

New Jersey Court of Errors and Appeals

ROSE G. GARRISON,

Plaintiff-Appellee,

vs.

NEWARK CALL PRINTING & PUBLISHING COMPANY,

Defendant-Appellant.

*In Tort.
On Error
from
Essex
Circuit
Court.*

Brief for Appellant.

Statement of the Case.

This action was commenced by Rose G. Garrison and George E. Garrison, her husband, against the Newark Call Printing and Publishing Company for an alleged libel published in the Newark Sunday Call on November 22, 1908.

At the trial of the case which began on February 10th, 1913, and before any testimony was offered, counsel for the plaintiff amended the declaration by eliminating George E. Garrison as a plaintiff and the case then proceeded with Rose G. Garrison as sole plaintiff.

From the evidence it appears that Rose G. Garrison was married to George E. Garrison in the City of Orange, October 23, 1901, and that after their marriage they took up their residence at No. 436 Summer avenue in the City of Newark, a house owned by the husband of the plaintiff and occupied by him a number of years prior to plaintiff's marriage, he being a widower and had resided in said house with his first wife.

That the plaintiff and her husband continued to reside at No. 436 Summer avenue from the time of their marriage until about the month of April or May, 1909. That George E. Garrison, husband of the plaintiff, was a resident of the City of Newark since 1893, and before that he resided in New York City. That for twenty-five years he was employed as a stereotyper and ever since he resided in Newark was employed as such by the "New York World," and that his residence and occupation given in the Newark City Directory is 436 Summer avenue and stereotyper.

It appears from the testimony of witnesses produced by the plaintiff, that during the years 1899, 1900, 1901 and 1902 a Mrs. Everett G. Garrison and her husband resided at No. 426 Summer avenue, in the City of Newark, and that the occupation of Everett G. Garrison was that of a broker. That in the year 1902 Mrs. Everett G. Garrison left her husband and went away with a man by the name of Archer. That Mr. Everett G. Garrison after his wife left him in 1902 moved from 426 Summer avenue and was not living there at the time of the publication.

That the Sunday Call is published weekly and on November 22nd, 1908, published an article which was headed "For Extradition of Elliot Archer, Asconding Grain Broker Arrested in Seattle May Be Brought to Newark Shortly. A Six-Year Search Ended." A similar article had been published the evening before in the "Newark Evening News."

The alleged libel upon which the plaintiff bases her action appears in the center of the article and reads as follows: "At the time of his arrest, Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a broker, when Archer first disappeared from the city. It is said she has been with him much of the time since. Archer's wife is living in this city, at 124 Lincoln avenue."

It appears from the testimony of the plaintiff that she did not notify the Sunday Call of any mistake in the Christian name given in the publication, but that she notified her lawyer the next day or day after and it was admitted by counsel for plaintiff that no request was made whatever. Counsel for plaintiff lost no time in bringing suit, the summons having been issued December 1, 1908. That upon discovery by the defendant that an error had been made in the Christian name in the publication it did on December 6, 1908, publish on the first page of its paper, it being the most conspicuous page of the paper, a correction which read as follows:

A CORRECTION MADE.

In the Sunday Call of November 22, in an article announcing Archer's arrest in Seattle and telling the story of his crime, it was said that when he ran away from Newark he was accompanied by Mrs. George E. Garrison, of 426 Summer avenue. This statement has naturally proved distressing to Mr. and Mrs. George E. Garrison, who have their home in the same neighborhood, namely at 436 Summer avenue. The woman who went away with Archer was not Mrs. G. E. Garrison but was Mrs. E. G. Garrison, the full name being Mrs. Everett G. Garrison, and her home was at No. 426, the address given in this paper two weeks ago. The fact that two persons with similar names lived within four or five doors of each other explains the unfortunate error. It is regretted by the Sunday Call. Of course, Mrs. George E. Garrison's friends knew that she had not left Newark, nevertheless it is unpleasant to her to have her name linked with that of Archer."

It also appears from the testimony in the case that similar publications appeared in the New York Sun and the New York American besides the publication

in the Newark Evening News, November 21, 1908, the evening before the publication by the defendant. That the plaintiff commenced suits against all of the aforementioned papers and that the suit against the Newark Evening News was tried June 7th, 1910.

That the case now under review was tried at the Essex County Circuit Court in February, 1913, and the jury rendered a verdict in favor of the plaintiff for the sum of \$4,296.25 and that judgment was accordingly entered against the defendant, from which judgment the defendant appeals upon the grounds hereinafter set forth.

The publication by the defendant was not intended to refer to the plaintiff, but was intended for Mrs. Everett G. Garrison who was described in the publication.

The declaration does not set out the whole of the article published by defendant November 22, 1908, but a copy put in evidence by the plaintiff, and marked Exhibit P. 1, is fully set out on page 237.

It is a matter of which the court will take judicial notice that Seattle, in the State of Washington, is more than 3,000 miles distant from the City of Newark and that it would be a physical impossibility for a person to be in Seattle on Friday night and in Newark the next day or the day following. The words used were plain and intelligible. Witnesses produced by the plaintiff who knew the plaintiff testified that it did not apply to the plaintiff, but to another person, and the plaintiff knew that the publication did not apply to her.

“At the time of his arrest, Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who it is said deserted her husband, a broker, when Archer first disappeared from the city.”
The language used in the article is incapable of

bearing the meaning assigned by the innuendo. Any person who can read the English language unless he has a motive to apply it to the plaintiff, will at once conclude that the article does not apply to the plaintiff. And it is a well settled rule of law that unless the language concerns either the person or the affairs of the person complaining, no wrong can have been done him of which he can rightfully complain.

Blanche Caldwell, a witness for the plaintiff who resided in the house owned by the husband next door to where the plaintiff resided on p. 90 clearly states that she knew that it did not apply to the present Mrs. Garrison, the one in court, the plaintiff.

On re-direct examination by plaintiff's counsel this witness testified p. 90, l. 30, that she thought it applied to Mr. Garrison's former wife, the first Mrs. George Garrison. On p. 91, l. 12, to the question, "When you talked with Mrs. George E. Garrison, the present Mrs. Garrison, did you talk the matter over with her about whom it applied to? A She told me who it was. Q And what did she say to you? A She told me that it was the Mrs. Garrison that lived a few doors below us—had lived there."

Harry R. Crane, a witness produced by the plaintiff, on direct examination, bot. p. 111 and top of p. 112, testified that he knew George E. Garrison and Rose G. Garrison and that he also knew Mrs. Everett G. Garrison and her husband and on cross examination p. 114, l. 10, he testified he knew all the time that it was not Mrs. George E. Garrison. He knew that Mrs. Everett G. Garrison lived at No. 426 Summer avenue, while Mrs. George E. Garrison lived at No. 436 Summer avenue. He knew that Mr. George E. Garrison was a stereotyper in New York, and that Mrs. Everett G. Garrison's husband was a broker. He knew that the article did not apply to Mrs. George E. Garrison the plaintiff, and that at the time of the

publication Mrs. Everett G. Garrison did not live on Summer avenue, although she formerly lived there.

On p. 118 this witness, on re-direct examination reiterates his previous testimony and on re-cross examination p. 119, l. 25, he says that Mrs. E. G. Garrison lived at 426 Summer avenue for three years anyhow. And on same page l. 30, he gives the years as 1902, 1901, 1900, 1899 that Mrs. Everett G. Garrison lived at 426 Summer avenue and that she lived there up to the time she ran away with Archer.

These witnesses were qualified to testify as to who was meant by the publication for the reason that they resided in the neighborhood and were acquainted with the parties and the circumstances.

The testimony of George E. Garrison, the husband of the plaintiff given on cross examination bot. of p. 200, that he knew that he was designated in directory as a stereotyper. On p. 201. Counsel for plaintiff admits that George E. Garrison was a stereotyper all those years.

Mr. Garrison, on p. 201, l. 3, testified that he knew that Everett G. Garrison lived at No. 426 Summer avenue, and l. 18 says, he knew him by sight, and that he had been pointed out to him as a namesake of his.

And on p. 189, l. 10, on direct examination he says he knew Everett G. Garrison by sight, and that he knew Mrs. Everett G. Garrison by sight. That witness' business is that of a stereotyper employed on the *New York World*. There is some confusion in the testimony between counsel for the plaintiff and the witness as to when he lived at No. 436 and 436½ Summer avenue, pp. 188, 189. My understanding of the testimony of Mr. Garrison on this point is that he built No. 436 Summer avenue in 1895 and moved in there and lived there at the time he was married to his present wife in 1901 and then continued to live

there with her and was living at No. 436 at the time of the publication; but at the time of the trial of this suit in February, 1913, he lived at No. 436½ Summer avenue.

The plaintiff, Rose G. Garrison, testified on her direct examination p. 34, l. 10, that she was married in Orange in 1901, and after her marriage they went to No. 436 Summer avenue, Newark to live and resided there until April, 1909, and on p. 57, she says that her husband during all the time she knew him was a stereotyper, and on p. 56, l. 28, she says that when she married her husband he was a stereotyper and was such up to the present time and that he is employed by the New York *World*.

Louis Hannoeh, a witness for defendant on p. 225, l. 25 (reading from the Newark City Directory for the year 1908, which was offered in evidence and marked Exhibit D. 2, for defendant), testified that there were twenty persons by the name of Garrison in the directory and that there were three by the name of George and that they are designated as follows: George, machinist; George E., stereotyper, and George W., driver. That on cross examination he testified that the residence given in the directory was, George, 136 Springfield avenue; business, machinist; George E., 436 Summer avenue, stereotyper; and George W., driver, 94 Sylvan avenue.

From the foregoing excerpts of testimony it is clear that although the Mrs. George E. Garrison was used in the article, there was no intention to refer to the plaintiff. It pointed directly to a person who formerly lived at 426 Summer avenue, a house other than plaintiff's, and who had gone away with a man six years before the publication and was with the man at the time of his arrest. It also designates the occupation of the witness's husband that went away, and

which was not the occupation of the husband of the plaintiff.

In the case of *Hanson vs. Globe Newspaper Co.*, 159 Mass., 293; 34 N. E. Rep., 462. The syllabus is as follows:

"In an action against a newspaper, for libel, it appeared that plaintiff was a real estate and insurance broker of South Boston, and that in an article giving an account of a person who was fined in a police court, the paper described the prisoner as "H. P. Hanson," a real estate and insurance broker of South Boston," while the name of the prisoner was A. P. H. Hanson, also a real estate and insurance broker of South Boston, and that the intention was to describe the proper person, and that plaintiff's name was used by mistake,

HELD, that plaintiff could not recover, for the reason that, while the name was used in the article, there was no intention to refer to him, and that in order to prove the libel it was not sufficient to show that plaintiff's name was used in the article, but it must be further shown that he was the person whom the article was intended to describe."

Knowlton, *J.* who delivered the opinion of the court says:

"In a suit for libel or slander it is always necessary for the plaintiff to allege and prove that the words were spoken or written of and concerning the plaintiff."

Upon a careful reading of the opinion in the case above cited, it will at once appear that the case at bar is a much stronger case for the defendant, because in the Hanson case, the publication gave not only the name of the plaintiff but his occupation and residence, which were the same as the person intended, while in the case at bar, the publication only gave the plaintiff's name and in doing so designated her as Mrs.

George E. the balance of the article such as residence and occupation of her husband and all the facts narrated therein did not apply to her. If the defendant's article had contained anything libelous against Mrs. Everett G. Garrison, there can be no doubt that she could have maintained an action against the defendant for this publication.

"The name used is not conclusive in determining the meaning of the libel in respect to the person referred to. It is but one fact to be considered with other facts upon that subject."

The case of *Hanson vs. Globe*, is mentioned in the case of *Sweet vs. Post Publishing Co.*, 102 N. E. Rep. Morton, J., on page 661 says :

"Nor can the defendant avail itself of the doctrine laid down in *Hanson vs. Globe Newspaper Co.*, that in order to render a defendant liable the libel must have been published of and concerning the plaintiff, and it is not to be deemed to have been so published if through mistake another person than the one intended is named."

It is evident that the plaintiffs' suit against the defendant was not for the purpose of vindicating the reputation of the plaintiff, but that the plaintiff has capitalized her reputation by bringing many suits against various newspapers, for the purpose of obtaining money. Nowhere in the evidence does it appear that the plaintiff lost either a friend or acquaintance or that her friends and acquaintances treated her in any different way than they previously had, nor was there any evidence that any of her friends or acquaintances had read the article published by the defendant, but on the contrary her whole testimony is based upon suppositions without any basis for it, with the intent of obtaining a large verdict from the jury. In this she succeeded, for the jury rendered a most peculiar sum when they awarded the plaintiff \$4,296.25.

Errors.

The court erred in the admission of three articles published in 1902, six years prior to the publication complained of.

An exception was taken to the admission of these exhibits offered by the plaintiff and marked P. 2; P. 3; P. 4, which exhibits are fully set out on pages 239-250.

Rose G. Garrison, the plaintiff, testified on pages 34 and 35 respecting the publications by the defendant in 1902 as follows:

“Q Did you also see these other articles that were published in 1902?

Mr. Leonard Kalisch. I object on the ground that it does not refer to this plaintiff at all, nor was there any libel in them that refers to this plaintiff or any libelous matter that referred to anybody.

The Court. Well, I do not understand it to be claimed that there is.

Mr. Leonard Kalisch. Well, then, it is irrelevant and has nothing to do with the case whether she saw those articles or not.

Mr. Lambert. This is preliminary, leading up to another question.

The Court. Well, it would only be admissible as following out the line of thought under which they were admitted, by showing that her attention, as one of the public, was called to these publications in the ordinary way. I think you may show that, if it is a fact. You may answer the question.

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

Exception allowed; let it be sealed.

(Question read.)

A Yes.

The Court. That means, I suppose, did you see them at the time they came out?

Witness. Yes.

The Court. Is that what you mean?

Witness. Yes."

The admission of the publications in 1902, six years before the article complained of was error, there was nothing in the articles that could in any way connect the plaintiff, and the introduction of them in this case brought before the jury irrelevant matter for the purpose of prejudicing the jury against the defendant.

The court erred in the admission of incompetent testimony.

Testimony of Rose G. Garrison, p. 47, l. 24:

"Q Did you see them say anything to any of their associates?

This question was objected to and objection overruled and exception allowed.

Q What was the answer? A Yes."

This testimony should have been excluded. It had no bearing upon the publication and was not connected with it, nor was there any subsequent testimony that connected it with the publication; it was prejudicial to the defendant, as will be seen by the testimony of this witness preceding the question objected to:

"Q Who were you buying the things of? A Of ladies.

Q What ladies? A Why, I don't know who they were, but they were in the Bee Hive, Hahne's and—

Q What were they doing—what were these ladies doing? A Behind counters.

Q What was their business? A I suppose I was buying shoes and all—

Q No, not what you were doing; what were the ladies doing? A Selling to me.

Q On how many occasions did you go and buy goods where these salesladies sold goods to you and you saw them talk? A Every day in the week, for the greatest long time; I don't know how long it was."

Page 49, l. 36. The court admitted the following question over the objection of counsel for defendant, and an exception was taken and allowed.

"Q And your object in doing that was what?

A To show the people I hadn't gone away with Archer."

This question should have been excluded.

On p. 52, l. 2. The court admitted the following question over the objection of counsel for the defendant, and an exception was allowed:

'Q How long did your nervousness continue?

Mr. Leonard Kalisch. I make the same objection that I raised before.

The Court. This goes back to the witness's previous statement in connection with her mental anguish, that she was very nervous, which the court remarked at the time might naturally be understood as relating to a state of mental agitation or disturbance. Understanding the question to be relevant to that, I think it is proper.

The Court. You may answer the question. How long did your nervousness continue?

A Why, it is with me yet."

The admission of this testimony was harmful and prejudicial to the defendant.

This question should have been excluded, for it is apparent that if the nervousness is with her yet, it being over four years since the publication that the jury would understand it as a disease and attribute it to the publication.

This character of testimony comes within the case of *Butler vs. Hoboken Printing & Publishing Co.*, 44 Vroom, p. 45.

To more emphatically impress the jury, this same question was put in a little different form, p. 52, l. 34:

“Q How often have you had this nervous feeling since the publication? A Why, I have had it right along.

Q What do you mean by that? A Why, down in Asbury Park I was stricken—my right leg and arm were paralyzed.

Mr. Leonard Kalisch. I object to that, if your honor please. That is certainly improperly interposed in this case.

Mr. Lambert. I consent to its being stricken out.

The Court. Strike it out. That is certainly within the *Butler* case. It is a case of physical disability.

Although this later testimony was stricken out, it had a most harmful effect upon the jury against the defendant, and taken in connection with the question “How long did your nervousness continue? And the answer, “Why, it is with me yet,” which testimony the court admitted over defendant’s objection, leave no room for doubt that the jury must have understood that the nervousness of the plaintiff was a disease and attributed it to the publication.

Blanche Caldwell, a witness for the plaintiff testified beginning on p. 84, l. 20:

“Q Did you talk with anyone or did anyone speak to you about the article?

The Court. You may answer that yes or no.

A Yes.

Q Who talked with you or whom did you talk with about the matter? A Mr. Caldwell.

Q And with anyone else? A Yes.

Q Whom? A A Mr. Hine.

Q What was said between you and Mr. Caldwell about the article, or the fact?

Mr. Leonard Kalisch. I object.

The Court. I will overrule the objection.

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

Exception allowed.

A I don't just recall all the conversation, but we just wondered whether it was Mrs. Garrison or not.

Q What Mrs. Garrison? A Mrs. George E. Garrison.

Q You were acquainted with her, were you?

A Yes.

Q And what conversation did you have with Mr. Hine about the matter? A Just about the same thing.

Mr. Leonard Kalisch. I wish also to have an exception to that.

The Court. There will be the same ruling and exception.

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

Exception allowed.

Q Can you recall the conversation that you had with Mr. Hine? A No, I don't recall the words.

Q Well, the substance?

The Court. She said it was just about the same as the other.

Q About the same as the other? A Yes.

The Court. That is what she said."

Patrick Walsh, a witness for the plaintiff, over the objection of counsel for the defendant, was permitted to testify to a conversation had with a man by the

name of Brady, and with a man by the name of McCormack, p. 92, l. 26:

“Q Did you talk with anyone about this article? A Yes, sir.

Q With whom? A A man named Brady and a man named McCormack.

Q And where did you talk with them? A At the Lackawanna station.

Q Who is Mr. Brady? A A police officer detailed there.

Q And who is Mr. McCormack? A Night station master.

Q How long after the 22d day of November, 1908, did you talk with them? A Well, the following Monday, Tuesday, and I believe up until a Thursday or Friday night.

Q Can you state what you said to them or what they said to you on that occasion?”

Objection was here made and overruled and exception allowed, p. 93, l. 30.

“(Question read.)

A Well, not just exactly the words, but we talked it over and we were pretty sure of it, that it was Mrs. Garrison that went away.

Q What Mrs. Garrison? A Mrs. George E. Garrison.

Q How long did that impression continue with you? A Four or five days.

Q And then what happened, if anything? (P. 94, l. 1) A We were discussing it over one evening there, and Mr. George E. Garrison came in, and with that he overheard us say—we had to let it out, and we said, ‘Well, we see they have got Archer again’; and he said, ‘Yes, and I see they have got me in it again’; and then came the explanation that it wasn’t Mrs. George E. Garrison, that it was this other woman, Everett G. Garrison, or whatever you call her.

Q And until that time— A We was of the opinion that it was Mrs. George E. Garrison.”

This testimony was incompetent and should have been excluded. There was no evidence that either Brady or McCormack had read or even seen the article published by the defendant, nor was there any evidence that they had the article before them during their discussion. On the contrary on p. 96, l. 20, Walsh on cross examination in answer to the question:

“Q In your conversation did you speak of the Evening News and Sunday Call? A No, we didn't mention no paper at all, but I had in mind the both subjects, the News and the Call.

Q I mean in this conversation was there any names of any paper mentioned? A Not one.”

Patrick Walsh, testified that he did not know Mrs. George E. Garrison, and Matthew Brady testified, p. 132, l. 13, that he did not know Mrs. George E. Garrison, and only saw her at the trial of her case against the News, where he was a witness, and he further testified, l. 20:

“I don't remember seeing it in the Call; I don't remember reading the Call,” and further down on p. 132 he says, “No, I don't think I could, because I think I am almost sure that I didn't read it in the Call; I am sure I didn't read it in the Call, because I didn't read the Call after the publication I saw the News.”

It appears from the evidence that the case against the Newark Evening News was tried in June, 1910, about a year and half after the publication.

George McCormack, with whom Walsh had the conversation, which was objected to, testified, p. 140, l. 10, that he did not see the article published in the Sunday Call.

The testimony of Walsh was incompetent and inadmissible. It was hearsay. It expressed the opinion not alone of himself, but also of Brady and McCormack.

The same character of testimony was given by other witnesses for the plaintiff throughout the entire case, and objections were made by defendant's counsel which were overruled, the court holding invariably that such testimony was competent and admissible, and for this reason much of the testimony of that character was given without formal exception being taken by counsel for defendant.

John Friery, a witness for the plaintiff, after testifying, p. 105, l. 32, that he did not know Mrs. George E. Garrison, and did not see the article Ex. P. 1, at the time of its publication, nor did he see it afterwards, was allowed to give a conversation with a person by the name of James McGrath, and on p. 106, l. 16, he was asked the following questions:

“Q What was the conversation or the substance of it between you and him?”

Objection was made and overruled and exception granted.

A As to whether this was the wife of Mr. George E. Garrison or not; of course, we both of us knew Mr. George E. Garrison.

Q Can you give us the conversation?

A Nothing more than as I said before, that we both knew Mr. Garrison, and of course, if it was his wife we were sorry. We had talked it over in that strain.”

On p. 107, l. 6, the following questions were asked of this witness by plaintiff's counsel:

“Q I will ask you this question. At the time of that conversation, did you believe that Mrs. George E. Garrison had gone away with Archer?”

This question was objected to and objection overruled and exception allowed.

"A We didn't know anything about it, whether she had or had not, only as I tell you, that we saw Mr. Garrison every morning we were on duty. As to whether this was Mrs. George E. Garrison or not, we didn't know whether it was or whether it wasn't, whether it was his wife or whether it was somebody else's wife."

The question was an incompetent one and should have been excluded, as before stated, this witness did not read or see the article complained of either at the time of its publication or at anytime afterwards, nor was the defendants' paper mentioned in the conversation, nor did the witness know the plaintiff, and therefore whatever belief he may have had, had no basis so far as the publication by the defendant was concerned. On page 108, bottom of page, he was asked on cross examination: "Q But the words 'Sunday Call' were not mentioned were they? A Not that I remember of, no."

This was followed up by counsel for plaintiff asking question as to how long he was in doubt. On p. 107, l. 30, by the question: "Q And how was your doubt cleared up in the matter, if at all?"

This question was objected to and objection overruled and exception allowed.

Page 108, top.

"A Well, I don't remember just how it was cleared up."

This question should have been excluded, the question implies that the witness had a doubt in his mind which reflected upon the plaintiff and which doubt had continued for a time. Nowhere does it appear in the testimony of this witness that he knew of any publication by any paper, nor was the Sunday Call mentioned in any conversation had with him.

"Q Did you talk with Mr. Garrison about it?"

A Well, now, Mr. Garrison, I believe, says that I did, but I don't remember that, and if I did talk to Mr. Garrison about it, why, he told me. I was pretty well acquainted with Mr. Garrison, because he rode with me quite some on that train, used to come out with me every morning, in fact, and, as I said before—

Q (*By the Court.*) Well, you do not remember? A No."

Daniel F. Wettlin a witness for the plaintiff, who at the time of the trial of this case resided at 436 Summer avenue, he having purchased the property from George E. Garrison the plaintiff's husband, April or May, 1910. That at the time of the publication he resided at 57 Arlington avenue. On pages 97 and 98 this witness testifies that he knew where Mr. and Mrs. George E. Garrison lived at the time of the publication, that it was at 436 Summer avenue, the same house which he has since purchased. This witness then testified on p. 98, l. 12:

"Q At the time you read this article did you know whether or not it was Mrs. George E. Garrison who had gone away with Archer? A I believed from reading the article that it was Mrs. George E. Garrison.

Q And how long did you believe that? A I don't know; for some time afterwards.

Q As near as you can tell? A Oh, a year or two."

And on p. 98, l. 24:

"Q How many people as near as you can tell, did you hear speak of it? A I don't know how many."

He then says there were at least half a dozen different people and he was then asked:

"Q From what they said to you, do you know what they believed as to the identity of the

person who had gone away with Mr. Archer?

Objected to.

The Court. That is rather doubtful. It asks the witness to express an opinion on the mind of another person."

This question was then withdrawn. The witness was then asked p. 99, top:

"Q If you can recall, what did they say about this?

Mr. Leonard Kalisch. I want to make the same objection as before to that.

The Court. Yes. I will allow this; this is a fact.

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

Exception allowed.

Q Go ahead. What did they say to you, if you can recall? A I don't remember the exact words, but it was to the effect that it was Mrs. George E. Garrison that had gone away."

This question was clearly incompetent and was harmful to the defendant. It does not appear from his testimony that the persons with whom he conversed had read the article published by the defendant. Nor does the witness give the conversations had with the different persons. This witness undertakes to give conclusions that he gathered from the alleged conversations. It was for the jury to determine what the effect of the different conversations had upon the minds of the persons he claims to have talked to. The witness must give the conversations had as nearly as he can remember, and not his opinion as to what the effect of the conversations had upon the mind of others.

Testimony of Harry R. Crane, p. 116, l. 10, and p. 117, re-direct examination of this witness for the plaintiff, he testified as follows:

“Re-direct examination by Mr. Lambert.

Q Did you ever hear any people discuss this matter outside of your store, in any other place?

A Yes, sir.

Q Where? A On the street car.

Mr. Leonard Kalisch. I think that is opening the door again to new matter.

Mr. Lambert. Well, that is a question that I overlooked.

The Court. I will allow it as an omitted question.

Q How many people did you hear discuss it on the street car? A Two.

Q Did you hear what they said? A Yes, sir.

Q Did you know them? A No, sir.

Q What did you hear them say? A One said to the other—

Objected to.

Objection overruled.

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

Exception allowed.

A One said to the other, ‘Do you see the second lady sitting up in front?’ The other one said, ‘Yes.’ He said, ‘That is Mrs. Garrison that ran away with Archer.’ And the first speaker said, ‘Yes, he took \$40,000.’ And the second one said, ‘Well, I hope she got part of it.’

Q Did you recognize the lady that they were referring to? A Yes, sir.

Q Who was it? A The second lady.

Q Who was it? A That was Mrs. George E. Garrison.”

This testimony was clearly inadmissible, it was hearsay evidence. It was prejudicial and harmful to the defendant. The conversation alleged to have taken place in a street car between two strangers, unknown to the witness; it did not mention the defend-

ants' publication or newspaper in any way, and if such conversation did occur it was unconnected with any publication by any paper, and it was error by the court to have allowed the admission of this testimony. Bearing in mind that the testimony on behalf of the plaintiff was, that there were similar publications to that of the defendant in three other newspapers, and for which the plaintiff has brought suit, and that the suit against one of them had been tried. There was no attempt made by the plaintiff to connect the above alleged conversation, with the publication by the defendant.

Testimony of Matthew Brady. This witness for the plaintiff testified on p. 131, l. 32, that he was a policeman; and on p. 13, he says that in 1908 he was stationed at the D., L. & W. Depot, and that he resided at No. 39 North Third street, Roseville. That he knew George E. Garrison; that he did not know Mrs. George E. Garrison. That he does not remember reading the article in the Call.

It appears from the testimony given by this witness that there was a conversation between Patrick J. Walsh, George McCormack, and this witness, at the D., L. & W. Station about November 22d or 23d, 1908. It is evident from reading the testimony of this witness on pp. 134, 135 and 136 that this witness had no knowledge whatever concerning the publication.

"Q Did the conversation between you and Mr. Walsh and Mr. McCormack relate to the article published in the Sunday Call about Archer and Mrs. Garrison? A Walsh told me that he read it in the Call also, as well as in the News. That was on Monday or Tuesday. I think, he said that to us, and he said it was published in the Call as well as in the News, and he said that he thought it was Garrison's wife.

Mr. Leonard Kalisch. I move that that be stricken out.

The Court. Strike out the last. It is not strictly an answer to the question. You are entitled to anything that Mr. Walsh said about the Call article.

Q Now, state all that was said at this interview? A That is all I remember of the conversation.

Q Just re-state all that was said? A All that was said?

Q All that was said, as near as you can tell. A Well, we all thought it was Garrison's wife. That is all I know that I could state as far as the conversation was with him. And he told us that it was published in the Call, and he had read it in the Call.

Mr. Leonard Kalisch. I ask your honor to strike that out, what he said, that 'we all thought it was Garrison's wife,' and that he read it in the Call and News.

The Court. Any conclusion of that kind derived from the Call article is competent, and again in connection with the fact that it was read in the Call. I think the two statements may go together. He read the article in the Call and he drew a certain conclusion from it.

Mr. Leonard Kalisch. That is not the language that he employed here, your honor; he said 'we all thought.' He can not testify to what the others thought.

The Court. No, he can testify only to what they said. If you want to strike it out on that ground, I will sustain your objection.

Mr. Leonard Kalisch. Yes, sir.

Mr. Lambert. That is, where he said 'we thought?'

Mr. Leonard Kalisch. 'We all thought.'

Q Just state the substance of the conversa-

tion that you had that brought you to your conclusion as to whether this was Mrs. Garrison that went away with Archer or not—the substance of the conversation, if you can not remember the exact conversation.

Mr. Leonard Kalisch. That is rather broad, your honor, I think.

The Court. Perhaps it is. I think the question ought to be as to what was said about the Call article in this conversation.

(After further argument the question is withdrawn.)

Q Did your conversation with the other two gentlemen relate specifically to the Sunday Call, and if so, what was said in that connection? A Well, I just told what was said about him reading it in the News—he read it in the Call—the story in the Call. I don't remember having any conversation outside of that over the case whatever.

Q (*By the Court.*) You are speaking of Mr. Walsh now, aren't you? A Yes, your honor.

Q (*By Mr. Lambert.*) Now, I ask you, did your conversation refer especially to the Call? A Yes." Page 136, l. 3:

"Q Now state what the conversation was? A That he had read it in the Call; he said he read it in the Call and that it was almost the same story, or the same story, that he had read in the News. I am not sure which he said now.

Q Now what did he say was his judgment as to whether it was true or otherwise concerning Mrs. Garrison going away with Archer?

Mr. Leonard Kalisch. I object to the question, on the ground that he is asking this witness to state what Mr. Walsh's judgment was.

The Court. That is Walsh's statement.

We have gone all over that. I will admit it.

An exception to this ruling of the court was taken and allowed.

(Question read.)

Mr. Lambert. Whether he believed the story or not.

A He said he thought it was Mrs. Garrison on account of what he read in both papers."

This testimony was incompetent, it permitted this witness to state what Walsh, also a witness for the plaintiff thought, and in the language of this witness "He said he thought it was Mrs. Garrison on account of what he read in both papers." If such testimony is admissible it would mean that any number of persons who had not read the article, such being the case of this witness to testify what some one told the witness what he thought of what he read in two papers. And on p. 137, l. 10, this witness was asked:

"Q How long did you continue of the belief that it was Mrs. Garrison who had gone away with Archer? A Well, three or four days, I think it was, or three or four nights—three or four days afterwards; it might be, maybe, longer than that; I am not sure; and then Mr. Garrison—

Q Which Mr. Garrison? A This gentleman.

Q Mr. George E. Garrison? A Yes, sir. He explained that it was not his wife, that it was another Mrs. Garrison that went off with Archer.

Q Where did he explain that? A Down at the depot, when he was there talking—before he took the train."

Testimony of George McCormack, a witness for the plaintiff.

This witness testified p. 139, l. 30, that he was night station master of the D., L. & W. R. R. at the Broad Street Station. Page 140, l. 5, he testified as follows:

"Q Do you know his wife, Mrs. Rose Garrison? A I do not, only just to see the lady, that is all.

Q I show you Exhibit P. 1, an issue of the Sunday Call of November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you if you saw that article (shown to witness)? A No, sir; I did not."

* * * * *

Page 140, l. 30, he further testified:

"Q What did he say, if anything? What did Mr. Walsh say? A Just what we thought of it.

Q Well, what did he say? A I didn't know whether it was the News or the Call.

Q Well, what did Mr. Walsh say? A That I couldn't tell you, it is so long ago.

Q Tell us the substance of it. You can not recollect exactly, of course, but what was the substance? A Well, we thought it was Mrs. Garrison. We were talking about it there, and he thought it was Mrs. Garrison. I said—I didn't say anything at the time; I kept quiet; I waited for a while to find out what he was talking about. He said it was Mrs. Garrison; I said I didn't know.

Q Do you recall whether he mentioned the Sunday Call or not? A He didn't mention no paper whatever, as I said before; he mentioned no paper whatever.

Q Well, what was he talking about, then? A He was talking about this case at the time.

Q (*By Mr. Leonard Kalisch.*) The other case, you mean? A What other case?

Mr. Lambert. No, that is not true.

(Question and answer read.)

Witness. He was talking about the case of Mrs. Garrison.

Q (*By Mr. Lambert.*) Well, what did he say, what was said? A He wanted to know what we thought of it, and I said I thought it was her at the time. I didn't know what paper, though, it was that he was talking about. I didn't see it in the Call, but I saw it in the News.

Q Well, did you hear him say whether or not he saw it in the Call? A I did not; no, siree; I did not; no, sir."

The testimony of this witness was of the same character as that given by Matthew Brady, another witness for the plaintiff; an objection was made to the testimony, which objection the court overruled and an exception was taken and allowed. The court in admitting the testimony of Brady said, "We have gone all over that. I will admit it." See p. 136.

The trial of this case occupied four days and much of the time was taken up in the argument of objections to the incompetency of the testimony of witnesses relating to conversations had and opinions expressed. Many of the witnesses did not know the plaintiff, nor had they read the article published by the defendant, but had read the article published by the Newark Evening News.

Testimony of Henry C. Hine, a witness for the plaintiff testified that he resided in Livingston, Essex County, and was a steamfitter. At the time of the publication he was installing a heating plant in the house of Mr. George E. Garrison, next door to the one in which the plaintiff resided. He had been working there three or four days prior to the publication, p. 152, l. 36, and on p. 153, top, he says in answer to the question:

"Q Did you see Mrs. Garrison during those days? A I would see her every day, and Mr. Garrison not getting up until a late hour of the day, she would inform me as to any changes or

any particular location where my work was to be installed in the house.

Q From what you saw of Mrs. Garrison on those occasions, those three or four days before this article was published, did you notice whether there was anything disturbing her mind or not?

