. D. Nineteen Hundred and Fifteen, and said plaintiff was found not guilty as charged and complaint was dismissed.

The plaintiff avers that the defendant is a man of prominence in said community, being a Commissioner of Parks, and a Commissioner of said Borough of Allendale.

20 The plaintiff avers that by reason of the aforesaid arrest, publicly made, and by reason of his great humiliation thereof, before his friends and neighbors, and by reason of his having to stand public trial aforesaid, he was greatly humiliated and was injured in his good name and reputation, and he suffered great mental distress.

30 That he further spent divers sums of money in securing counsel to defend him in trial of said charges, as well as in travelling expenses in going from Allendale to the office of his counsel, to wit, the special sum of Twenty-five Dollars.

And further the said defendant, being a public official of said Borough of Allendale, to wit, a Commissioner of Parks in said Borough, his accusation aforesaid maliciously and without probable cause made, was of great credibility in said community, and therefore of greater damage to plaintiff, and plaintiff therefore asks punitive damages from said defendant thereof.

40 That aside from the special damages of plaintiff of Twenty-five Dollars, as aforesaid, plaintiff has

suffered and claims damages for the humiliation of arrest, the incarceration in jail, and the public trial aforesaid, and for his injury to reputation, as well as for punitive damages, as hereinbefore set forth, in the sum of Four Hundred and Seventy-five Dollars.

Therefore, the plaintiff claims damages in the sum of Five Hundred Dollars, as is said, and he therefore brings his suit. 10

FREDERICK V. WATSON,
Attorney for Plaintiff.

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30

40

Testimony.

THE DISTRICT COURT

of the

THIRD JUDICIAL DISTRICT

of the

10 COUNTY OF BERGEN.

GEORGE HEMION,
Plaintiff,

vs.

JOHN W. RUDOLPH,
Defendant.

20

The above entitled matter was tried in this Court on Tuesday, October 26th, 1915, at the Court Room, Ridgewood, Bergen County, New Jersey, before Hon. PETER W. STAGG, Esq., Judge, and in the presence of F. V. Watson, Esq., attorney for the plaintiff, and Walter R. Hudson, of counsel for defendant.

30

IRA W. DUTTON, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Watson.

Q. Mr. Dutton, you are the Recorder of Allendale? A. Yes, sir.

40 Q. Were you the Recorder on the twenty-ninth and the thirtieth days in July and the fourth day of August, nineteen fifteen? A. Yes, sir.

Ira W. Dutton—For Plaintiff—Direct.

Q. Have you your docket with you? A. Yes, sir.

Q. Where is it? A. I will get it providing I can leave the stand a minute (Witness produces a book which he calls his docket).

Q. Will you kindly turn to the portion of the docket which contains a record of the case of *The State v. Hemion*? A. This is on page 51 and page 52.

10

These pages offered in evidence and marked Exhibits P 1 and P 2.

Q. Have you the complaint made by Mr. Rudolph against Mr. Hemion? A. Yes, sir.

Q. Produce it, please? (Witness produced a complaint).

20

By the Court.

Q. That is the complaint referred to in this docket? A. Yes, sir.

(Plaintiff also produced a warrant and recognizance marked Exhibits P 3, P 4 and P 5).

Q. Does your docket show what your final disposition was of this case? A. Yes, sir.

30

Q. Also the date when it was tried? A. Yes, sir.

(Docket read in evidence).

By Mr. Watson.

Q. You heard Mr. Rudolph cross-examine the young ladies that were brought there as witnesses, Mr. Dutton?

Objected to by Mr. Hudson. Objection sustained; you cannot put anything in but the record.

40

Ira W. Dutton—For Plaintiff—Direct.

Q. Did Mr. Rudolph testify at that time?

By the Court: Answer, yes or no.

A. Yes.

10 Q. Who did he say that he spoke to before he made this complaint?

Objected to by Mr. Hudson.

By the Court: It is leading. I will overrule that.

Q. Did Mr. Rudolph testify that he spoke to anybody before he made this complaint?

Objected to by Mr. Hudson on the ground that it was incompetent.

20 By the Court: It is only incompetent because it is leading. It presumes that he did speak to somebody. Objection sustained.

Q. What did Mr. Rudolph testify to; kindly state all his testimony. A. It is right in my docket.

Q. Is that all he said? A. That is all I remember.

Q. How long did it take? A. I don't remember exactly how many minutes. I think you were there.

30 *By the Court.*

Q. That is all in substance? A. Yes, sir, merely made a complaint; that is all.

By Mr. Watson.

Q. How long did he testify; was it five minutes? A. I could not say, I am not positive.

40 Q. What would you say was the minimum amount of time? A. I would say not very long.

By the Court: He is giving you the best he can.

Ira W. Dutton—For Plaintiff—Direct.

Q. Did he make other statements than is summarized in that record?

By the Court.

Q. That is, did he speak some other words? A. Yes, sir.

10

By Mr. Watson.

Q. Did Mr. Rudolph make any statement as to whether or not he made any inquiries whatsoever prior to his making this complaint in your presence on that day in the firehouse? The day of the trial did he make any statement that he made any inquiries of any person whatsoever prior to having made the complaint? A. Yes, I think he did.

20

Q. What did he say? A. That there was another party had told exactly what had transpired down there.

Q. Who did he say the other party was? A. I think Mr. Braun.

Q. Did he mention any woman that he spoke to?

By the Court: What are you trying to prove, Mr. Watson, probable cause; that is for the defense.

30

Q. Mr. Hemion was arrested on that complaint, Mr. Dutton?

By the Court: Yes, the docket says so.

Q. How long was he incarcerated in the jail? A. He was never in jail.

Q. Where was the bail given, was he not in jail? A. No, sir, he was not.

Q. Was he brought before the Recorder? A. Yes, sir.

40

Ira W. Dutton—For Plaintiff—Direct.

Q. Were there many people in the court room at the time? A. I cannot say.

By the Court.

Q. Were there other people present? A. Yes.

10

By Mr. Watson.

Q. They heard the charge read? A. Yes, sir.

Q. He was brought by a duly authorized officer of the community?

Mr. Hudson objected to the question and the objection was sustained.

Q. Who brought him before you? A. I suppose Mr. Theil did. He is our marshal.

20

By the Court.

Q. Can you tell the reason there is no return on that warrant? A. No, sir, I cannot.

Q. Do you permit officers to bring persons before you without making returns? A. Not in the habit of doing so.

Q. As a matter of fact, the warrant was in the hands of the officer? A. Yes, sir.

Q. And the defendant was brought there by virtue of that warrant? A. Yes, sir.

30

Q. So the officer not making a return was an oversight? A. Yes, sir.

By Mr. Watson.

Q. Were there many people in the court room at the day of the trial or hearing? A. Quite a few.

By the Court.

40

Q. About how many? A. Possibly thirty.

Ira W. Dutton—For Plaintiff—Direct—Cross.

Q. Citizens around there? A. Yes, sir.

Q. Male and female there? A. Yes.

Cross-examination by Mr. Hudson.

Q. When you issued the warrant, or rather, when you took the complaint, you issued a warrant to the officer? A. Yes, sir. 10

Q. How long after you issued the warrant was it that the young man was returned into your court? A. That night.

By the Court.