A She was very cheerful and could show me very plainly what she wanted done as to the location of the radiators, where she wanted them put. They had hot air in it, and locating radiators, they would be located in different places from where hot air would, and she was very clear and distinct as to where she wanted them put."

This witness on p. 149, after testifying that he read the article, having borrowed the paper from a neighbor on the Sunday that the article was published testified on p. 150, l. 2, as follows:

"Q At the time you read the article did you believe that Mrs. Garrison was the person who had gone away with Archer? A Yes, sir.

Q How long did that opinion continue with you? A Over a year, nearly two years.

Q You did not get acquainted with Mrs. Garrison, then, while you were working—

Objected to.

Q Did you get acquainted with Mrs. Garrison while you were doing that work? A I did.

Q Well, she was in the house, was she, next door to where you were working? A Yes, sir; came in every day while I was doing my work.

Q And then while you were working there were you of the opinion that it was she who had gone away with Archer? A I was.

Objected to as leading.

The Court. It is already answered. He said he continued of that opinion for nearly two years. Necessarily, therefore, he was of that opinion while doing this work.

Q How was this opinion corrected? A By Mr. Garrison seeing me in connection with the trial of the News.

Q Two years ago? A Yes, sir."

In considering the testimony of this witness, the court should bear in mind that part of the article complained of begins by stating, "At the time of his arrest, Archer is alleged to have been in the company of Mrs. George E. Garrison, etc." And as already herein stated, Archer was arrested in Seattle, Washington, on Friday night, and on Saturday, November 21, 1908, the account appeared in the Newark Evening News, and then on Sunday, November 22, 1908, in the Sunday Call. This witness, Henry C. Hine, it will be seen from his testimony above set forth had been working on Mr. Garrison's house three or four days prior to the day of the publication, and that he saw Mrs. George E. Garrison every day, and to the knowledge of this witness was at her home in Newark all the time from Wednesday or Thursday, before the publication. This witness testified to a conversation between Mr. and Mrs. Caldwell and himself on Monday, November 23, 1908, as follows, p. 151:

"Q Whom did you talk with, if anybody, about the matter? A Mr. and Mrs. Caldwell, in the house, the tenant in the house where I was working.

Q That is, in the Garrison house? A Yes, sir.

Q And what conversation did you have with them about it and when was it? A The Monday following the publication.

Q In the News? A In the News.

Q That would be the 23d of November, 1908. Just state the conversation that you had with them about what you saw in the Call. A I was upstairs in Mr. Caldwell's apartments. Both Mr. and Mrs. Caldwell were present. The question

was asked, "I wonder if it could be possible that this was Mrs. Garrison?" And in the conversation the impression left with both of us was that it was Mrs. Garrison. Mr. Caldwell said that they had little dealings with Mrs. Garrison, she collecting the rent from them occasionally, but afterwards Mrs. Caldwell would have less to do with Mrs. Garrison."

This relates to the conversation testified to by Mrs. Blanche Caldwell, on p. 84 and 85, and to which counsel for plaintiff made objection, which was overruled and exception allowed. Mr. Caldwell denies that anyone spoke to him about the article, p. 81, l. 30.

It will be noticed that the witness, Hine, testified to an impression made upon Mrs. Caldwell, that it was Mrs. Garrison. While Mrs. Caldwell testified on cross examination, p. 90:

"Q Now, then, 'At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue,' you knew then it did not refer to the Mrs. Garrison next door to you, did you not?
A I didn't say it did.

Q What? A I didn't say I thought it did.

Q You did not say it did, did you? A No.

Q 'This city, who, it is said, deserted her husband, a broker.' And you knew her husband was connected with a New York paper? A Yes.

Q And you did not think it applied to Mrs. Garrison at all—the one that lived next door to you? A I didn't think it applied to the present Mrs. Garrison.

Q The one that is here in court? A No.

Q The plaintiff? A No."

And on re-direct examination by plaintiff's counsel, p. 90, l. 30, she reiterates her previous testimony:

"Q In answer to a question counsel asked you,

whether you thought this article applied to Mrs. George E. Garrison who is in court, whether you thought the article applied to her— A No, I did not.

Q Well, whom did you think it applied to? A Mr. Garrison's former wife, the first Mrs. George Garrison.

Q Well, this Mrs. Garrison was the second Mrs. Garrison? A Yes."

On p. 160, l. 25, on cross examination, Hine testified as follows:

"Q Now, in your testimony against the News you did not mention reading it in the Sunday Call, did you? A No, sir.

Q Your testimony was that your impressions were formed by what you had read in the News?

A Yes, sir.

Q Did you not so testify? A Yes, sir."

And again on p. 164, l. 10, on re-cross examination, he says:

"Q The conversation that you had with Mr. and Mrs. Caldwell that you spoke of, that was in reference to what you saw in the News, was it not? A The combined papers.

Q Did you not testify that it was on account of the publication in the News at the trial before?

A Yes, sir.

Q Did you testify that the conversation with Mr. and Mrs. Caldwell, at the trial against the News, was with reference to the publication in the News? Do you not so testify? A Yes, sir."

On p. 151, l. 30, the witness, Hine, on direct examination by plaintiff's counsel gave the following testimony of what occurred in a restaurant:

"Q Did you talk with Mr. Whitlock about it?

A No, sir.

Q Or anyone else? A Well, in the restaurant we talked, a number of us, at the table the next day.

Q How many at the table? A A number of small tables; about eight or ten there.

Q How many days was that after November 22, 1908? A The next day following."

On p. 152:

"Q Do you know the people with whom you were talking? A No, sir.

Q Strangers to you were they? A Yes, sir.

Q What did you hear? What was the subject of the conversation? A The subject of the conversation turned on the case of Archer, the extradition of Archer.

Q Well, what opinion was expressed, if any, by any of those people? A The question arose, could it possibly be about Mrs. Garrison? My working there, I mentioned Mrs. Garrison's name several times, and I quoted the opinion that, being in the News and in the Call both, it must be well founded in fact, or the papers wouldn't have published it.

Q Was any correction made at that table as to whether it was Mrs. Garrison or not by any person? A No, sir.

Q (*By the Court.*) You mean at that table? A At that table."

It appears from the testimony of this witness that he did some work again at the house in the year 1911, which was a year after the trial of the plaintiff against the Evening News, and about three years after the publication of the article by the defendant.

On p. 154, l. 20, and continuing in p. 155, the witness was allowed to give the testimony over the objection by counsel for defendant, which objection the court overruled and an exception was allowed:

"Q How many days were you working there then? A Two days.

Q What did you observe, if anything, concerning Mrs. Garrison's mind at that time? A

Well, when I got to the house I had to ascertain what the description of the work was to be done. I was sent there for general work, no definite statement, and I had to wait until Mrs. Garrison could appear and tell me where the work was to be done. She referred to my judgment as to the location of it, tried to determine which of two places to locate the radiator, and finally she had to give up and withdraw from it and leave the room.

Q Why? A She wasn't able to positively determine which of the two places she would have it put in.

Q How did her mind appear to you at that time?

Mr. Leonard Kalisch. I object to the question. Last year, I understand, you are talking about.

Mr. Lambert. 1911.

The Court. There is a sense in which it might be understood in which it is a proper question: whether she showed agitation of mind. If she did, it goes for nothing, unless it is connected, of course, with the publication. I think, if the witness will understand the question in that sense, he may answer it.

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

Exception allowed.

(Question read.)

A I can't describe her mental condition, except as to the location of that particular radiator, trying to tell me where to put it and couldn't determine, spoke slowly and couldn't get the words through her mouth.

Q Did she exhibit any worriment of mind?

Objected to.

The Court. I will allow it now. I think

there is foundation enough for it.

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

Exception allowed.

The Court. You may answer that question yes or no.

A Yes, sir."

Testimony of John H. Sanderson.

This witness called by the plaintiff testified in his direct examination on p. 164 as follows:

"Q Mr. Sanderson, I show you Exhibit P. 1, an issue of the Sunday Call, dated November 22, 1908, the second page, fourth column, headed 'For Extradition of Elliott Archer,' and ask you if you read that article (shown to witness)? A I have read that; yes, sir.

Q On the Sunday it was published? A Yes, sir.

Q Did you know George E. Garrison at that time? A I did.

Q Did you know his wife? A No, sir.

Q Had you seen her with him? A I had. I seen a lady with him; I supposed it was his wife.

Q At the time you saw that article what was your belief as to whether it was George E. Garrison's wife who had gone away with Archer or not? A Well, I believed that it was."

And on p. 165, he testified:

"Q Did you talk with anybody about the matter? A Well, I talked with some police officers that I knew that was acquainted with Mr. Garrison, and I have spoken to my family about it—a general conversation with my family.

Q That was during that two weeks you talked with them? A I am not positive about talking to the police officers during that two weeks, but I thing so. I know I spoke to my family about it during that time.

Q Well, what was their belief, if they stated?

A Of course, they didn't know either of the parties, and they believed, of course—I told them I believed that it was Mrs. Garrison, and they coincided with my belief, that is all.

Objected to.

The Court. Strike out what he told them.

Q From what the police officers said, what did they believe? A They believed the same thing; they were all in sympathy with Mr. Garrison."

Testimony of William S. Harrington.

This witness who was produced by the plaintiff is a brother-in-law of the plaintiff, having married a sister of the plaintiff. He testified, p. 173, as follows:

"Q Can you relate any circumstances where you had occasion to talk with people about the article? A Yes, in the railroad stations, talked with my own family about it, talked in the restaurants about it, on the trains, and hotels.

Q And the people that you talked with, did they express any opinion to you as to their belief in the truth or falsity of the charge? A Yes, they all believed it, in fact, until I relieved their mind, convinced them it was not so.

Q How many people, as near as you can tell, did you make the correction with all together, who believed the truth of the statement up to the time you made the correction? A Well, that I really don't know, how many. I didn't make any record of it.

Q Well, as near as you can tell? A Between twenty and thirty people.

Q And how long after this publication of November 22, 1908, did you continue to make explanations—find it necessary to do so? A Oh, possibly—well, it was only here the other day I made a correction."

This testimony is in line with like testimony given by other witnesses for the plaintiff and to which an exception was prayed for and allowed. The court ruling that it was competent for a witness to state the opinion expressed by those with whom the witness conversed.

Testimony of George E. Garrison.

This witness, husband of the plaintiff on p. 195, l. 16, was permitted to answer the following question over the objections made by defendant's counsel and an exception was allowed:

"Q Immediately after the publication of November 22, 1908, what effect, if any, did you notice it had on Mrs. Garrison—not physical effect; mental effect? A She was very nervous.

Mr. Leonard Kalisch. I submit that is coming very close to the line again.

The Court. I have allowed the testimony to go thus far as to the nervous condition which was about coincident with the publication. In my opinion, there is a distinction to be made, as I think I have remarked before, between evidence of mental agitation and distress and annoyance that can be rationally and legitimately connected with the publication, and the consequences of a mental disturbance of that kind resulting in some fixed condition of mind or body which would require medical attention. The existence of annoyance or disturbance may be proved, if it is traceable to the publication. The ulterior consequences of it, I think, fall under a different category. This particular testimony, I think, is unobjectionable.

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

Exception allowed. (Question and answer read.)

And on p. 196.

The court refused to strike out the following question and the answer made thereto, and an exception was allowed :

“Q How was that exhibited? A Well, she seemed to be agitated by the fear that she was going to be arrested—

Mr. Leonard Kalisch. Now, if your honor please, I ask that that be stricken out, on the ground that it does not come under the head under which damages can be sought here.

The Court. I think so.

Mr. Leonard Kalisch. That may be caused by entirely other grounds than what are stated here.

The Court. I think it very evidently does fall within the sphere of legitimate proof. I overrule the objection.”

Counsel for plaintiff under the direction of the court pursued this line of examination, and on p. 196, l. 26, put the following question :

“Q How long did that nervous state continue?

A It still continues.”

This witness's testimony was given February 13, 1913, more than four years after the publication. Same page, l. 30 :

“Q What was her mental condition—that is as to worryment or mental distress—at the time you went to Asbury Park? A At the time she was very flighty; I had to get up in the middle of the night and go out and walk the streets with her. That state of affairs kept up until about July 12 at Asbury Park, when—

Q What year? A That was in 1910, and she seemed to collapse entirely for awhile; she lost her reason.

Mr. Leonard Kalisch. I ask your honor to

strike out all this testimony. I do not think that counsel ought to bring these things out when he knows the answer that is coming to the question.

The Court. Strike out the last statement. I warn counsel of the danger of pursuing this line of inquiry."

The whole of the testimony of this witness from line 30, should have been stricken out by the court, as it related entirely to the physical condition of the plaintiff.

On page 198, l. 30, the following question but by plaintiff's counsel was objected to and overruled:

"Q Mr. Garrison, just prior to this publication of November 22, 1908, what was the condition of Mrs. Garrison's mind as to worryment?"

Objected to.

Objection overruled.

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

Exception allowed.

The Court. Before this publication?

Mr. Lambert. Just prior.

A Her mind was perfectly normal."

And on page 199, this witness then goes on to state in answer to questions put by plaintiff's counsel, that they lost a little daughter about a month before the publication of the article, and in answer to the questions:

"Q And what effect did this publication have on her then, if you noticed, as to her worryment?"

A Well, it didn't worry her, but it was a sorrowful, mournful condition that she was in.

Q That is, as to the child? A As to the child, yes.

Q But I am talking about the publication. What was her condition as to the publication, her

mental condition, as to worryment? Did it change at all? And if so, how? A As to the publication?

Q After the publication? A Oh, she became very flighty and all worked up over it.

Mr. Leonard Kalisch. I want to call your honor's attention to that last answer, where the witness says she was flighty. I think that is right within the prohibition.

The Court. I do not think that means anything more than a state of mental excitement.

Mr. Lambert. That is the way I take it.

Mr. Leonard Kalisch. I think it means to the general mind more than that. It might perhaps to some persons, but you take the ordinary person, when you say a man is flighty, they think there is something the matter with his head.

Mr. Lambert. That is just what we say.

Mr. Leonard Kalisch. Then I ask that it be stricken out.

The Court. It is to be taken in connection with the context. 'Became very flighty and all worked up over it.' I take it all together to mean a state of mental excitement and distress, disturbance of mind, rather than a case of mental disease.

Mr. Leonard Kalisch. What I mean is that the ordinary mind would probably look upon it in that way, I therefore ask to have that stricken out.

The Court. No, I do not think it is necessary to strike it out."

An exception was taken and allowed by the court. This testimony should have been stricken out. That it was more than a mental excitement and disturbance of mind, is shown by the statement of counsel for plaintiff in answer to the objection made by

counsel for defendant, that to the ordinary person, "When you say a man is flighty, they think there is something the matter with his head." To which Mr. Lambert replied, "That is just what we say."

Medical Testimony.

There were three physicians called as witnesses for the plaintiff in this case, all of whom attended the plaintiff, more than a year and a half after the publication by the defendant. Dr. Daniel B. McCarter was the first to testify, see pp. 72 and 73.

On p. 73, l. 8, the court admitted the following testimony over the objection of counsel for the defendant to which an exception was taken and allowed.

"Q Just state, doctor, in your own way, what you noticed of her mental suffering or mental anguish. A From her statement, from her—

Mr. Kalisch. Of course, this goes in under my objection. I take an exception to this testimony.

The Court. Make your objection; state the ground of it.

Mr. Leonard Kalisch. My ground is that it is not connected at all with this publication, as too remote, and it goes more to the physical condition of the plaintiff.

The Court. It is not yet connected with the publication, but I will not anticipate. I will allow the witness to go on for the present.

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

Exception allowed.

The Court. That is, what you noticed.

A She came to me as a patient suffering from a nervous condition, and the symptoms were those

of general nervousness; she said she couldn't sleep well, lost her appetite.

The Court. No, I think we are now getting off the track.

Mr. Lambert. Never mind the appetite.

The Court. Never mind what she said; only what you noticed."

This testimony should have been excluded, it related to a physical sickness, nearly two years after the publication.

On p. 74, l. 1. The court remarked, "If the doctor observed (and that was the question), anything as to her mental agitation or distress, he may state that as a fact."

Under this ruling, counsel for plaintiff asked the following question:

"Q How did she appear to you when she came to your office? A She was nervous, excited, her language incoherent, she was fidgety, in her general demeanor, and, mentally speaking, I would say, in a highly nervous, excited state."

There was no evidence connecting the physical condition of the plaintiff with the publication by the defendant.

In *Butler vs. Hoboken Printing & Pub. Co.*, 44 Vr., p. 50, Justice Reed says:

"But when physical injury is predicated of the defamatory words spoken, it cannot be said that it is either the necessary or natural consequence therefrom. In rare instances physical sickness may result from mental worry, but it is an exception to the rule. Even then, it is a step removed from the first result and cannot be said to be the proximate consequence of the defamatory words."

Dr. Roswell D. Grant, a witness for the plaintiff, testified on p. 167, that he graduated as an osteopath in June, 1909, and that he treated the plaintiff in the fall of 1910 for about three months.

The court permitted over the objection of counsel for defendant the following question (p. 169, l. 40):

“Q Did she exhibit any nervousness?”

Mr. Leonard Kalisch. I object to that. The witness having said that he noticed nothing, I think that ought to end it. I think where we have an intelligent man on the witness stand, the questions ought to be put in the proper method.

The Court. I think the witness may be asked this question.

Defendant’s counsel pray an exception to this ruling of the court.

Exception allowed.

(Question read.)

Mr. Lambert. At the time of your treatment of her?

A Yes, I may say she did.

That the doctor must have considered the condition of the plaintiff as a physical condition can be gathered from the following questions and answers:

“Q Did she exhibit any mental anguish? A Not at that time.

Q Any mental strain? A Not at that time.”

At the conclusion of Dr. Grant’s direct examination a motion to strike out the whole of his testimony was denied by the court and an exception was taken and allowed (p. 170, l. 25).

Mr. Harry Kalisch. Your Honor, I think this testimony so far has not been connected at all with the alleged libelous publication. They have not shown that it was caused by this alleged libel, and I think it would be necessary to connect her condition with the libel that she has brought suit for, which, I suppose, might be done. I do not know how they would do it; but, at any rate, they have

not connected it at all, and I move to strike out the testimony.

The Court (After argument.) I will let the testimony stand.

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

Exception allowed.

The same objection applies to the testimony given by this witness as to that given by Dr. McCarter. This witness did not see the plaintiff until about two years after the publication by the defendant, and his testimony was not connected with it in any way whatever.

Dr. G. Herbert Allen, a witness for the plaintiff, testified on page 211, that he in conjunction with Dr. Joseph H. Bryan, treated the plaintiff in 1910 at Asbury Park.

The court permitted over the objection of counsel for plaintiff the following questions put to the witness (p. 211, l. 27) :

“Q Well, did you notice anything concerning her state of mind, whether she was nervous or in a state of worryment?”

Mr. Leonard Kalisch. I object to the question.

The Court. The objection is overruled.

Defendant's counsel pray an exception to this ruling of the court. Exception allowed.

A I did.

Q Just state what you noticed of her. How did she appear to you? Do not go into the physical part or what you did for her. A Do you mean just her mental condition?

Q Just her mental condition, as you saw it.

A Why, when I first saw her she was in a semi-conscious condition and wholly incapable mentally in that respect. She was capable in one way, but not in another. I believe she could read, but you couldn't talk to her.

Q Never mind the physical part. What did you notice about her mind or her state of mental worriment, if she had any?

Mr. Leonard Kalisch. Of course, I want an exception to all those questions without asking for it.

The Court. Take a general exception. Exception allowed.

Mr. Lambert. Go ahead.

(Question read.)

A Well, I said before that she had it, and she was—well, practically wholly incapacitated to do anything at the time, and she was in bed and couldn't get up.

Q No, not physically. A Well, that was mental, in a way; it was due to her mind, or her brain, at least. And she was practically oblivious to everything, so far as she was concerned.

Q How many times were you there, doctor?
A I don't know the number of times. I know that from about the middle of July until the end of August she was in Asbury Park, and we looked after her during that time."

The plaintiff's counsel having concluded with his direct examination of this witness, counsel for defendant moved to strike out the whole of the testimony given by this witness. The court granted the motion with the following remarks:

"The Court. I think it all ought to go out. It is a result of condition. I do not think it is permissible under the rule. Strike it out."

While it is held in the case of *Bullock vs. State*, 36 Vroom, on page 575, Depue, *Chief Justice*, says:

"Where evidence which is illegal is received by the court in the progress of the trial, it is competent for the court subsequently to exclude such illegal testimony. In such case no error could be assigned in the reception of the testimony.

But the admission of the evidence being error, it must clearly appear that the testimony illegally admitted, was so eradicated from the case that its admission could not have injuriously affected the accused."

Although the court struck out the testimony of this witness the court made no other comment of the testimony stricken out more than what is above set forth. No mention of it being stricken out was made by the court in the charge.

Extracts from Cases and Text Books.

I have collected the leading cases which deal with like errors in the admission of testimony as have occurred in the case under consideration, and have taken copious extracts from the opinions of the court in the cases, and also extracts from recognized text books.

Townsend on Slander and Libel, sec. 384, says:

"The court and jury, and not the witnesses are to construe the words. And the opinion of witnesses as to the meaning of the language published is not admissible, and therefore a witness cannot be asked how he understood the words published, nor be permitted to state what meaning he understood the defendant to convey by the words, nor the impression produced on his mind by the whole of the conversation. The words being unambiguous, it is not competent for a witness to say that he understood the publication to mean differently from the common import of the words."

In *Cyc.*, vol. 25, p. 502, under the title, "Understanding of Hearers, Readers or Witnesses":

"But the weight of authority is in favor of the rule that the testimony of readers or hearers as

to what they understood the alleged defamatory words to mean is inadmissible, at least where the words are unambiguous and plain and in the absence of peculiar circumstances, either as respects to the language employed or the manner of the utterance or publication. This rule is in accordance with the principle of the law of evidence, which in general limits the testimony of witnesses to a statement of the facts and circumstances within their knowledge to the exclusion of their opinions and mental conclusions concerning the matter in issue."

Newell on Libel and Slander, p. 767, says:

"In cases where the person defamed is not mentioned, there will be need of some evidence to show who is meant. As a rule the plaintiff may give in evidence any of the attending circumstances, the case and occasion of the publication, subsequent statements, if any, by the defendant, and all other extraneous matter which will tend to explain the allusion or point out the person in question. But witnesses cannot be called upon to state to whom they understood the defamatory matter to refer. A witness may testify to the publication of defamatory matter, the speaking of slanderous words or the publishing of a libel together with all the surrounding circumstances, the attending facts connected with the transaction; and from this testimony it is for the jury to say who was meant."

A case in point is *Van Vechten vs. Hopkins*, 5 Johnson (N. Y.) on p. 225, Van Ness, J., says:

"There is another point in the case, upon which, in the view I have taken of the subject, it would not be necessary for me to express all opinions. As it may, however, embarrass the parties, on a future trial (if there should be any), it may as well be disposed of. I allude to the

exclusion by the judge, of the testimony of the witness who was called to say, that from reading the libel, he applied it to the plaintiff. This evidence was properly overruled. The intention of the defendant is not the subject of proof, by witnesses, in the way here attempted. It is the mere opinion of the witness which cannot and ought not to have any influence upon the verdict. I consider the evidence as inadmissible, because it goes to prove the correctness of an innuendo. This kind of evidence, I know, has frequently, though I think erroneously, been admitted at *nisi prius*. From what has been said before, of the nature and use of an innuendo, technically so called, it is clear that it cannot be the subject of proof by witnesses."

Chancellor Kent, Thomson, *J.*, and Yates, *J.*, were of the same opinion.

The case of *Van Vechten vs. Hopkins*, was approved and followed twenty years later by the case of *Maynard vs. Beardsley*, 7 Wend., p. 561. The opinion in the latter case completely covers the exceptions taken to the testimony given by the witnesses Walsh, Wettlin, Brady, McCormack, Hine and Sanderson. I have taken the liberty of quoting extensively what the learned Chancellor says in his opinion.

In the case of *Maynard vs. Beardsley*, 7 Wendell, p. 562:

A witness for the defendant, who testified that he read the article complained of as libelous at the time of its first appearance, was asked by the defendant how he understood it; which question was objected to, and overruled by the judge.

Chancellor Walworth, in delivering the opinion of the court says:

"This being a question of construction for the court and jury after the facts had been ascertained, it was not competent for the defendant to

call witnesses and ask them how they understood the publication; for thus the witnesses would be constituted the judges both in law and fact, instead of the tribunal organized for that purpose. I consider this question as having been settled in our courts more than twenty years since, in the case of *Van Vechten vs. Hopkins* (5 Johns., R. 211). And it probably would not again have been raised here but for the remarks of a recent writer on the law of evidence (2 Starkie, 861). Mr. Starkie's observations are unquestionably founded upon the loose practice sometimes adopted at *nisi prius*, and which is alluded to by Judge Van Ness (5 Johns., R., 226). When the defendant does not seriously mean to contest the applicability of the libel to the plaintiff, the general question is frequently asked whether from reading the libel, the witness applied it to the plaintiff, without calling upon him to state the facts and circumstances in detail from which the jury might see that it was intended to be so applied; but I am not aware of any case in which such general questions have been permitted to be answered, if objected to by the adverse party."

On page 569 the learned Chancellor concludes his opinion as follows:

"The exclusion of the evidence, *how the witness understood the article charged as libelous*, has appeared to me perfectly correct. It is the province of the jury to decide whether the words complained of were libelous or not, and the understanding or opinion of witnesses, as to the force and effect of those words, cannot be the subject of evidence. If one witness is permitted to state to the jury his construction of the words charged as libelous, another may be called who may put a very different construction on the same words, and so on with any number of wit-

nesses; which, instead of determining any point of fact, would only tend to a confusion of ideas, embarrassing, instead of informing or enlightening the minds of the jury. In *Gibson vs. Williams* (4 Wendell, 320), it was held that the understanding or opinion of witnesses is not received in evidence, except in matters of science, and a few special cases resting upon peculiar circumstances. It is the business of witnesses to state facts, and the province of the jury, under the direction of the court, to draw the necessary inferences and conclusions. There would be as much propriety, in my view, to permit a witness to enter into a detail of his reasons for the opinion he had formed, as to permit him to explain his understanding of the article containing the expressions charged as libelous. The former, I presume, would not be contended for in any case, neither ought the latter to be allowed."

The doctrine laid down in the cases of *Van Vechten vs. Hopkins* and *Maynard vs. Beardsley*, in actions for libel have been followed in New York State ever since.

In the case of *Hearne vs. De Young*, 52 Pacific Rep., p. 153, Mr. Justice Garotte says:

"It is claimed that the court committed error in allowing witnesses, who had read the publication charged as libelous to testify as to their understanding. Those witnesses testified their understanding of the article after reading it was to the effect that it charged the plaintiff as a *participe criminis* in the murder of Stillwell. This character of evidence was not admissible in the case at bar. Tested by the record, witness for plaintiff to this proposition stood exactly as the jurors. They were in no sense learned and scientific men. They knew nothing of the parties or the circumstances save what they gathered from the publication."

In the case of *White vs. Sayward*, 33 Maine, p. 322, second head note:

“Testimony of witnesses is not receivable to show that that on reading the libelous article, they considered the plaintiff as the person intended to be defamed.”

Tenney, *J.*, who delivered the opinion of the court in this case after stating what Southerland, *J.* said in the case of *Gibson vs. Williams*, 4 Wend., 320, concludes his opinion as follows:

“In the case of *Snell vs. Snow*, 13 Metc., 278, the Court of Massachusetts treat the evidence as entirely inadmissible. We cannot regard such testimony of witnesses, an exception to the general rule of evidence, and it was erroneous by allowing it to go to the jury. Upon this point exceptions sustained and new trial granted.”

In the case of *Quinn vs. Prudential Ins. Co. of America*, Supreme Court Iowa, 90 N. West., 349, on p. 352, Weaver *J.*, says:

2. “To show that the alleged libelous publication has a defamatory meaning, plaintiff called several witnesses to the stand, and, after proving by them that they had seen and read the article, about the time it was published, put to each of said witnesses the following question: ‘State to the jury what you understood that article to mean at the time you read it.’ Defendant’s objection to the competency of this testimony was overruled and the witness was allowed to answer in substance that he interpreted the published notice as a charge that plaintiff had been wrongfully representing himself to be defendant’s agent, and by such means had collected and converted to his own use moneys belonging to the defendant. This ruling was error. Whatever may be the rule of evidence in this respect in cases where the language complained of is in itself

ambiguous or uncertain, or where proof of extrinsic facts casts any doubt upon the real meaning intended to be conveyed, it is a well-established doctrine that, in the absence of such ambiguity and uncertainty, it is not competent for a witness who has simply read the alleged libel to put his construction upon the language employed. To admit such testimony is to allow the witness to usurp the functions of the court and jury. *Anderson vs. Hart*, 27 N. West., 289."

Gribble vs. Poiner Press Co., 34 N. West., page 30 (Minn.).

In an action for libel, expressed in ordinary language, witnesses should not be allowed to testify as to the meaning which they understood the libel to convey, or that they understood it to apply to the plaintiff an offensive term found in the article.

Dickinson, *J.* "The alleged libel upon which this action is brought will be found in the reporter's statement of the case. Upon the trial of the case the court permitted several witnesses to testify that they, at the time of the publication, understood the article as using the term 'shyster' as applicable to the plaintiff. Upon subsequent consideration, the learned judge who tried the cause having come to the conclusion that such evidence was inadmissible, a new trial was for that reason granted, and upon the same question the case is now before us for review. We are of the opinion that the learned judge was right in his conclusions that the evidence was not admissible."

Then the judge gives the reasons why such evidence should not be admitted.

Republican Pub. Co. vs. Miner, 20 Pacific, 345, 12 Col., 77.

The understanding of a witness that the publication in question charged an attempt to commit murder by

poisoning is irrelevant, and its admission reversible error.

There are exceptions to the rule in libel cases; such as where the libel complained of is by signs or pictures, or where no name is mentioned but is described, or where asterisks be put instead of the name, or where the alleged libel is ambiguous, in such cases the courts hold, that the witnesses should be those who reside in the neighborhood of the plaintiff, and who are acquainted with the persons living there, and are conversant with the parties and the circumstances.

It will be observed that the witnesses who testified did not reside in the neighborhood of the plaintiff, and knew nothing of the parties or the circumstances, save what they gathered from the publication; their conclusions were based alone upon the reading of the article, while some of the witnesses had not even read the article; and under such conditions the jurors were as competent to arrive at a correct conclusion as to the meaning of the publication as were the witnesses.

Ency. of Evidence, vol. 8, p. 247.

“Where there is ambiguity or uncertainty as to whom the defamatory publication was directed against, witnesses who were at the time acquainted with the plaintiff and with facts and circumstances explaining the ambiguous language may testify that they understood it to apply to the plaintiff.”

Although there is a conflict in the decisions of the courts in the various states in actions for slander, as to the admission of the testimony of bystanders and hearers as to how they understood and to whom they applied the words spoken, it does not alter the rule in cases of libel.

In the case of *Gibson vs. Williams*, 4th Wend., 320. Southerland, J., pages 325, 326, says:

“The testimony of Bigelow and Foley as to

whom they understood the defendant to mean by the infamous thief, &c., was properly excluded. Mr. Starkie, in his Treatise on Evidence (2 vol., 861), seems to consider this species of evidence admissible. He says the colloquium and other averments, which connect the words or libel with the plaintiff or subject, must next be proved. This is usually done, he remarks, by the testimony of one or more witnesses, *who know the parties and the circumstances, and who state their opinion and judgment as to the intention of the defendant to apply his words or libel to the party or circumstances as alleged.* It seems to be sufficient, he continues, if the witness in the first instance *states his general belief and opinion as to the defendant's meaning,* without disclosing his reasons, leaving it to the defendant, if he think proper, to inquire as to the grounds and reasons which support that conclusion. *Mr. Starkie cites no cases as authority* in support of these positions, and it is believed that none can be found; nor is the doctrine assented, so far as I have been able to discover, by any other writer upon the law of libel, or the rules of evidence. It is an elementary principle in the law of evidence that the understanding and opinion of witnesses are not to be received except in matters of science, and a few special cases, resting upon peculiar circumstances. (Citing *McKee vs. Nelson*, 4 Cowen, 355; *Murray vs. Bethune*, 1 Wendell, 196.) It is the business of witnesses to state facts, and it is the province of the jury, under the direction of the court, to draw such inferences or conclusions from those facts as in their judgment they will warrant."

In the case of *Snell vs. Snow*, 13 Met., p. 282, action for slander, Chief Justice Shaw says:

2. "The other exception of the plaintiff is also, in the opinion of the court, untenable. The witness, after stating all that the defendant said, with all the attendant circumstances and connections, was asked what meaning he understood the defendant to convey by these words. The judge very properly decided that the witness might testify to any existing facts or circumstances, to which the defendant alluded and referred, if any; but, having given the whole conversation, it was for the jury to determine by the language used, and that it was not competent for the witness to testify to his understanding of the defendant's meaning, in the language used."

In the case of *Leonard vs. Allen*, 11 Cash., 241, action for slander.

In that case the court held it was competent to inquire of the witnesses what they understood the defendant to mean by using "certain expressions, gestures, and intonations."

The case of *Smart vs. Blanchard*, 42 N. Hamp., 146, was an action for slander and the court held that "Unless the words are ambiguous, and their application doubtful, in which case the testimony of hearers as to how they understood the words is admissible."

The head note in this case reads:

"The mere opinion of witnesses as to the meaning of the libel, or that it was of and concerning the plaintiff, are not admissible. But when the words are ambiguous and the application doubtful it must be shown that they were used in their actionable sense, and were applied to the plaintiff, and that the hearers so understood them and therefore the testimony of the hearers as to how they understood the words is admissible."

The case of *Smith vs. Miles*, 15 Vermont, 246, was an action for slander.

Redfield J., says:

“In this view, doubtless the sense in which intelligent and observing witnesses who were present and noticed the publication understood the words is important to determine the extent of the defendants liability; but it is not conclusive. The defendant is supposed to intend what his words impart and what others understood from them. * * * This depends upon the attending circumstances, *gestures, tones and innuendoes*, which have a ‘most potent oratory’ often, but which no man can describe or imitate. Hence those who see and hear those incidents, are permitted to state the impressions made upon their minds, at the time, on the same ground I apprehend, that any witness is allowed to state, appearances in any case, where such appearances, in their nature incapable of exact and minute description.”

It is apparent from the examination of the authorities, that the courts have adopted a different rule in the admission of testimony in actions for slander from that in actions for libel. In cases of slander it is necessary for the plaintiff to produce testimony of witnesses who were present and heard the slanderous words spoken, which is not the case in actions for libel, and for that reason we find that the courts have held in slander cases that the testimony of hearers and bystanders is admissible, and yet there is a conflict of opinion in slander cases as to that. In libel, the courts seem all to be of the same opinion regarding the admission of testimony as to who was meant by the publication and the opinion expressed either by the witness or by others and invariably have held such testimony inadmissible. The publication in this case being unambiguous, and the jury having it before them, they had the same oppor-

tunity to judge it, as the witnesses produced by the plaintiff had. We respectfully ask for the errors in the admission, and other errors, that the judgment be reversed and a new trial granted.

LEONARD AND HARRY KALISCH,
Attorneys of Defendant-Appellant.

HARRY KALISCH,
Of Counsel.

Elbridge D. S.

Copy from Newark City Directory, 1908

- Carleton, Charles P., steam fitter, h. 544 Bergen.
- Cookman, salesman, 41 Commerce, bds. 59 Halsey.
- Dubin, W., compositor, h. 307 Dickerson.
- Frank, real estate, bds. 230 Mt. Pleasant av.
- Frederick, S., clk., h. 585 Warren.
- George, mach., bds. 136 Springfield av.
- George, J., stereotypist, h. 130 Sumner av.
- George, W., driver, bds. 91 Sylvan av.
- James, H., driver, bds. 91 Sylvan av.
- J. Coleman, salesman, bds. 25 E. Park.
- Joel T., stereotypist, h. 155 Elwood av.
- Linn, Mrs., h. 25 Watwick.
- Louis, lab., rms. 55 Arlington.
- Marcus, F., engraver, h. 28 Frederick.

Omitted from the State of the Case.

Garrison vs. Newark Sunday Call.

Exhibit D, 2.

- Washington vs.
- William C. Rice Pres Federal Trust Co. p 10
- William D. Tompkins p 44 Eagles
- William B. Camp Pres Ins Co. vs Washington
- Scott, Parke, Weston vs pds 40
- Sarah and William H. p 8 N. York
- Wendell C. Tucker pds 15 Windsor
- Wendell C. Tucker p 296 S. 21th
- Picassant vs
- William K. C. C. Pres Ins Co. pds 558 WI
- William D. C. C. WI Picassant vs
- Paul Tompkins pds 44 Eagles
- William P. C. C. Pres School vs Orange
- William O. and Andrew J. pds 83 Palm A
- William A. C. p 21 M. C. C.
- William and Abraham pds 81 WI Picassant vs
- William M. C. pds 575 WI Picassant vs

New Jersey Court of Errors and Appeals.

ROSE G. GARRISON,
Plaintiff, Respondent.

vs.

NEWARK CALL PRINTING AND
PUBLISHING COMPANY, a cor-
poration,
Defendant, Appellant.

In Tort.

On Appeal.

10

BRIEF OF PLAINTIFF-RESPONDENT.

This action is based on a certain libel published in the Newark Sunday Call, the newspaper published and edited by the Newark Call Printing and Publishing Company, a corporation, and the defendant herein, of and concerning the plaintiff, Rose G. Garrison. The libelous article was published in the Newark Sunday Call on Sunday morning, November 22, 1908, on the second page, fourth column and was as follows:

The Sunday Call, Nov. 22, 1908.

30

FOR EXTRADITION OF ELLIOT ARCHER.

Abscinding Grain Broker Arrested in Seattle May
Be Brought to Newark Shortly.

A SIX-YEAR SEARCH ENDED.

Through information furnished to Prosecutor
Wilbur Mott on Thursday by General Joseph W.

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10 Plume, president of the Manufacturers' National Bank, and later by Prosecutor Mott to the police, Elliot A. Archer, for whom the local authorities have been searching for nearly six years to answer to ten indictments for forgeries amounting to more than \$40,000, was arrested in Seattle, Washington, Friday night. In response to a request for instructions from Chief of Police Irving Ward of the western city the local authorities wired for him to hold Archer until extradition papers are ready. These papers will be made out and signed by Governor Fort early this week and unless Archer combats extradition he will be brought here to answer the charges at an early date.

20 Archer's arrest follows a search which had led around the world and which has kept the police of this and several other cities in this country, as well as European authorities, on the lookout for him. The arrest was the direct result of a letter received by a prominent Newark business man from an acquaintance in Seattle, who had recognized Archer. The latter was passing under the name of C. Archer Carter and was employed in the offices of the Seattle-Tacoma Power Company. The business man who received the letter informed General Plume, as he knew that the Manufacturers' Bank had lost heavily through Archer's forgeries. At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a broker, when Archer first disappeared from the city. It is said that she has been with him much of the time since. Archer's wife is living in this city, at 124 Lincoln avenue.

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Archer is wanted for the forgery of receipts for bills of lading through which the National Newark Banking Company and the Manufacturers' National Bank, with which Archer and his mother, Mrs. Laura Archer, who composed the firm of A. E. Howe & Co., in the Prudential building, did much business. Both banks had the Howe & Co. receipts to the extent of \$40,000 each, but the National Newark Banking Company recovered \$33,000 from the Lackawanna Railroad in a suit, as that much of its paper was genuine. Archer carried on grain operations on a large scale while he was in Newark, and effected his forgeries in much the same manner, it is said, as that which was used by Van Vissengen, the Chicagoan, who last week confessed to using a glass and tracing signatures on notes. 10

After Archer left Newark, he traveled all over the globe, appearing at one time in Cape Town, South Africa, where he was recognized by a sea captain named Mahaffey, who communicated with the authorities. The word came too late to prevent Archer from making his escape to Australia. Later he was heard from in Denver and in San Francisco, but the local police were never able to apprehend him. In Seattle, Archer had a position paying him \$125 a month salary and is said to have lived in moderate fashion. 20 30

Since Archer's disappearance, Detective Sergeant Frank Tuite had been working on the case. Circulars were sent by the local authorities to almost every city in this country and to several foreign cities as well.

The summons was issued in the action on December 1, 1908, and was tried before Judge Adams and a jury in the Essex County Circuit Court. The 40

jury found a verdict in favor of the plaintiff, Rose G. Garrison, and against the defendant, in the sum of \$4,296.25.

From this, verdict the defendant appeals and assigns as grounds of appeal testimony which was admitted in evidence over the objection of the counsel for the defendant.

10 The first ground of appeal is the admittance of articles published in the Newark Sunday Call in the year 1902 in three different issues of the newspaper. The newspaper was at that time under the control and management of the defendant corporation. These articles refer to the time when Elliott A. Archer, with whom Rose G. Garrison was later associated in the publication, out of which this action arose, as having absconded from Newark.

20 This evidence is competent. Here was a publication in which the plaintiff was accused of having deserted her husband and having for a period of several years lived in adultery with this man Archer. This statement if untrue was libelous per se. When a newspaper in the course of its printing is about to publish an article in which such a statement is to be made, it ought to investigate or at least use reasonable effort to ascertain the
30 correctness of such an assertion. The libelous article referred back to the time when Archer first left Newark. Had these articles in 1902 been consulted the writer would have seen the wide publication of Archer absconding. Yet with absolute disregard for this and the liklihood that a charge of this character would cause great scandal, the defendant published this libel.

40 This evidence in view of these circumstances, is proper to show the carelessness of the defendant,

in charging the plaintiff with this crime. Under the rules of damages recoverable in an action of libel, where no special damage is pleaded or no malice is to be proved, only compensatory damages can be awarded to the plaintiff by the jury. Surely damages assessed ought to be greater against a defendant who is charged with gross carelessness.

Then again this evidence is admissible to show the extent of the damages suffered by the plaintiff. These earlier publications show the manner in which Archer's flight was published and the apparent interest the public had in his disappearance, for otherwise the space devoted to it in the newspaper would have been considerably less. We believe that it is proper therefore that the jury have this evidence before them. The public interest in this matter is best shown by the wide publicity given the matter at the time of its origin. The only other way this might have been shown would have been to produce many witnesses to state the position of Archer in the public eye. The admittance of these articles is the best evidence on that point.

The evidence therefore was proper to show the greater extent of damages suffered by the plaintiff and as such was not legal error.

The court at the trial very properly admitted this evidence and stated the grounds of admission as follows:

"The Court: I cannot be influenced in ruling on this particular offer by any exploitation of what some witness who has not yet been called may testify to; but I am willing to admit these publications, just as I would admit publications in any other newspapers, as evidence that the Archer mat-

ter was a matter that had been widely written about and published about and had presumably attracted a good deal of attention. That is all that is necessary for me to rule on now."

10 The reasons two, three, four, five, six and seven, assigned as grounds of appeal all refer to testimony of the plaintiff, Rose G. Garrison. In this testimony, she relates the injuries done to her reputation and her feelings and mental anguish produced by the publication.

20 In *Knowlden v. Guardian Printing and Publishing Co.*, 69 New Jersey Law, 670, a case very often cited, the Court of Errors and Appeals held that in an action for libel when damages are sought, which are compensatory only, evidence of lack of ill-will or malice is not admissible, the compensation depending not upon the motive or intent, as in the case of punitive damages, but solely on the actual injury done by the publication to reputation and feelings.

Likewise in *Bird v. Press Publishing Co.*, 139 N. Y. S. 90, the Court held that in an action for libel, plaintiff may testify as to the effect of the publication upon his feelings.

30 In *Van Ingen v. Star Co.*, 1 App. 429; 37 N. Y. Supp. 114, Mr. Justice Ingrahm said:

"It is a well settled rule that in determining the amount of damages where the publication is libelous per se, the jury has a right to consider the mental suffering, which may have been occasioned to the plaintiff by the publication."

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This case was subsequently affirmed in 157 N. Y. 695; 51 N. E. 1904, in which Mr. Justice Rumsey said:

“A publication of a libel which reflects upon the character of a reputable man must necessarily cause him more or less mental suffering and humiliations, and these things are elements of general damages which the jury may take into consideration.”

10

A similar question was passed upon in *Palmer v. N. Y. News Publishing Co.*, 31 App. Div. 210; 52 N. Y. Supp. 539.

In 25 Cyc. 533 we read that damages are recoverable for mental suffering and this contention is supported by many authorities cited in the note.

Again in *Butler v. Hoboken Printing and Publishing Co.*, 73 New Jersey Law 45, Justice Reed says:

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“The right of a libeled person to recover damages as a compensation for her feelings was recognized by our Court of Errors and Appeals in the case of *Knowlden v. Guardian Printing Co.*, reported in 40 Vroom 670. Indeed, mental anguish, mortification and anger are the necessary results from defamation of character, and so may be said to be legally inferred from the fact of defamation.”

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In all of these cases injuries done to a person's feelings and reputation are damages to be taken into consideration by the jury. Then it is certainly proper for the plaintiff to relate what her feelings were when she was in the presence of other persons and the way in which she was mortified

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when other people spoke about her. This evidence is legally admissable.

10 Counsel also raises the question about the admittance of the testimony of Mrs. Garrison wherein she tells of her having read the articles published of Archer's Disappearance in 1902. This evidence tended to show that Mrs. Garrison was aware of the wide publicity given this matter at that time and this increased the mortification and injury to her feelings since she felt that mostly everyone in the community had knowledge of Archer's crimes and it was not possible for her to go anywhere unless there was some one present who she thought would immediately associate her with Archer. This evidence is competent to show her great mental anguish and the extent of her suffering.

20 Counsel for the defendant assigns as the sixteenth and twentieth grounds of appeal the legality of evidence regarding the appearance of Mrs. Garrison.

These questions were asked of non-expert witnesses for the purpose of showing the change in plaintiff's mental condition caused by the publication. These are questions of fact and not of opinion and are therefore admissable.

30 In 17 Cyc. page 91 we find that an observer may testify as to the appearance indicative of mental condition and his inference from them; or that a given condition of mind on one occasion resembles that observed on another, or has changed.

40 Continuing the author says on the same page a witness with adequate intelligence and opportunities for observation may testify as to the indicia of the operation of emotion; as that an animal

looked "fierce," or "sulky rather than frightened"; that a person appeared to be afraid, angry, cross, mad, ferocious, despondent, "kinder worried." "felt pretty bad," "disgusted," "excited," "surprised," or manifested other mental operations; that a disposition expressed him as happy and contented.

In *Castner v. Sliker*, 33 New Jersey Law 95, the court held that it was lawful to inquire whether Sliker, one of the parties, was sober or otherwise, without making it appear that the witness was an expert in judging of intoxication, or that he had any particular knowledge of Sliker's habits or conduct. 10

It was also held that in an action for personal injuries, testimony by a non-expert witness that since the accident plaintiff looked like a very sick woman, a broken invalid, a very nervous woman, and utterly unable to do anything and appeared incapable of talking consecutively, being a matter of common observation is competent. 20

O'Neil v. Hanscom, 56 N. E. 587. 175 Mass. 313.

Likewise it was held in *Cannon v. Brooklyn City R. Co.* that it was not calling for an opinion, in a technical sense to ask a non-professional witness how a person, with whom he is intimately acquainted, looked in respect to health at a certain time. 30

In view of these authorities it was not error to admit this testimony.

Ground of appeal Numbers 10, 11, 12, 13, 14, 15, 17 and 19, all relate to the admissibility of evidence regarding the questions whether or not the witnesses understood the libel as referring to the 40

plaintiff and also the admissibility of conversations between the witnesses and third parties as to whom these persons understood the libel to refer to. The witnesses who gave testimony of this character were acquainted with the plaintiff or her husband. From the proof at the trial it appeared that there was a latent ambiguity in the libelous article in that Mrs. George E. Garrison's (the plaintiff) name was given but it stated that she lived formerly at No. 426 instead of 436 Summer avenue, the correct address. All the reasons stated in the foregoing grounds of appeal refer to the admissibility of evidence given on the understanding of witnesses as to whom the article referred.

There is no doubt that evidence explaining the meaning of words in actions of either slander or libel, where there is no ambiguity, is not admissible. On the other hand, where there is only the slightest ambiguity, it seems as if testimony of witnesses as to whom they believed was meant and what other people had said to them as to how they had understood the publication, is competent testimony.

Newell on Slander and Libel, second Ed., 1898, on pages 308-313, secs. 33-35, discusses this subject. The author on page 311 says, "there is some conflict of opinion in regard to the doctrine as laid down in the text, and it would seem that the law is not to be regarded as settled upon this principle." He then, after a further discussion, states in his opinion that the safer rule would be to hold this testimony inadmissible, because "it is dangerous at best and where the witnesses are frequently partisans of the plaintiff or defendant, the temptation to commit perjury great and the danger of detection extremely remote."

This deduction does not seem very logical. The fundamental principle in all rules of evidence is to secure the best evidence available, and where can better evidence be secured, or more reasonable evidence be obtained, than what a reader of a newspaper understands himself, or learns from conversations with others as to what they believed from what they have read in the newspaper? A newspaper seems to be the seed from which general conversation springs. It is supposed to publish what is the truth. A reliable newspaper article is supposed to be based on reliable facts and is not supposed to be a mere conjecture as to what might be so. The best way to ascertain to whom this article referred was by asking witnesses who knew the plaintiff whether they believed that she was the party referred to.

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Witnesses may competently testify in our courts as to the size, weight, color of objects and may estimate time and distances. This is because however finely facts and circumstances may be stated by a witness, it would be impossible for the jury to definitely arrive at a conclusion. The law therefore permits witnesses to state the conclusion in their minds which they have arrived at after reasoning. So it is not possible for readers of a newspaper to show facts or circumstances which will tend to assist the jury, but they must state the conclusion arrived at in their minds. Without the mention of names in a newspaper article we could not intelligently understand it. Unless we know the person or persons mentioned in the article it carries very little weight in our minds unless the article refers to some one in public life or relates an incident very much out of the ordinary, or one over which we become very curious. Immediately in

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reading a newspaper, when we come across a name similar to that of some one whom we know, our curiosity is immediately aroused and we read the article thoroughly to find out if it does or does not refer to the person whom we know. If we do not know the person referred to the matter immediately passes out of our minds. Then where, in view of the fact that the foregoing is our manner in reading a newspaper, can better evidence be secured than by witnesses acquainted with the person apparently referred to as to whom they understood the article to mean? Certainly in the great majority of cases it is mere conjecture for the jury to say who was meant, unless there is no doubt as to the reference in the article.

Greenleaf in libel and slander, 2nd vol. sec. 417, seems to take the proper view of evidence of this character. He says "the plaintiff must prove the truth of the colloquy, or the application of the words to himself, and to the extrinsic matters alleged in the declaration, where those are material to his right to recover. The meaning of the defendant is a question of fact to be found by the jury. It may be proved by the testimony of any persons conversant with the parties and circumstances; and from the nature of the case they must be permitted to some extent to state their opinion, conclusion and belief, leaving the grounds of it to be inquired into on cross-examination."

Many cases have followed this line of reasoning which seems most logical and reasonable. Leaving the grounds of the witnesses' opinion, conclusion or belief to be inquired into on cross-examination seems to give the writer of a libelous article full opportunity to show that the witnesses' deductions

are not based on the article. It does seem peculiar to say that this evidence, as Newell states, ought to be excluded because of the likelihood of perjury when all witnesses are presumed to tell the truth and in only rare instances fail to do so after they are sworn so to testify. If the testimony of witnesses in a libel or slander case seems so preposterous that no reasonable person could understand their conclusion other than that they were prejudiced or biased, the jury can find otherwise. This testimony is only offered as a guide and aid to the jury in arriving at a verdict.

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Many cases have held, and they seem to be far in the majority, that this evidence is competent and proper, and therefore admissible.

It has been held that in proving the application of the language of an alleged libel to the person, who is the subject of it, witnesses may be asked their opinion as to the meaning and intent and what is their understanding of particular expressions.

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Miller v. Butler, 6 Cush. (Mass.) 71.

Russell v. Kelley, 54 Cal. 641.

Goodrich v. Davis, 11 Met. (Mass.) 473.

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Wigmore on Evidence, vol. 3, sec. 1971, (b.) under the title *Intention of One Charged with Libel or Slander*, says "when utterances are alleged to have been defamatory, the fundamental notion of defamation—a spreading of false information among the community—requires us to take the standpoint of the community, or of the particular hearers or readers, in determining whether such a charge was published, i. e., made known to them."

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Likewise Odgerson Libel and Slander (from the 2nd English Edition), page 437, says: "If the libel does not name the plaintiff there may be need of some evidence to show who was meant. The plaintiff may give evidence 'of all surrounding circumstances, i. e., the cause and occasion of publication, late statements made by the defendant, and other extraneous facts which will explain and point the allusion. The plaintiff may also call at the trial his friends or others acquainted with the circumstances to state that on reading the libel they at once concluded that it was aimed at the plaintiff.'" (*Broome v. Gosden*, 1 C. B. 728; *Rv. Barnard*, Ex Parte, Lord R. Gower, 43 J. P. 127.) It is not necessary that all the world should understand the libel; it is sufficient if those who know the plaintiff can make out that he is the person meant (*Bourke v. Warren*, 2 C. B. 310). Evidence that the plaintiff was jeered at at a public meeting is admissible to show that his neighbors understood the libel as referring to him (*Cook v. Ward*, 4 M. & P 99; 6 Bing. 412). Lord Ellenborough held that the declaration made by spectators while they were looking at libelous caricature were admissible in evidence to show whom the figures were intended to represent.

In the case of *Commonwealth v. Buckingham*, Thatcher Cr. Cas. 29. It was held to be proper to ask a witness whether in his opinion the libelous words referred to the person alleged to be libelled.

In *Miller v. Butler*, 60 Mass. (6 Cush.) 71, the court held that in proving the application of the language of an alleged libel to the person who is the subject of it, witnesses may be asked their opinion as to the meaning and intent and what is their understanding of particular expressions.

It has also been held competent to admit the opinion of witnesses as to what persons were referred to by a particular expression as "the doctor," "the colonel," etc., in an alleged libel.

Goodrich v. Davis, 52 Mass. (11 Metc.) 473.

Miller v. Butler, (6 Cush.) 60 Mass. 71.

Leonard v. Allen, 65 Mass. 241.

In *Leonard v. Allen*, 65 Mass. (11 Cush.) 241, 10
the court held in an action for slander not made in direct terms, but by expressions, gestures and intonations of voice, it is competent for witnesses who heard the expressions, to state what they understood the defendant to mean by them, and to whom he intended to apply them.

It was also held that witnesses under proper qualifications may state their understanding as to 20
whom the words were applied.

Tomkins v. Wisener, 1 Sneed, (Tenn.) 458.

Smailey v. Stark, 9 Ind. 386.

In *Warner v. Clark*, 45 La. Am. 863, it was held that a plaintiff may for the purpose of proving the allegations of his petition, that he has suffered special and general damages as a result of certain letters written and sent out by the defendants, 30
question the parties who received the letters or heard their contents discussed, as to the effect produced upon them by the letters; such evidence, not being offered to prove the meaning of the words used, nor the innuendo charged, but the substantive fact of damage sustained.

We find in 25 Cyc. 505, "it is competent for the plaintiffs to prove by persons who read or heard 40

of the libel the effect produced upon them for the purpose of showing the substantive fact of damage sustained."

In 25 Cyc. 493, the author says: "as a general rule testimony of witnesses who heard or read the defamatory matter that they understood it to refer to the plaintiff is admissible."

10 One of the very latest cases decided on this point is that of *Wisner v. Nichols*, 143 N. W. 1020, the court held that where the libelous words do not in terms apply to any particular person, but may be so supplied by the reader of the article, the intention of the writer and the understanding of those among whom the libel is published may be shown to determine its applicability to plaintiff.

20 In *Bowken v. Warren*, 2 C. & P. 307, the plaintiff was referred to in the publication by five asterisks. Witnesses were permitted to testify how they understood it.

30 In *Smart v. Blanchard*, 42 N. H. 146, we find that the court held that the mere opinion of witnesses as to the meaning of the libel, or that it was of and concerning the plaintiff, are not admissible. But when the words are ambiguous and the application doubtful it must be shown that they were used in their actionable sense and were applied to the plaintiff.

Evidence of a like character was also held to be admissible in *Smith v. Miller*, 15 Vermont 245.

40 A strong case favoring evidence of this kind is the case of *Nelson v. Borchneius*, 52 Ill. 236. The Court held "that in actions of slander the testimony of the hearers as to the sense in which they un-

derstood the words spoken is admissible. But such testimony is not conclusive upon the jury. It is admissible as tending to show what meaning hearers of common understanding would and did ascribe to them."

In delivering the opinion in this case Supreme Court Justice Lawrence says:

"It is further urged that the Court erred in permitting the witnesses to testify that they understood the defendant to be speaking of the plaintiff in his business as a merchant. It is claimed the witnesses can only testify as to what words were spoken, and the jury must determine the sense in which they were spoken, and to what they were designed to apply, without aid from the testimony of the witnesses as to the sense in which they understood them. Although there is much conflict in the cases we are of the opinion the weight of authority and the sounder reason are adverse to the position. The rule laid down in *Pollock, Ch. B. in Hankinson v. Bibby*, 16 M. & W. 442, is: 'Words uttered must be construed in the sense in which hearers of common and reasonable understanding would ascribe to them.' It may well be asked what better guide there is in that inquiry, than to ascertain how they were really understood by the bystanders. It has been held, if the words are ambiguous, and the hearers understood them in an actionable sense, it is sufficient for it is this which caused the damage. . . . The essence of the injury is the effect created by the slander upon the minds of the hearers and it seems to us extraordinary that a person having used language

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10 concerning another which all his hearers understood in a slanderous sense, should be permitted to escape the legal consequences by saying he did not use the words in that sense. It was his duty to avoid the use of language which would be liable to such a construction in the minds of reasonable men who might hear them. We do not mean that their construction would be conclusive upon the jury but it is admissible in evidence as tending to show what meaning hearers of common understanding would and did ascribe to them."

Barnes v. Hamon, 71 Ill. 609, holds that words spoken, when an action is founded upon them, are to be taken in the sense which men of common and reasonable understanding would ascribe to them.

20 Perhaps the strongest and most logical reasoning for the admittance of evidence of this character is found in *Smawley v. Stark*, 9 Ind. 386. It is held in this case that in an action for slander, where the slanderous words were spoken by indirection, without naming the plaintiff, the witnesses well acquainted with the parties and the circumstances, to whom the words were spoken, are admissible in evidence, to show the plaintiff was the person referred to. The grounds of such opinion are open
30 to inquiry on cross-examination.

The only grounds of appeal still remaining to be discussed are those numbered 8, 9, 18 and 21.

40 At the completion of the testimony of Dr. G. Herbert Allen and assigned as the twenty-first ground of appeal, the court on a motion of the counsel of the defendant struck out all of the wit-

ness' testimony. As this is therefore not a part of the record it cannot properly be assigned as a ground of appeal.

The others all refer likewise to testimony of physicians. All the evidence which was admitted related to mental anguish and suffering and as such was proper.

These questions are admissible for reasons similar to those mentioned previously in discussing the legality of the evidence assigned as the 16th and 20th grounds of appeal. 10

In denying the application for a new trial Judge Adams very fully considered all of the objections made by counsel for defendant during the trial. His very exhaustive and comprehensive opinion might well be considered by the Court of Appeals and we have appended same as part of our brief as follows: 20

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"Essex Circuit Court.

Monday, September 8, 1913.

10	ROSE G. GARRISON,	}
	vs.	
	NEWARK CALL PRINTING AND PUBLISHING COMPANY, a cor- poration.	

Mr. George H. Lambert for plaintiff.

20 Mr. Leonard Kalisch and Mr. Harry Kalisch for
defendant.

DECISION.

ADAMS, J.

30 This is an action brought by Mrs. Rose G. Gar-
rison to recover compensation for damage which
she claims to have suffered in consequence of a
publication, alleged to be a libel upon her. The
publication appeared on November twenty-second,
1908, in the Newark Sunday Call, a weekly news-
paper owned and published by the defendant, in the
City of Newark.

40 The plaintiff obtained a verdict for \$4,296.25.
The defendant has been allowed a rule to show
cause why the verdict should not be set aside, and
upon the return of the rule argument has been
heard.

The rule to show cause reserved exceptions, and did not mention the grounds of the application. On the argument the counsel for the defendant assigned orally as reasons for a new trial, that the verdict was contrary to the evidence and to the charge and is excessive.

It appears to me that the verdict was not contrary to the charge and that it is not excessive. Notwithstanding the Act of 1898, the plaintiff, if she recovered, was entitled to compensatory damages, under the declaration. 2 C. S. p. 1815, Sec. 226, the cases there cited. The remaining question is whether the verdict was contrary to the evidence. This means, whether the verdict was contrary to the legal evidence. 10

The case turned upon the question whether the alleged libel was published of and concerning the plaintiff. Some of the evidence bearing on this subject was objected to and admitted over objection. Exceptions were duly prayed and allowed as to some, but not as to all of the evidence objected to. Since all exceptions have been reserved, the first inquiry is whether, on this motion, I am precluded by this reservation from considering questions raised by the exceptions as to the admission and exclusion of evidence. As I understand the rule, a reservation of exceptions does not restrict the scope of the inquiry to be made by the trial judge who granted the rule containing the reservation. 20 30

The publication which is alleged to be libelous reads as follows:

"FOR EXTRADITION OF ELLIOT
ARCHER.

Absconding grain broker arrested in Seattle
may be brought to Newark shortly.

A SIX-YEAR SEARCH ENDED.

10 * * * At the time of his arrest Archer
is alleged to have been in the company of
Mrs. George E. Garrison, formerly of 426 Sum-
mer avenue, this city, who, it is said, deserted
her husband, a broker, when Archer first dis-
appeared from the city. It is said she has
been with him much of the time since. Archer's
wife is living in this City, at 124 Lincoln ave-
nue."

20 It appears from the proof at the trial that this
publication contains a singular latent ambiguity.
The plaintiff, Mrs. Rose G. Garrison, is the wife of
Mr. George E. Garrison, a business man, who has
resided for many years in the City of Newark, and
does business in the city of New York. The desig-
nation "Mrs. George E. Garrison" points, on its
face, to her. Mrs. Garrison was born in Orange,
New Jersey, and lived there until her marriage
to Mr. Garrison, on October twenty-third, 1901.
30 Mr. and Mrs. Garrison then went to live in New-
ark, at 436 Summer avenue, a home owned by him,
and lived there continuously as husband and wife
until April, 1909, which was about five months
after the appearance of the publication in ques-
tion. Mr. and Mrs. Garrison then boarded at dif-
ferent places in Newark and elsewhere, and on
August twenty-fourth, 1911, went to housekeeping
at No. 436 1-2 Summer avenue, in the City of New-
ark, a residence owned by Mr. Garrison, and so
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continued to live together as husband and wife at that place up to and at the time of the trial in February, 1913. Mrs. Garrison testified that she does not know Elliot A. Archer and that, so far as she knows, she never saw him. No attempt is made by the defendant company to prove that Mrs. Garrison ever deserted her husband, or lived with Archer. On the contrary, the defendant admits an error and has made correction.

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On December sixth, 1908, which was fourteen days after the publication in question, there appeared in the Newark Sunday Call, the following statement, which makes manifest the latent ambiguity above mentioned:

“A CORRECTION MADE.

In the Sunday Call of November 22d, in an article announcing Archer's arrest in Seattle and telling the story of his crime, it was said that when he ran away from Newark he was accompanied by Mrs. George E. Garrison, of 426 Summer avenue. This statement has naturally proved distressing to Mr. and Mrs. George E. Garrison, who have their home in the same neighborhood, namely, at 436 Summer avenue. The woman who went away with Archer was not Mrs. G. E. Garrison, but Mrs. E. G. Garrison, the full name being Mrs. Everett G. Garrison, and her home was at No. 426, the address given in this paper two weeks ago. The fact that two persons with similar names lived within four or five doors of each other explains the unfortunate error. It is regretted by the Sunday Call. Of course, Mrs. Garrison's friends knew that she had not left

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Newark. Nevertheless, it was unpleasant to her to have her name linked with that of Archer."

10 The summons in this action was tested on December first, 1908, was served on the fourth day of that month, and was returnable and returned on the twelfth of that month—the service of the writ thus preceding by two days the appearance of the correction.

20 The defendant company at the trial put itself on the ground, as to the issue of fact, that the publication was not made of and concerning the plaintiff, but of and concerning the other woman mentioned in the correction. This question was for the jury. *Merrey v. Guardian Pub. Co.*, 50 Vroom 177. S. C. 52 Vroom 632. The jury, in considering this question, might look behind the defendant's declaration as to intent. It would be proper for the jury to construe the language of the publication, in order to ascertain who was the individual aimed at; and, since persons are held in law to intend the natural consequences of their own acts, the jury might ask themselves how persons who should read the publication would naturally understand it. As Mr. Justice Holmes puts it, in the dissenting opinion in *Hanson v. Globe Newspaper Co.*, 159 Mass. 301-302:

30 "On the general principles of tort the publication is so manifestly detrimental that the defendant publishes it at the peril of being able to justify it in the sense in which the public will understand it."

40 All this seems to be fair matter for the consideration of the jury.

The plaintiff's case might have been rested at this point. But the plaintiff claimed and was accorded the right to go further and to prove by the testimony of witnesses that they had read the publication and had themselves understood it to refer to the plaintiff and that they had learned in the course of conversation that other persons had received the same impression. This line of evidence has a double aspect. It consists of testimony by witnesses as to how they themselves understood the publication, and of testimony by witnesses as to what other persons said to them as to how those other persons understood the publication. Evidence of both kinds was received.

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Samuel E. Caldwell was asked a question on this subject. The question was objected to and withdrawn, was substantially repeated and again withdrawn. (Book, pp. 84, 85, 87, 88.) Mrs. Blanche Caldwell, the wife of Samuel E. Caldwell, said that in conversation with her husband and with Mr. Hine, they "just wondered whether it was Mrs. Garrison or not." (Book, pp. 89, 90.) An exception was here taken. On cross examination she said that she did not think the publication referred to the plaintiff. (Book, p. 96.) She added that she thought it referred to the first wife of Mr. George E. Garrison, the plaintiff being his second wife, and that this impression was removed by a conversation with the plaintiff. (Book, p. 97.) Patrick J. Walsh said that he and a police officer named Brady and a Mr. McCormack, a night station master at the Lackawanna station in Newark talked the matter over, and that they all had had the impression that the publication referred to the plaintiff. (Book, pp. 100, 101.) An exception was allowed. Both Brady and McCormack were called

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on behalf of the plaintiff as to the same conversation. Mr. Brady testified that he did not read the article in the Call. (Book, pp. 151, 152.) Mr. McCormack testified that he did not read the article in the Call. (Book, p. 163.) The Court ruled that conclusions not founded on the article in the Call were irrelevant. (Book, pp. 155, 167.) Daniel F. Wettlin testified, without objection, that he believed from reading the article that it referred to Mrs. George E. Garrison. (Book, p. 106.) He further said, after objection, that half a dozen different people with whom he talked said that they thought that it was Mrs. George E. Garrison who had gone away. (Book, pages 106, 107.) An exception was taken. On cross examination he said that he thought that the article applied to Mrs. George E. Garrison, because that was her name; that the house number mentioned in the paper made no impression on his mind, that he was impressed that the person referred to was Mrs. George E. Garrison, who lived on Summer avenue. (Book, pp. 112, 113.) John Friery said that he and James McGrath, with whom he talked, were uncertain about the matter. (Book, pp. 116, 117.) An exception was taken. James McGrath was subsequently called as a witness, as before mentioned. Harry R. Crane said that he thought or knew that it was a mistake and tried to correct it in conversation with other persons, who thought that the article referred to Mrs. George E. Garrison. (Book, pp. 123, 124, 125, 133.) No exception was taken. On redirect examination the witness detailed a conversation which he heard in a street car, during which Mrs. George E. Garrison, who was a passenger, was pointed out as the Mrs. Garrison who had run away with Archer. (Book, pp.

129, 130.) As to this evidence an exception was allowed. Many objections were not followed up by exceptions. James McGrath said, without exception, that he read the article in the Call, and thought for some time that it referred to Mrs. George E. Garrison. He said that he spoke with his wife and sisters about the matter, and that "they didn't know whether it was her or not." (Book, pp. 136, 137, 139.) Henry C. Hine testified without exception that he read the article in the Call and thought it referred to Mrs. George E. Garrison. (Book, pp. 175, 176, 178.) He mentioned also without objection a conversation with Mr. and Mrs. Caldwell where the same opinion or suspicion was expressed. (Book, pp. 178, 179.) There was a long cross examination in which this conversation was again mentioned. Mr. Caldwell, as already mentioned, was examined as to this conversation with Mr. Hine. (Book, p. 189.) John H. Sanderson, a police officer, testified without exception that he read the article in the Call and supposed that it was George E. Garrison's wife who had gone away with Archer. (Book, p. 195.) Also that he conversed with some police officers and with his family and told them that he believed it was Mrs. George E. Garrison who had gone off with Archer, and that his family and the officers coincided in his belief. (Book, p. 196.) An objection was made to this answer but no exception was taken. William S. Harrington, who married a sister of the plaintiff, said without objection that he was spoken to by numbers of people who understood that the articles referred to Mrs. George E. Garrison and that in conversation with them he corrected the error. (Book, pp. 206, 207, 208.) George E. Garrison, the husband of the plaintiff, testified

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without exception, among other things, that he had been obliged to make a correction of the article in conversation with many persons. (Book, pp. 231, 240, 241.)