Q. That does not tell us how long after you issued the warrant? A. I think in the afternoon, I am not sure about that. 20

By Mr. Hudson.

Q. The same day? A. Yes, sir.

Q. When he came into your court room was that the time the bail was given? A. No, sir, he brought him in the evening, about 5 o'clock.

Q. Then when he brought him in, at 5 o'clock, what happened? A. He sent for his father and his father went his bond.

Q. Where was the hearing, in your home or the Borough Hall? A. The Borough Hall. 30

By the Court.

Q. What happened to him between the time he came in and his father came in? A. He stayed there.

Q. He was detained in custody? A. Yes, sir.

Q. Was the general public there? A. Yes, sir.

*Ira W. Dutton—For Plaintiff—Cross.**By Mr. Hudson.*

Q. At that time, after he gave bail, you fixed a time for the hearing, did you not? A. Yes, sir.

Q. When did you make these entries in your docket with relation to the hearing, did you make them the same day? A. No, I did not.

Q. Did you make them the next day?

Objected to by Mr. Watson. Objection overruled.

A. I think afterwards.

By the Court.

Q. How long afterwards? A. Possibly a day or so.

By Mr. Hudson.

Q. Did you have notes showing the testimony? A. I put it down myself.

Q. This docket entry is then made from those notes? A. Yes, sir.

Q. Have you in that docket the testimony given by Mr. Rudolph? A. No, sir.

Q. You have what? A. Just the complaint.

Q. Was Mr. Rudolph sworn at the hearing? A. I suppose he was.

Q. Well, was he? A. Yes, sir, he was.

Q. I call your attention to page 52, where it says John W. Rudolph, Park Commissioner, and ask you who wrote that, that the Park Commissioner stated that the complaint had been made to him that some young men were using indecent language? That statement was made to you the day of the hearing by Mr. Rudolph? A. Yes, sir.

Q. So that, at the hearing, he did tell you that he had been informed that these conditions existed? A. Yes, sir.

Ira W. Dutton—For Plaintiff—Cross—Redirect.

Q. He told you that complaint had been made to him, did he not? A. Yes, sir.

By the Court.

Q. Did he say how many people had made complaint? A. Three, I should say. 10

Redirect examination by Mr. Watson.

Q. He told you who these three were, didn't he? A. Yes, sir.

Q. Who were they? A. Three young girls.

By the Court.

Q. Who were they, can you name their names? A. One of them; I can remember one name. 20

Q. Are they here in court? A. Yes, sir.

Q. These three young ladies? A. Yes, sir.

By Mr. Watson.

Q. He said he went to see these girls before he went to issue this complaint? A. I am not in a position to say that.

Q. He said he had interviewed them before he made the complaint? A. Yes, sir.

Q. And he cross-examined these young girls as to going to see them at the trial? A. I don't think so. 30

Q. Didn't he ask them if they made any statements before he went to make this complaint? A. I asked that.

Q. And what was their answer?

Objected to by Mr. Hudson. Objection sustained.

Ira W. Dutton—For Plaintiff—Redirect.

George Hemion—For Plaintiff—Direct.

Q. Did Mr. Rudolph testify as to whether he knew any other facts than the complaint of his own knowledge?

10 Objected to by Mr. Hudson.

 By the Court: I will sustain that. It is leading.

GEORGE HEMION, a witness produced on behalf of the plaintiff, being first duly sworn, testifies as follows:

Direct examination by Mr. Watson.

20 Q. Are you the young man that was arrested on the charge of Mr. Rudolph? A. Yes, sir.

 Q. Who arrested you? A. Ernest Theil.

 It is stipulated by both sides that Ernest Theil, the man who made the arrest of the plaintiff under the warrant issued by the Recorder, which is offered in evidence as P 4, was Marshal for the Borough of Allendale at the time when said arrest was made.

30 Q. Where did he arrest you? A. In Ramsey.

 Q. At your home in Ramsey? A. Yes, sir.

 Q. Where did he bring you? A. To the firehouse in Allendale.

By the Court.

 Q. How did he bring you? A. In the automobile.

By Mr. Watson.

40 Q. When you got to the firehouse, what happened there?

*George Hemion—For Plaintiff—Direct.**By the Court.*

Q. What day of the week was this? A. I could not just tell you.

Q. Was it Sunday or a week day? A. A week day.

10

By Mr. Watson.

Q. What happened when you got to the firehouse? A. I just sat there and waited until he got the rest of them.

Q. How long did you wait? A. From half-past 5 or twenty minutes to 6; we went up on the 9.06 trolley.

By the Court.

Q. Who was with you? A. I don't know the man's name; he told a man to watch us.

20

By Mr. Watson.

Q. Were there other people at the firehouse at that time, coming in and out? A. One in there and one came in and went right out again.

Q. Were there other people there when you were brought up before the judge and asked whether you were guilty or not guilty? A. Yes, sir.

30

Q. Spectators and visitors? A. Yes, sir.

Q. And your father went your bail? A. Yes, sir.

Q. Did you have to send for him? A. Yes, sir.

Q. How did you send for him? A. I think Ernest sent for him.

Q. The man that brought you down went after your father? A. Yes, sir.

Q. You say you were there three or four hours? A. About two hours.

Q. Were there many people at the trial on the 4th of August? A. Yes, quite a few.

40

George Hemion—For Plaintiff—Direct.

Q. Was the room crowded or otherwise? A. Quite a crowd in there.

By the Court.

Q. About how many people were there? A. About twenty-five or thirty.

By Mr. Watson.

Q. Men and women? A. Yes, sir.

By the Court.

Q. How old are you, young man? A. Twenty-three years old.

Q. What do you do for a living? A. Work for the old man in a butcher shop.

Q. Keeps a retail butcher store? A. Yes, sir.

Q. Wait on customers that come in? A. Yes, sir.

Q. Go around to the houses and get orders? A. Yes, sir.

By Mr. Watson.

Q. Are you known throughout the community of Allendale?

Objected to by Mr. Hudson.

By the Court: That is rather leading.

Q. Where is your father's butcher store? A. Right behind the Allendale Saloon.

Q. From where do you draw your customers; where are your trades people; where do they live?

By the Court.

Q. What he wants to know is, where do you go to get orders? A. I go on the turnpike and across the tracks.

George Hemion—For Plaintiff—Direct.

By Mr. Watson.

Q. What community is that in?

By the Court.

Q. Is that in Allendale? A. Yes, sir.

Q. Go anywhere else than Allendale to get orders? A. No, sir, just in Allendale. 10

By Mr. Watson.

Q. Do you know whether or not any of your customers were in the court room at the time that you were arraigned or the time of trial?

By the Court: You mean his father's customers? 20

A. No, sir, I do not.

Q. You employed counsel to defend you in the case, did you not? A. Yes, sir.

Q. And you came down from where to see him?

By the Court.

Q. Did you have to travel to see him? A. No, sir.

Q. Where do you live? A. Ramsey.

Q. Did the lawyer you employ live in Ramsey? A. No, sir. 30

By Mr. Watson.

Q. I was your counsel in that action, was I not? A. Yes, sir.

Q. You came down several times to see me by train, didn't you? A. Yes, sir.

Q. About what were your expenses for a lawyer and for carfare, altogether, all the expenses you had connected with that trial? 40

George Hemion—For Plaintiff—Direct—Cross.