10 The question which I have referred to runs through this case. It is the only question which I mean to consider. It was fairly raised by some of the exceptions. It being admitted, as it must be, that it was for the jury to judge whether the publication was of and concerning the plaintiff, the question to which I refer is whether a jury, in considering this matter, is restricted to the data
20 be assisted in making this inquiry by evidence as to how persons in fact understood the publication. Evidently, if only a single person understood it in the same sense which the plaintiff imputes to it, the plaintiff's case is, so far forth, made out, provided the construction appears to be reasonable.

30 An examination of the books shows that courts have not agreed as to the admissibility of such evidence. The defendant insists that this testimony was inadmissible. I will first consider whether it was error to permit a witness to state to whom he or she understood the publication to refer.

40 The subject is discussed in *Newell on Slander and Libel*, Second Edition, 1898, at pages 308 to 313, Sections 33 to 35. In the opinion of the author (p. 311, Sec. 35) "the law is not to be regarded as completely settled upon this question." He regards the

weight of authority as opposed to the admission of testimony of this character, (pp. 308 to 311, Sec. 33-34) and on page 313 recommends that as the safer rule.

The books show that in the States of New Hampshire, Vermont, Indiana and Illinois such testimony has been admitted. *Smart v. Blanchard*, 42 N. H. 146; *Smith v. Miller*, 15 Vermont, 245, opinion by Redfield, J. *Smart v. Blanchard* is a thorough case decided by the Supreme Court of New Hampshire in 1860. The headnote reads in part as follows: 10

“The mere opinions of witnesses as to the meaning of the libel, or that it was of and concerning the plaintiff, are not admissible. But when the words are ambiguous and the application doubtful it must be shown that they were used in their actionable sense, and were applied to the plaintiff, and that the hearers so understood them and therefore the testimony of the hearers as to how they understood the words is admissible.” 20

The opinion, among other cases, cites *Bowken v. Warren*, 2 C. & P. 307, where the person referred to was designated in the publication by five asterisks. Witnesses were allowed to state how they understood it. There is a reference to *American Leading Cases*, 136, 137, 139. A notable case is *Neison v. Borchneius*, 52 Ill., 236. The headnote says: 30

“In actions for slander the testimony of the hearers as to the sense in which they understood the words spoken is admissible. But such testimony is not conclusive upon the jury. 40

It is admissible as tending to show what meaning hearers of common understanding would and did ascribe to them."

Mr. Justice Lawrence, in delivering the opinion of the Supreme Court, says:

10 "It is further urged that the Court erred in permitting the witnesses to testify that they understood the defendant to be speaking of the plaintiff in his business as a merchant. It is claimed the witnesses can only testify as to what words were spoken, and the jury must determine the sense in which they were spoken, and to what they were designed to apply, without aid from the testimony of the witnesses as to the sense in which they understood them. Although there is much conflict in the cases, we are of opinion the weight of authority and the sounder reason are adverse to the position. The rule laid down in *Pollock, Ch. B. in Hankinson v. Bibby*, 16 M. & W. 442, is: 'Words uttered must be construed in the sense which hearers of common and reasonable understanding would ascribe to them.' It may well be asked what better

20 guide there is in that inquiry, than to ascertain how they were really understood by the bystanders. It has been held, if the words are ambiguous, and the hearers understood them in an actionable sense, it is sufficient for it is this which caused the damage. * * * The essence of the injury is the effect created by the slander upon the minds of the hearers and it seems to us extraordinary that a person having used language concerning another which

30 all his hearers understood in a slanderous

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sense, should be permitted to escape the legal consequences by saying he did not use the words in that sense. It was his duty to avoid the use of language which would be liable to such a construction in the minds of reasonable men who might hear them. We do not mean that their construction would be conclusive upon the jury but it is admissible in evidence, as tending to show what meaning hearers of common understanding would and did ascribe to them." 10

This case of *Nelson v. Borchneius* was cited with approval in *Barnes v. Hamon*, 71 Ill., p. 609, at p. 611, as "A case decided after full examination of the authorities."

The case of *Smawley v. Stark*, 9 Indiana, 386, presents an ambiguity as to the person intended by the slander. The plaintiff was not named. A witness was asked, "Whom did you understand the defendant to refer to?" The propriety of the question was sustained by the Supreme Court. In this case as in that of *Nelson v. Borchneius*, the opinion refers to a passage in 2 *Greenleaf on Evidence*, which in the 16th Edition is to be found on pages 390, 391, Sec. 417, and is as follows: 20

"The meaning of the defendant is a question of fact to be found by the jury. It may be proved by the testimony of any persons conversant with the parties and circumstances; and, from the nature of the case, they must be permitted to state their opinion, conclusions and belief, leaving the grounds to be inquired into on cross examination." 30

See also the context and note 3 on page 391. 40

The cases in New York seem on the whole to disfavor such evidence; see *Van Vechten v. Hopkins*, 5 Johns, 211, and *Gibson v. Williams*, 4 Wend. 320, which is to be considered, however, in connection with *Phillips v. Barber*, 7 Wend. 439.

The Massachusetts cases, so far as I have been able to consult them, favor such evidence. *Goodrich v. Davis*, 11 Met. 473, at pages 484, 485; *Miller v. Butler*, 6 Cush. 71, a case where the ambiguity was as to the person intended; *Leonard v. Allen*, 11 Cush. 241. The case of *Snell v. Snow*, 13 Met. 278, is different in kind from these other Massachusetts cases, and has little or no bearing on the question now under consideration. Among the cases which I have examined, those which come closest to the matter in hand, are *Smawley v. Stark*, 9 Ind. 386, and *Miller v. Butler*, 6 Cush. 71. As in the case before the Court, the ambiguity in each of these instances was as to the person intended by the publication.

There is undoubtedly a good deal of force in what Mr. Newell says on page 313, before mentioned. I think, however, that the author, in seeking for safety, has become timid. It is not well to reject the best evidence, because witnesses may swear falsely without the possibility of direct contradiction. The matter may be safely committed to cross examination and the discernment of the jury. I am not convinced either on principle or by authority, that legal error was committed in placing witnesses on the stand and asking them to whom they understood the publication to refer, especially as the witnesses were to some extent, in the words of Greenleaf, "conversant with the parties and circumstances," that is, they were not, as

a general thing, picked up at random out of the mass of the community, but were persons who had some knowledge of or acquaintance with the plaintiff, or her husband, or both.

But some of the testimony on behalf of the plaintiff, as I have already observed, goes beyond this point, and details statements made to witnesses on the stand by other persons, who in some cases are not named or identified, as to the understanding of such persons concerning the meaning of the publication. This looks like hearsay, and if sustainable, must fall under some recognized exception to the hearsay rule. Evidently, also, such persons, if not themselves called as witnesses, go free from examination and cross examination. This objection was distinctly made by Mr. Harry Kalisch, of counsel with the defendant, at pages 82 and 83 of the book, and though the question objected to was withdrawn the point was fairly raised, and in justice to the defendant must be considered.

There is a well known class of cases in which words are considered to be acts, and so to lie outside of the hearsay rule. In 1 *Greenleaf on Evidence*, Sec. 101, a phase of this subject is treated under the title, "Words used evidently, though not testimonially." Mr. Greenleaf tersely says: "The general rule of law rejects all hearsay reports of transactions, whether verbal or written, given by persons not produced as witnesses." *Greenleaf on Evidence*, Sec. 99. Shaw, C. J. in *Warren v. Nichols*, 6 Met. 261, says: "The general rule is that one person cannot be heard to testify as to what another person has declared in relation to a fact within his knowledge and bearing on the issue." This case is cited by Greenleaf, at Section 99a. The author

then proceeds in Sections 100, 101, 108, to distinguish between words which are merely probative and words which are themselves verbal acts and so the direct object of evidence. He says, at page 187:

10 “It is considered that evidence of general reputation, reputed ownership, general notoriety, and the like, though composed of the speech of third person, not under oath, is original evidence, and not hearsay, the subject of inquiry being the concurrence of many voices to the same fact, so far as it is offered not to prove the fact reputed to be true, but merely the probability that through the reputation, rumor or other communication, a party has become aware of a certain fact, if it existed.”

20 In this case, an important question is how the public understood the article in the Call, or, more accurately, how they might reasonably understand it. Suppose that Mrs. George E. Garrison had entered a company of ladies, and one of them had said to her, in the presence and hearing of the others, “Mrs. Garrison, we have read and believe an article in the Call stating that you have been unfaithful to your husband. Under these circumstances we cannot associate with you, and ask you to withdraw”; and that the other ladies had as-
30 sented to this, and that thereupon Mrs. Garrison had withdrawn. Is it not plain that if Mrs. Garrison had narrated this interview on the stand, her testimony as to what these third persons had said, would not be hearsay, but would be direct evidence as to words considered as facts?

40 The same subject is treated in 1 *Wigmore on Evidence*, at Sections 266 and elsewhere. The author says, on page 332:

“The important thing is that, so far as the evidential fact consists in an utterance of words, it is receivable for the present purpose” (that is, to show knowledge or belief) “as circumstantial evidence; and that, so long as it is offered for that purpose only, and not as an assertion to be credited like testimony, it is not obnoxious to the Hearsay Rule. For example, A’s mention of X’s insolvency is receivable as circumstantial evidence of A’s knowledge, but not as testimonial evidence of X’s insolvency.” 10

See also 3 *Wigmore on Evidence*, Sections 1788, 1789, 1790.

The class of testimony now under consideration was received in this case, because it was thought to be circumstantial evidence of a condition of public opinion which the plaintiff might prove directly, as a relevant fact. If this view was correct, the Hearsay Rule was not violated. 20

I have not been referred to nor have I found a New Jersey case which bears directly on the subject of inquiry. I conclude that the verdict was not contrary to the legal evidence. There is no other question raised by the rule or the argument which requires decision. The rule to show cause will be discharged.” 30

As the authorities cited in this brief fully support the ruling of the trial court in admitting all the evidence herein discussed, we therefore respectfully submit the verdict should be affirmed.

LAMBERT & STEWART,

Attorneys for Plaintiff-Respondent. 40

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Notice of Appeal

Filed November 7, 1913.

Essex County Circuit Court

Rose G. Garrison,
Plaintiff,

vs.

Newark Call Printing and
Publishing Company, a
Corporation,
Defendant.

IN TORT.

10

NOTICE OF APPEAL.

To Lambert & Stewart,

Attorneys for Plaintiff.

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause. 20

LEONARD KALISCH,
Attorney of Appellant.

Dated November 7, 1913.

30

NOTE.

The pages referred to in the grounds of appeal has reference to the pages in the stenographer's transcript of the case.

40

Grounds of Appeal

Filed December 3, 1913.

New Jersey Court of Errors and Appeals

10

Rose G. Garrison,
Plaintiff-Respondent,

vs.

Newark Call Printing and
Publishing Company, a
Corporation,

20

Defendant-Appellant.

ON APPEAL.

GROUNDS OF APPEAL.

To Lambert & Stewart, Esq's.,

Attorneys of Paintiff.

TAKE NOTICE that the following are grounds of appeal which the defendant-appellant hereby assigns and upon which it will rely at the hearing:

30

1. Because the Court admitted over defendant's objections a copy of the Sunday Call dated August 31, 1902, December 21, 1902, and December 28, 1902, Pages 5, 6 and 7.

2 Because the following questions to the plaintiff, Rose G. Garrison, were admitted over defendant's objection: (P. 10.)

Q Did you also see these other articles that were published in 1902?

40

A Yes.

Grounds of Appeal

THE COURT. That means, I suppose, did you see them at the time they came out?

WITNESS. Yes.

THE COURT. Is that what you mean?

WITNESS. Yes.

3. Q (Page 35.) On how many occasions did you go and buy goods where these sales-ladies sold goods to you and you saw them talk? 10

A Every day in the week, for the greatest long time; I don't know how long it was.

Q Did you see them say anything to any of their associates?

A Yes.

4. Q (Page 36.) What next did you do?

A Well, when I went down in trolley cars I would see two or three ladies in the corner, or in the trolley car, and I supposed they were looking at me—— 20

Objected to.

5. Q (Page 37.) And what effect did the talk that you saw between the ladies at the physical culture class have upon your mind?

A Why, it made me very nervous and mental anguish.

MR. LEONARD KALISCH. Of course that part with reference to nervousness is not an element of damage.

MR. LAMBERT. I think it is, if your Honor please.

THE COURT. Well, not considered as a disease, but 30 it is a word that admits of a use that is not technical, such as agitation, disturbance of the emotions, and so forth. It is probably in that sense the witness intended it. I will let it stand.

Q What other incidents can you recall, if any, after this publication affecting your mental?

A Why, Mr. Garrison and I drove through Orange in one of these runabouts, and we drove through Orange very slowly to show the people that I wasn't with that man.

Grounds of Appeal

Q (Page 38.) And your object in doing that was what?

A To show the people that I hadn't gone away with Archer.

6. Q (Page 41.) How long did your nervousness continue?

A Why, it is with me yet.

10

7. (Page 45.) To the questions:

Q. How lately have you seen people talking to each other and looking at you?

A About a month ago.

Q And has that occurred frequently within the last year or two, or not?

A It has.

Q And how does that affect you?

A Why, it causes me to worry.

20

Q Why?

A On account—

MR. LEONARD KALISCH. I object to the reason.

THE COURT. You may answer the question.

A On account of this publication.

Q Did you know what they were talking about?

A No, but I just thought it.

8. Because the following questions to the witness, Dr. Daniel B. McCartie, were admitted over defendant's
30 objection:

9. Q Did you observe anything of that character?

MR. LEONARD KALISCH. I object to the question on the ground that the Doctor testifies that the first time he examined her, or the first time he saw her, was two years ago. Now, this publication is more than four years ago, and it is too remote.

MR. LAMBERT. Oh, no, all the way down to the present time is not too remote, Mr. Kalisch.

40 THE COURT. I think the suggestion goes to the

Grounds of Appeal

weight rather than to the competency of the testimony. You may ask that question.

(Question read.)

A Mental suffering?

Q Mental suffering or mental anguish, yes.

A Well, yes, that is what she came to me for.

Q Just state, Doctor, in your own way, what you noticed of her mental suffering or mental anguish. 10

A From her statement, from her—

MR. KALISCH. Of course, this goes in under my objection. I take an exception to this testimony.

THE COURT. Make your objection; state the ground of it.

MR. LEONARD KALISCH. My ground is that it is not connected at all with this publication, as too remote, and it goes more to the physical condition of the plaintiff. 20

THE COURT. It is not yet connected with the publication, but I will not anticipate. I will allow the witness to go on for the present.

THE COURT. That is, what you noticed.

A She came to me as a patient suffering from a nervous condition, and the symptoms were those of general nervousness; she said she couldn't sleep well, lost her appetite.

Q (Page 73.) How did she appear to you when she came to you, Doctor? 30

A She was nervous, excited, her language was rather incoherent, she was fidgety in her general demeanor, and, mentally speaking, I should say, in a highly nervous, excited state.

Q What did you do, if anything, for her nervous state or mental condition, Doctor?

A Yes, I prescribed medicine that would relieve this condition. 40

Grounds of Appeal

10. Because the following questions to the witness, Blanche Caldwell, were admitted over defendant's objection:

Q (Page 89.) What was said between you and Mr. Caldwell about the article, or the fact?

A I don't just recall all the conversation, but we just wondered whether it was Mrs. Garrison or not.

10 Q What Mrs. Garrison?

A Mrs. George E. Garrison.

Q You were acquainted with her, were you?

A Yes.

Q And what conversation did you have with Mr. Hine about the matter?

A Just about the same thing.

Q Can you recall the conversation that you had with Mr. Hine?

20 A No, I don't recall the words.

Q Well, the substance?

THE COURT. She said it was just about the same as the other.

Q About the same as the other?

A Yes.

11. Because the following questions to the witness, Patrick J. Walsh, were admitted over defendant's objection: (P. 99.)

30 Q Can you state what you said to them or what they said to you on that occasion?

A Well, not just exactly the words, but we talked it over, and we were pretty sure of it, that it was Mrs. Garrison that went away.

Q What Mrs. Garrison?

A Mrs. George E. Garrison.

Q How long did that impression continue with you?

A Four or five days.

Q And then what happened, if anything?

40 A We were dicussing it over one evening there, and

Grounds of Appeal

Mr. George E. Garrison came in, and with that he overheard us say—we had to let it out, and we said, “Well, we see they have got Archer again.” And then came the explanation that it wasn’t Mrs. George E. Garrison, that it was this other woman, Everett G. Garrison, or whatever you call her.

Q And until that time——

A We was of the opinion that it was Mrs. George E. Garrison. 10

Q Did you hear anybody else talk about the case?

A Only the three of us that was in the station.

12. Because the following questions to the witness, Daniel F. Wettlin, were admitted over defendant’s objection: (P. 107.)

Q If you can recall, what did they say about this?

MR. LEONARD KALISCH. I want to make the same objection as before to that.

THE COURT. Yes. I will allow this; this is a fact. 20

Q Go ahead. What did they say to you, if you can recall?

A I don’t remember the exact words, but it was to the effect that it was Mrs. George E. Garrison that had gone away.

13. Because the following questions to the witness, John Friery, were admitted over defendant’s objection: (P. 116).

Q What was the conversation, or the substance of it, between you and him? 30

A As to whether this was the wife of Mr. George E. Garrison or not, of course, we both of us knew Mr. George E. Garrison.

Q (P. 117). Can you give us the conversation?

A Nothing more than as I said before, that we both knew Mr. Garrison, and, of course, if it was his wife, we were sorry. We had talked over it in that strain.

Q I will ask you this question. At the time of that conversation did you believe that Mrs. George E. Garrison had gone away with Archer? 40

Grounds of Appeal

A We didn't know anything about it, whether she had or had not, only as I tell you, that we saw Mr. Garrison every morning we was on duty. As to whether this was Mrs. George E. Garrison or not, we didn't know whether it was or whether it wasn't, whether it was his wife or whether it was somebody else's wife.

Q How long did you continue in doubt?

10 A Oh, for some time.

Q About how long?

A Oh, I don't just remember.

Q Well, as near as you can tell?

A Well, maybe a week.

Q And how was your doubt cleared up in this matter, if at all?

A Well, I don't remember how it was cleared up.

14. Because the following questions to the witness, Harry R. Crane, were admitted over defendant's objection:

20 Q Page 129. How many people did you hear discuss it on the street car?

A Two.

Q Did you hear what they said?

A Yes, sir.

Q Did you know them?

A No, sir.

Q What did you hear them say?

30 A One said to the other——

A One said to the other, "Do you see the second lady sitting up in front?" The other one said, "Yes." He said, "That is Mrs. Garrison, that ran away with Archer." And the first speaker said, "Yes, he took \$40,000." And the second one said, "Well, I hope she got part of it."

Q Did you recognize the lady that they were referring to?

A Yes, sir.

40 Q Who was it?

Grounds of Appeal

A. The second lady.

Q Who was it?

A That was Mrs. George E. Garrison.

15. Because the following questions to the witness, Matthew Brady, were admitted over defendant's objection:

Q (Page 157.) Now, what did he say was his judgment as to whether it was true or otherwise concerning Mrs. Garrison going away with Archer? 10

MR. LEONARD KALISCH. I object to the question on the ground that he is asking this witness to state what Mr. Walsh's judgment was.

THE COURT. That is Mr. Walsh's statement. We have gone all over that. I will admit it.

(Question read.)

MR. LAMBERT. Whether he believed the story or not. 20

A He said he thought it was Mrs. Garrison, on account of what he read in both papers.

16. Because the following questions to the witness, Henry C. Hine, were admitted over defendant's objection:

Q (Page 182.) How did her mind appeal to you at that time?

A I can't describe her mental condition, except as to the location of that particular radiator, trying to tell me where to put it and couldn't determine, spoke slowly and couldn't get the words through her mouth. 30

Q Did she exhibit any worriment of mind?

THE COURT. You may answer that question yes or no.

A Yes, sir.

17. Because the following questions to the witness, John H. Sanderson, were admitted over defendant's objection:

Q (Page 196.) Well, what was their belief, if they stated? 40

Grounds of Appeal

A Of course, they didn't know either of the parties and they believed, of course—I told them I believed that it was Mrs. Garrison and they coincided with my belief, that is all.

Objected to.

THE COURT. Strike out what he told them.

Q From what the police officers said, what did they believe?

A They believed the same thing; they were all in sympathy with Mr. Garrison.

18. Because the following questions to the witness, Dr. Roswell D. Grant, were admitted over defendant's objection:

Q (Page 202.) Did she exhibit any nervousness at the time of your treatment of her?

A Yes, I may say she did.

Q Did she exhibit any mental anguish?

A Not at the time.

Q Any mental strain?

A Not at that time.

Because the Court on motion of defendant's counsel refused to strike out the testimony of Doctor Roswell D. Grant. (Page 204.)

19. Because the following questions to the witness, William S. Harrington, were admitted over defendant's objection:

Q (Pages 207 and 208.) And how long after this publication of November 22, 1908, did you continue to make explanation—find it necessary to do so?

A Oh, possibly—well, it was only here the other day I made a correction.

Q How long ago?

A The Star had an article in about this suit against the Sunday Call, and I made a correction—

Objected to.

THE COURT. You were merely asked as to the period within which you made corrections.

Grounds of Appeal

Q What correction did you make at that time and with whom?

A That it was not my sister-in-law that went away with Archer.

Q Whom were you talking with?

A I was talking with Charles McGee.

Q What was his opinion, if he stated it?

A He was rehashing the story of 1908, and I told him at the time that it was not the Mrs. Garrison referred to, and he said that he was always under the impression that it was until he had seen this article in the Star. 10

Q About this present trial?

A About this present trial.

Q Who is Charles McGee?

A He is a traveling man.

Q Do you know where he could be found? Do you know where he is now or don't you know? 20

A He is on the road all the time; I meet him occasionally.

Q What line is he in?

A I really couldn't say what his business is.

Because the Court refused to allow the witness, William S. Harrington, on re-cross examination by defendant's counsel, to answer the following question after the witness' attention was called to testimony given by the witness in the case of the plaintiff against the News:

Q Now, did you in answer to the following question, Page 54—the question was as follows: "And how many people do you suppose you have heard talk about the matter?" Your answer was, "I have not kept a record of it, but for the last ten years I have been answering questions on and off, different times, to people, trying to convince them it was not Mrs. Garrison." 30

20. Because the following questions to the witness, George E. Garrison, were admitted over defendant's objection: 40

Grounds of Appeal

Q (Page 236.) Immediately after the publication of November 22, 1908, what effect, if any, did you notice it had on Mrs. Garrison—not physical effect; mental effect?

A She was very nervous.

Q How was that exhibited?

A Well, she seemed to be agitated by the fear that she was going to be arrested—

10 MR. LEONARD KALISCH. Now, if your Honor please, I ask that be stricken out, on the ground that it does not come under the head under which damages can be sought here.

THE COURT. I think so.

MR. LEONARD KALISCH. That may be caused by entirely other grounds than what are stated here.

THE COURT. I think it very evidently does fall within the sphere of legitimate proof. I overrule the objection.

20 Because the Court refused to strike out all of the following testimony given by the witness, George E. Garrison:

Q (Pages 238 and 239.) I will ask you, Mr. Garrison, whether there was any incident or any other cause at that time connected with Mrs. Garrison which would cause her to fear arrest?

A None whatever.

Q How long did that nervous state continue?

A It still continues.

30 Q What her mental condition—that is, as to worryment or mental distress—at the time you went to Asbury Park?

A At the time she was very flighty. I had to get up in the middle of the night and go out and walk the streets with her. That state of affairs kept up until about July 12th at Asbury Park, when—

Q What year?

A That was in 1910. And she seemed to collapse entirely for a while; she lost her reason.

40 MR. LEONARD KALISCH. I ask your Honor to

Grounds of Appeal

strike out all this testimony. I do not think counsel ought to bring these things out when he knows the answer that is coming to the question.

THE COURT. Strike out the last statement. I warn counsel of the danger of pursuing this line of inquiry.

(Page 241.) Because the Court permitted the witness to answer the following question over defendant's objection:

10

Q Mr. Garrison, just prior to this publication of November 22, 1908, what was the condition of Mrs. Garrison's mind as to worryment?

THE COURT. Before this publication?

MR. LAMBERT. Just prior.

A Her mind was perfectly normal.

(Page 242.) Because the Court permitted the witness, George E. Garrison, to answer the following questions over defendant's objection:

20

Q But I am talking about the publication. What was her condition as to the publication, her mental condition, as to worryment? Did it change at all, and if so, how?

A As to the publication?

Q After the publication.

A Oh, she seemed very flighty and all worked up over it.

21. Because the following questions to the witness, Dr. G. Herbert Allen, were admitted over defendant's objection:

30

Q (Page 261.) Were you there in——

A 1910.

Q In 1910?

A Yes, sir.

Q And did you meet Mrs. Rose G. Garrison, this lady sitting here (indicating), at that time?

A I did.

Q Who was treating her then?

40

Grounds of Appeal

A Why, I was treating her, with Dr. Bryan, of Asbury Park, Joseph H. Bryan.

Q Well, did you notice anything concerning her state of mind, whether she was nervous or in a state of worryment?

MR. LEONARD KALISCH. I object to the question.

THE COURT. The objection is overruled.

10 A I did.

Q Just state what you noticed of her. How did she appear to you? Do not go into the physical part or what you did for her.

A Do you mean just her mental condition?

Q Just her mental condition, as you saw it.

A Why, when I first saw her she was in a semi-conscious condition and wholly incapable mentally in that respect. She was capable in one way, but not in another. I believe she could read, but you couldn't talk to her.

20 Q Never mind the physical part. What did you notice about her mind or her state of mental worryment, if she had any?

MR. LEONARD KALISCH. Of course, I want an exception to all these questions without asking it.

THE COURT. Take a general exception.

MR. LAMBERT. Go ahead.

(Question read.)

30 A Well, I said before that she had it, and she was—well, practically wholly incapacitated to do anything at the time, and she was in bed and couldn't get up.

Q No, not physically.

A Well, that was mental, in a way; it was due to her mind, or her brain at least. And she was practically oblivious to everything, so far as she was concerned.

Q How many times were you there, Doctor?

40 A I don't know the number of times. I know that from about the middle of July until the end of August she was in Asbury Park, and we looked after her during that time.

Grounds of Appeal

22. Because the Court admitted a letter written by F. H. Smith, Jr., to George E. Garrison, which letter was marked (Ex. P. 6) (See Page 77), and to the following questions put by the plaintiff's counsel on P. 77 & 78:

Q What did you want to see Mr. Garrison about a mortgage; what were the circumstances?

A We were negotiating a mortgage, my brother and myself—we were executors of my father's estate and we were negotiating, or had negotiated, a mortgage with Mr. Garrison, and my brother came to me one afternoon and raised the question whether Mrs. Garrison could properly have signed that mortgage if she was away with Mr. Archer, and I told him I hadn't heard anything about it before, I would investigate the thing right away, and I would send for Mr. Garrison to come and see me and explain. 10

Q Did he come?

A Yes, sir. 20

Q What explanation did you get?

A The explanation that he made was that it was not his wife at all, that it was some other Mrs. Garrison.

Q What is your brother's name?

A William L. Smith.

Q And from what he said did you understand from him that he believed that Mrs. George E. Garrison was the person who had gone away with Mr. Archer?

Objected to. 30

A Yes, sir.

23. Because the plaintiff's counsel continually put questions to the plaintiff and her witnesses over defendant's objections which were incompetent and improper and the questions after being answered were stricken out by the Court and which were greatly prejudicial to the defendant's rights.

HARRY KALISCH,
Of Counsel.

LEONARD KALISCH,
Attorney for Defendant.

Judgment Record

SUMMONS:
ESSEX COUNTY, ss.

(Seal.) The State of New Jersey to the Sheriff
of the County of Essex:

10 GREETING: We command you to sum-
mon Newark Call Printing and Publishing Company; a
corporation formed under the laws of the State of New
Jersey. Defendant, to be and appear before the Circuit
Court to be held at Newark, in and for the County of
Essex, on the twelfth day of December, inst., to answer
unto Rose G. Garrison and George E. Garrison, her hus-
band, plaintiffs, in an action In Tort wherein the plain-
tiffs claim from the defendant twenty thousand dollars,
and have you then and there this Writ.

20 WITNESS, Frederic Adams, Esq., Judge
(Seal.) of our said Court at Newark aforesaid,
the first day of December, A. D. one
thousand nine hundred and eight.

JOHN D. WOOLSTON, Clerk.
Lambert & Stewart, Attorneys.

Declaration

30 Essex County Circuit Court, of the twelfth
day of December, nineteen hundred and
eight.

ESSEX COUNTY, ss.:

Newark Call Printing and Publishing Company, a cor-
poration formed under the laws of the State of New Jer-
sey, the defendant in this suit, was summoned to answer
unto Rose G. Garrison and George E. Garrison, her hus-
band, the plaintiffs herein, in an action in tort and there-
upon the said plaintiffs by Lambert & Stewart, their at-
torneys, complain:

40 For that whereas the plaintiff Rose G. Garrison now
is a good, true, honest, just and faithful citizen of this

Declaration

State, and as such has always behaved and conducted herself, and until the committing of the several grievances by said defendant as hereinafter mentioned, was always reputed, esteemed and accepted by and amongst all her neighbors and other persons, to whom she was in anywise known, to be a person of good name, fame and credit, to-wit, at Newark, in the County of Essex aforesaid.

And whereas also the said plaintiff, Rose G. Garrison, 10
has not ever been guilty, or until the time of the committing of the said several grievances by the said defendant as hereinafter mentioned, been suspected to have been guilty of adultery, or of any other crime or crimes, or to have ever deserted her husband, or ever to have eloped with any person, or to have been guilty of lewd or lascivious conduct, or to have had improper or questionable relations with any man, or of the offenses and misconduct hereinafter mentioned to have been charged upon and imputed to the said plaintiff, Rose G. Garrison, or of 20
any other such offenses or misconduct, by means of which said premises, the said plaintiff, Rose G. Garrison, before the committing of the said several grievances by the said defendant as hereinafter mentioned, had deservedly obtained the good opinion and credit of all her neighbors and other good and worthy persons of this State, to whom she was in anywise known, to-wit, at Newark, in the county aforesaid.

And whereas, also, before the committing of the several grievances by the said defendant, the said plaintiff, 30
Rose G. Garrison, was married to the said plaintiff, George E. Garrison, on the twenty-sixth day of October, nineteen hundred and one, at the City of Orange, County and State aforesaid, and has ever since remained the wife of said plaintiff, George E. Garrison, and resided with her said husband, George E. Garrison, in the said County and State.

Yet the said defendant well knowing the premises, but greatly envying the happy state and condition of the said plaintiffs and contriving and wickedly and maliciously intending to injure the said plaintiff, Rose G. Garrison, in 40

Declaration

her good name, fame and credit and to bring her into public scandal, infamy and disgrace with and amongst all her neighbors and other good and worthy persons, and to cause it to be suspected and believed by those neighbors and worthy persons that she, the said plaintiff, Rose G. Garrison, had been guilty of adultery and had been guilty of deserting her husband, and had eloped with a person named Elliott A. Archer and had been
 10 guilty of lewd and lascivious conduct with said Archer, and to subject her to the pains and penalties by the laws of this State made and provided against and inflicted upon persons guilty of such offenses, and to vex, harass, oppress, impoverish and wholly ruin the said plaintiff, Rose G. Garrison, heretofore, to-wit, on the twenty-second day of November, nineteen hundred and eight, at Newark, in the County of Essex aforesaid, falsely, wickedly and maliciously did compose and publish and cause and procure to be published of and concerning her marital relations with her said husband, said plaintiff,
 20 George E. Garrison, in a certain newspaper owned and controlled by the said defendant, known as The Sunday Call and published in the City of Newark, in the county of Essex aforesaid, and circulating throughout the State of New Jersey and other parts of the United States, a certain false, scandalous, malicious and defamatory libel, containing, amongst other things, the false, scandalous, malicious, defamatory and libelous matter following:

"FOR EXTRADITION
 OF ELLIOT ARCHER.

30

Absconding Grain Broker Arrested in Seattle May Be
 Brought to Newark Shortly. —

A SIX-YEAR SEARCH ENDED.

* * * At the time of his arrest Archer is
 alleged to have been in the company of Mrs.
 40 George E. Garrison, formerly of 426 Summer ave-

Declaration

nue, this city, who, it is said, deserted her husband, a broker, when Archer first disappeared from the city. It is said she has been with him much of the time since. Archer's wife is living in this city, at 124 Lincoln avenue," which said false, scandalous and defamatory article stated of and concerning the said plaintiff, Rose G. Garrison and of, and concerning her marital relations with her said husband, the plaintiff, George E. Garrison, as hereinafter set forth, that is to say:

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"FOR EXTRADITION
OF ELLIOT ARCHER.

Abscending Grain Broker Arrested in Seattle May Be
Brought to Newark Shortly.

A SIX-YEAR SEARCH ENDED.

* * * At the time of his arrest (meaning the arrest of the said Elliott A. Archer) Archer is 20
alleged to have been in the company of Mrs. George E. Garrison (meaning the plaintiff herein, Rose G. Garrison), formerly of 426 Summer avenue, this city, who, it is said, deserted her husband (meaning that the plaintiff, Rose G. Garrison, had deserted her husband, the plaintiff, George E. Garrison, and had eloped and gone away with said Elliott A. Archer and was living in adultery with him) a broker, when Archer (meaning the said Elliott A. Archer) first disappeared from the city. It is said she (meaning the plaintiff, Rose G. Garrison) has been with him (meaning 30
the said Elliott A. Archer) much of the time since (meaning that the plaintiff, Rose G. Garrison, had been living in adultery with the said Elliott A. Archer much of the time between the year nineteen hundred and two and the month of November, nineteen hundred and eight). Archer's wife is living in this city, at 124 Lincoln avenue.

By means of the committing of which said several grievances by the said defendant as aforesaid, the said plaintiff, Rose G. Garrison, has been and is greatly injured in her good name, fame and credit and brought 40

Declaration

into public scandal, infamy and disgrace, with and amongst all her neighbors, and other good and worthy persons to whom the innocence and integrity of the said plaintiff, Rose G. Garrison, in the premises were unknown, have on account of the committing of the said several griveances by the said defendant, as aforesaid, from thence hitherto, suspected and believed, and still do suspect and believe, the said plaintiff, Rose G. Garrison, to have been guilty and to be the person guilty of adultery with Elliott A. Archer and of having deserted her husband, the said plaintiff, George E. Garrison, and of having eloped with one Elliott A. Archer, and to have been guilty of lewd and lascivious conduct with the said Elliott A. Archer, and to have had improper and questionable relations with the said Elliott A. Archer, and have by reason of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto, wholly refuse and still do refuse to have any transaction, acquaintance or discourse with the said plaintiff, Rose G. Garrison, as they were before used and accustomed to have, and otherwise would have had.

And also by means of the said premises, the said plaintiff, Rose G. Garrison, hath been and is otherwise much injured and damnified, to wit, at Newark, in the County of Essex aforesaid, to the damage of the said plaintiff, Rose G. Garrison, Fifteen Thousand Dollars.

And also, the said plaintiff, George E. Garrison, complains for that whereas he, the said plaintiff, George E. Garrison, and the said plaintiff, Rose G. Garrison, from the date of their marriage, October twenty-first, Nineteen Hundred and One, down to the time of the committing of the grievances aforesaid have constantly lived together in the City of Newark, in the County of Essex, as husband and wife, and have always behaved and conducted themselves as good, true, honest, just and faithful citizens of this State, and until the committing of the several griveances by the said defendant as hereinafter mentioned were always reputed and esteemed and accepted amongst all of their neighbors and other persons to whom they were in anywise known, to be persons of

Declaration

good name, fame and conduct, to wit, at Newark, in the County of Essex aforesaid:

And whereas also, the said plaintiff, Rose G. Garrison, has not ever been guilty, or until the time of the committing of the said several grievances by the said defendant as hereinafter mentioned been suspected to have been guilty of adultery or any other such crime or crimes, or to have ever deserted her husband, the plaintiff, George E. Garrison, or ever to have eloped with any person, or to have been guilty of lewd or lascivious conduct, or to have had improper or questionable relations with any man, or of the offenses and misconduct hereinafter mentioned to have been charged upon and imputed to the said plaintiff, Rose G. Garrison, or of any such other offenses or misconduct, but had always been a good, true and faithful wife of the said plaintiff, George E. Garrison, and by means of which said premises the said plaintiff, George E. Garrison, before the committing of the said several grievances by the said defendant as hereinafter mentioned had deservedly obtained the good opinion and credit of all his neighbors and other good and worthy persons of this State to whom he was in anywise known, to-wit, at Newark, in the County aforesaid:

Yet the said defendant well knowing the premises, but greatly envying the happy state and condition of the said plaintiffs and contriving and maliciously intending to injure said plaintiff, George E. Garrison, in his good name, fame and credit and to bring him into public scandal, infamy and disgrace, with and amongst all his neighbors and other good and worthy persons, that his wife, the said plaintiff, Rose G. Garrison, had been guilty of adultery and had been guilty of deserting her husband, the said plaintiff, George E. Garrison, and had eloped with one Elliott A. Archer, and had been guilty of lewd and lascivious conduct with said Archer, and had had improper and questionable relations with said Archer, and to subject her to the pains and penalties by the laws of this State made and provided against and inflicted upon persons guilty of such offenses, and to vex, harass, oppress, impoverish and wholly ruin the said plaintiff,

Declaration

George E. Garrison, heretofore, to wit, on the twenty-second day of November, Nineteen Hundred and Eight, at Newark, in the County of Essex aforesaid, falsely, wickedly and maliciously did compose and publish and cause and procured to be published of and concerning the said plaintiff, Rose G. Garrison, wife of the said plaintiff, George E. Garrison, and of and concerning their marital relations with one another, in a certain
 10. newspaper owned and controlled by the said defendant, known as The Sunday Call, and published in the City of Newark, in the County of Essex aforesaid, and circulating throughout the State of New Jersey and other parts of the United States, a certain false, scandalous, malicious and defamatory libel, containing amongst other things the false, scandalous, malicious and defamatory and libelous matter following:

"FOR EXTRADITION
OF ELLIOTT A. ARCHER.

20

Absconding Grain Broker Arrested in
Seattle May Be Brought to Newark
Shortly.

A SIX-YEAR SEARCH ENDED.

* * * At the time of his arrest (meaning the arrest of said Elliott A. Archer) Archer is alleged to have been in the company of Mrs. George E. Garrison (meaning the plaintiff, Rose
 30 G. Garrison, wife of the plaintiff, George E. Garrison), formerly of 426 Summer avenue, this city, who (meaning the plaintiff, Rose G. Garrison, wife of the plaintiff, George E. Garrison), it is said, deserted her husband (meaning that the plaintiff, Rose G. Garrison, had deserted her husband, the plaintiff, George E. Garrison, and had eloped and gone away with the said Elliott A. Archer and was living in adultery with him), a broker, when Archer (meaning the said Elliott A. Archer) first
 40 disappeared from the city. It is said she (meaning the plaintiff, Rose G. Garrison, wife of the plaintiff, George

Declaration

E. Garrison) had been with him (meaning the said Elliott A. Archer) much of the time since (meaning that the said plaintiff, Rose G. Garrison, had been living in adultery with the said Elliott A. Archer much of the time between the year nineteen hundred and two and the month of November, nineteen hundred and eight). Archer's wife is living in this city, at 124 Lincoln avenue."

By means of the committing of which said several grievances by said defendant as aforesaid, the said plaintiff, George E. Garrison, has been and is greatly injured in his good name, fame and credit, and brought into public scandal, infamy and disgrace, with and amongst all his neighbors, and other good and worthy persons, in so much that divers of those neighbors and persons to whom the innocence and integrity of the said plaintiff, Rose G. Garrison, in the premises were unknown, have, on account of the committing of the said several grievances by the said defendant as aforesaid, from thence hitherto, suspected and believed and still do suspect and believe the plaintiff, Rose G. Garrison, to have been and to be the person guilty of adultery and of having deserted her husband, the said plaintiff, George E. Garrison, and of having eloped with one Elliott A. Archer, and to have been guilty of lewd and lascivious conduct with the said Elliott A. Archer, and to have had improper and questionable relations with the said Elliott A. Archer, and have by reason of the committing of the said grievances, by the said defendant as aforesaid, from thence hitherto, wholly refused, and still do refuse to have any transaction, acquaintance or discourse with the said plaintiff, George E. Garrison, as they were before used and accustomed to have and otherwise would have had.

And also by means of the said premises the said plaintiff, George E. Garrison, hath been and is otherwise much injured and damnified, to wit, at Newark, in the County of Essex, aforesaid, to the damage of the said plaintiff, George E. Garrison, Five Thousand Dollars, and therefore the said plaintiffs bring their suit.

LAMBERT & STEWART, 40
Attorneys for Plaintiff.

PLEA.

Plea and Notice

ESSEX COUNTY CIRCUIT COURT.

Rose G. Garrison et al.,	}	
vs.		
Newark Call Printing and Publishing Company.		IN TORT.

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PLEA.

And the said defendant, by Leonard Kalisch, its attorney, comes and defends the wrong and injury when, etc., and says that it is not guilty of the said supposed grievances laid above to its charge, or any or either of them, or any part thereof in manner and form as the said plaintiffs have above thereof complained against it, and of this it, the said defendant, puts itself upon the country.

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LEONARD KALISCH,
Attorney of Defendant.

NOTICE IS HEREBY GIVEN, that the defendant in the above cause will give in evidence a retraction made by the defendant in the above cause and published in the "Sunday Call" in its issue of December 6, 1908, on Page 1, Part 1, of said paper, and of which the following is a true copy:

30

"A CORRECTION MADE.

"In the Sunday Call of November 22, in an article announcing Archer's arrest in Seattle and telling the story of his crime, it was said that when he ran away from Newark he was accompanied by Mrs. George E. Garrison, of 426 Summer avenue. This statement has naturally proved distressing to Mr. and Mrs. George E. Garrison, who have their home in the same neighborhood, namely, at 436 Summer avenue. The woman who went away with Archer was not Mrs. G. E. Garrison, but Mrs. E. G. Garrison, the full name being Mrs. Everett G. Gar-

40

PLEA.

ri-son, and her home was at No. 426, the address given in this paper two weeks ago. The fact that two persons with similar names lived within four or five doors of each other explains the unfortunate error. It is regretted by the Sunday Call. Of course, Mrs. George E. Garrison's friends knew that she had not left Newark, nevertheless it was unpleasant to her to have her name linked with that of Archer."

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Judgment

ESSEX COUNTY CIRCUIT COURT.

22445

<p style="text-align: center;">Rose G. Garrison, Plaintiff, vs. Newark Call Printing and Publishing Company, Defendant.</p>	}	<p style="text-align: center;">IN TORT AFTER VERDICT.</p> <p style="text-align: center;">Judgment entered Feb'y 14, A. D. 1913.</p> <p>Damage \$4,296.25</p> <p>Costs 103.09</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p>Total \$4,399.34</p>
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LAMBERT & STEWART, Attorneys of Plaintiff.

Judgment After Verdict in the above entitled action In Tort was rendered on the fourteenth day of February, A. D. nineteen hundred and thirteen, in favor of the said plaintiff, Rose G. Garrison, and against the said defendant, Newark Call Printing and Publishing Company, for the sum of four thousand two hundred and ninety-six dollars and twenty-five cents, damage and the sum of one hundred and three dollars and nine cents, cost of suit.

Judgment entered and signed February 14th, A. D. 1913.

WM. S. GUMMERE.
J.

30

40

Rule to show cause

ESSEX COUNTY CIRCUIT COURT.

Rose G. Garrison	}	RULE TO SHOW CAUSE IN TORT.	
vs.			
Newark Call Printing and Publishing Company,			
			10

Application having been made to me within six days after the rendering of the verdict herein for a rule to show cause why the verdict should not be set aside:

It is, on this seventeenth day of February, nineteen hundred and thirteen, ORDERED that the plaintiff show cause before me, at the Court House in the City of Newark, County of Essex, on the eighth day of March, nineteen hundred and thirteen, at ten o'clock in the forenoon of that day, why the verdict in this cause should not be set aside.

20

It is FURTHER ORDERED that the granting of this rule shall not be a waiver of the exceptions taken by the defendant at the trial, and it is hereby granted that the defendant may reserve each and every exception taken by it at the trial of this cause.

Dated February 17th, 1913.

On motion of

LEONARD KALISCH,
Attorney of Defendant.

Let this rule be entered on the minutes.

30

FREDERIC ADAMS,
Circuit Court Judge.

Rule Discharged

ESSEX COUNTY CIRCUIT COURT.

<p style="text-align: center;">Rose G. Garrison</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">Newark Call Printing and Publishing Company,</p>	}	<p style="text-align: center;">IN TORT ON RULE TO SHOW CAUSE ORDER DISMISSING RULE.</p>
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10.

An order having been made by this Court on the 17th day of February, 1913, that the plaintiff show cause before said Court on the 8th day of March, 1913, why the verdict rendered in said cause should not be set aside; and the Court having heard arguments of counsel thereon, and considered the matter, and being of the opinion that the said verdict rendered in said cause should not be set aside, and that the said rule to show cause should be dismissed:

20 It is, on this tenth day of September, 1913, ordered that the said rule to show cause be and the same is hereby dismissed, with costs to be taxed.

On motion of

LAMBERT & STEWART,
Attorneys for Plaintiff.

Let this rule be entered on the minutes.

FREDERIC ADAMS,
Circuit Court Judge.

30

CERTIFICATE OF CLERK.

I, Joseph McDonough, Clerk of the Circuit Court, in and for the County of Essex, in the State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the Notice of Appeal and Transcript of all the Proceedings and Judgment record and the entire record in the case of Rose G. Garrison vs. Newark Call Printing and Publishing Company, and the same is taken from and compared with the original record, and as the same

40 now remains on the files of said Clerk's office.

(Seal.) In Testimony Whereof, I have hereunto
set my hand and affixed the official seal
of said Court and County, at Newark.
N. J., this — day of November, A. D.
1913.

JOSEPH McDONOUGH, Clerk.

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Declaration Amended

ESSEX CIRCUIT COURT,
Monday, February 10, 1913.

10	Rose G. Garrison and George E. Garrison, her husband,	}	In Tort
	vs.		
	Newark Call Printing & Publish- ing Company, a Corporation.		

Before Hon. Frederic Adams, J., and a Jury.
 For plaintiffs appears George H. Lambert, Esq.
 For defendant appear Leonard Kalisch, Esq., and Harry
 Kalisch, Esq.

20 MR. LAMBERT. If the Court please, I want to move
 to strike out all that portion of the declaration which
 makes George E. Garrison a plaintiff. I will specify the
 exact amendment.

I want to move to strike out on the first page, the
 fourth line, after the name "Rose G. Garrison," "and
 George E. Garrison, her husband;" on the next line,
 strike out the letter "s" in the word "plaintiffs;" on the
 next line, strike out the letter "s" in "plaintiffs," and
 also strike out the word "their" before "attorneys," and
 insert "her," and add to the word "complain" the letter
 "s;" on the second page, seventh line, strike out the
 30 words "the said plaintiff;" on the tenth line, strike out
 the word "plaintiff;" on the third page, before the words
 "George E. Garrison," near the bottom of the page,
 strike out the words "the plaintiff;" on the fourth page,
 at the end of the sixth line and first of the seventh,
 strike out the words "the plaintiff;" at the bottom of
 the page, the last line, strike out the word "plaintiff;"
 on the fifth page, at the third paragraph, beginning
 "And also," strike out the whole of that paragraph;
 strike out the whole of the sixth page, the whole of the
 40 seventh page, the whole of the eighth page, and down

Exhibits Offered

to the signature of the attorneys for the plaintiff. The last that I have stricken out is the count relative to George E. Garrison.

MR. LEONARD KALISCH. We have no objection.

THE COURT. The motion is granted.

Mr. Lambert opens for plaintiff.

EXHIBITS PUT IN EVIDENCE.

Plaintiffs' counsel calls upon defendant to produce copy of the Sunday Call published on November 22, 1908. 10

(Defendant's counsel produce newspaper file.)

MR. LAMBERT. Now, if the Court please, I will offer in evidence a copy of the Newark Sunday Call, published at Newark, New Jersey, Sunday morning, November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer. Absconding Grain Broker Arrested in Seattle May Be Brought to Newark Shortly. A Six Year Search Ended," running down to about the middle of that page. It is the article in question. I offer that in evidence. 20

THE COURT. We will not mark it, but we will call it P1.

Circulation book called for. (Defendant's counsel produces book.)

MR. LAMBERT. The book that is produced shows on November 22, 1908, circulation 35,764. You admit that to be correct?

MR. LEONARD KALISCH. Well, that is the book. I do not know anything about it.

MR. LAMBERT. Well, I am willing to concede that that is correct. Is that the circulation or is that what you print? 30

(A man seated beside defendant's counsel, who is afterward sworn as G. Wisner Thorne, says: "That is the net circulation. Every week I get a report from the business office showing the circulation, and I enter it in this book.")

(Marked Ex. P2.)

MR. LAMBERT. Now, I ask counsel to produce the Newark Sunday Call of August 31, 1902, December 21, 1902, and December 28, 1902. 40

Exhibits Offered

I might state, if the Court please, the purpose. The purpose is to show that this defendant published largely concerning the doings of Archer and his leaving Newark, and the matter should have been in the mind of the defendant in 1908; they should have had some record referring to this, at least, so as to put them on their guard. It shows that the negligence in the publication is the more gross because of their familiarity with the facts of Archer forging and leaving Newark, and they should have been put more upon their guard in the publication of 1908. I want to show that they had full knowledge and made publications concerning Archer's leaving Newark in 1902 in these three issues—not alleging any damages from that, but simply as a matter of evidence, showing the fact of their knowledge at that time, which continued, of course, until this libelous publication.

MR. LEONARD KALISCH. I object to it because there is absolutely nothing that connects those publications with the charge in the declaration, nothing whatever, and there is nothing that leads up to it. There is nothing here before the Court which calls for the production of those papers.

THE COURT. (After argument.) I cannot be influenced in ruling on this particular offer by any exploitation of what some witness who has not yet been called may testify to; but I am willing to admit these publications, just as I would admit publications in any other newspaper, as evidence that the Archer matter was a matter that had been widely written about and published about and had presumably attracted a good deal of attention. That is all that is necessary for me to rule on now.

MR. LAMBERT. That is the only object with which I ask your Honor to admit them.

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

Rose G. Garrison direct examination

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,

(Seal.)

Circuit Court Judge.

MR. LAMBERT. Now, if your Honor please, I think I ought to read this publication of November 22, 1908; that is, the alleged libel.

THE COURT. You may do so.

10

(Plaintiff's counsel reads Ex. Pl.)

ROSE G. GARRISON, plaintiff, sworn in her own behalf.

DIRECT EXAMINATION by Mr. Lambert:

Q Mrs. Garrison, where do you reside?

A 436 Summer avenue.

Q And you are the plaintiff in this case, are you?

A Yes.

Q Are you married?

A Yes.

20

Q Who is your husband?

A George E. Garrison.

Q And he resides with you?

A Yes.

Q Have you any children?

A Not now.

Q How many children have you had?

A Had two.

Q And have they died?

A Yes.

Q And when did the last one die?

30

A About four years.

Q (By the Court.) About——?

A About four years and——on October 26th.

Q (By Mr. Lambert.) That would be October, 1908?

Objected to.

A Yes.

Q It was, then, a short time before this publication——

(Question withdrawn.)

Q Where were you born, Mrs. Garrison?

40

Rose G. Garrison direct examination

A In Orange.

Q And how long have you lived in Orange?

A Until I was married.

Q When were you married?

A October 23, 1901.

Q And where were you married?

A In Orange.

Q And after you were married where did you go to
10 reside?

A Newark.

Q What place?

A 436 Summer avenue.

Q Did you and your husband own that?

A Yes.

Q And did you and he reside there together?

A Yes.

Q How long did you continue to reside there to-
gether?

A Until the April after this publication.

Q That would be April, 1909; is that right?

A Yes.

Q You have seen this publication, have you?

A Yes.

MR. LAMBERT. I will show the witness the Ex-
hibit P1.

Q I show you Exhibit P1, the second page, fourth col-
umn, and ask you if you have seen the article headed
"For Extradition of Elliott Archer"?

A Yes.

Q Did you also see these other articles that were pub-
lished in 1902?

MR. LEONARD KALISCH. I object on the ground
that it does not refer to this plaintiff at all, nor was there
any libel in them that refers to this plaintiff or any
libelous matter that referred to anybody.

THE COURT. Well, I do not understand it to be
claimed that there is.

MR. LEONARD KALISCH. Well, then, it is irrele-
vant and has nothing to do with the case whether she
40 saw those articles or not.

Rose G. Garrison direct examination

MR. LAMBERT. This is preliminary, leading up to another question.

THE COURT. Well, it would only be admissable as following out the line of thought under which they were admitted, by showing that her attention, as one of the public, was called to these publications in the ordinary way. I think you may show that, if it is a fact. You may answer the question.

Defendant's counsel pray an exception to this ruling 10
of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

(Question read.)

A Yes.

THE COURT. That means, I suppose, did you see them at the time they came out?

WITNESS. Yes. 20

THE COURT. Is that what you mean?

WITNESS. Yes.

Q Were you acquainted with Elliott A. Archer?

A No, I didn't know him.

Q Did you ever see him, to your knowledge?

A No.

Q Did you see anyone from the defendant company, from the Sunday Call, concerning these articles, and if so, whom? Did anybody call on you?

A Yes.

Q (By the Court.) Someone did call on you? 3)

A Yes.

Q (By Mr. Lambert.) Who was the person?

A Why, a lady.

Q Did she give her name?

A Well, I can't just remember.

Q Well, as near as you can tell, what is her name?

A Well, I don't know that.

Q (By the Court.) You said someone called with reference to these articles. To what articles did you then refer? 40

Rose G. Garrison direct examination

A Why, a lady called at my house, and I told her that I wasn't the woman who went away with Archer.

Q (By Mr. Lambert.) Well, what inquiry did she make?

MR. LEONARD KALISCH. One moment. It does not appear yet what articles they were.

MR. LAMBERT. Why, the articles that are offered in evidence.

10 THE COURT. The question might be understood by the witness in either one of two ways; it might be understood to include only the articles of 1902 or it might be understood to include also the article of 1908.

(Question withdrawn.)

MR. LEONARD KALISCH. Then I think that that other answer that she gave ought to be stricken out.

MR. LAMBERT. Very well, let it be stricken out.

THE COURT. It will all go out.

MR. LAMBERT. Except that she saw the articles?

20 THE COURT. Yes.

Q About the time, Mrs. Garrison, that these articles were published, in 1902, did anyone call to see you from the Sunday Call, as a representative of the Sunday Call?

A Yes.

Q Who was it?

MR. LEONARD KALISCH. One moment. I do not think that is proper, unless she can say that he was authorized by or did come from the Sunday Call. I understood her to say that somebody came there whose name she did not know.

30 A I can't recall her name.

Q Did she give you her name?

A She gave me her name, yes, and she said she was from the Sunday Call.

MR. LEONARD KALISCH. I do not see how that could bind the Sunday Call in any way.

THE COURT. The rule being that an agent cannot prove his or her own agency, you will require something more than the witness's statement that she came from the Sunday Call to establish that fact. The statements
40 made by such a person would not bind the defendant.

Rose G. Garrison direct examination

Q (Question read as follows: "Who was it?")

THE COURT. I will allow the question.

MR. LEONARD KALISCH. I do not object to her saying that.

THE COURT. You may answer that question.

A Well, she was from the Sunday Call.

Q Do you remember the name?

A I can't remember just now who she was.

Q Did she give you her name? 10

A Yes, she gave me her name.

Q And did she say for what purpose she called? Did she state?

Objected to.

THE COURT. You are asking as to the mental operations of another person or as to what the other person said was her purpose. Now, I think that until you have proven the agency of this person it would only encumber the case to take her statement.

(Question withdrawn.) 20

Q This article of 1908 states that at the time of his arrest Archer was alleged to have been in the company of Mrs. George E. Garrison. Is that true?

A Yes.

Q I say was it true that he was in your company?

MR. LEONARD KALISCH. The article says that.

MR. LAMBERT. Well, I ask her if that is true.

MR. LEONARD KALISCH. Whether what is true?

MR. LAMBERT. What I read.

THE COURT. Is it true that Archer was in the company of Mrs. George E. Garrison? 30

Q Was that true?

A Oh, no.

Q The article also says, "formerly of 426 Summer avenue, this city, who, it is said, deserted her husband." Did you desert your husband?

A No.

Q "A broker." Was your husband formerly a broker?

A Yes, he was.

Q "When Archer first disappeared from the city. It 40

Rose G. Garrison direct examination

is said she has been with him much of the time since.”
Were you ever with Archer?

A No.

Q After that time or at any time?

A Never saw him.

Q “Archer’s wife is living in this city.” Did you
know Archer’s wife?

10 A No.

Q Did you ever make any explanation to any repre-
sentative of the Sunday Call about this matter, or about
Archer?

Objected to.

THE COURT. The question is really double. Did
you ever make an explanation of the matter to some
other person, and was that other person a representative
of the Sunday Call—not merely did that person purport
to be a representative, but was he a representative?

(Question withdrawn.)

20 Q After this publication in November, 1908, how long
did you continue to reside at 436 Summer avenue?

A Until April.

Q What did you then do?

A We broke up housekeeping.

Q What did you do with your furniture?

A We stored it in a room on the top floor.

THE COURT. Did you say what year that April was
—1909?

MR. LAMBERT. April, 1909.

30 Q What year was that?

A I don’t know the date.

Q Well, how long after the publication?

A The following April, the next April; that was the
next year.

Q (By the Court.) The publication was in November,
1908, and you lived there until April, 1909?

A 1909, yes.

Q (By Mr. Lambert.) Where did you go after April,
1909, after you broke up housekeeping?

A We went boarding.

40 Q And from that time on how many different board-

Rose G. Garrison direct examination

ing places did you have during that year?

A Well, they were numerous; I don't know how many there were.

Q Where did you first board?

A Up at Simon's.

Q In what street?

A Highland avenue, Forest Hill.

Q That is in Newark?

A Yes.

10

Q How long did you remain there, do you remember?

A Six weeks.

Q And from there where did you go?

A We came down to our house.

Q (By Mr. Leonard Kalisch.) Where?

A We came to our empty house and stayed there.

Q What is the number, please?

A 436 Summer avenue.

Q (By Mr. Lambert.) How long did you remain there, as near as you can tell?

A Maybe a day or two.

20

Q And then where did you go?

A We went up to Summer avenue then.

Q Whose house?

A Mrs. VanNess's.

Q How long were you there?

A Six weeks.

Q Did you board there?

A Yes.

Q From there where did you go?

A Down to Jeffries's.

30

Q And where did they live?

A On Fourth avenue.

Q How long were you there?

A Nine months.

Q And how did you come to leave there?

A We were ordered out.

Q Had you any difficulty with Mrs. Jeffries or any of the boarders?

A Nothing at all, not a word.

Q How many boarders did they have there?

40

Rose G. Garrison direct examination

A Well, they must have fed about forty-five; I should judge that many.

Q Was any explanation given you when you had to leave?

Objected to as leading and immaterial.

THE COURT. Of course, it is one of the features in a libel case for the plaintiff to show, if the plaintiff can show, the extent to which the alleged libel had been
10 circulated and the effect, if any, which it has produced on the minds of those to whom it was communicated. If that effect was hostile to the person who complains of the alleged libel, then that line of testimony is admissible for the purpose of showing damage. Now, questions may arise as to what extent the statements of other persons, as indicative of the way in which the minds have been affected by the publication, are competent. That question will probably arise more than once in this case. We had better settle it at the outset, if we can.

20 MR. LEONARD KALISCH. If your Honor please, that question is very leading; it really almost puts the answer in the witness' mouth.

(Question read.)

THE COURT. It does not seem to me to be objectionable as leading.

MR. LEONARD KALISCH. But cannot that be taken in another light? Ought not the evidence to come from the person who ordered her out, or who gave the explanation, and not from the plaintiff?

30 THE COURT. Then, in that aspect of the matter, your objection would be that it is hearsay, would it?

MR. LEONARD KALISCH. It is hearsay, yes.

THE COURT. Well, that was the thought that I had in my mind and which I tried to express, and that is a question on which I have not formed an opinion. Sometimes things which you might think at first sight were hearsay are admissible, because they are the very thing to be proved, as showing the effect of something on the minds of other people. You will remember in the Lord George Gordon case, which was not an indictment for
40 libel, but was an indictment for high treason, the cries

Rose G. Garrison direct examination

of the crowd were admitted as evidence of the nature of the gathering. I am perfectly willing to hear counsel on the question, and perhaps if the matter is threshed out at the outset, we might save ourselves some time as to similar questions that may come up later.

ADJOURNED until to-morrow, Tuesday, February 11, 1913, at ten o'clock, A. M.

10

SECOND DAY.

Tuesday, February 11, 1913.

ROSE G. GARRISON, plaintiff, resumes the stand in her own behalf.

DIRECT EXAMINATION (continued) by Mr. Lambert.

Q (Question read as follows: "Was any explanation given you when you had to leave?")

A No, we were told to leave.

20

Q Were you told personally to leave?

A No.

Q How did you learn that you had to leave?

A Why, a lady came to us and told Mr. Garrison—
Objected to.

Q No, do not tell what she told Mr. Garrison, unless you were present.

A I wasn't present.

Q Well, you learned it through Mr. Garrison?

A Yes.

MR. LEONARD KALISCH. Well, then, I move to strike out that other testimony, where she said, "I was told to leave." She says now that it was not told her at all.

30

WITNESS. No.

Q (By the Court.) Told Mr. Garrison, not in your presence?

A No.

THE COURT. The motion is to strike out.

MR. LAMBERT. I have no objection to it being struck out.

40

Rose G. Garrison direct examination

THE COURT. I will strike it all out.

Q (By Mr. Lambert.) The only information you have in that matter is what you received through your husband; is that right?

A No.

Q You say that is correct?

A No.

10 Q You do not understand me.

A I don't understand the question.

Q The only information you have about this matter of leaving Mrs. Jeffries's came through your husband; is that right? You got your information through your husband?

A Yes.

Q After you left the house of Mrs. Jeffries, where did you then go to board?

A We went to 50 Oriental street, Mrs. Grevey's.

BY THE COURT.

20 Q In the City of Newark?

A Yes.

Q On what street?

A 50 Oriental street.

BY MR. LAMBERT.

Q How long were you there?

A About two weeks.

Q And then where did you go?

A To Asbury Park.

Q How did you happen to go to Asbury Park?

A Why, the doctor told us to go.

30 Q What doctor did you have?

MR. LEONARD KALISCH. I object to that question.

THE COURT. I think, if the witness went on the advice of a physician, she is entitled to that simple fact—not what the doctor said, but that she went upon his advice. I will let that stand.

Q Who was the doctor?

A Dr. McCartie.

Q How long were you at Asbury Park?

A Why, I should imagine about three months.

40 Q And then where did you go?

Rose G. Garrison direct examination

A We came back to Newark.

Q And where did you go?

A To my sister's.

Q Did you go at once to your sister's when you came from Asbury Park?

A Well, we went boarding then at——

Q Where did you board first, on what street?

A Why, Second avenue.

Q Did you board on Belleville avenue a short time? 10

A Oh, yes.

MR. LEONARD KALISCH. One moment.

Q (By the Court.) Do you remember where you went first?

A We went to Belleville avenue.

Q (By Mr. Lambert.) And how long were you at Belleville avenue?

A Two weeks.

Q And from there where did you go?

A To Second avenue. 20

Q Whose house?

A Mrs. Drake's.

Q How long were you there?

A Six weeks.

Q And from there where did you go?

A Why, to my sister, Mrs. Harrington; she took a larger house, and we went there to board.

Q (By the Court.) Mrs. Harrington was your sister?

A Yes.

Q (By Mr. Lambert.) Where was that?

A Mrs. Harrington's, my sister. 30

Q What number?

THE COURT. Where was her house?

A 63 Broad street.

Q And how long were you there?

A About nine months.

Q And then where did you go? What did you do then?

A Why, we went housekeeping.

Q Where?

A 436 Summer avenue—436½. 40

Rose G. Garrison direct examination

Q Do you remember the time when you went to housekeeping—I mean the date, or about the date, how long ago?

A Why, the 24th of August.

Q What year?

A The year before last.

Q That would be 1911; is that right?

A Yes.

10 Q And are you still keeping house there?

A Yes.

Q Who owns the house?

A Why, my husband, George E. Garrison.

Q (By the Court.) This is on Summer avenue?

A. Yes, sir.

MR. LAMBERT. 436½ Summer avenue.

Q (By Mr. Lambert.) What was your condition of health prior to the accident?

20 MR. LEONARD KALISCH. I object. Health has nothing to do with this; it is not an element of damage.

MR. LAMBERT. I am not going to show any physical suffering; I am simply asking the question as to what her condition of health before the libel.

THE COURT. What is the object of the question?

MR. LAMBERT. Simply to show her condition of health prior to this. I propose to follow this up—not to show her condition of health, but to show her mental anxiety and mental anguish and her nervousness—not to go into her health.

30 THE COURT. What has the previous condition of health to do with that?

MR. LAMBERT. Simply to show whether she was in this nervous state before this publication, that is all.

THE COURT. I sustain the objection on the authority of the case of *Butler v. Hoboken Printing & Publishing Company*, 44 Vroom 45.

(Plaintiff's counsel prays an exception, and the same is allowed.)

40 Q What was the condition of your memory prior to

Rose G. Garrison direct examination

this publication?

Objected to.

THE COURT. This charge was actionable per se, I suppose.

(Question read.)

THE COURT. I think that question is objectionable, under the rule of law in the Butler case.

Q Mrs. Garrison, can you state what you did after this publication of November 22, 1908, in the Sunday Call? 10

A Why, I went to physical culture.

Q Physical culture class?

A Physical culture class.

Q Where was that held?

A That was held on Belleville avenue.

Q Go on and state what happened there.

A Well, I noticed all the people sitting to one side, and I supposed they were talking about me.

MR. LEONARD KALISCH. I object to that, your Honor, and I ask to have that struck out, what she supposed—that they were talking about her. 20

THE COURT. Strike out the supposition and leave the fact, as to what the people did.

MR. LAMBERT. If your Honor please, this is very important. She says she went to the physical culture class and she saw a lot of people talking, and she supposed they were talking about her. Now, the state of her mind at that time and her impressions at that time are strictly proper evidence, as I understand. It is the effect. 30

THE COURT. First let us hear what was done, what the facts were.

WITNESS. Well, they were sitting over to one side and—

Q You say they were talking there on one side?

A Yes. They came over to me then and—

Q Who came to you?

A One lady—and asked me if Mr. Garrison had gone away—if I had gone away with Mr. Archer, and another woman stepped up and said, "This is not the Mrs. Garri- 40

Rose G. Garrison direct examination

son that went away," and——

Q (By the Court.) "This is not?"

A Yes.

Q (By Mr. Lambert.) How many ladies were there at that time?

A Oh, there must have been forty or fifty.

Q Did you find it necessary to explain the matter to any of the others?

10 Objected to as leading.

Q What else did you do after talking to these two ladies?

A In that one particular place?

Q Yes. Did you talk with any of the other ladies there?

A Well, there were two ladies I spoke to.

Q (By the Court.) Those whom you have already mentioned?

A Yes, sir.

20 Q (By Mr. Lambert.) Did you talk with any of the others who were present on that occasion?

A There was five or six around us, but I suppose they understood me.

Q Did you make any explanation?

A Yes.

Q And what explanation did you make?

A I told them that I wasn't the person that went away with Archer.

Q What next did you do after that?

30 A Why, when I would go downtown to the stores, I would give my name, "Mrs. George E. Garrison, 436 Summer avenue," and they would say, "Mrs. Garrison?"

Q Speak up, please. I can not hear you.

A I would give my name, "Mrs. George E. Garrison," and my number, "436 Summer avenue," and they would say, "Mrs. Garrison? Summer avenue?" and I supposed they were thinking about me——

MR. LEONARD KALISCH. I object to the last part of that, what she supposed.

40 THE COURT. Yes, that is an inference which the jury may draw. Strike out the supposition.

Rose G. Garrison direct examination

Q Those were lady clerks?

A Yes.

Q In what stores?

MR. LEONARD KALISCH. I object to putting questions to the witness that are leading.

THE COURT. The question is leading.

Q Who were you buying the things of?

A Of ladies.

Q What ladies? 10

A Why, I don't know who they were, but they were in the Bee Hive, Hahne's and——

Q What were they doing—what were these ladies doing?

A Behind counters.

Q What was their business?

A I suppose I was buying shoes and all— —

Q No, not what you were doing; what were the ladies doing?

A Selling to me.

Q On how many occasions did you go and buy goods where these salesladies sold goods to you and you saw them talk? 20

A Every day in the week, for the greatest long time; I don't know how long it was.