By the Court.

Q. You mean that day in Allendale? What he wants to know is how much money did you spend out for your lawyer and carfare from the time you were arrested until the time you were acquitted?

10 A. About \$7.

By Mr. Watson.

Q. Sure of that?

By the Court: That is what he says, \$7.

Q. That paid your lawyer, too? A. Yes, sir.

Q. Did you lose any work by reason of this—

20 Mr. Hudson objected to the form of the question.

By the Court: Well, I don't know; I will allow that.

A. Yes, sir.

Q. How much in wages did you lose during this time by reason of this action?

By the Court.

30 Q. Be very careful; remember you are working for your father. Did your father deduct any wages on account of your not being there? A. No, sir.

Q. Then you did not lose any wages? A. No.

Cross-examination by Mr. Hudson.

Q. Mr. Theil came to your house in Ramsey and told you he had a warrant for you? A. Yes, sir.

Q. Did he tell you what the warrant was? A. Yes, sir, read it off to me.

40 Q. Does your father live in Ramsey? A. Yes, sir.

George Hemion—For Plaintiff—Cross.

Q. Were you at your father's house at that time?
A. Yes, sir.

Q. Mr. Theil told you what he would have to do? A. He said he had a warrant out.

Q. Did he ask you to go down to Allendale with him? A. Yes, sir. 10

Q. And you went? A. Yes, sir.

Q. He did not put any handcuffs on you? A. No, sir.

Q. And you were taken before Judge Dutton?
A. Yes, sir.

Q. And Judge Dutton asked you for bail? A. Yes, sir.

Q. And you had no bail? A. No, sir.

Q. And Judge Dutton allowed Mr. Theil to go for bail for you? A. Yes, sir. 20

Q. And you were allowed to go as soon as you got bail? A. Yes, sir.

Q. And the next time you appeared was on the hearing? A. Yes, sir.

Q. And when the Judge gave you his decision in your favor you were allowed to go? A. Yes, sir.

Q. And you were not delayed at all? A. No, sir.

Q. When was the first you consulted your attorney in regard to the matter of your being arrested? 30

By the Court.

Q. Was it after you gave bail or before? A. After I got the bail.

By Mr. Hudson.

Q. Now, then, when, after you gave bail, was it that you consulted your attorney? A. When we had the hearing in the firehouse.

Q. And you had never visited your attorney before that hearing—you had never consulted with Mr. Watson until the day of the hearing? 40

George Hemion—For Plaintiff—Cross.

By the Court: The question is, had you seen Mr. Watson to talk to him about this case before the day that you had the hearing?

10 A. No, sir.

Q. You say you lost work by reason of this charge? A. Yes, sir.

Q. And you also said, if I heard you correctly, that you work for your old man? A. Yes, sir.

Q. You meant your father, didn't you? A. Yes, sir.

Q. Were you working for your father at the time this complaint was made against you? A. Yes, sir.

Q. You were? A. Yes, sir.

20 Q. Are you now working for your father? A. Yes, sir.

Q. When did your father lay you off from work?

Objected to by Mr. Watson on the ground that he is not examining this witness on the testimony and also in the form of the question. Objection overruled.

A. He did not lay me off, no, sir.

30 Q. Have you been working for your father continuously from the time you were arrested until now? A. No, sir.

Q. Did your father discharge you because of this complaint? A. No, sir.

Mr. Watson objected to this testimony on the ground that it is not cross-examination and there is no such testimony on the direct examination.

40 By the Court: This is the plaintiff and I will allow that question and overrule the objection.

Mildred Terwilliger—For Pltff.—Direct—Cross.

MILDRED TERWILLIGER, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Watson.

Q. Miss Terwilliger, you are the young lady who testified at the case before the Recorder, were you not? A. Yes, sir. 10

Q. You were one of the young women who were at the park on the day that they testified this boy used improper language; is that correct? A. Yes, sir.

Q. Did anybody speak to you before this case came up about this mater? A. No, sir.

Q. Mr. Rudolph speak to you? A. No, sir. 20

By the Court.

Q. Did you speak to him? A. No, sir.

Cross-examination by Mr. Hudson.

Q. With whom were you in company on the day before this complaint was made, which referred to your being in the park at Allendale? A. Two young ladies, a Miss Chaplin was one; I don't know the other girl's name. 30

Q. Are they here? A. Yes, sir.

Q. Both the young ladies were witnesses at the hearing, weren't they? A. Yes, sir.

Q. You testified that you did not hear Mr. Hemion use any profane language?

Objected to on the ground that it is not cross-examination.

By the Court: I will sustain that objection on the ground that it is not cross-examination. 40

Mildred Terwilliger—For Plaintiff—Cross.

Mary Chaplin—For Plaintiff—Direct.

Q. How long were you at the park on the day before the complaint was made, Miss Terwilliger?

Objected to by Mr. Watson.

10 By the Court: I will overrule that objection.

A. Came in the morning.

Q. And stayed all day? A. Yes, sir.

Q. Was Mr. Hemion there during the day?

Objected to by Mr. Watson.

By the Court: I will allow that.

A. He was there in the morning.

20 Q. You say he was there? A. Yes, sir.

Q. During the time that you were there, were you annoyed by any young men?

Objected to by Mr. Watson. Objection sustained.

Q. You are related to Mr. Hemion? A. No, sir.

Q. You say you are not a cousin of Mr. Hemion?

A. No, sir.

30 Q. Not related in any way whatsoever? A. No, sir.

MARY CHAPLIN, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Watson.

40 Q. You were one of the witnesses, were you not, at the trial before Judge Dutton? A. Yes, sir.

Mary Chaplin—For Plaintiff—Direct.

Q. Did anybody speak to you before this complaint was made? A. Yes, sir.

Q. Who? A. Mr. Rudolph.

Q. What did he say—what did he ask you?

By the Court.

10

Q. What did he say? A. He asked me to explain all that happened on that day before he came there.

By Mr. Watson.

Q. When did he ask you that? A. On the afternoon of the day—

By the Court: What day was that?

20

Q. Was that before the 4th of August or after? A. Before.

Q. When did Mr. Rudolph speak to you, was it before the complaint was made or afterwards; do you know? A. It was before.

Q. Before the complaint?

By the Court.

Q. What month was it in, do you recall? A. In July.

30

By Mr. Watson.

Q. What did he say to you? A. He told me to explain everything that the boys had done and anything else that happened before he got there that afternoon.

Q. How did he put the question, can you remember what he said?

Mr. Hudson objected on the ground that he could not cross-examine his own witness.

40

Mary Chaplin—For Plaintiff—Direct—Cross.

A. No.

Q. What did you say he said—was that his exact language, Miss Chaplin?

By the Court.

10 Q. Is that what he said exactly or as you recall it? A. Just as I remember it.

By Mr. Watson.

Q. What did you say to him? A. I told him all that I knew that happened.

20 Q. What did you tell him that happened? A. We were up at the other end of the pond and the boys were down at the opposite end and fooling with the boat, and he asked me if I knew who put the boat up on the dam and who broke it, and I told him I did not know because I did not see who put the boat up there.

By the Court.

Q. Is that all you told him? A. Yes, sir.

Cross-examination by Mr. Hudson.