Q Did you see them say anything to any of their associates?

A Yes.

MR. LEONARD KALISCH. I object to that question.

THE COURT. It may be introductory. I will allow it. 30

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS.

Circuit Court Judge.

(Seal.)

Q What was the answer?

A Yes.

Q What next did you do? 40

Rose G. Garrison direct examination

A Well, when I went down in trolley cars I would see two or three ladies in the corner, or in the trolley car, and I supposed they were looking at me——

Objected to.

Q No, What were they doing? Leave out the word "supposed." What were they doing?

A What do you mean?

10 Q What were the ladies doing in the trolley car?

A Why, they were talking to each other.

Q And looking where?

A At me. And I——

MR. LAMBERT. Well, I am going to ask the witness what she thought.

Q What did you think of these ladies looking at you?
Objected to.

THE COURT. I sustain the objection, not upon the ground that a natural inference is inadmissible, but it is an inference for the jury to draw.

20 MR. LAMBERT. Not the witness's own impression?

THE COURT. No.

Q How often did you go in trolley cars and see ladies talk to each other and look at you? How many times did you see them?

A. Oh, I don't know. Perhaps I was in the trolley car——

Q About how many times, as near as you can tell?

A Oh, about a hundred times.

30 Q What effect did these conversations that you saw between the ladies in trolley cars and looking at you have upon your mind?

A I suffered greatly from it, mental anguish.

Q What effect did the talk that you saw between the salesladies in stores with each other have upon your mind?

A Why, the same thing.

Q Well, what was it?

A Mental anguish.

40 Q And what effect did the talk that you saw between the ladies at the physical culture class have upon your mind?

Rose G. Garrison direct examination

A Why, it made me very nervous and mental anguish.

MR. LEONARD KALISCH. Of course that part with reference to nervousness is not an element of damage.

MR. LAMBERT. I think it is, if your Honor please.

THE COURT. Well, not considered as a disease, but it is a word that admits of a use that is not technical, such as agitation, disturbance of the emotions, and so forth. It is probably in that sense the witness intended it. I will let it stand. 10

Q What other incidents can you recall, if any, after this publication affecting your mental—?

A Why, Mr. Garrison and I drove through Orange in one of these runabouts, and we drove through Orange very slowly, to show the people that I wasn't away with that man.

Q And how soon was this after the publication that you drove through Orange?

A Oh, that was right away. 20

Q How often did you go through Orange for that purpose?

A Two or three times a week.

Q For how many weeks?

A A long time.

Q What streets did you go through?

A Why we went through Lincoln avenue and Scotland street and Ridge and Main street.

Q Did you ever reside on Lincoln avenue?

A Yes. 30

Q What kind of a carriage did you go in?

A Why, two seats in it, a runabout, with two seats—with one seat.

Q Any top?

A No.

Q And your object in doing that was what?

MR. LEONARD KALISCH. I object. She has already stated why she went to Orange, right at the beginning. It is repetition and leading the witness.

THE COURT. You may answer the question. 40

Rose G. Garrison direct examination

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

10 A To show the people I hadn't gone away with Archer.

Q Did you have a large acquaintance in Orange at the time?

A Yes.

Q Did you ever find it necessary to explain to others that you were not the Mrs. Garrison who went away with Archer besides those you have mentioned?

A Very often.

20 MR. LEONARD KALISCH. I object to that question, your Honor, on the ground that there is nothing that leads up to this question whether she found it necessary to explain to others. There is nothing to show any condition whereby this witness was called upon to make any explanation, no circumstance at all.

THE COURT. In other words, it of necessity is an inference to be drawn from facts which have not been stated?

MR. LEONARD KALISCH. Yes.

THE COURT. I think that is worthy of consideration.

Q Did you ever explain to any others—

30 A Yes.

MR. LAMBERT. One minute.

MR. LEONARD KALISCH. That is the same thing.

THE COURT. No.

Q Did you ever explain to any others the circumstance of your not having gone away with Archer?

A Yes.

Q On what occasions did you find that necessary to do?

40 A Well, when I went into houses I was introduced as Mrs. Garrison; and "Mrs. Garrison?" And then the

Rose G. Garrison direct examination

lady of the house that introduced me came up, and said, "Why, that ain't the Mrs. Garrison that ran away."

Q Where did that occur?

A Mrs. Egger's.

Q Where is that?

A That is on Mt. Prospect avenue, on the corner—in a corner apartment on Mt. Prospect avenue—Grafton street—Grafton avenue or Grafton street.

Q Can you recall anything that occurred the night following this publication of November 22, 1908, that you did? 10

A I didn't hear the question.

Q (Question read.)

A Yes.

Q What?

A The lady downstairs in our house, she came up—Mrs. White came to our house, and I was so excited, I thought that I would be arrested and taken out of the house, and I called Mr. Garrison up and told him about it. 20

Q How long did the lady stay?

A Oh, about two hours. I had to go to bed.

Q What has been your mental condition as to nervousness since the publication?

MR. LEONARD KALISCH. I object to that. That is sickness.

THE COURT. The question is somewhat ambiguous, because nervousness is either a physical disease, or a purely physical condition, or it is often more popularly used to characterize the state of mental agitation. What I desire to do is to exclude from the mind of the witness and the minds of the jury anything like purely physical sickness, and to confine attention to what is within the scope of the inquiry. 30

MR. LAMBERT. I do not intend it that way, if your Honor please.

THE COURT. By reason of the ambiguity of the question, I think it is objectionable.

(Question withdrawn.)

THE COURT. The witness has told us of her mental 40

Rose G. Garrison direct examination

anguish, and that she has been very nervous.

Q How long did your nervousness continue?

MR. LEONARD KALISCH. I make the same objection that I raised before.

10 THE COURT. This goes back to the witness's previous statement in connection with her mental anguish, that she was very nervous, which the Court remarked at the time might naturally be understood as relating to a state of mental agitation or disturbance. Understanding the question to be relevant to that, I think it is proper.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

20 THE COURT. You may answer the question. How long did your nervousness continue?

A Why, it is with me yet.

Q Has it been continuous or not?

Objected to.

A Yes.

Objected to as leading.

30 THE COURT. Yes, perhaps it is leading. I do not think the alternative form of it deprives it of its leading character. It is somewhat suggestive. I sustain the objection.

MR. LEONARD KALISCH. Of course that answer is stricken out, I presume?

THE COURT. Yes.

Q How often have you had this nervous feeling since this publication?

A Why, I have had it right along.

Q What do you mean by that?

A Why, down in the Park I was stricken—my right leg and arm were paralyzed.

40 MR. LEONARD KALISCH. I object to that, if your

Rose G. Garrison direct examination

Honor please. That is certainly improperly interposed in this case.

MR. LAMBERT. I consent to its being stricken out.

THE COURT. Strike it out. That is certainly with-
in the Butler case. It is a case of physical disability.

(Question read.)

Objected to.

(Question withdrawn.)

Q What have you to say as to the continuance of
your mental anguish since this publication? 10

(No response.)

Q Do you understand the question?

A No.

Q (Question read.)

A Why, I have it yet.

Q And what causes your mental anguish at the pres-
ent time, if you know?

MR. LEONARD KALISCH. That is certainly hard
for the witness to answer. 20

THE COURT. I do not know; I should think it would
be very easy.

MR. LEONARD KALISCH. It might have been
caused by many things.

A This publication is what causes it.

Q Does anything happen in your presence, or has any-
thing happened in your presence recently which gives
you mental anguish in regard to this publication?

THE COURT. You may say either yes or no to that,
if you can answer it in that way. 30

A I don't know.

Q Don't you understand me?

A No.

Q What have you to say as to your memory at the
present time?

Objected to.

A Very poor.

MR. LEONARD KALISCH. We have gone into that,
your Honor, and the question was objected to before.

THE COURT. I had occasion to speak of that, I
think, in ruling once before. At any rate, my idea about 40

Rose G. Garrison direct examination

it is that that is a physical disability, if there was any impairment of memory, which is not one of the items for compensation.

Q How lately have you seen people talking to each other and looking at you?

A About a month ago.

Q And has that occurred frequently within the last year or two, or not?

10 A It has.

Q And how does that affect you?

A Why, it causes me to worry.

Q Why?

A On account—

MR. LEONARD KALISCH. I object to the reason.

THE COURT. You may answer the question.

A On account of this publication.

Q Did you know what they were talking about?

A No, but I just thought it.

20 MR. LEONARD KALISCH. I want to ask the Court to have the testimony preceding this stricken out; that is, with reference to people looking at her and talking about her.

THE COURT. I will deny your motion. I think it is a consideration that goes to the weight and value of the evidence rather than to its competency.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Mrs. Garrison, you stated that you were married to George E. Garrison on the 23d of October, 1901?

30 A Yes.

Q Is that correct?

A Yes.

Q And how long did you know your husband before that time?

A About six months.

Q Six months?

A Yes.

Q Before you were married?

A Yes.

Q You did not know him before that?

40 A No.

Rose G. Garrison cross-examination

Q And at the time that you married your husband he resided at No. 436 Summer avenue; is that correct?

A 436½.

BY THE COURT.

Q At that time?

A Yes.

Q That was in the year 1901?

A Yes.

10

BY MR. KALISCH.

Q 436½ Summer avenue?

A Yes.

Q And you continued to live at No. 436 Summer avenue up to what period?

A Well, that I don't know.

Q Well, did you live there until 1910?

A No, we built our new house, and we moved in that house.

Q When?

A I don't know.

20

Q You do not know when you built the new house?

A Yes, I do, but my memory is so——

Q Well, that new house is right next door, is it not?

A Yes.

Q It is 436?

A Yes.

Q And in 1910 you lived at 436 Summer avenue, did you not?

A No, it wasn't built then.

Q Did you not live at 436 Summer avenue in 1910?

30

A I may have; I don't know.

Q Did you not live at 436 Summer avenue all the time until you moved into the new house, which was 436½?

A I didn't hear you.

Q Well, is not 436½ the new house?

A Yes.

Q And did you not live at 436 all the time until you moved into the new house?

A No.

Q Well, the new house was built in 1910, was it not?

A Well, I don't remember the dates.

40

Rose G. Garrison cross-examination

Q Well, why do you remember all this testimony that you speak of?

MR. LAMBERT. Is that a proper question?

MR. LEONARD KALISCH. It is cross-examination.

THE COURT. Well, it is a question that is often asked. I do not think it is an illegal question.

(Question withdrawn.)

10 Q Is it not true that 436½ was built about 1910?

A No, I don't believe it was; it might be 1909.

Q Well, 1909, or, rather, was it not built in 1908?

A No, it was not.

Q Now, in 1908 you lived at 436, did you not?

A Yes.

Q And in 1907 you lived at 436?

A Yes.

Q And you lived in 436 from the time you were married until you built the new house; isn't that correct?

A 436½ we lived.

20 Q But 436½ was not built you say, until 1909?

A Yes, it was; we lived at 436½, and then we moved in 436.

Q When?

A About nine years ago,

Q Well, when you married your husband he was stereotyper or an electrotyper?

A Yes.

Q A stereotyper, was he not?

A Yes, sir.

30 Q And all the time from that time on up to the present time, was he not?

A Yes, he is that now.

Q And he is employed by the New York World, is he not?

A Yes.

Q And his employment is at nights, is it not?

A Yes.

Q And prior to your marriage with Mr. Garrison he was also for a great many years a stereotyper?

A Yes, sir.

40 MR. LAMBERT. How would she know that? She

Rose G. Garrison cross-examination

only knew him six months before her marriage.

Q Well, all the time you knew him he was a stereotyper?

A He was a stereotyper when I knew him.

Q Now, why did you testify yesterday that he was a broker?

A Because he told me he was a broker.

Q And is that the reason that you testified he was a broker, because he told you that? 10

A No.

Q Did you ever know him to be a broker?

A No, I never knew him to be a broker, because I didn't know him.

Q But you testified yesterday afternoon in this court that your husband was a broker?

A Yes, he told me so; he told me so.

Q When?

A Why, repeatedly.

Q When? I am asking you when? 20

A Well, I can't just say.

Q What?

A I can't just say.

Q You knew yesterday that he was not a broker, did you not?

A No, I did not; I knew he was a broker.

Q What?

A I knew he was a broker because he told me he was.

Q You never knew it from your own knowledge, that he was a broker? He was not a broker during the time that you were married to him, was he? 30

A No.

Q Now, did you not testify that he was a broker because the article in the Sunday Call speaks of him as a broker?

A No.

Q Because the article in the Sunday Call said that "Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a 40

Rose G. Garrison cross-examination

broker"—was it not on that account that you said he was a broker?

A No, it was not.

Q You never lived at 426, did you?

A No, I never did.

Q Now, when he told you he was a broker, what kind of a broker was he?

10 A Why he was a ticket agent, a ticket broker.

Q Where?

A In New York.

Q When?

A Well, that I don't know.

Q How many years ago?

A I don't know.

Q He was a ticket agent?

A A ticket broker.

20 Q What do you mean by "ticket broker," what kind of a ticket broker?

A That I don't know.

Q He did not tell you that?

A No.

Q And when he told you he was a broker that is all he said?

A Yes.

Q And you do not know when he told you that, do you?

A Yes, I do; repeatedly.

Q When did he tell you that?

30 A Well, that I don't know.

Q You knew that you were to testify only what you knew yourself, of your own knowledge, did you not?

A Well, I knew he was broker, because he told me he was.

Q No. I am asking you now, when you testified yesterday that he was a broker, did you not know that you should only testify what you knew yourself? (No response.)

Q Will you answer that, please?

40 A Will you ask me again?

Rose G. Garrison cross-examination

Q (Question read.)

A Yes.

Q And yet you testified he was a broker, and did not know it, except what he told you? (No response.)

Q Why do you not answer as readily to me as you did to Judge Lambert? Will you please answer that last question?

A Yes.

Q And your neighbors knew that he was employed on the New York World, did they not? 10

A Well, I don't know.

Q Did not your friends know it?

A Most of them did, but lots of them didn't.

Q All knew he was working for the New York World?

A Yes, but lots of my friends didn't know it.

Q Now, Mrs. Garrison, you saw this publication in the Sunday Call?

A Yes. 20

Q When did you see it, what time of day?

A In the morning, I believe—no. Let me see. It was some time in the day; I don't know just when it was.

Q Now did you see a publication in the Sunday Call on December 6, 1908, with reference to this matter?

A I don't know whether I did or not.

Q Well, you never told the Sunday Call that they made a mistake, did you?

A No, we notified our lawyer right away. 30

Q You notified your lawyer?

A Yes.

Q But you did not notify the Sunday Call?

A No, because we notified our lawyer.

Q Never mind the causes. I want to know only what you did. You had a telephone in your house, did you not?

A Yes; we have a telephone yet.

Q And you have one yet?

A Yes.

Q Did you not see the publication of December 6th 40

Rose G. Garrison cross-examination

in the Sunday Call, called "A correction?"

A Yes.

Q Did you read it?

A Yes.

Q Do you know in what part of the paper it was, what sheet?

A No, I don't.

Q Do you remember it being on the first page of the
10 Sunday Call?

A I don't remember where it was.

Q Well, I will show it to you, then. (Newspaper file shown to witness.) Do you see it there?

A Yes.

Q "Correction Made." That is on the first page, is it not?

A Yes.

Q Of the Sunday Call?

A Yes.

Q December 6, 1908?
20

A Yes.

MR. LEONARD KALISCH. First page, part one.

MR. LAMBERT. Third column, at the bottom.

Q That was done voluntarily by the Sunday Call, was it not?

MR. LAMBERT. How can this witness testify to that?

Q Well, you did not request it, did you?

MR. LAMBERT. We will admit that no request was made whatever.

Q And it was put in voluntarily by the Sunday Call, was it not?
30

MR. LAMBERT. I object to that. How does the witness know?

THE COURT. She says she made no request.

Q What time did your husband leave for New York to go to his work?

A At ten o'clock some nights and nine o'clock other nights.

Q Well, when you read this article in the Sunday
40 Call your husband was home, was he not?

Rose G. Garrison cross-examination

- A I don't know whether he was or not.
- Q What?
- A I don't know.
- Q And you say that your trouble, your mental anguish and your nervous feelings, and the people that you noticed talking, and all this and that, were all caused by this publication in the Sunday Call, do you?
- A Well, of course, it was in the other papers, too, 10
but the Sunday Call was among those other papers.
- Q Then it was in other papers?
- A Yes.
- Q In what other papers was it?
- A Well, it was in the Newark News.
- Q And when was it in the Newark Evening News?
- A The night before.
- Q And what other papers was it in?
- A Two New York papers.
- Q What are the names of the papers?
- A I don't know. 20
- Q Have you not brought suit against them?
- A Yes.
- Q And you do not know the names of the papers?
- A Well, the name has slipped my memory now.
- Q Was it the New York Sun?
- A I believe it was.
- Q And the New York American?
- A Yes.
- Q Which is the morning edition of the Journal?
- A Yes.
- Q And was it not also in the New York World? 30
- A No, sir.
- Q Where your husband is employed?
- A No.
- Q Now, you brought a suit, you say, against the Evening News?
- A Yes.
- Q And that case was tried, was it not?
- A Yes.
- Objected to.
- THE COURT. It is of no importance whether it was 40

Rose G. Garrison cross-examination

tried or not.

MR. LEONARD KALISCH. I might state right here to the Court that, while I can not go into the result of that trial, I can show that the damages—that is, the suffering that she claimed that she had—she testified at that time that it was all the result of what appeared in the News.

MR. LAMBERT. No.

10 THE COURT. Say that again. I want to get your idea.

MR. LEONARD KALISCH. That in the case that was tried here against the Evening News, this witness testified in that case that all her suffering and all these transactions with the physical culture and with these boarding-houses, and this affair in the cars, and in the stores, were all caused by the publication in the News. That was her testimony.

MR. LAMBERT. Now, if your honor please, that
20 statement is absolutely incorrect; it is not true.

THE COURT. The statement is irregular, because there is nothing on which it rests, and it was not suggested by the question you asked, at least to my mind. If you want to pursue the line of inquiry by question and answer, I will rule on the questions as they arise.

Q In the first place, do you remember having this suit against the Newark Evening News?

A Yes.

Q And do you remember when it was tried?

MR. LAMBERT. I object to this, if your Honor please.
30 I have no objection to the testimony so far as it relates to the fact that there were four suits pending, or that there are four suits pending, and that there were three other publications, all of which are equally liable; but as to going into that fact, except the fact that a suit was brought and a suit tried against the News and suits brought against the other papers—when counsel goes that far, that is as far as he can go.

THE COURT. I understand Mr. Kalisch's proposition is, or his offer, if I may call it so, to be allowed to ask
40 questions with a view to show that certain injurious re-

Rose G. Garrison cross-examination

sults, which the witness in her testimony here has attributed to the publication in the Sunday Call, she on another occasion attributed to the publication in some other paper.

MR. LAMBERT. I have no objection if counsel will quote the testimony in the other case; I have no objection as to his doing that.

THE COURT. I understand that is what Mr. Kalisch proposes. 10

MR. LEONARD KALISCH. Yes.

Q In your case against the Evening News (pages 6 and 7), do you remember answering to the following questions: "Question: Just state what you did after this first publication on November 21st, and the second, of November 25th, concerning this matter, if anything." And you answered: "Why, while I was in public places, such as a physical culture class, I noticed several ladies sitting to one side, and they were looking in my direction, and, I supposed, talking about me. Well, of course, I 20 did not know. And later on there was one of the parties came up to me and asked me in regard to the case, and, as I remember, they asked me if my husband was the man who went away; that is, they did not ask me directly; and another lady in the party stepped up and said, 'Oh, this is not the Mrs. Garrison at all, these are not the same people at all'; and then we had quite a laugh about it, and mentioned this Archer case, and the other Mrs. Garrison, and I convinced those people I was not the Mrs. Garrison that left town with this man Archer. 30 And on other occasions, while shopping in stores, I noticed as I gave my name, Mrs. George E. Garrison, 436 Summer avenue, that they would look at me in amazement, and say 'Mrs. Garrison?' 'George E. Garrison?' And of course, I would think right away there is no need of explaining to these people, but I took it for granted they thought I was the one that left town with Archer, and I felt embarrassed over it. And I suffered greatly on account of this publication, mentally, and lost rest, and all that sort of thing, on account of this publication; and the only consolation I really had at any time was the 40

Rose G. Garrison cross-examination

fact that I was not the person, and I was innocent of the crime which I was accused of." Did you not so testify?

A Something to that effect.

Q Well, do you remember it now?

A Yes, I remember it.

Q And in that testimony you said that all this was on account of the publication that was in the Evening News?

10 A No.

Q On this publication?

A Yes.

Q And that was the Evening News that you were referring to, was it not?

A No.

Q Some other paper?

A The Sunday Call.

Q Why did you not say so in that case? (No response.)

20 Q You said nothing about the New York Journal, did you?

A No.

Q Or, rather, the American. Nor the New York Sun?

A No. Will you say that over again?

Q Well, I say, you said nothing in that case about it?

A No.

Q You testified in your direct examination that you had to send for a lady upstairs, did you?

THE COURT. You mean in the direct examination in this case?

30 MR. LEONARD KALISCH. In this case.

Q This Sunday you had to send for some lady, ~~and~~ she stayed two hours with you; is that right?

A Yes.

Q Who was it?

A Mrs. White.

Q Where did she live?

A Downstairs.

Q And you sent for her, and she stayed two hours with you?

40 A Yes.

Rose G. Garrison cross-examination

Q You were ill the night before, suffering, were you not?

A Yes. My aunt was with me.

Q And you sent for your aunt. And you telephoned to your husband, did you?

A Yes.

Q And you were ill all night, were you not?

A Yes.

Q And that was caused by what you read in the News, was it not? 10

A Yes, that was caused by what I read in the News.

Q And you also sent for the lady of the house, did you not?

A Well, that I don't know.

Q Now, did you testify in your case against the News, on page 10, to a question put to you by Mr. Hardin: "Did I understand you that you were made ill by this matter?" and your answer was, "Why, I am very, very nervous, and this matter has a great deal to do with it. I am under the doctor's care at the present time," and so forth? Did you so testify? 20

MR. LAMBERT. Read on; finish the answer.

MR. LEONARD KALISCH. That is all I have reference to.

MR. LAMBERT. Counsel cannot read a portion of an answer, if your Honor please, that she has been under the doctor's care, and so forth.

MR. LEONARD KALISCH. Well, "I am under the doctor's care at the present time, and this matter has a great deal to do with it." 30

Q What matter did you refer to?

A Why, I was referring to the News.

Q You were, when you were testifying, were you?

A Yes, sir.

Q And that was two years afterwards?

A It was the next night—

Q No, I meant the testimony that you gave was two years after the matter appeared in the News, was it not?

(No response.)

THE COURT. The witness may not remember when 40

Rose G. Garrison cross-examination

the case was tried. Do you remember?

Q Do you remember when the case was tried? If I refresh your memory, will that help you? It was tried in June, 1910. Do you remember it now?

A Yes.

Q The summer of 1910?

A Yes.

10 Q And this matter appeared in the News on November 21, 1908. It was almost two years afterwards when you gave that testimony?

A Yes.

Q And do you remember testifying in your case against the News, on page 9: "Question: When you have met people since November 21, 1908, down to the present time, has this matter of the publication in the News been in your mind as you met people?" and your answer was: "Yes, very, very often?" Do you remember that?

20 A Yes.

Q And do you remember this: "Question: And what effect has it had upon your mind? Answer: Why, it made me very, very nervous, and I have been under a great mental strain from it, and I have had the doctor on account of my nerves?" Do you remember that?

A Yes.

Q And did you not further testify to the question, "Has that mental strain been continuous, or only now and then?" and your answer was, "It still continues?"

A Yes.

30 Q Now, all that had reference to the News, did it not?

A Yes.

Q And did you not further testify to the question, "Been continuous since November, 1908?" and your answer was, "Yes?" "Question: And you still have that mental strain, do you?" and your answer was, "Yes. And the night of the first publication I got so nervous we had to have a neighbor come in to stay with me. I was so nervous, I thought possibly the authorities would
40 come up and perhaps put me under arrest, and, as a

Rose G. Garrison cross-examination

result, I had to have one of my neighbors come and stay with me for a few hours to quiet my nerves down?" Do you remember that?

A Yes.

Q Now, a moment ago you said it was your aunt that came and stayed with you?

A Well, Aunt was with me at the time.

Q But here you say that it was a neighbor?

A And a neighbor—we called in a neighbor. 10

Q And that was all on account of the publication in the News, was it not? You testified so, did you not?

A We called a neighbor in; that was on account of the News; but my aunt was staying with me all the time then.

Q Now, when you read that in the News your husband was not home, was he?

A No.

Q And you telephoned to him to New York, did you?

A Yes. 20

Q And your husband came home, did he not?

A No.

Q The next morning?

A Yes.

Q He did not come home in response to your telephone, did he?

A No.

Q Do you remember saying also that you were so nervous, "I thought possibly the authorities would come and perhaps put me under arrest?" Now you say the same thing with reference to the Sunday Call in this case, do you not? You testified to that on your direct examination? 30

A Yes.

Q The very same words that you used in your case against the News; isn't that so—what you have testified here?

A Yes.

Q Now, you moved back again to 436½ in what year?

A A year and a half ago—a year ago in September, September 24th. 40

Rose G. Garrison cross-examination

Q On September 24, 1911; is that right? (No response.)

THE COURT. That would be a year and a half ago.

MR. LAMBERT. That is when they began keeping house again.

MR. LEONARD KALISCH. That is what I said, 1911.

10 Q And when did you break up the house, how soon after the publication?

A Why, the following April.

Q Was it not in—

A April or May; I don't know which it was.

Q Was it not in June?

A No, it was not, I don't believe.

Q June, 1909?

A No, it was April or May; I don't know which it was.

Q Let me refresh your memory. Did you not testify
in the case against the News, which was tried in June,
20 that you broke up the house about June, a year before
that?

MR. LAMBERT. What is the page?

MR. LEONARD KALISCH. I do not know what it is.
It is a general question.

MR. LAMBERT. Then I object to the counsel asking
such a question as that.

Q Now, you never lived at 426 Summer avenue, did
you?

A No.

30 THE COURT. She has already said that; the question
has already been asked.

Q Did you keep house in Broad street at any time?

A No.

RE-DIRECT EXAMINATION by Mr. Lambert.

Q You have been asked about your testimony in the
News case, and you used the words "this publication."
You have also testified that there were four publications,
one in the News, one in the Sunday Call, one in the
Sun and one in the American. Were you referring at
40 that time to the particular publication or all of the pub-
lications?

Rose G. Garrison re-direct

Objected to.

A All of them.

Objected to as leading.

Objection sustained.

Q When you testified with reference to the News and used the words "this publication," what did you refer to?

A I didn't hear you.

Q When you testified in the News case and used the words "this publication," what did you refer to? 10

A The News.

Q The News only?

A No.

MR. LEONARD KALISCH. I object. She said, "The News," and the counsel put in the word "only" afterwards.

WITNESS. No.

MR. LAMBERT. I put in the word "only"—"The News only."

WITNESS. I had all the cases. 20

Q The cases?

A Yes, the cases with the Sunday Call and the American and the Star.

Q Did the effect of these various publications, causing you mental anguish and this nervous state of mind—did that come alone from the News?

Objected to.

A No.

THE COURT. I think it is a proper question.

(Question read.)

MR. LEONARD KALISCH. I think that is clearly a 30 question for the jury to determine. The other publications are not here.

THE COURT. No, but you brought them in to a certain extent. That makes the re-direct examination proper.

MR. LEONARD KALISCH. I brought them in for the purpose of showing that in that case her mental suffering and everything that she has testified to here, almost verbatim, she testified in the News case and said it came from that paper. 40

Rose G. Garrison re-direct

THE COURT. Now she is asked to explain her testimony. I think that is proper.

MR. LEONARD KALISCH. I do not see how that can be competent, your Honor, how she can explain her testimony, when it is here in language which is easily understood.

THE COURT. People are always explaining their testimony, from morning to night, in this court.

MR. LEONARD KALISCH. In the same case, but this is another case.

THE COURT. But you brought it into this case.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

20

(Question and answer read.)

Q Did any of that mental trouble or anguish come from the Sunday Call?

A Yes.

Q Then did it also come from the other papers, the Sun and the American?

A Yes.

Q You testified yesterday that you thought you would be put under arrest. How long did you continue to have that impression, that you might be arrested, how long after this publication of November 21 or 22, 1908?

30

A Two or three days.

RE-CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Now, in the suit against the News you did not mention any of those other papers that you have mentioned here as causing you this anguish or mental trouble, in testifying, did you?

A I don't know.

Q What?

A I don't know.

40 Q You do not know whether you said anything in

Rose G. Garrison re-cross

that case while you were testifying about any publication in the Sunday Call or the American or the Sun, as causing you mental trouble or mental anguish?

A Why, yes, they all caused me mental anguish.

Q (By the Court.) No. The question is, madam, whether in testifying in the News suit you mentioned these other papers, if you remember?

A I don't remember.

10

Q (By Mr. Leonard Kalisch.) I think I did ask you if you claim that all that trouble that you speak of was on account of the publication in the News?

Objected to as repetition.

Q The question I want to ask is, did you not claim in your suit against the News that all your trouble, your mental anguish and your nervous trouble, was caused by the publication in the News?

Objected to as repetition.

THE COURT. Well, a general question, a general appeal to the witness's recollection, is not improper. The question is, did you say in your testimony that all your trouble came from the News article?

20

MR. LEONARD KALISCH. Yes.

MR. LAMBERT. That is the same question that counsel asked before.

THE COURT. I am not sure about that. She may answer it again. You may answer the question.

A No—well, I didn't hear. You will have to ask it again.

30

Q (Question read.)

A I don't understand you.

Q You do not understand the question?

(Question read.)

A No.

Q Well, did you mention any other paper?

Objected to as repetition.

Q Well, in connection with this, I mean. Did you mention any other paper?

A No.

40

Daniel B. McCartie, direct examination

Q (By Mr. Lambert.) Were you asked about any other paper?

A No.

DANIEL B. McCARTIE sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Doctor, where do you reside?

A 93 Fourth avenue, Newark.

10 Q And you are a practicing physician?

A Yes, sir.

Q Where did you graduate?

A Bellevue Hospital, New York.

Q How long have you been practicing in Newark?

A Eighteen years.

Q Have you attended Mrs. Rose G. Garrison?

A Yes.

Q Did you see this publication in the Sunday Call, Doctor?

A No.

20 Q How long have you attended her?

A All together?

Q Yes. When did you first begin?

A I saw her at my office three or four times, and twice, I think, at her house.

Q No, I am not asking you how many times. How long ago did you first attend her?

A It must be two years ago, I should say.

30 Q Now, Doctor, I do not want you to testify anything as to her physical difficulties, but merely as to her mental anguish, or mental suffering, if she had any?

A Yes, sir,

Q Did you observe anything of that character?

MR. LEONARD KALISCH. I object to the question on the ground that the Doctor testifies that the first time he examined her, or the first time he saw her, was two years ago. Now, this publication is more than four years ago, and it is too remote.

MR. LAMBERT. Oh, no, all the way down to the present time is not too remote, Mr. Kalisch.

40 THE COURT. I think the suggestion goes to the weight rather than to the competency of the testimony.

Daniel B. McCartie direct examination

You may ask that question.

(Question read.)

A Mental suffering?

Q Mental suffering or mental anguish, yes.

A Well, yes, that is what she came to me for.

Q Just state, Doctor, in your own way, what you noticed of her mental suffering or mental anguish.

A From her statement, from her—

MR. KALISCH. Of course, this goes in under my objection. I take an exception to this testimony. 10

THE COURT. Make your objection; state the ground of it.

MR. LEONARD KALISCH. My ground is that it is not connected at all with this publication, as too remote, and it goes more to the physical condition of the plaintiff.

THE COURT. It is not yet connected with the publication, but I will not anticipate. I will allow the witness to go on for the present.

Defendant's counsel pray an exception to this ruling of the Court. 20

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

THE COURT. That is, what you noticed.

A She came to me as a patient suffering from a nervous condition, and the symptoms were those of general nervousness; she said she couldn't sleep well, lost her appetite. 30

THE COURT. No, I think we are now getting off the track.

MR. LAMBERT. Never mind the appetite.

THE COURT. Never mind what she said; only what you noticed.

MR. LAMBERT. Not sleeping well, I suppose, is proper.

THE COURT. I do not think the plaintiff is in the attitude of a patient towards a physician, so that her statements are competent. We are not dealing with a physi- 40

Daniel B. McCartie direct examination and cross

cal difficulty at all. If the Doctor observed (and that was the question) anything as to her mental agitation or distress, he may state that as a fact.

MR. LAMBERT. That would necessarily be founded on what she said to him, would it not, to an extent?

THE COURT. No, I do not think so. I do not think that class of testimony is admissible. It is admissible
10 where you are dealing with disease, or physical injury, not where you are dealing with the case of grief or mental agitation.

Q How did she appear to you when she came to you, Doctor?

A She was nervous, excited, her language was rather incoherent, she was fidgety in her general demeanor, and, mentally speaking, I should say, in a highly nervous, excited state.

Q What did you do, if anything, for her nervous state or mental condition, Doctor?

20 A Yes, I prescribed medicine that would relieve this condition.

Q Did you advise anything besides the medicine that you gave for this state of mind that she was in?

A Yes, and later on I thought that if she did leave the city and resided in the country she would improve quicker.

Q And what did you advise her to do?

A I think I told her she might go somewhere, to the seaside or country.

Q Do you remember where she went?

30 THE COURT. If you know, you may state.

A No, I did not know where she went.

Q You do not recollect where she went?

A No.

Q How many times did you treat her for this nervous or mental difficulty?

A Well, I should say at my office she came three or four times, and at her house, I think, I saw her three times.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

40 Q That is about two years ago, you say, Doctor?

Frederick H. Smith, Jr. direct examination

A Well, I placed the date of it at the time the lady was in Mrs. Jeffries's, next door to my house, Mr. Kalisch; I think that is about the time.

Q About the time she was in Jeffries's?

A That is the time I saw her first.

Q (By Mr. Lambert.) Did I understand you to say that Jeffries's place was next door to your office, Doctor?

A Yes, sir.

FREDERICK H. SMITH, JR., sworn in behalf of 10
plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Smith, where do you reside?

A 321 Mt. Prospect avenue.

Q Newark?

A Newark, yes.

Q And you have lived there how long?

A Oh, about sixteen or eighteen years.

Q And you have lived in Newark most of your life, have you?

A Always. 20

Q To refresh your recollection as to date, I show you a communication addressed to Mr. George E. Garrison, and ask you if that is your signature (paper shown to witness)?

A Yes, that is my signature.

Q Do you remember communicating with him?

A Yes.

Q And what was the communication for, what purport. 30

MR. LEONARD KALISCH. One moment.