30 Q. You were in the presence of Mrs. Ackerman that day? A. No, I did not know her then.

Q. You knew Miss Terwilliger? A. Yes.

Q. And also knew Marie Megnin? A. Yes..

Q. The four of you were in the park together? A. Yes.

Q. Having a picnic? A. Yes, a good time generally.

By the Court.

40 Q. What time did you get there and what time did you leave? A. I don't remember whether it was that day or the day before.

Mary Chaplin—For Plaintiff—Cross.

By Mr. Hudson.

Q. You live in Allendale? A. No, in Ramsey.

Q. A great many other people in the park that day? A. Yes, sir.

Q. Some ladies? A. Yes, sir.

10

By the Court.

Q. This is a public park? A. Yes, sir.

By Mr. Hudson.

Q. You go to that park frequently, do you not?

A. Yes, sir.

Q. And it is a place where women can bathe?

A. Yes, sir.

Q. And there are bathhouses for women? A. Yes, 20
sir.

Q. And there are what might be called a playground and a ball field and such amusements provided there? A. Yes, sir.

Q. On this particular day, July 29th, there had been some disturbance?

Objected to by Mr. Watson on the ground that it is not cross-examination and he has got to connect it up.

30

By the Court: I will overrule the objection.

Exception asked and granted.

A. Yes.

Q. You knew about the boat having been thrown over the dam?

Objected to by Mr. Watson.

A. It was on top, it was not thrown over; it was 40
on the dam.

Mary Chaplin—For Plaintiff—Cross.

Q. Where it was was a place where it could not be used by those wanting to use it?

Objected to by Mr. Watson on the ground that it is incompetent and immaterial.

10 A. Yes.

Q. Had it been placed on the dam that day?

Objected to by Mr. Watson.

A. Yes, sir.

By the Court.

Q. Where was the boat when you went there? Was it in its regular place? A. Yes, sir.

20

By Mr. Hudson.

Q. And while you were there it had been placed where it was on the dam?

Objected to by Mr. Watson. Objection overruled.

A. Yes, sir.

30 *By the Court.*

Q. Did you see anybody place this boat on the dam? A. I did not see them in the act of putting it there.

By Mr. Hudson.

Q. When Mr. Rudolph came to you, Miss Chaplin, was he accompanied by any other man? A. There were two, I think.

40 Q. Had the other man spoken to you earlier in the day?

Mary Chaplin—For Plaintiff—Cross.

Objected to by Mr. Watson.

By the Court: It is not cross-examination.
I will overrule that.

Q. Do you know who the other man is that was
with Mr. Rudolph?

10

Objected to by Mr. Watson.

By the Court: I will allow that.

A. No.

Q. Had you seen the other man earlier that day?

A. No.

Q. How did Mr. Rudolph come to you; was he
brought to you by someone, or were you taken to
him?

Objected to on the ground that it is not
cross-examination. 20

By the Court: I will sustain the objection.
You may be able to show that on your side.

Q. Do you remember being at the hearing, Miss
Chaplin? A. Yes, sir.

Q. And you knew Mr. Hemion? A. Yes, sir.

Q. Did you know him at the time you were speak-
ing to Mr. Rudolph? A. Yes, sir.

Q. Do you know Mr. Simpson?

30

Objected to and objection overruled.

A. Yes, sir.

Q. At the time you were talking to Mr. Rudolph
in the park was Mr. Hemion's name mentioned?

Mr. Watson objected to the question.

By the Court: I will allow that. It is
cross-examination.

40

Mary Chaplin—For Plaintiff—Cross—Redirect.

By the Court.

Q. At the time you were talking to Mr. Rudolph in the park, was Mr. Hemion's name mentioned?
A. Yes.

10 *Redirect examination by Mr. Watson.*

Q. Were you talking to Mr. Rudolph in the park at all? A. Yes.

Q. What day was that—that is, the day you were down there? A. Yes.

Q. Were you talking to Mr. Rudolph the day you girls were there? A. Yes.

Q. You saw Mr. Rudolph after that?

20 Objected to by Mr. Hudson.

Q. After the time that you saw Mr. Rudolph and the time you had this conversation, was that at another time than the time you saw him?

Objected to by Mr. Hudson, she says he talked to her.

30 By the Court: Yes, she says she was in the park that afternoon and he came to see her about what happened that morning.

By the Court.

Q. How old are you, young lady? A. Twenty-one.

Marie Megnin—For Plaintiff—Direct.

MARIE MEGNIN, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Watson.

Q. You are one of the young women that was at this park? A. Yes, sir. 10

Q. And the young lady that testified before Judge Dutton? A. Yes, sir.

Q. Do you know Mr. Rudolph? A. Yes, sir.

Q. Did he speak to you before this trial, before he made the complaint? A. Yes, sir.

Q. When did he speak to you? A. Before the trial; in the public park.

By the Court.

20

Q. What time of day? A. In the afternoon.

By Mr. Watson.

Q. What did he say? A. He asked me if I knew anything about it and I said no.

Q. Did he say anything else? A. He told me to appear at the trial.

By the Court.

30

Q. When he said about "it," did he tell you what "it" was? A. About who put the boat on the dam.

Q. Is that what he asked you? A. Yes, sir.

By Mr. Watson.

Q. Did he speak to you at any other place? A. Yes, in front of my house.

By the Court.

40

Q. When was that? A. I don't know.

Marie Megnin—For Plaintiff—Direct—Cross.

Q. Before or after the time at the park? A. After.

Q. Before the trial? A. Before the trial.

By Mr. Watson.

10 Q. Before these boys were arrested; do you know?

A. Yes, sir.

Q. What did he say there? A. He told me I should remember what time to appear.

Q. Did he ask you any other questions? A. No.

Q. Did he ask you any question at all? A. The same question he asked me down at the park.

By the Court.

20 Q. What was that? A. About putting the boat on the dam.

Q. What you knew about that? A. Yes, sir.

Q. What was your answer? A. I told him nothing.

By Mr. Watson.

Q. And do you remember Mr. Rudolph cross-examining you at the trial?

Objected to by Mr. Hudson.

30 *By the Court.*

Q. Do you remember his cross-examining you at the trial? A. Yes, sir.

Q. Do you remember what he asked you there? A. He told me I said something about his making a complaint.

Cross-examination by Mr. Hudson.

40 Q. When Mr. Rudolph was talking to you in the public park, did he ask you anything about any bad language he used?

Marie Megnin—For Plaintiff—Cross.

Mr. Watson objected to that.

By the Court: I will allow it.

A. He did.

Q. He asked you about the boat being put on the dam? A. Yes.

Q. Did he ask you anything about holes being cut in the partition of the ladies' bathing house?

A. No.

Q. When you went to the park this morning the boat was floating around on the water? A. I did not go in the morning; I went in the afternoon.

Q. Where was the boat when you got there? A. I don't remember.

Q. When Mr. Rudolph asked you about the boat, what did you tell him? A. I told him I did not know anything about it.

Q. When he asked you about the language—

Objected to by Mr. Watson as not cross-examination, if he—

By the Court: That is not finished.

Q. When he asked you about the language, what did you tell him?

Objected to by Mr. Watson; I object to his asking this witness anything about the language unless it is about the boat.

By the Court: I will allow that question.

Exception asked and granted.

A. I said I had heard it from somebody else but not from these boys.

Q. When you said you heard it from somebody else, you mean you heard bad language or indecent language?

Objected to by Mr. Watson. Sustained.