MR. LAMBERT. This is only to refresh his recollection as to date and circumstances.

MR. LEONARD KALISCH. That is dated when?

MR. LAMBERT. August 12, 1910.

(Question read.)

Q What was the purpose of this letter?

THE COURT. The purport of the letter will speak for itself. 40

Frederick H. Smith, Jr., direct

A We were negotiating a mortgage—

THE COURT. Just a minute.

MR. LAMBERT. The letter is only three or four lines. Suppose I read it.

MR. LEONARD KALISCH. No, that has nothing to do with the case at all.

MR. LAMBERT. It is leading up to something, that is all.

10 THE COURT. (After examining the paper referred to.) Well, it is something or other about a mortgage.

Q You say something here about a mortgage?

A Yes.

MR. LEONARD KALISCH. I object to that.

MR. LAMBERT. Well, I will ask the witness if the letter refreshes his memory as to what he wanted to see Mr. Garrison about. Have you any objection to that?

20 MR. LEONARD KALISCH. I thought you wanted to fix the time of this letter.

MR. LAMBERT. I want to fix the time, and I want to fix the incident, and I want to fix the reason he wanted to see Mr. Garrison.

THE COURT. Well, you want to offer the letter, do you?

MR. LAMBERT. Yes, for the purpose of fixing the time and the incident.

THE COURT. The materiality of this does not appear yet, but I will receive it.

(Marked Ex. P6.)

30 MR. LAMBERT. The letter is as follows: "New York, August 12, 1910. Mr. George E. Garrison, Newark, N. J. Dear sir: Will you please call on me either in the morning before ten-thirty or in the evening say after eight o'clock? I want to see you in regard to your mortgage. I can possibly arrange some other time, if you will telephone me in advance. Yours very truly, F. H. Smith, Jr."

Q What did you want to see Mr. Garrison about a mortgage, what was the circumstance?

40 A We were negotiating a mortgage, my brother and

Frederick H. Smith, Jr., direct

myself—we were executors of my father's estate, and we were negotiating, or had negotiated, a mortgage with Mr. Garrison, and my brother came to me one afternoon and raised the question whether Mrs. Garrison could properly have signed the mortgage if she was away with Mr. Archer, and I told him I hadn't heard anything about it before, I would investigate the thing right away, and I would send for Mr. Garrison to come and see me and explain. 10

Q Did he come?

A Yes, sir.

Q What explanation did you get?

A The explanation that he made was that it was not his wife at all, that it was some other Mrs. Garrison.

Q What is your brother's name?

A William L. Smith.

Q And from what he said, did you understand from him that he believed that Mrs. George E. Garrison was the person who had gone away with Mr. Archer? 20

Objected to.

A Yes, sir.

(Question withdrawn.)

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q You did not read anything in the newspapers at all?

A What?

Q You did not read this article in the newspaper?

A No, I didn't read it at all.

Q You knew nothing about it?

A I hadn't read it at all. 30

SAMUEL E. CALDWELL sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Caldwell, what is your business?

A Salesman.

Q For whom?

A Rand, McNally & Company.

Q And where do you reside?

A 62 Arlington avenue.

Q What city?

A Newark, New Jersey. 40

Samuel E. Caldwell direct

Q How long have you been engaged by Rand, McNally & Company?

A Eleven years.

Q Are you a married man?

A Yes, sir.

Q I show you, Mr. Caldwell, Exhibit P1, published November 22, 1908, headed "For Extradition of Elliott Archer," and ask you if you saw that in the Sunday Call (shown to witness)?

A I saw the heading, yes.

Q Did you not read the article?

A No.

Q Did you read any portion of the article, if you recollect?

A Not that I remember.

Q I call your attention to the portion of the article, beginning down in the centre, "At the time of his arrest," and ask you just to read that paragraph, and see whether you can recollect it or not.

THE COURT. The question I understand to be whether you can recall it or not.

MR. LAMBERT. Yes, whether you can recall having read that.

A (After examining paper.) I think I recall just seeing that name.

Q What name do you refer to?

A George E. Garrison.

Q Where were you residing at that time, Mr. Caldwell?

A 436 Summer avenue.

Q And who was your landlord?

A Mr. Garrison, George E. Garrison.

Q (By the Court.) Were you living at 436?

A Yes, sir.

Q (By Mr. Lambert). And how long had you lived there?

A Oh, over a year.

Q Had you at that time become acquainted with Mrs. Garrison?

Samuel E. Caldwell direct

A Yes.

Q Well, did you know her personally?

A Yes.

Q When you saw the article stating that she had gone away with Archer, what was your belief in regard to whether it was true or not? What was your impression?

MR. LEONARD KALISCH. One moment. There is not any positive evidence from this witness that he read that article. He saw the name and the heading, that is all. 10

THE COURT. He thinks he recalls just seeing the name "George E. Garrison." The question goes beyond the evidence.

Q Had you seen the article in the News the night before?

A Yes, I had seen it in the News, yes.

Q See if you can recollect whether you actually read this article in the Sunday Call or not, Mr. Caldwell. 20

MR. LEONARD KALISCH. I think that is going a good way.

THE COURT. Well, the witness's memory may be explored. I do not see anything illegal about the inquiry.

A I read the papers a great deal by looking at the headlines and getting the general thought of the article, and in that way I saw that and I saw that name, and it was something that did not interest me, and I did not read it; that I remember; but I saw the article.

Q And you saw Mrs. Garrison's name in that connection in the article in the Sunday Call, you said? 30

Objected to.

THE COURT. He said he thinks he recalls just seeing the name "George E. Garrison." That is as far as he had gone.

Q At the time you saw this article in the Sunday Call did you know whether Mrs. George E. Garrison had gone away with Archer or not?

MR. LEONARD KALISCH. That is objected to as immaterial. He read nothing in the Sunday Call about her going away at all. 40

Samuel E. Caldwell direct

THE COURT. I think it is irrelevant. He did not read the article, and consequently got no information from that, and the impressions that he had derived previously from other sources are not in this case.

Q Did you talk with your wife or anyone about this publication?

Objected to.

THE COURT. I think that is irrelevant. If he did, 10 he talked about something that he had not read.

Q Did you hear anyone, or, rather, did anyone speak to you about this publication in the Sunday Call concerning Mrs. Garrison having gone away with Archer?

MR. LEONARD KALISCH. I object to that.

(Counsel argue.)

THE COURT. You ought to confine it to the Sunday Call.

MR. LAMBERT. I will add that to the question.

At one o'clock P. M., the court takes a recess of one 20 hour.

AFTER RECESS.

THE COURT. The question objected to was this: "Did you hear anyone, or, rather, did anyone speak to you about this publication in the Sunday Call concerning Mrs. Garrison having gone away with Archer?" Why do you object, Mr. Kalisch?

MR. HARRY KALISCH. We object to that question because, in the first place, we think it is purely hearsay. I have had very little time during the noon recess to look up the authorities, but this is my view of it. The 30 only object of that question would be to show in what sense the general public understood the publication, and also to show what effect the publication had upon the minds of the public in general, to show damage. Now, for the purpose of showing that, if a witness speaks of it outside to a witness who is testifying upon the stand, we have absolutely no opportunity of cross-examining the person who told this witness who is testifying, or, rather, to cross-examine the person who spoke of this publication to the witness who is testifying to the conversation. That 40 is an opportunity which we think we ought to have. This

Samuel E. Caldwell direct

person who had the conversation with the witness makes a certain remark to this witness concerning this publication. If the witness who made that remark was produced in court, we would have the opportunity of cross-examining that witness; we would have the right to explore the recollection of the person who made these remarks to the witness, to see whether he actually read it in this publication. I can readily understand how the conduct of the world at large would be relevant, as expressed in words or in their general conduct; but when a person narrates something to a witness who is on the stand, that, I think, is purely hearsay. 10

THE COURT. It may be that you are anticipating too much. The question merely is, did anyone speak to you about this publication?

MR. LEONARD KALISCH. That might be answered yes or no.

THE COURT. That might be answered yes or no; and then the next question would be, "Who was it?" That might be the next question. Perhaps the only object of an inquiry is to show that the matter came to the knowledge of some other persons. 20

MR. HARRY KALISCH. What he said is what we object to.

THE COURT. I will consider that when it is asked. That really has not been asked yet. This question can be answered yes or no.

SAMUEL E. CALDWELL resumes the stand in behalf of plaintiff.

DIRECT EXAMINATION (continued) by Mr. Lambert. 30

Q (Question read.)

THE COURT. You may answer that yes or no, Mr. Caldwell. Did anyone speak to you about it?

A No.

Q Mr. Caldwell, when you first read this story, did you or did you not think it was Mrs. George E. Garrison who had gone away with Archer?

MR. LEONARD KALISCH. I wish to object to that question. Mr. Caldwell's testimony is distinct on that 40

Samuel E. Caldwell direct

subject, and it is that he did not read the article, he just glanced at the heading, and he saw the name "Garrison" and the heading, and that is all.

MR. LAMBERT. He saw the name of Mrs. Garrison in the centre, and he had already read the News article.

10 THE COURT. I think the question goes beyond the proof. I did not understand the witness to say that he read the article; he said that he recalled just seeing the name of George E. Garrison; that is, the name of the husband.

(Question withdrawn.)

Q Mr. Caldwell, at the time you saw the name of Mrs. George E. Garrison in this issue of the Sunday Call, which has been shown you, Exhibit P1, did you or did you not believe at that time that Mrs. George E. Garrison had gone away with Archer?

Objected to.

20 THE COURT. I still think that question goes rather beyond the testimony, because the witness did not say that he saw anything but the name of George E. Garrison; he did not say that he saw anything about Mrs. George E. Garrison. There is no George E. Garrison in it; it is Mrs. George E. Garrison.

MR. LEONARD KALISCH. My objection is that all the witness said was that he saw the heading and saw the name, I think he said, of George E. Garrison. It doesn't make any difference.

30 THE COURT. This is just what he said: "I think I recall just seeing the name of George E. Garrison."

(After further argument.) I think the question is objectionable. I think I substantially ruled on it. The witness has not said that he saw anything about Mrs. George E. Garrison; he thinks he caught the name of her husband; and if he at that time had any impression about Mrs. Garrison, it must have been derived from his reading the article in the News the night before.

40 Q Mr. Caldwell, I again show you Exhibit P1, on the fourth column of the second page, and call your attention to these words, and ask you what name you referred to in your direct examination as having seen in that

Samuel E. Caldwell direct

article (shown to witness)? Just look at it.

MR. LEONARD KALISCH. I object to that. He points out to the witness the name of Mrs. George E. Garrison.

MR. LAMBERT. I pointed to the article.

MR. LEONARD KALISCH. You had your finger on the point where her name appears. And he now asks the witness to say what name he referred to in his previous testimony. 10

THE COURT. The name "George E. Garrison" may occur more than once. Can you indicate what you saw there?

Q Just look at that and tell us what you saw there. You spoke of having seen a name. Tell us what you saw.

A "Mrs. George E. Garrison."

Q Is that what you stated first?

THE COURT. No, it is not what he stated.

(Question withdrawn.)

Q Now, Mr. Caldwell, when you saw the name of Mrs. George E. Garrison in Exhibit P1, which has just been shown you, did you at that time know whether Mrs. George E. Garrison had gone away with Archer or not? Objected to. 20

THE COURT. I do not exactly see what that has to do with the cause of action that we are trying. The complaint is founded on an alleged libel contained in this article. We have to consider its effect. Now, the witness did not read the article; he only saw the words "Mrs. George E. Garrison." 30

MR. LAMBERT. And the heading, he said.

THE COURT. Yes, I think he said he saw the heading. He said he was in the habit of reading headings. He may have said that. The heading is, "For Extradition of Elliott Archer. Absconding Grain Broker Arrested in Seattle May Be Brought to Newark Shortly. A Six-Year Search Ended." But there is nothing in the heading or in the name "Mrs. George E. Garrison" which would convey any information about her to his mind unless he had acquired some impressions previously to his 40

Blanche Caldwell direct

seeing the article at all, and if he did, I do not see how you can introduce those prior impressions in the case as a basis for recovery.

(Question withdrawn.)

CROSS-EXAMINATION WAIVED.

BLANCHE CALDWELL sworn in behalf of plaintiff.

10 DIRECT EXAMINATION by Mr. Lambert.

Q Mrs. Caldwell, are you the wife of Mr. Samuel E. Caldwell, who has just left the witness-stand?

A I am.

Q And where do you reside?

A 62 Arlington avenue, Newark.

Q I show you Exhibit P1, the fourth column of the second page, and ask you to look at that and tell us if you saw that article at the time of its publication (shown to witness)?

20 A I did.

Q Did you talk with anyone or did anyone speak to you about the article?

THE COURT. You may answer that yes or no.

A. Yes.

Q Who talked with you or whom did you talk with about the matter?

A Mr. Caldwell.

Q And with anyone else?

A Yes.

Q Whom?

30 A A Mr. Hine.

Q What was said between you and Mr. Caldwell about the article, or the fact?

MR. LEONARD KALISCH. I object.

THE COURT. I will overrule the objection.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS.

Circuit Court Judge.

40 (Seal.)

Blanche Caldwell direct

A I don't just recall all the conversation, but we just wondered whether it was Mrs. Garrison or not.

Q What Mrs. Garrison?

A Mrs. George E. Garrison.

Q You were acquainted with her, were you?

A Yes.

Q And what conversation did you have with Mr. Hine about the matter?

A Just about the same thing. 10

MR. LEONARD KALISCH. I wish also to have an exception to that.

THE COURT. There will be the same ruling and exception.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge. 20

(Seal.)

Q Can you recall the conversation that you had with Mr. Hine?

A No, I don't recall the words.

Q Well, the substance?

THE COURT. She said it was just about the same as the other.

Q About the same as the other?

A Yes.

THE COURT. That is what she said. 30

Q Did you talk with anyone else, that you recall?

A Yes.

Q Whom?

A Mrs. Garrison.

Q Mrs. George E. Garrison?

A Yes.

Q Anyone outside of that?

A No.

Q When you talked with Mrs. Garrison about the matter how did she appear to you as to her mental state?

MR. LEONARD KALISCH. I do not see that there 40

Blanche Caldwell direct

is any time or place fixed, or anything at all, as to when this talk took place.

Q How long after this conversation on Sunday, November 22, 1908, did you talk with Mrs. Garrison?

A Well, I don't remember exactly; I should say perhaps it was two or three weeks.

Q Now, what did you notice, if anything, concerning her state of mind at the time you talked with her?

10 A Well, she seemed to feel as though her feelings were hurt; she was rather embarrassed about it.

Q Did you see her on more than one occasion when you saw her in that state of mind?

A That is the first time I saw her after the publication.

Q Did you see her subsequently to that?

A Yes, occasionally.

Q Well, what do you say as to her state of mind on the subsequent occasions?

20 THE COURT. How long subsequent?

MR. LAMBERT. If you noticed?

WITNESS. I have seen her occasionally ever since.

Q Well, what have you observed, if anything, concerning her state of mind on these other occasions when you have seen her?

A Well, she didn't act naturally.

Q What do you mean by that? How did she act?

A She was very forgetful, and sometimes she couldn't say what she would like to say, she couldn't express herself.

30 MR. LEONARD KALISCH. I object to that line of testimony.

Q Did you see her after she came back from Asbury Park?

THE COURT. There seems to be an objection. I will regard so much of that answer as relates to what is an apparent physical disability as being outside of the rule and strike it out. Let the statement stand that she did not act naturally. Strike out the rest of it.

40 Q Did you see her after she returned from Asbury Park?

Blanche Caldwell cross

A I did.

Q How did her state of mind appear at that time?

A Very bad, I should say.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Where did you live at that time?

A 436 Summer avenue.

Q And when did you move there?

A April 1, 1908. 10

Q And where did Mrs. George E. Garrison live?

A She lived next door.

Q 436½?

A There was no number on the house.

Q No number?

A No.

Q And when did you become acquainted with Mrs. Garrison?

A After we moved there.

Q Shortly after April 1, 1908? 20

A Yes.

Q And did you see the article in the News?

A Yes.

Q And did you talk to Mrs. Garrison about that?

A We talked about the publication; I don't know that we specified either one.

Q You did not specify any paper, then?

A No.

Q How about Mr. Hine, did you talk about the publication in the News?

A No, just the fact. 30

Q Just the facts; you did not specify any paper?

A No.

Q And as far as Mrs. Garrison's appearance was concerned, you did not know whether it was caused by the publication in the News or by the publication in the Sunday Call, then, or any other paper, did you?

A I suppose the fact of the publication.

Q Did you know it?

A You will have to repeat your question; I don't know what it is now. 40

Blanche Caldwell cross

Q (Question read.)

A I did not.

Q And when did Mrs. Garrison go to Asbury Park?

A I don't know.

Q Well, when did she come back?

A I don't know.

Q Well, you said something about her appearance
when she came back.

10 A I saw her after she had been back some time.

Q Well, don't you know when she went there?

A I do not.

Q You read the article in the Sunday Call, did you
not?

A Yes.

Q And did you know the Mrs. Garrison that lived
at 426 Summer avenue?

A I did not.

Q You knew Mr. Garrison, did you not?

20 MR. LAMBERT. What Mr. Garrison?

A Which one?

Q George E. Garrison?

A I did.

Q And you knew that he was working in New York,
did you not?

A Yes.

Q On a newspaper there?

A Yes.

Q A stereotyper? You did not know what partic-
ular—

30 A I did not know his particular occupation.

Q But you knew he had been working at that busi-
ness?

A Yes.

Q You saw Mrs. Garrison from April 1, 1908, when
you moved there, right straight along, did you not?

A Why, I saw her occasionally, if that is what you
mean.

Q Well, as a neighbor?

A Yes, sir.

40 Q You saw her as frequently as you would any neigh-

Blanche Caldwell cross

bor, did you not?

A Yes.

Q And that continued from April 1, 1908, until you moved away from there?

A Well, she moved away before I did.

Q Well, until she moved away—in what year?

A I believe in 1908.

Q No.

A No, 1909. 10

Q Do you remember what month?

A No, I don't.

Q Now, when you read the article in the Call, did you read it all?

A Yes.

Q And did you read all that was in the News?

A Yes.

Q And what was in the News was in the night before, was it not?

A Yes. 20

Q Did you always read the Sunday Call?

A No.

Q What?

A No.

Q Well, you read it that Sunday?

A I read that part of it.

Q What?

A I read that part of it.

Q Only that part?

A No, I looked over the paper; I happened to see that and read it. 30

Q How about the following week, didn't you have the Call?

A We took it occasionally on Sunday; it happened to be that we had it that Sunday.

Q Did you not take it the next week?

A I couldn't say.

Q Did you take it the week after that?

A I couldn't say whether we took it in three or four weeks after that; I don't remember.

Q And that is the only time you read in that paper, 40

Blanche Caldwell cross

in the Call, about this matter?

A That is all I saw about that matter.

Q Well, did you read the retraction?

A No, I didn't see it.

Q You did not see that?

A No.

Q Now, then, "At the time of his arrest Archer is
alleged to have been in the company of Mrs. George E.
10 Garrison, formerly of 426 Summer avenue," you knew
then it did not refer to the Mrs. Garrison next door to
you, did you not?

A I didn't say it did.

Q What?

A I didn't say I thought it did.

Q You did not say it did, did you?

A No.

Q "This city, who, it is said, deserted her husband, a
broker." And you knew her husband was connected
20 with a New York paper?

A Yes.

Q And you did not think it applied to Mrs. Garrison
at all—the one that lived next door to you?

A I didn't think it applied to the present Mrs. Garri-
son.

Q The one that is here in court?

A No.

Q The plaintiff?

A No.

REDIRECT EXAMINATION by Mr. Lambert.

30 Q In answer to a question counsel asked you, whether
you thought this article applied to Mrs. George E. Garri-
son who is in court, whether you thought the article
applied to her—

A No, I did not.

Q Well, whom did you think it applied to?

A Mr. Garrison's former wife, the first Mrs. George
Garrison.

Q Well, this Mrs. Garrison was the second Mrs. Garri-
son?

40 A Yes.

Blanche Caldwell re-direct

- Q Did you know the former wife?
 A I did not.
 Q But you knew he had been married before?
 A I did.
 Q Did you not know that she was dead?
 A No.
 Q You did not know anything about the history of the Garrison family at the time?
 A I never met any of them until we moved there. 10
 Q When you talked with Mrs. George E. Garrison, the present Mrs. Garrison, did you talk the matter over with her about whom it applied to?
 A She told me who it was.
 Q And what did she say to you?
 A She told me that it was the Mrs. Garrison that lived a few doors below us—had lived there.
 Q Did you tell her that you thought it might apply to Mr. Garrison's first wife?
 A I did. 20
 Objected to as leading.
 Q And did you have that impression when your conversation with her ceased on the subject—that it was Mr. Garrison's first wife?
 A No.

PATRICK J. WALSH sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

- Q Mr. Walsh, what is your business?
 A Foreman in a cutlery shop, A. F. Bannister's.
 Q How long have you been connected with Mr. Bannister's shop? 30
 A Twenty-five years or more.
 Q Where do you reside?
 A 137 Sheffield street.
 Q How long have you resided there?
 A Close onto fifteen years.
 Q Mr. Walsh, I show you Exhibit P1, and call your attention to an article in the Sunday Call published November 22, 1908, on the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you 40

Patrick J. Walsh direct

if you saw that article at the time it was published in the Sunday Call?

A Yes, sir; I did.

Q Do you take the Sunday Call?

A Yes, sir.

Q Where were you at the time you saw the article, if you recall it?

A In the Call, in the house.

10 Q Who were present?

A My mother, my sisters and brother.

Q Was the article read by any of the rest of your family?

A That I couldn't say.

Q Was the subject of the article discussed between you and other members of your family?

A No, sir.

Q Did you know Mr. George E. Garrison?

A I knew Mr. Garrison.

20 Q Did you know his wife?

A No, sir.

Q Had you ever seen her, to your knowledge? Do you know her by sight?

A No, sir; I have seen her once at that time, but I have seen her twice since.

Q Did you talk with anyone about this article?

A Yes, sir.

Q With whom?

A A man named Brady and a man named McCormack.

Q And where did you talk with them?

30 A At the Lackawanna station.

Q Who is Mr. Brady?

A A police officer detailed there.

Q And who is Mr. McCormack?

A Night station master.

Q How long after the 22d day of November, 1908, did you talk with them?

A Well, the following Monday, Tuesday, and I believe up until a Thursday or Friday night.

40 Q Can you state what you said to them or what they said to you on that occasion?

Patrick J. Walsh direct

MR. LEONARD KALISCH. I object to that.

THE COURT. Well, I suppose the editor of a newspaper is presumed to intend the natural consequences of his own acts. He publishes a newspaper in order that it may be read, passed from hand to hand, and it is his natural expectation that the contents of it will be interesting, and after being read will be talked about. I am not prepared to say that information acquired by a conversation may not be legitimately shown. It is quite clear, I think, that information derived from the paper itself, through however many hands it might pass, may properly be shown, because that is what the paper is for, and there is no opportunity in that case of any falsification of its contents. There is some liability that the persons who talk about what they read in the paper may not talk with entire accuracy, and that the story may be somewhat falsified or exaggerated, but that is incident to human nature—the operations of the human mind, the minds of the people among whom the paper circulates. I think it is one of the natural consequences of a publication which it is fair to impute, certainly within reasonable bounds, to the publisher. For that reason I overrule the objection.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge. 30

(Seal.)

(Question read.)

A Well, not just exactly the words, but we talked it over and we were pretty sure of it, that it was Mrs. Garrison that went away.

Q What Mrs. Garrison?

A Mrs. George E. Garrison.

Q How long did that impression continue with you?

A Four or five days.

Q And then what happened, if anything? 40

Patrick J. Walsh cross ex

A We were discussing it over one evening there, and Mr. George E. Garrison came in, and with that he overheard us say—we had to let it out, and we said, “Well, we see they have got Archer again;” and he said, “Yes, and I see they have got me in it again;” and then came the explanation that it wasn’t Mrs. George E. Garrison, that it was this other woman, Everett G. Garrison, or whatever you call her.

10 Q And until that time——

A We was of the opinion that it was Mrs. George E. Garrison.

Q Did you hear anybody else talk about the case?

A Only the three of us that was in the station.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Did you read the article in the News?

A Yes, sir.

Q And wasn’t that the article you were discussing?

A No, sir.

20 Q What?

A No, sir; we were discussing the both of them.

Q You were discussing both of them?

A The News and the Call.

Q And you knew Mr. George E. Garrison?

A Yes, sir.

Q And you knew where he lived?

A Yes, sir.

Q You knew he was living at 436½ Summer avenue?

A I didn’t know the number.

Q But you knew where he lived?

30 A I knew he lived there.

Q And you knew he was in business in New York?

A Yes.

Q And he went every day by the D., L. & W. to New York?

A Every evening.

Q You knew he was not a broker?

A Yes.

Q You say you read the article?

A Yes, sir.

40 Q And the Mrs. Garrison mentioned in the article in

Patrick J. Walsh cross ex

the Sunday Call was the wife of a broker?

A Yes, sir.

Q And you knew it was not Mr. Garrison's wife, did you not, then?

A I didn't know it wasn't Mr. Garrison's wife; I was of the opinion that it was his wife.

Q But Mrs. Garrison was not the wife of a broker?

A No. I didn't know what he really was.

Q You knew he went to New York and worked 10
nights?

A Yes, sir.

Q And the article in the Call stated that "Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a broker." Now, you knew he was not a broker?

A I knew he worked for the newspaper.

Q That is not a broker, is it?

A No, sir.

Q Now, how could you say from what you saw in 20
the Sunday Call that you were discussing the Sunday Call article?

A Because it referred to where he lived.

Q Well, it referred to 426.

A I didn't say the number at all; I didn't know the number.

Q Was it not the Evening News that you were discussing?

A No, sir; we were discussing both papers in general.

Q Did you not testify at the previous trial here, 30
against the Evening News?

A Yes, sir.

Q You were a witness?

A Yes, sir.

Q On page 38 you were asked the question—you were first asked with reference to whether you had seen the publications in the News, and you answered that you had?

A I did.

Q Then you were asked this question: "What impression did this paper make on your mind as to whether 40

Patrick J. Walsh cross ex

Mrs. Garrison, the wife of George Garrison, had gone away with Archer or not?" and your answer was: "I was of the opinion it was George E. Garrison's wife until the explanation?"

A Yes, sir.

Q Well, was it not the Evening News that you had in mind all the time when you were discussing it three or four nights afterwards?

10 A No, sir; we were discussing both papers in general.

Q You did not so testify at that trial, did you?

A How could I? I wasn't asked to testify to the Call.

Q You say that you did not hear anybody else talk about this matter except those two persons that you mentioned?

A That was all.

Q In your conversation did you speak of the Evening News and Sunday Call?

20 A No, we didn't mention no paper at all, but I had in mind the both subjects, the News and the Call.

Q I mean in this conversation was there any name of any paper mentioned?

A Not one.

Q Did you read the article in the New York American?

A No, sir.

Q Or the New York Sun?

A No, sir.

30 Q And no paper was mentioned at all in this conversation?

A No paper at all.

Q You did not know Mrs. Garrison?

A No, sir.

DANIEL F. WETTLIN sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Wettlin, where do you reside?

A 436 Summer avenue.

Q Who is the owner of that property?

A I am.

40 Q And from whom did you prechase it?

Daniel F. Wettlin direct

A Mr. George E. Garrison.

Q How long ago?

A Three years ago in April, I think it was.

Q It will be three years ago this coming April, do I understand you?

A I believe it is in April, three years ago, either April or May.

Q Well, it will be three years this coming April or 10
May; is that right?

A Yes, sir.

Q What is your business, Mr. Wettlin?

A Druggist.

Q Where are you employed?

A Corner of Market and Broad.

Q In whose store?

A Holzhauer's.

Q How long have you been there?

A Seven years. 20

Q Mr. Wettlin, I show you Exhibit P1, and call your attention to the publication of the Sunday Call under date of November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer," and ask if you saw that article at the time of its publication (shown to witness)?

A Yes, sir.

Q Did you read the Sunday Call?

A Yes, sir.

Q Where were you residing at the time that you saw 30
that article?

A 57 Arlington avenue.

Q Were you acquainted with Mr. George E. Garrison at that time?

A No, sir; I knew him by sight.

Q Were you acquainted with Mrs. George E. Garrison?

A No, sir.

Q Did you know Everett G. Garrison or Mrs. Everett G. Garrison?

A No, sir. 40

Daniel F. Wettlin direct

Q Did you know where Mr. and Mrs. Garrison resided?

A Yes, sir.

Q And where did they reside at that time?

A 436 Summer avenue.

Q George E. Garrison, I mean.

A Yes, sir.

10 Q They resided at that time in the same house which you have since purchased?

A Yes, sir.

Q At the time you read this article did you know whether or not it was Mrs. George E. Garrison who had gone away with Archer?

A I believed from reading the article that it was Mrs. George E. Garrison.

Q And how long did you believe that?

A I don't know; for some time afterwards.

Q As near as you can tell.

20 A Oh, a year or two.

Q And did you talk with anyone about it?

A It was a matter of general comment in the neighborhood.

Q How many people, as near as you can tell, did you hear speak of it?

A I don't know how many.

Q How far did you live from Mr. Garrison at that time?

A Just around the corner, a short distance.

30 Q Well, you say you do not know how many. As near as you can tell, about how many?

A Oh, at least half a dozen different people.

Q Of the neighbors

A Of the neighbors; yes, sir.

Q From what they said to you, do you know what they believed as to the identity of the person who had gone away with Mr. Archer?

Objected to.

40 THE COURT. That is rather doubtful. It asks the witness to express an opinion on the mind of another person.

Daniel F. Wettlin direct

(Question withdrawn.)

Q If you can recall, what did they say about this?

MR. LEONARD KALISCH. I want to make the same objection as before to that.

THE COURT. Yes. I will allow this; this is a fact. Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly. 10

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

Q Go ahead. What did they say to you, if you can recall?

A I don't remember the exact words, but it was to the effect that it was Mrs. George E. Garrison that had gone away.

Q Did you know Mr. Archer?

A No, sir. 20

Q Did you know him by reputation?

A By reputation, yes.

Q Had you heard of him before these articles were published?

A Through previous articles that had been published about him.

Q How long ago were they published?

A The articles that were published six years previous, and there may have been some after that, but I don't know.

Q In the conversation with the neighbors did any of them speak of Archer? 30

Objected to.

Objection sustained.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q How long have you lived in that neighborhood, Mr. Wettlin?

A Nine years.

Q From now back?

A From now back; yes, sir.

Q So that you lived in that neighborhood from about 40

Daniel F. Wettlin cross

1904; is that it—1903 or 1904?

A Yes, about that.

Q You did not know Mr. George E. Garrison, did you?

A Not to speak to; I knew him by sight.

Q You did not know his wife, Mrs. George E. Garrison?

A Not to speak to; no, sir.

Q Did you know her by sight?

10

A I knew her when I saw her; yes, sir.

Q And you saw her right along, did you not?

A No, sir.

Q What?

A No, sir.

Q You did not see her?

A No, sir.

Q You mean to say that you did not see her in those—

A You asked me if I saw her right along.

20

Q Well, occasionally?

A I can't say that I did see her; I might have seen her, but I can't say that I have seen her any particular times.

Q How did you know her by sight?

A I don't understand the question.

Q My question is, How did you know her, as you say, by sight? What brings her to your mind that you knew her by sight, that she was Mrs. George E. Garrison?

30

A The same way that I know who you are; I never saw you before—I have seen you before—

Q You have seen me quite often, have you not?

A I have seen you quite often.

Q But, of course, you do not know my wife?

A I don't know as I have ever seen her.

Q Now, how did you know Mrs. Garrison by sight? Perhaps I may help you a little. Did you see her enter the house with Mr. George E. Garrison or see her in company with him?

40 A I have seen her on the street and I have been in company with people that have said, "That is Mrs.

Daniel F. Wettlin cross

George E. Garrison."

Q You have seen her from 1904, some parts of the year, have you not, some time during the year, up to the present time?

A I don't remember when I have seen her and when I haven't seen her.

Q Of course, you do not remember what particular time, but during the year you have seen her, during the different parts of the year, not specifying any particular time? 10

A During what year?

Q Well, 1905 and 1906; have you not seen her at some time during those years?

A I may have, yes.

Q 1907 and 1908?

A I may have.

Q And you knew they lived at 436 Summer avenue?

A Yes. 20

Q Did you not?

A Yes.

Q And you knew just where that house stands?

A Yes.

Q And you bought it?

A Yes.

Q When?

A Three years ago in April.

Q That is April, 1910, is it not?

A I believe so.

Q Is that the date you bought it, or 1909, which is it? 30

A Well, it was three years ago; that was 1910.

Q Well, it would not be three years until next April, if it was 1910?

A The coming April; yes, sir; almost three years.

Q Well, then, it was 1910. And when you bought it were Mr. and Mrs. George E. Garrison living there?

A No, sir.

Q Where were they living?

A They were, I believe, living next door; I don't know positively. 40

Daniel F. Wettlin cross

Q Well, you must have seen them?

A I saw them—they met me at their house and showed me through. I never asked where they lived or——

Q Well, did you not see them at 436½?

A They showed me through the house; yes, sir.

Q You called on them there with reference to your
10 house, did you not?

A No, sir; they called on me and took me to that house and showed me through.

Q And you knew they lived at 436½, did you not?

A I just said that.

Q Did you not live around the corner?

A Yes, sir.

Q And you did not know where they lived, you say?

A They were boarding at different times during that period.

20 Q No, not that period; you are wrong. How do you know they were boarding? How did you know they were boarding?

A I understood that they were boarding.

Q From whom did you understand that?

A Why, general comment.

Q General comment where?

A Common knowledge.

Q What do you mean by "common knowledge," in the newspapers?

(No response.)

30 Q Who told you they were boarding?

A I don't know.

Q Did anybody tell you?

A I don't know.

Q And you do not know it from your own knowledge, do you?

A I understood that they were boarding; that is all.

Q Did you know Mr. George E. Garrison's business?

A No, sir.

Q You say you had known him by sight?

40 A Yes, sir.

Daniel F. Wettlin cross

Q And you knew that Mrs. Garrison had not left the city, did you not?

A No, sir; I didn't know it.

Q But you saw her during the years that you lived in that neighborhood, did you not?

A I had seen her from that time—I had seen her occasionally; just when I don't know.

Q Where did you see her? 10

A I don't remember.

Q Well, now, you do not remember?

A No, sir.

Q On how many occasions did you see her?

A I don't remember.

Q What was there in this article that made you think that it applied to Mrs. George E. Garrison?

A Because that was her name.

Q But it did not give her house number?

A I didn't know the number of the house. 20

Q You lived around the corner, you say?

A Yes, but I didn't know the number of the house.