Marie Megnin—For Plaintiff—Cross.

Q. What did you mean?

By the Court: No; we are not troubled about what somebody else said.

10 Q. You did hear offensive language in the park?

Objected to by Mr. Watson.

By the Court: I will sustain that; she said she did not hear it from these boys.

Q. Did Mr. Rudolph call on you at your home after he had talked to you at the park? A. Yes.

Q. And your father was present at the time?

20 Objected to by Mr. Watson on the ground that it is immaterial.

A. Yes.

Q. Did Mr. Rudolph then ask you about bad language having been used in the park?

Objected to by Mr. Watson on the ground that it is not cross-examination.

By the Court: I will allow that question. Exception asked.

30 A. I don't remember.

Q. Do you remember what he did ask you? A. I remember he asked me if I could—

Q. How old are you, Miss? A. Fourteen.

Q. What did Mr. Rudolph ask you when he came to your father's house? A. Nothing special.

Q. What did he ask you? A. Nothing, he told me something.

Q. What did he tell you?

40 By the Court: I will overrule that; he cannot make evidence.

*Marie Megnin—For Plaintiff—Cross.
Motion for Non-Suit.*

Q. You say he did not ask you anything?

By the Court: That's what she said.

Q. Don't you know you saw Mr. Rudolph only
once? 10

Objected to.

By the Court: I will allow that.

A. I saw him twice.

By the Court.

Q. Did you see him twice? A. I saw him at the
park and at the house. 20

By Mr. Hudson.

Q. Twice on the same day? A. No.

Q. You are sure about that? A. Yes, sir.

PLAINTIFF RESTS.

Motion made by Mr. Hudson for a non-suit
on the ground that my friend has not shown
what he is required to show in a case of this
kind and I refer to Abbott's Trial Evidence, 30
page 825. The plaintiff is bound to show
want of probable cause, and that, I submit,
is the whole case here, and that they have
failed in absolutely. This action is brought
for malicious prosecution and, as your Honor
so well knows, malice cannot be inferred and
the fact that this man was brought before
the Justice, put under bail and acquitted
is not sufficient to show that. He must go
further than that; he must show want of 40
probable cause.

Ira W. Dutton—For Defendant—Direct.

By the Court: I think there is a want of probable cause here, so far as the case now stands. Motion denied.

Exception asked and granted.

10

IRA W. DUTTON, a witness produced on behalf of the defendant, testified as follows:

Direct examination by Mr. Hudson.

Q. Before this complaint was made by Mr. Rudolph, did he lay the facts in the matter before you? A. Yes, sir.

20 Q. Did he make known to you that complaint which had been made to him?

Objected to by Mr. Watson.

By the Court: I will overrule that.

Q. What did Mr. Rudolph say to you?

Objected to by Mr. Watson.

By the Court: I will sustain the objection.

30

Q. Did he ask you for your advice?

Objected to by Mr. Watson.

By Mr. Hudson: I have a right to show that as a justification and in mitigation of damages.

By the Court: Objection overruled on the ground that it is in mitigation of damages.

Objected to by Mr. Watson on the ground that he is not entitled to give advice.

The Court will take it for what it is worth.

40

Exception.

By the Court: Answer yes or no.

Ira W. Dutton—For Defendant—Direct.
Valentine Braun—For Defendant—Direct.

A. Yes, sir.

Q. What did you advise him?

Objected to by Mr. Watson.

By the Court: I don't think I will allow you to go as far as that. He asked for his advice and he was the committing Magistrate. 10

Q. At the time he asked for advice he had not yet made the complaint? A. No, sir.

Q. Did he ask your advice as to whether or not he should make a complaint?

Objected to by Mr. Watson.

By the Court: I will not allow that. I will allow you to go as far as that he got the advice before he made the complaint. 20

Q. The advice relating to making the complaint?

Objected to by Mr. Watson.

By the Court: I will allow that.

A. Yes, sir.

Q. And related to the making of this complaint? 30

A. Yes, sir.

VALENTINE BRAUN, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Hudson.

Q. Mr. Braun, you live in the Borough of Alledale? A. I do. 40

Valentine Braun—For Defendant—Direct.

Q. Do you know the location of the public park that has been mentioned? A. I do.

Q. What have you to say as to the nearness of your place of residence to this park?

10 Objected to by Mr. Watson on the ground that it is immaterial.

By the Court: I will allow that.

A. I am about 500 feet away from the park.

Q. This park is located in what kind of a section of Allendale, with regard to the closeness of buildings?

20 Objected to on the ground that it is immaterial.

By the Court: I will allow that.

A. The nearest building is about 200 feet away from me.

By the Court.

Q. About how many buildings are there around this park? A. About four or five.

30 Q. How large is the park—how many acres? A. About three acres, I guess.

Q. Entirely in Allendale, or partly in Ramsey?
A. All in Allendale, right in the center.

Q. Is it east of the Franklin Turnpike or west?
A. West.

Q. East or west of the Erie Railroad? A. West.

By Mr. Hudson.

Q. This park is frequented by many people?

40 By the Court: The Court will take notice that it is a public park.

Valentine Braun—For Defendant—Direct.

Q. There is on this park a small pond? A. A small pond.

Q. Used for bathing? A. Yes, sir.

Q. On certain days of the week are women allowed to bathe there? A. Every day.

Q. Men and women allowed to bathe there? A. Yes, sir. 10

Q. On every day are they allowed to bathe together? A. Yes, sir.

Q. Bathhouses for the use of the men and bathhouses for the use of women? A. Both, two houses for the women and one for the men.

By the Court.

Q. People bathing there are required to bathe in bathing costumes? A. Yes, sir. 20

By Mr. Hudson.

Q. On the 29th of July, 1915, were you at this park? A. I was at the park. I was there for the purpose—

Q. You were there? A. I was there.

Q. Did you see Mrs. Ackerman there? A. Yes, sir.

Q. Did you see a Miss Terwilliger there? A. No. 30

Q. Did you see Miss Chaplin there? A. I did.

Q. Did you see Miss Megnin there? A. Yes, sir.

Q. Did you talk to these young ladies? A. One of them.

Q. Which one? A. Miss Chaplin.

Q. Did your conversation have to do with the actions of men at the park that day?

Objected to by Mr. Watson on the ground that it is immaterial. 40

A. Yes, sir.

Valentine Braun—For Defendant—Direct.

Q. During the conversation was Mr. Hemion's name mentioned?

Objected to by Mr. Watson as to the form of the question.

10

Objection overruled.

A. It was.

Q. Was Mr. Rudolph present? A. He was.

By the Court: One minute, you are on the witness stand and this is not a place for fun; counsel has a right to object, and don't snap in your answer.

20

Q. Was Mr. Rudolph present at the time you were talking to Miss Chaplin? A. He was.

Q. Did you talk with Miss Chaplin or any of these ladies prior to the time Mr. Rudolph was there?

Objected to by Mr. Watson as to the form of the question. It is too indefinite.

By the Court: I will allow it.

A. No.

30

Q. In the talk to Miss Chaplin was she asked whether or not Hemion had used profane language on that day?

Objected to by Mr. Watson on the ground that it is leading.

By the Court: I will sustain that objection because I don't see how that can justify Mr. Rudolph in making the complaint, because somebody said something to him, Mr. Hudson, he took his chance, and if this statement to him turned out to be true and the

40

Valentine Braun—For Defendant—Direct.

man was convicted, that is one thing; but if it turned out to be false, he took his chance.

Q. Did you hear any profane language on the day in question? A. No.

Q. Did you see this boat that is spoken of? 10

Objected to by Mr. Watson as immaterial.

By the Court: Why trouble ourselves about this boat? It could not be disorderly conduct; if anything, it is malicious mischief.

Q. Did you take Mr. Rudolph to this park on this day? A. I telephoned to him.

Q. And you told him to come to the park? 20

Objected to by Mr. Watson.

A. I did.

Q. How long after you telephoned was it that Mr. Rudolph came?

Objected to by Mr. Watson.

By the Court: I will allow that.

A. About fifteen or twenty minutes. 30

Q. Where did you telephone from?

Objected to by Mr. Watson.

By the Court: I don't care where he telephoned from.

A. From my house.

Q. Before you telephoned you had been in the park? A. I had.

Q. What caused you to telephone Mr. Rudolph? 40

Valentine Braun—For Defendant—Direct—Cross.

Objected to by Mr. Watson.

By the Court: I will sustain that objection.

Q. Did you ask Mr. Rudolph to come to the park?

10

By the Court: The conversation between him and Mr. Rudolph is entirely irrelevant and I will not allow that.

Q. When Mr. Rudolph and you got to the park, was Mr. Hemion there? A. No.

Q. Was he there when you were in the park prior to your telephoning for Rudolph? A. I did not see.

Q. When you telephoned for Rudolph, did you say it was on the day of this alleged disorderly conduct?

20

By the Court: That is improper.

Q. Do you know whether the complaint had been made at the time?

By the Court.

Q. Was it on the same day? A. The same day.

By Mr. Hudson.

30 Q. Was it before or after the complaint was made, if you know? A. Before.

Cross-examination by Mr. Watson.

Q. You just drove through the park? A. I just walked through there.

Q. What time of the day was it? A. I should judge around 2 o'clock.

40 Q. How long did you stay in the park? A. I just went through it and I saw what happened.

John W. Rudolph—For Defendant—Direct.

JOHN W. RUDOLPH, a witness produced on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Hudson.

Q. Mr. Rudolph, where do you live? A. Allendale. 10

Q. Are you in business there? A. Yes, sir.

Q. What is your business? A. Building contractor.

Q. How long have you lived in Allendale? A. Nine years.

Q. Are you in any way connected with the Government down there? A. I am.

Q. In what capacity? A. President of the Shade Tree Commission and Commissioner in charge of the Public Parks. 20

Q. This park that has been spoken of, is that under your supervision and jurisdiction? A. Yes, sir.

Q. On the 29th of July, it has been said that you were at the public park and met some of these ladies. A. If I remember, it was on the 30th of July.

By the Court.

Q. That was after you made the complaint? A. No, sir. 30

Q. It was on the day of the complaint? A. Yes, sir.

By Mr. Hudson.

Q. Was it before or after you made the complaint?

By the Court: You met these young ladies? 40

A. Before.

John W. Rudolph—For Defendant—Direct.

Q. Which of the young ladies did you meet? A. Miss Chaplin, Miss Megnin and Mrs. Ackerson.

Q. Where did you meet Miss Chaplin? A. In the park.

Q. Was the meeting with her before or after Mr. Braun telephoned to you? A. After.

Q. Was Mr. Braun with you? A. Yes, sir.

Q. What did you ask Miss Chaplin?

Objected to by Mr. Watson.

Q. What did you say to her?

Objected to by Mr. Watson.

By the Court: I will allow that on the question of the mitigation of damages.

A. I asked her if she knew anything of the doings of the previous day.

Motion by Mr. Watson that it be stricken out as not responsive.

By the Court: That is responsive.

Witness continues: She said she did; that she had been present nearly all of the day in the park and had seen and heard a lot of talk and she mentioned the names of several young men as having been the ones that took part in it.

Q. What did she say, if anything, about Mr. Hemion? A. Mentioned his name as being one of them.

Q. What did she say he did? A. She accused them of—

By the Court: No; now, Mr. Rudolph, what did she say Mr. Hemion did; did she say anything particular about him.

40

A. She said he was one of the crowd.

John W. Rudolph—For Defendant—Direct.

Q. Did she say he did anything? A. She mentioned his being one of the crowd.

By the Court.

Q. What did she say that he did? A. Used profane language. 10

By Mr. Hudson.

Q. Who said that? A. Miss Chaplin.

By the Court.

Q. Is that young lady in court? A. Yes, sir.

Q. Is that the young lady sitting there? A. Yes, sir.

Q. What language did she say he used; did she repeat the words? A. No. 20

By Mr. Hudson.

Q. Did you ask her anything about that boat?

Objected to by Mr. Watson.

By the Court: I will sustain the objection; we have nothing to do with the boat.

Q. Did you see any other young woman who has been on the stand to-day before you made this complaint? A. Yes, sir. 30

Q. Did you talk to Miss Terwilliger or not? A. No.

Q. Did you talk to Miss Megnin or not?

Objected to on the ground that it is leading.

A. Yes.

Q. Where? A. In front of her residence, in the presence of her father. 40

John W. Rudolph—For Defendant—Direct.

By the Court.

Q. Was that on the same day? A. The same day.

Q. Before or after the complaint was made? A. Before.

10 *By Mr. Hudson.*

Q. What did you say to her?

Objected to by Mr. Watson.

By the Court: I will allow that.

A. I asked her if she knew anything about the doings in the public park on the previous day, when it was reported that ladies had been annoyed in violation of the ordinance.

20

By the Court.

Q. What did she say? A. She said she did and she also mentioned the same names the others had as being leaders in it.

Q. What did she say she saw or heard them do?
A. Heard them use indecent language and saw them destroying property.

Q. Did she tell you what the language was or words that had been used? A. No.

30

By Mr. Hudson.

Q. Was anything said by either Miss Chaplin or Miss Megnin which you remember particularly, concerning Mr. Hemion and the others that you mentioned?

By the Court: No, you will have to take "the others" out of your question and make it simply concerning Mr. Hemion.

40

Objected to by Mr. Watson on the ground

John W. Rudolph—For Defendant—Direct.

that it is indefinite and the answer cannot be responsive and also that it is immaterial.
Objection overruled.

A. Yes.

Q. Before you made this complaint, did you know Mr. Hemion? A. No, sir. 10

Q. Before you met Miss Chaplin at the park, did you know her?

Objected to as immaterial.

By the Court: I will allow that.

A. No, sir.

Q. Before you made this complaint, did you know Miss Megnin? A. I did, but had never spoken to her. 20

Q. Before you made this complaint, did you know Mrs. Ackerman? A. No, sir.

Q. You say you did not see Miss Terwilliger? A. No, I did not, her name was given by Miss Chaplin.

Q. What first directed your attention to the alleged happenings at the park?

Objected to by Mr. Watson.

By the Court: I will overrule the question. 30

Q. When you learned of these happenings at the park, what did you do?

Objected to by Mr. Watson.

By the Court: I will sustain the objection to the question in that form.

Q. After you talked to these ladies, what did you do? A. Called up Judge Dutton. 40

Q. What did you say to Judge Dutton?

John W. Rudolph—For Deft.—Direct—Cross.

By the Court: No, we got from Judge Dutton what he advised him.

Q. Was your talk with Judge Dutton regarding the making of this complaint?

10 By the Court: Answer yes or no.

A. Yes.

Q. What was your talk with him? A. It was regarding advice.

By the Court.

Q. Advice about this complaint? A. Yes, sir.

Q. Then it was regarding the complaint? A. It was prior to the complaint.

20 Q. Wasn't it regarding the complaint? A. I asked his advice as to what to do after having learned of these things.

Q. That was regarding the complaint? A. Yes, sir.

By Mr. Hudson.

Q. What did Judge Dutton advise you to do?

Objected to as immaterial.

30 Q. After you talked with Judge Dutton, did you make the complaint? A. Yes, sir.

Q. Was the complaint drawn up by Judge Dutton? A. Yes, sir.

Cross-examination by Mr. Watson.

Q. You swore to it, didn't you?

By the Court: He does not deny that.

40

DEFENDANT RESTS.

Mildred Terwilliger—For Plaintiff—Recalled.

Mary Chaplin—For Plaintiff—Recalled.

Marie Megnin—For Plaintiff—Recalled.

MISS TERWILLIGER recalled in rebuttal on the part of the plaintiff.

By Mr. Watson.

10

Q. Did you tell Mr. Rudolph that Mr. Hemion had used improper language?

Objected to by Mr. Hudson.

By the Court: I will overrule that.

MISS CHAPLIN recalled in rebuttal by the plaintiff.

20

By Mr. Watson.

Q. Did you tell Mr. Rudolph that the Hemion boy had used improper language at the park? A. No.

MISS MEGNIN recalled in rebuttal by the plaintiff.

30

By Mr. Watson.

Q. Did you tell Mr. Rudolph that this young man had used improper language at the park on the day before the complaint was made?

Objected to by Mr. Hudson.

A. No, I did not know him.

BOTH SIDES REST.

40

Copies of Exhibits.

DOCKET MARKED "P 1" AND "P 2."

 THE BOROUGH OF ALLENDALE

10

vs.

 GEORGE HEMION, JOSEPH SHU-
 ART and WM. SIMPSON.

On Complaint for Disorderly Conduct.

Date of " July 30th, 1915.

20

Name of Complainant. John W. Rudolph, Park
Commissioner,

Address of Complainant. Allendale, N. J.

Address of Defendants. Hemion and Shuart, Ram-
sey, N. J. William Simpson, Allendale,
N. J.

Witnesses & Addresses.

30

Nature of Charge. That defendants did act in a
disorderly manner and also indulged in
and uttered loud and offensive and inde-
cent language, and also made offensive re-
marks to persons at said Park.

Warrant returned before Ira W. Dutton.

" " Date July 30th

Date of order To appear Aug. 4th/15 at 10 A. M.

Bondsmen Wilson Hemion for Geo. Hemion, Ram-
sey.

40

" Jas. Simpson of Allendale for Wm.
Simpson.

Exhibits.

Witnesses Mary Chapel, Mildred Terwilliger, Ramsey. Mrs. Francis Ackerson & Maria Megnin, Allendale.

IRA W. DUTTON, Borough Recorder.

Aug. 4th

Trial of Geo. Hemion, Joseph Shuart, Wm. Simpson. 10

On Complaint for Disorderly Conduct.

John W. Rudolph, Park Commissioner, stated that complaint had been made to him that the above young men had insulted some of the visitors at the Park by using offensive and indecent language and that it was getting to a point where it was almost dangerous for our young girls and the women of the town to visit the Park. 20

First Witness Mrs. Francis Ackerson stated that she had often heard most profane language used at the Park, but did not hear any of the defendants say anything offensive or could she recognize any of them, as having been at the Park on that particular day (July 29th).

Second Witness Mildred Terwilliger stated that she did not hear any of the defendants say anything or use any profane language. 30

Third Witness Mary Chapel stated that she was at the Park on July 29th but defendants said nothing to her and she was not insulted by any of them, nor did she hear any profane language used.

Fourth Witness Maria Megnin was asked if she had seen any of the defendants at the park on July 29th and said she had, but that 40

Exhibits.

they had said nothing to her in any way that was offensive, and has heard no profane language used in any way.

10 Aug. 4th, 1915. After hearing fully the evidence and allegations of the parties, I gave judgments that the defendants are not guilty as charged, and so dismissed them.

IRA W. DUTTON,
Borough Recorder.

COPY OF COMPLAINT, MARKED "P 3."

20 Complaint.—Disorderly Conduct—P. L. 1898, P. 871-619.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:

30 John W. Rudolph, Park Commissioner of the Borough of Allendale in the County of Bergen and State of New Jersey, upon his oath does complain and says that on the 29th day of July A. D. 1915, at the Public Park of Allendale in the County aforesaid:

That George Hemion did act in a disorderly manner and also indulged in and uttered loud and offensive and indecent language and also made offensive remarks to persons at said Park.

40 Wherefore, he prays that the said George Hemion may be apprehended and held to answer to said

Exhibits.

complaint, and dealt with as law and justice may require.

JOHN W. RUDOLPH.

Subscribed and sworn to at Allendale
the 30th day of July, A. D. 1915, before me, 10

IRA W. DUTTON,
Recorder.

Seal.

ENDORSEMENTS.

Witnesses:

Mary Chapel, Ramsey, N. J.
Mildred Terwilliger, Ramsey, N. J. 20
Mária Megnin, Allendale.
Mrs. Mable Simons, "
Mrs. Francis Ackerson "

Before

IRA W. DUTTON, Esq.,
Recorder in and for the County of Bergen, N. J.
Borough of Allendale.

THE STATE OF NEW JERSEY,

vs.

GEO. HEMION. 30

Complaint for
Disorderly Conduct.

Filed.

COPY OF WARRANT, MARKED "P 4."

Warrant—Disorderly Conduct—P. L. 1898.—612.

STATE OF NEW JERSEY, }
 COUNTY OF BERGEN, } ss. :

10 THE STATE OF NEW JERSEY,

to the Sheriff or any Constable of said County:

WHEREAS, complaint hath this day been made to me, a Recorder, in and for the County of Bergen, on oath by John W. Rudolph, Park Commissioner, that George Hemion did act in a disorderly manner and also indulged in loud and offensive and indecent language and also made offensive remarks to persons at the Public Park,

20 These are, therefore, in the name of the State of New Jersey, to command you to apprehend the said George Hemion if in your County he may be found, and bring him forthwith before me, or some other Justice of the Peace, or in and for said County, to answer the said complaint, and be further dealt with as the law directs. Hereof you are not to fail, and for so doing, this shall be your warrant.

30 Given under my hand and seal, at my office, in the Borough of Allendale in said County, this 30th day of July, A. D. 1915.

IRA W. DUTTON

Seal.

Recorder.

No endorsements and no return of service.

40

COPY OF RECOGNIZANCE, MARKED "P 5."

Recognizance to appear and answer charges.—

P. L. 1898, P. 875—610.

Before Ira W. Dutton, Recorder.

THE STATE OF NEW JERSEY,

VS.

GEORGE HEMION.

} On Charge for
Disorderly
Conduct.

10

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss. :

BE IT REMEMBERED, That on this 30th day of July
in the year of our Lord One Thousand Nine hun-
dred & fifteen, personally appeared before me Ira
W. Dutton, one of the Recorders in and for the
County of Bergen and State aforesaid, and ac-
knowledged himself to be indebted to the State of
New Jersey, in the sum of 50.00 Fifty dollars each,
to be made and levied of their respective goods and
chattels, lands and tenements, if default be made in
the following condition, to wit:

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That if the above named George Hemion shall
personally be and appear before the said Ira W.
Dutton, Recorder in and for the said County of
Bergen on the 4th day of August, to answer such
charges as shall be then and there preferred against
him and not depart the said Court without leave,
then the above recognizance to be void, or otherwise
to be and remain in force.

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NELSON HEMION.

L. S.

Taken and acknowledged the day and
year first above written, before me

IRA W. DUTTON,
Recorder.

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Exhibits.

COPY OF AFFIDAVIT ENDORSED ON RECOGNIZANCE.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss.:

10 MR. NELSON HEMION, Ramsey, the recognizer
named in the within recognizance, being duly
sworn, say that his residence is correctly stated in
the said recognizance; that he is a freeholder, own-
ing in fee simple, and in his own right, real prop-
erty within the County of Bergen, worth double the
amount in which he is bound in the said recogniz-
ance over and above all incumbrances, liens and
liabilities whatsoever, and that such property con-
sists of

20 NELSON HEMION.

Sworn and subscribed to before me
this 30th day of July, A. D. 1915.

IRA W. DUTTON.

30 I hereby certify the above transcript to be the
state of the case on appeal.

Nov. 30, 1915.

PETER W. STAGG,
*Judge of The District Court of
the Third Judicial District of
the County of Bergen.*

Opinion.

THE DISTRICT COURT
of the
THIRD JUDICIAL DISTRICT
of the
COUNTY OF BERGEN.

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GEORGE HEMION,
Plaintiff,

vs.

JOHN W. RUDOLPH,
Defendant.

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In rendering decision in the above-entitled matter the Court gave the following summary :

This suit is brought to recover damages in tort for falsely, maliciously and without cause swearing out a complaint against the plaintiff by the defendant, which caused his arrest. It is quite evident to the Court, from the appearance of the defendant and from the testimony here, that there was no actual malice of this defendant in issuing this complaint; in fact he advised with the Recorder before having the complaint sworn to. There was some little controversy in the testimony, but the Recorder, who knew these people best, decided on the trial before him against the complainant, and said that the then defendant, and now plaintiff here, was absolutely innocent of the charge charged against him. A man may have charge of the public park as Commissioner, but that does not give him any more rights than other citizens, so far as hav-

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Opinion.

ing anybody arrested for committing an offense against the law. He did not hear this defendant use any indecent or improper language, and he does not testify that he did. He does testify that he has some hearsay evidence from somebody else. If that could be said to be probable cause, we would all be liable to be arrested; because if somebody could go to somebody else and say that they heard a man say something on the street, but he was unwilling to swear to it, but the man it was told to would swear to it that he had it told him by somebody else, and then the other people come into court and say that they did not hear it, then there would be a lack of proof and nobody could be held for perjury. If this park is to be protected, it can be protected by officers, but I do not understand that a man who made a complaint can come in and say there was probable cause without having any legal evidence whatever on which to base his affidavit. Now the affidavit says this: "John W. Rudolph, of the Borough of Allendale, in the County of Bergen and State of New Jersey, upon his oath avers, complains and says that on the 29th day of July, A. D. 1915, at the Public Park of Allendale in the said County aforesaid, that George Hemion did act in a disorderly manner and also indulged in and uttered loud and offensive and indecent language and also made offensive remarks to persons at said Park. Wherefore he prays that the said George Hemion may be apprehended and held to answer to said complaint and dealt with as law and justice may require."

Now he swears to that as a positive statement, when he did not know anything about it, except as other people told him. If he had said in that affidavit that Miss Terwilliger had told him, or that somebody else had told him that, then the Recorder could not have issued the warrant, because the complaint would have been illegal. Now when a man

Opinion.

goes to work and makes a complaint that is legal, and then it turns out that he made a statement that he had no personal knowledge of which he says he did have, he cannot come into court and say that he did it with probable cause. It is a pretty hard thing to arrest a young man just budding into manhood; and it is especially hard when he is working for his father, and entering the houses of the citizens and mingling with their wives and daughters. A man does not want a young man to come to his place that has been convicted of using vile language in a public park, and there is the necessity of putting a young man out of a job, even if he is working for his father. It is true he is putting that young man in a position where fathers would not want their daughters to associate with him and would not want to consider him as their possible son-in-law. Of course Recorders issue warrants and officials make affidavits without thinking of the damage they are doing to reputations of people and yet they talk of reform, and an officer that makes an affidavit of this kind it seems to me cannot escape a verdict. 10 20

This man had to pay something out for expenses and he procured counsel for a very reasonable sum. Seven dollars, and some of that must have gone for carfare; and in view of the fact that the Commissioner acted, in my judgment, without malice and under advice of this Recorder, and without being in any way unkind, I think that the Recorder had better buy a law book and look up some law; he, the defendant, certainly would not have made any such affidavit as that if he had been advised by a lawyer; all these things taken into consideration, I think ample justice will be served by a judgment in favor of the plaintiff against the defendant for Fifty dollars and costs. 30 40

The defendant took an exception to the judgment.

DOCKET

of the

THIRD JUDICIAL DISTRICT COURT

of the

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COUNTY OF BERGEN.

HEMION

vs.

RUDOLPH.

Docket
No. 1114.

20 Summons issued September 17, 1915; returnable
September 28, 1915; served September 22, 1915, by
leaving the same at the place of abode of the de-
fendant with a person over the age of fourteen
years, Truman Rodgers, Constable.

State of demand filed September 17, 1915.

Case tried October 26, 1915; judgment entered
same day for \$50 and \$10 costs.

Notice of appeal filed November 15, 1915.

Bond on appeal filed November 16, 1915.

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DISTRICT COURT

of the

SECOND JUDICIAL DISTRICT

of the

COUNTY OF BERGEN.

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GEORGE HEMION,
Plaintiff,

vs.

JOHN W. RUDOLPH,
Defendant.

Reasons.

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The following is a specification of the determinations of the District Court with which appellant is dissatisfied in point of law :

- 1. The plaintiff did not prove malice.
- 2. The plaintiff did not prove want of probable cause.

3. The suit was for malicious prosecution and the plaintiff failed to prove malice and want of probable cause.

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1. At the close of the plaintiff's case, appellant's attorney made a motion for a non-suit on the grounds that plaintiff had failed to prove malice.

2. That plaintiff had failed to prove want of probable cause.

3. That plaintiff was required to prove malice and want of probable cause and had failed so to do.

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Reasons.

4. The Court admitted hearsay as evidence.

5. The Court declined to receive competent evidence on the part of the defendant from the witnesses Valentine Braun and Ira Dutton and the defendant.

10 The Court denied the motion and appellant asked for an exception and same was granted. The Court erred in its determinations and appellant is dissatisfied with same in point of law.

HUDSON & JOELSON,
Attorneys of Defendant.

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