Q And you bought the house?

A That was some time afterwards.

Q And the article gave the house as 426 Summer avenue. You read that, did you not?

A I may have, but I don't remember whether it was 426 or 436 or 456; it meant all the same to me.

Q It meant all the same to you?

A Yes, sir.

Q But you did not know Mrs. George E. Garrison well enough from reading that she was formerly of 426, that it applied to Mrs. George E. Garrison of 436, did you? 30

A The number of the house made no impression on my mind whatever; it might have been 456, for all I knew.

Q You thought it was Mrs. George E. Garrison, but who it was you did not know?

A The number given in the paper made no impression on my mind whatever; I was impressed that it was 40

Daniel F. Wettlin cross

Mrs. George E. Garrison who lived on Summer avenue.

Q Was there not more than one Mrs. Garrison on Summer avenue?

A Not that I knew of; she was the only one I knew.

Q But you did not know her at all. You said you saw her only once or twice in a year.

A I didn't say that I didn't know her.

10 Q You only knew her by sight, you said?

A Well, isn't that knowing one?

Q Well, I do not know whether they call that knowing anybody, by sight. Well, you knew that Mrs. Garrison had not deserted her husband, did you not?

A I didn't know it.

Q You did not know that?

A No.

REDIRECT EXAMINATION by Mr. Lambert.

20 Q Where did you negotiate with Mr. Garrison for the purchase of this house? Where was he living at the time you went to see him?

A Mr. Garrison came to my house, 57 Arlington avenue.

Q And did you go to where he was living at the time, do you recall?

A Not that I remember of.

Q Did you know that he boarded at Mrs. Jeffries's, on Fourth avenue? Did you know where Mrs. Jeffries's place was?

30 A I remember at one time going down on Fourth avenue. What the number of the house is or the name, I don't know. I saw them on Fourth avenue.

Q Did your wife accompany you?

A My wife accompanied me.

Q Did you go there to see Mr. Garrison about the purchase of the house?

Objected to as leading.

THE COURT. Well, the point is whether he went there to see Mr. Garrison.

Q Did you?

40 A Yes, come to think of it, I did.

Daniel F. Wettlin cross

Q On your cross-examination you testified that Mr. Garrison at the time of this publication was living at 436½, next door to the place you purchased.

A I said I didn't know whether he lived there or not.

Q I understood you to say that he did live there at the time you saw this publication. You said you did not know whether he lived there or not, is that it?

A Yes, sir.

Q Did you say that you called on Fourth avenue to see Mr. Garrison? 10

A Yes, I did.

Q Did you ever call on him at any other place to see him about the purchase of the house?

A I don't remember about it, except that he took me to 436.

Q (By Mr. Kalisch.) By the way, you are living now next door to Mr. Garrison, are you not?

A Yes, sir.

JOHN FRIERY sworn in behalf of plaintiff. 20

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Friery, where do you reside?

A 122 Prospect place, South Orange.

Q What is your business?

A Railroad conductor.

Q What railroad?

A D., L. & W.

Q Do you know Mr. George E. Garrison?

A Yes, sir.

Q Did you know him in 1908? 30

A Yes, sir.

Q Did you know Mrs. George E. Garrison?

A No, sir.

Q Were you a conductor on the D., L. & W. in 1908?

A Yes, sir.

Q I show you Exhibit P1, the Newark Sunday Call, November 22, 1908, on the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you if you saw that at the time of its publication (shown to witness)? 40

John Friery direct

A No, sir.

Q Did you see it afterwards?

A No, sir.

Q Did you talk with anybody else about that publication?

A Yes, sir.

Q With whom?

A James McGrath.

10 Q Who was he?

A Distributor for the Union News Company on the same train.

Q When did you talk with him?

A Oh, probably the next week after that, in that neighborhood.

Q What was the conversation, or the substance of it, between you and him?

MR. LEONARD KALISCH. I want to object to that.

20 THE COURT. I will overrule your objection.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,

(Seal.)

Circuit Court Judge.

A As to whether this was the wife of Mr. George E. Garrison or not. Of course, we both of us knew Mr.
30 George E. Garrison.

Q Can you give us the conversation?

A Nothing more than, as I said before, that we both knew Mr. Garrison, and, of course, if it was his wife, we were sorry. We had talked over it in that strain.

Q Who spoke of it first?

A I don't remember that.

Q Where was it?

A On the train.

Q What was the result of the conversation, as to
40 whether you or he or both of you believed it was Mrs.

John Friery direct

George E. Garrison that went away with Archer?

Objected to.

THE COURT. There is no objection to the witness saying what was said, as nearly as he can remember it; but this sounds too much like an inference—a summing up. I sustain the objection.

Q I will ask you this question. At the time of that conversation did you believe that Mrs. George E. Garrison had gone away with Archer? 10

Objected to.

Objection overruled.

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

Objection allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

A We didn't know anything about it, whether she had or had not, only as I tell you, that we saw Mr. Garrison every morning we was on duty. As to whether this was Mrs. George E. Garrison or not, we didn't know whether it was or whether it wasn't, whether it was his wife or whether it was somebody else's wife. 20

Q How long did you continue in doubt?

A Oh, for some time.

Q About how long?

A Oh, I don't just remember.

Q Well, as near as you can tell?

A Well, maybe a week. 30

Q And how was your doubt cleared up in the matter, if at all?

Objected to.

Objection overruled.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge. 40

(Seal.)

John Friery cross ex

A Well, I don't remember just how it was cleared up.

Q Did you talk with Mr. Garrison about it?

A Well, now, Mr. Garrison, I believe, says that I did, but I don't remember that, and if I did talk to Mr. Garrison about it, why, he told me. I was pretty well acquainted with Mr. Garrison, because he rode with me quite some on that train, used to come out with me every morning, in fact, and, as I said before——

10 Q (By the Court.) Well, you do not remember?

A No.

Q (By Mr. Lambert.) Did you ever hear anybody except Mr. McGrath talk about the matter?

A Not that I can recall, no.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Mr. Friery, did you read the article in the Evening News?

A No, sir.

Q Was not that discussed, too?

20 A What say?

Q Was not that discussed with the person?

A No, sir; this was the last, about; I don't remember——

Q You do not remember whether it was the Sunday Call article or the Evening News article that was discussed, do you?

A I said in the beginning that I didn't know. I didn't read it in any paper.

Q The talk that you had with the agent of the news company—was it? Whom did you have your talk with?

30 A The distributor of the Evening News Company.

Q That did not have reference to any one paper, did it?

A No.

Q It had reference to many papers?

A Well, I wouldn't say many papers; I don't know as it appeared—I don't know as it appeared in many papers, as a matter of fact.

Q But the words "Sunday Call" were not mentioned, were they?

40 A Not that I remember of, no.

Daniel F. Wettlin further cross ex

D. F. WETTLIN cross.

DANIEL F. WETTLIN recalled for FURTHER CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q I forgot to ask you: Did you read the articles in the Evening News?

A No, sir.

Q Those you did not read. You take the Evening News, do you not? 10

A Yes, sir.

Q And on November 21, 1908, where were you living?

A November, 1908?

Q Yes, November 21st.

A Arlington avenue.

Q And do you have your Evening News sent to your house?

A We have it sent to our house where we are now, yes.

Q And did you have it sent to Arlington avenue, 20 where you lived then?

A I believe so, as far as my recollection goes.

Q Do you not recollect seeing an article in the Evening News—seeing Archer's and Mrs. Garrison's names mentioned?

A No.

Q You have no recollection of seeing that at all?

A No.

Q Do you read the Sunday Call every Sunday?

A I read it that particular Sunday.

Q No other Sunday? 30

A Once in a while.

Q How about the week after?

A I don't know whether I did or not; I don't remember.

Q Or the week after that?

A I don't remember.

Q Is that the only article in the Call in which you saw Mrs. Garrison's name mentioned?

A I saw an article in the Call ten years ago.

Q An article in the Sunday Call ten years ago? 40

Daniel F. Wettlin further cross ex

A When the first articles were published.

Q Did the name of Mrs. Garrison appear ten years ago in the article that you speak of in the Sunday Call? Did the name of Mrs. Garrison appear there?

A I don't remember.

Q Well, why did you a moment ago say that you read it ten years ago?

10 A There were some articles in connection with it.

Q With what?

A This Archer case, published ten years ago.

Q And Mrs. Garrison?

A Her name was connected with it in my mind, it was connected with it.

Q Ten years ago this article?

A Either by what I saw in the paper or by what I heard, her name was connected with it.

Q Ten years ago?

A Yes.

20 Q And where did you get that idea from, ten years ago?

A I don't remember.

Q And that was in the Sunday Call?

A I don't remember.

Q Why did you say a moment ago?

MR. LAMBERT. He did not say so.

MR. LEONARD KALISCH. I am asking the witness, not you.

30 Q Did you not say a moment ago, or a little while ago, that you read nothing in the Sunday Call except what you might have read ten years ago?

A What was the question?

Q (Question read.) Except this article in question?

A I read the article of November, 1908.

Q And what did you say with reference to what you read ten years ago? Did you not say that was in the Sunday Call, too?

A Some articles had been published previous to that.

Q In the Sunday Call, you said, did you not?

MR. LAMBERT. He did not say so.

40 MR. LEONARD KALISCH. I want the witness to

Harry R. Crane direct

answer.

Q Did you not say it was in the Sunday Call?

A No, I did not.

Q What paper did you read it in?

A I don't know.

Q You say positively you do not know?

A I don't know.

HARRY R. CRANE sworn in behalf of plaintiff. 10

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Crane, where do you reside?

A 156 Grafton avenue.

Q How long have you resided there?

A Since last May.

Q What is your business now?

A With the Dwyer Furniture Company.

Q What was your business in 1908?

A News dealer. 20

Q And where were you located?

A 348 Belleville avenue.

Q Newark?

A Newark.

Q How long were you in the news business at Belleville avenue?

A Fourteen years.

Q Now, Mr. Crane, I show you Exhibit P1, and call your attention to a publication of the Sunday Call on November 22, 1908, the second page, fourth column, the article being headed "For Extradition of Elliott Archer," 30 and ask you if you saw that article (shown to witness)?

A I did.

Q At the time of the publication?

A Yes, sir.

Q Were you selling the Sunday Call at that time?

A Yes, sir.

Q How many issues of the Sunday Call did you sell on each Sunday at that time, as near as you can tell?

A In the neighborhood of two hundred.

Q Did you know Mr. George E. Garrison at that time? 40

Harry R. Crane direct

A Yes, sir.

Q And did you know Mrs. Rose G. Garrison, his wife?

A Yes, sir.

Q And did you also know Mrs. Everett G. Garrison?

A Yes, sir.

Q And her husband?

A Yes, sir.

10 Q Did you have occasion to discuss this article in the
Call with any of your customers or other people?

A Yes, sir.

Q And if so, how many?

A Well, I don't know how many, but I discussed the
question as to the mistake part of it.

Q Well, how many people, as near as you can tell?

A Oh, half a dozen.

Q How did you discuss it? What was said, as near
as you can tell?

20 A Well, that there had been a mistake made and it
was the wrong Mrs. Garrison.

Q Who said that?

A I did.

Q What knowledge did the people that you talked
the matter over with have on the subject?

Objected to.

THE COURT. What did they say about it?

Q What did they say about it—from what they said?

30 A Well, they said it was George E. Garrison's wife,
up on Summer avenue, and I said, "No, that is a mis-
take;" I said, "It is Mrs. Everett Garrison that went
away with Archer."

Q And how many people did you make that state-
ment to?

A Oh, half a dozen in the course of the morning, that
Sunday morning.

Q That is, on the first Sunday; that is, on the day it
was published?

A The day it was published.

Q Did you talk the matter over with anyone else
after that day?

40 A Well, I did, yes.

Harry R. Crane cross ex

Q How many other people after the Sunday on which this publication appeared did you talk with?

A Well; during the remainder of the week, about half a dozen more; they seemed so impressed that it was George E. Garrison's wife.

Q Were they all so impressed, that you talked with?
Objected to.

THE COURT. The question is, Mr. Crane, What did they all say, in substance? 10

WITNESS. Well, they said that it was George E. Garrison's wife, because they read it in the paper, in the Call.

Q How long after the publication did you talk with people about the matter, making these corrections?

A Oh, I couldn't say. Having a public place, it went on about a month. In my store once in awhile that would come up.

Q About how many people, as near as you can tell, all together, did you explain this matter to during the month? 20

A Oh, in the neighborhood of five or ten or twenty, I guess.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Well, now, Mr. Crane, it was not the Sunday Call that you were explaining all the time, was it?

A On this particular occasion, yes.

Q Well, on the occasions that you spoke of?

A This Sunday and thereafter.

Q You also sold the Evening News, did you not? 30

A Yes, sir.

Q And did you see the article in the Evening News?

A Yes, sir.

Q That was published November 21st?

A Yes, sir.

Q How many copies of the Evening News did you sell?

A About four hundred.

Q Four hundred?

A Yes. 40

Harry R. Crane cross ex

Q And did not the people discuss the article in the Evening News with you?

A Some of them.

Q What?

A Some people did; yes, sir.

Q Well, didn't they do it?

A Yes, sir.

10 Q And you knew all the time that it was not Mrs. George E. Garrison, did you not?

A I did; yes, sir.

Q And you knew that Mrs. Everett Garrison lived at 422—

A 426.

Q —426 Summer avenue, while Mrs. George E. Garrison lived at four hundred and—

A Thirty-six.

Q 436?

A Yes, sir.

20 Q And you knew that Mr. George E. Garrison was a stereotyper in New York, did you not?

A Yes, sir.

Q And Mrs. Everett Garrison's husband was a broker?

A Yes, sir.

Q So that when the article in the Sunday Call said, "Mrs. George E. Garrison, who formerly lived at 426 Summer avenue," you knew right away that it was not the Mrs. George E. Garrison, the plaintiff here?

30 A That is what I told them; I used that for an argument.

Q At the time of the publication in the Call Mrs. Everett Garrison did not live on Summer avenue, although she formerly lived there; isn't that right?

A That is right.

Q Well, the people that buy the News buy the Call and the people that buy the Call buy the News, do they not, a great many of them?

A Well, pretty much, yes; not all.

40 Q Now you were a witness here against the News about two years ago, were you not, Mr. Crane?

Harry R. Crane cross ex

A Yes, sir.

Q The question was asked you, on page 40, near the bottom: "How many people have you talked with, do you suppose, about this publication?" That had reference, did it not, to the News?

A It had reference to the News; yes, sir.

Q And you answered: "Well, probably the evening that I saw it, the first time I saw it, I spoke to half a dozen about it." That is correct, is it not? 10

A That is right.

Q Now, then, on page 41, at the bottom, the question was asked you: "How long after this first publication did you hear your customers discussing this question?" and you answered: "Oh, I could not say that, how long. Question: As near as you can tell. Answer: Well, probably it went on for two or three weeks, a month."

A That is right. 20

Q And that was all with reference to the News?

A Yes, that is what I testified to.

Q "Question: And how many people do you suppose after this first six or seven, how many people do you suppose you heard altogether discuss this person in your store? Answer: I could not say the number; I heard a great many; of course, being right in the neighborhood, and being in business there, I heard a great many; I couldn't say how many particularly; it was common talk." That all had reference, did it not, to the News? 30

A Yes, sir.

Q Do you remember reading a retraction in the Sunday Call two weeks afterwards?

A Yes, sir.

Q I will show it to you and see if this is the one, December 6th (shown to witness). That appeared, did it not, on the first page of part one of the Sunday Call in the third column?

A Yes, that is right. 40

Harry R. Crane re-direct ex

MR. LEONARD KALISCH. If your Honor please, I would like to read that retraction now, if it is not objected to.

MR. LAMBERT. It is not in evidence yet. When it goes in, I suppose, counsel can read it.

REDIRECT EXAMINATION by Mr. Lambert.

Q Did you ever hear any people discuss this matter
10 outside of your store, in any other place?

A Yes, sir.

Q Where?

A On the street car.

MR. LEONARD KALISCH. I think that is opening the door again to new matter.

MR. LAMBERT. Well, that is a question that I overlooked.

THE COURT. I will allow it as an omitted question.

Q How many people did you hear discuss it on the
20 street car?

A Two.

Q Did you hear what they said?

A Yes, sir.

Q Did you know them?

A No, sir.

Q What did you hear them say?

A One said to the other——

Objected to.

Objection overruled.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,

(Seal.)

Circuit Court Judge.

A One said to the other, "Do you see the second lady sitting up in front?" The other one said, "Yes." He said, "That is Mrs. Garrison that ran away with Archer." And the first speaker said, "Yes, he took \$40,000." And
40 the second one said, "Well, I hope she got part of it."

Harry R. Crane re-direct ex

Q Did you recognize the lady that they were referring to?

A Yes, sir.

Q Who was it?

A The second lady.

Q Who was it?

A That was Mrs. George E. Garrison.

Q Was there a physical culture class near your place?

A Yes, sir. 10

Q How near was that physical culture class?

A The second door.

Q Let me ask you: How long was this trolley car incident after the publication, as near as you can tell?

A Well, I don't know; it was fresh in the public's mind.

Q Well, about how long, within what time?

A I might say within two or three weeks; I couldn't say exactly.

Q Did this physical culture class purchase papers 20 from you, any of them, or come into your store?

A Well, they would just come into my place and buy confectionery.

Q Did you ever hear any discussion between any of them?

A No, I didn't.

Q Did you say that Everett Garrison was a broker?

A Everett Garrison is a broker; yes, sir.

Q Was he a broker at this time?

A Yes, sir; he lived on Lincoln avenue.

Q Now, in answer to counsel you said that Mrs. 30 Everett G. Garrison did not live at 426 Summer avenue at that time. Did you understand the question?

A I didn't understand that.

Q Did she live there at the time of this publication, in 1908 or not?

A She lived there at the time she ran away with Archer.

THE COURT. That was not the question. At the time of the publication?

MR. LAMBERT. Yes, at the time of the publication. 40

Harry R. Crane re-direct ex

Q (By the Court.) Do you remember how it was at the time of the publication?

A No, I don't remember that.

MR. LEONARD KALISCH. I did not understand him to say that at the time of this article, in 1908, she lived there.

THE COURT. He said he did not remember.

10 Q (By Mr. Lambert.) Do you remember whether Mrs. Everett Garrison lived at 426 Summer avenue at the time of the publication of this article, on November 22, 1908?

A No, sir; she didn't live there; she had gone.

Q Did she live there prior to the publication in the Call?

A Quite some time before that.

Q Do you know where she was living at the time?

A She lived at 426 when she went away.

20 Q That is not what I am asking you. Why don't you answer my question?

A At the time of the publication she did not live there; she had gone.

Q But, I say, previous to that time, previous to the time of her going away with Archer, did she reside at 426 Summer avenue?

A Yes, sir; she did.

30 Q You said on cross-examination that you had reference to the News publication in your previous testimony, the testimony in the News case. Did you have reference to the News publication alone or to the other papers also?

A I didn't quite catch that.

Q (Question read.)

A Just the News alone.

Q In your explanation with these people, with the several people that you have testified to, what explanation were you making, as to what publication, then, what you have testified to now?

40 A Well, I tried to correct it on two occasions, once when it was in the News, and the second time when it was in the Call, as to its being a mistake.

Harry R. Crane re-cross

Q Then how many times did you correct the publication in the Call?

MR. LEONARD KALISCH. If your Honor please, he has answered that; he said once.

MR. LAMBERT. Oh, no.

THE COURT. You may answer the question.

Q How many times did you correct the Call publication?

A I couldn't say how many. Having a public place and being right in the immediate neighborhood, it was common talk, and I tried to put them right on it, that there was a mistake made. 10

Q The point of the question is this: In these corrections, were you correcting the article that appeared in the News only or the article that appeared in the Call as well?

A I tried to correct both articles at the time they were published.

Q And did that on numerous occasions?

20

A Yes.

Objected to.

RE-CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q About how many years did Mrs. E. G. Garrison live at 426?

A She lived there, to my knowledge, about, I should say, for three years, anyhow.

Q Three years?

A I am satisfied of that.

Q Let me see if I can refresh your memory on that. Do you know whether she lived there in 1902?

30

A 1902.

Q 1902, 1899, 1900 and 1901, about three years—four years?

A About between three and four years she lived at 426.

Q Mrs. Everett G. Garrison?

A Yes, sir; that is right.

Q That is, up to the time she ran away?

A Up to the time she ran away.

Q With—

40

James McGrath direct

A With Archer.

Q With Archer, yes. You knew that Mrs. George E. Garrison never went away—she had not gone away—did you not?

A Sure.

Q And from what the neighbors have spoken to you, they knew she had not gone away, did they not? Did they not tell you so?

10 A No, some thought it was George E. Garrison's wife that run away.

Q Some did?

A Some did, yes.

Q But she was there all the time?

A Mrs. George E. Garrison was, yes.

JAMES McGRATH sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. McGrath, where do you reside?

A No. 1 Mechanic street, Orange.

20 Q How long have you resided in Orange?

A About fifteen years.

Q What is your business?

A Newspaper man.

Q What connection have you with the newspaper business?

A Well, messenger and distributor of newspapers.

Q And what concern are you connected with?

A The Union News Company.

Q How long have you been connected with the Union News Company?

30 A About twenty-eight years.

Q How long?

A About twenty-eight years.

Q A married man, are you?

A Yes, sir.

Q Mr. McGrath, I show you Exhibit P-1. This is a publication of the Sunday Call, November 22, 1908, second page, fourth column, headed "For Extradition of Elliott Archer," and I ask you to look at that and see if you ever saw that article before (shown to witness)?

40 A Well, it is possible.

James McGrath direct

Q Well, just glance at it.

A I couldn't say for sure; it is possible I have read it. I never read the News and I generally read the Call; that is, on Saturday I never read the News.

Q Just look at the centre part of that article—

MR. LEONARD KALISCH. I object to that method of examining a witness. Here is a witness who comes on the stand and testifies that he does not know that he read the article. 10

WITNESS. Oh, I have read the article, but I am not sure—

THE COURT. Never mind.

MR. LEONARD KALISCH. That was his testimony, that he was not sure whether he read the article or not.

WITNESS. I have read the article, but I am not sure it was the Call.

THE COURT. I am considering now what Mr. Kalisch is saying to me.

MR. LEONARD KALISCH. If he says that he read 20 the article, I haven't anything to say.

Q You read the article, then? A I am positively sure that I read it; I read it in the paper, and if it is any paper, I read it in the Call, because I never read the News on Saturday. I go to bed two o'clock on Saturday afternoon. That is the only paper I have read.

Q Did you know George E. Garrison at that time?

A Yes, sir.

Q Did you know Mrs. Garrison? A I met her once; he introduced me to her once.

Q And when was that? A Oh, it was shortly after 30 they were married, over at the Speedway.

Q You lived a long distance from them, did you not—your residence? A Yes, sir; I lived in Orange.

Q Was your wife acquainted with Mrs. George E. Garrison? A Yes, both my wife and her folks; they lived across the street from her previous to her marriage.

Q In what street, where? A In Lincoln avenue, Orange.

Q And when you saw this article, did you know whether Mrs. George E. Garrison had run away with 40

James McGrath direct

Archer or not? A Well, it kind of looked to me as if it was her.

Q What? A It kind of seemed to me it was her. I was very much impressed by the article.

Q How long did that impresson continue with you? A Well, it impressed me for some time.

Q How long was it, as near as you can tell? A Well, 10 some months afterwards I met them on Broad street——

Q Whom? A Mr. Garrison,—and he spoke to me and she walked away.

Q Was she with him? A Yes, sir.

Q Can you tell about how many months after? A Well, it was the latter part of the winter. It was a pretty cold winter, I know. I don't know exactly.

Q Did you know that she was again living with her husband prior to that time? A Well, I wasn't positive; it was gossip that she was and she wasn't; that was it.

20 Q Did you have any talk with Mr. Garrison on this occasion sime months afterwards, when you met him on the street? A No, I was always afraid to approach him; I felt ashamed to approach him; that was it.

Q How long after you saw the publication were you uncertain as to whether Mrs. George E. Garrison was the person who had run away with Archer? A I was pretty sure it was him, on account of him being such a prominent man in Newark, that there couldn't be such a mistake made.

30 Q That is, you were sure it was Archer? A I was pretty sure it was his wife.

Q Whose wife? A Mr. Garrison's wife.

MR. LEONARD KALISCH. He said something about a prominent man.

MR. LAMBERT. Well, he was talking about Archer. (Answer read as follows: "I was pretty sure it was him, on account of him being such a prominent man in Newark, that there couldn't be such a mistake made.")

40 WITNESS. I meant his wife, Garrison being such a prominent man in Newark, that I didn't think there was a mistake made, I thought it was her.

James McGrath direct

Q Was Mr. Garrison a prominent man in Newark?

A Well, he was in the neighborhood. He was quite a lover of race horses, trotting horses, and like that. I have seen him several times driving fast horses.

Q He used to be interested, did he, in race horses?

A Yes, in a horse I used to admire, Raritan Boy. It belonged to a doctor here in Newark. I met him on several occasions with that horse.

10

Q How was your impression that Mrs. George E. Garrison was the one that went away with Archer corrected and when, how long after the publication? A Well, I don't know. I always had kind of a doubt about it until I heard about his suits.

Q When did you hear about the suits? A Well, not until I heard about the News. It came around in the depot up there; Mr. McCormack told me he had a suit on with the News.

Q That was the trial? A The trial, yes.

20

Q That was in June, 1910? A I don't know when it was.

Q Up to the time of the trial until you talked with Mr. McCormack, had your mind been changed as to whether it was Mrs. George E. Garrison that had gone away with Archer or not? A Well, I don't know; I was always kind of skeptical about that.

Q Did you talk with others about the matter? A Well, I spoke to my wife and sisters about it. They were under the same impression about the matter; they didn't know whether it was her or not.

30

Q Where did you hear of it? A It was common gossip around the railroad depot; that it, the trainmen, people that knew him at that time, in the morning, going out.

Q You were accustomed to seeing Mr. Garrison in the morning on the train? A Yes, sir; every morning.

Q How many people on the train did you speak to?

A Well, not only on the train, and it was around the depot, too.

Q Well, around the depot, too? A Well, I suppose 40

James McGrath direct

there was half a dozen that worked around there nights and mornings.

Q Who corrected your impression?

THE COURT. I understood the witness to say that his impression became corrected about the time that he heard of the News suit.

Q The News suit, June, 1910; is that right? A Yes,
10 sir.

Q Who corrected it? A I don't know, any more than I heard the suit was on; I heard that he had a suit against the News, and I took it from that there was possibly a mistake made, that was his object in suing the News.

Q And that is the first you knew that any mistake had been made in the publication? A Yes, I was more convinced then that they had the wrong woman.

ADJOURNED until Thursday, February 13, 1913, at
20 ten o'clock, A. M.

Thursday, February 13, 1913.

Met Pursuant to Adjournment.

Present, Counsel as Before Stated.

JAMES McGRATH resumes the stand in behalf of plaintiff.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Mr. McGrath, you stated that you were a distributor of—

30 A Messenger and distributor.

Q Whereabouts were you employed?

A 105 Read street, New York.

Q What time would you start to distribute papers?

A Well, half-past two in the morning, around two to half-past two in the morning.

Q Are the papers out at half-past two?

A Oh, yes, they come out at one o'clock in the morning.

Q One o'clock?

40 A Yes.

James McGrath cross

- Q What time did the train leave New York?
 A 4.30.
- Q And you would start from Hoboken?
 A Yes, sir.
- Q And end where?
 A Orange.
- Q Then your route was between Hoboken and Orange?
 A Yes, sir. 10
- Q Well, if you started at four o'clock from New York, or half-past four, you would get through in about an hour, would you not?
 A We would get to Orange at 5.25.
- Q Well, that is about an hour?
 A Yes.
- Q And then you are through?
 A Well, yes, part of the work is through; that is part of the day; and then I got to go back again.
- Q Go back where? 20
 A To New York again.
- Q What for?
 A Well, to finish up.
- Q What do you mean by finishing up?
 A Why, the old papers, returned papers, unsold copies; I have got to work on those.
- Q You have to take those back?
 A Yes.
- Q And you would take those back, and get through what time?
 A About half-past nine or quarter to ten. 30
- Q (By the Court.) In the forenoon?
 A Yes, sir.
- Q (By Mr. Leonard Kalisch.) You have reference now to week days?
 A Week days; yes, sir.
- Q That is, not on Sunday?
 A No, Sundays we start a little earlier; we start Saturday nights about half-past nine.
- Q Saturday night—
 A Half-past nine; that is the beginning of Sunday 40

James McGrath cross

morning's work.

Q Saturday night about——

A Nine-thirty.

Q About nine-thirty in the evening?

A In the morning.

Q Saturday night you start——

A Nine-thirty in the evening; that is right.

10 Q And what would you do then?

A Well, we started in working on the supplements then, the supplements to the Sunday papers; that is, before the main sheets come out.

Q Well, you haven't anything to do with that?

A Oh, yes, I do.

Q You start Saturday night at nine-thirty?

A Yes, sir.

Q You would leave home at what time?

A Somewhere around half-past eight.

Q Half-past eight?

20 A Yes.

Q And then you would stay in New York?

A No, I would come right out on the train with the papers.

Q At what time?

A Well, we catch the four o'clock boat Sunday mornings.

Q On Saturday night?

A Oh, I worked all night, until the following Sunday morning.

30 Q And then you would start out Sunday morning at what time?

A We leave Sunday morning on the four o'clock boat.

Q And get through what time?

A Well, five-twenty-five at Orange.

Q You do not have to gather any papers on Sunday?

A Oh, no, I have done that.

Q Then you are through at half-past five Sunday morning?

A Yes, sir.

40 Q And go to bed?

James McGrath cross

A Well, no, I go to church and then to bed.

Q You go to church and then to bed?

A Yes.

Q And what time would you get up?

A Around half-past twelve.

Q What time would you get up on week days?

A Well, what do you mean?

Q After you get through your work.

A To start the work? 10

Q No, after you get through?

A I don't go out then until around four or five o'clock in the afternoon, and sleep until one.

Q On week days?

A Yes, sir.

Q And you distribute the News, too, do you not?

A No, we don't touch those.

Q You do not have anything to do with anything except New York papers?

A New York papers. 20

Q So that on week days you are up at five o'clock and around till nine?

A Half-past nine or quarter to ten; yes, sir.

Q Week days you would get up at five and go to work at nine-thirty?

A Yes, sir.

Q Five in the afternoon. Do you take any papers at your own house?

A Yes.

Q What papers do you take at your own house?

A The Journal and the Call. 30

Q You do not take the Evening News, eh? A Oh, yes, during the week. I thought you were referring to Sunday.

Q During the week? A Yes.

Q Do you remember reading this article in the Journal? A No, I don't remember reading the Journal. I don't read much Sundays; that is, I pick up the Call and look through the Call. I probably read the first page of the Journal, if there is anything sensational, or I read the front page. 40

James McGrath cross

Q Just the headings? A Yes, sir; unless there is something sensational, I read it through.

Q And sometimes you only read the headings in the Call? A No, I generally read the Call; I like to read the Call.

Q Sometimes you do not and sometimes you do? A I generally read the Call.

Q You read the News, do you not? A Yes.

10 Q And you read this article in the News, did you not?

A I go to bed Saturday afternoon around half-past two or quarter to three. We don't get the News until five o'clock.

Q But you do not go to work until nine? A Yes, but I wouldn't get up to read the News after it came; I wouldn't get up to read the News. I don't get the News until five o'clock, up around our way, or quarter past five.

Q You say you go to work at nine-thirty? A Yes, I go to bed around two or three o'clock Saturday after-
20 noons.

Q Is that different from any other afternoon? A Yes, I go to bed much earlier Saturday nights.

Q That is the reason you get up earlier— A Yes, sir; earlier Saturday, on account of the papers being so large.

Q But you do not go to New York until nine-thirty? A Yes, but—

Q Do you know what you read? A What?

Q In any of the papers? A Why, yes.

Q What did you read? A Well, I read—I have an
30 idea that I read that article in the Call.

Q You have an idea, but you do not know whether you did or not? A Well, if a man's life depended on it, I wouldn't want to send him away for it. I will tell you why—

Q One moment. I want to know whether, under your oath, now, you will say that you read that article in the Sunday Call? A When I take an oath, I couldn't say positively, but it is possible I did.

Q But you do not know that you did? A I didn't
40 take my oath that way.

James McGrath cross

Q (By the Court.) You say that you are not positive?

A Yes, sir; I said that yesterday, your Honor.

Q (By Mr. Leonard Kalisch.) You are not positive that you read it? A Yes.

Q Are you related to Mr. Garrison or Mrs. Garrison?

A In no way at all.

Q But you have known them a great many years?

A Yes, before he was married to his second wife.

Q Did you know his first wife? A No, I never met her. 10

Q And you knew him before he was married to his second wife? A Yes, sir.

Q You said something Tuesday about Mr. Garrison being in the horse business? A He was quite a bug on horses, trotting horses.

Q A bug on horses, eh? A Yes, sir; trotting horses. He owned one and he used to drive another one belonging to a doctor here in Newark.

REDIRECT EXAMINATION by Mr. Lambert. 20

Q You knew of this publication, however, as I understood you?

Objected to.

(Question withdrawn.)

Q The article in the Sunday Call which was shown you, Exhibit P1, published on Sunday, November 22, 1908, how soon after that paper was delivered to your house did you become cognizant that there was such a publication concerning Mrs. Garrison and Archer? A I couldn't answer that.

MR. LEONARD KALISCH. I object to the question in that form, your Honor. What he testified to was that he did not know whether he read it in the Sunday Call or or not, and unless he read it and knew what the article was, how could he become cognizant of the article in the Sunday Call? 30

(Question read.)

MR. LAMBERT. I am referring to any publication—how soon after the Call was published? He said the Call was delivered to his house on Sunday morning. I am asking him how soon after the time of the delivery 40

James McGrath re-direct

of the Call on Sunday did he become cognizant that there was some publication in any paper concerning Archer running away with Mrs. Garrison.

THE COURT. What have we to do with any paper but the Call?

MR. LAMBERT. The purpose is, if your Honor please, to try to pin the matter down and see whether we will not find out from where he got his information, whether he got it from the Call or not.

THE COURT. It seems to me that we are only inquiring as to the Call, not other articles. I think the question is too broad.

(Question withdrawn.)

Q How soon after November 22, 1908, did you hear any discussion concerning Mrs. Garrison and Archer?
Objected to.

THE COURT. Is not that also too broad? We ought to do what we can to limit our inquiry to the effect of this particular article, and exclude, as far as possible, the influence or effect of any other article.

(Question withdrawn.)

Q Did you read anything concerning Archer and Mrs. Garrison in either the New York American or the New York Sun?

MR. LEONARD KALISCH. If your Honor please, I object to that. I do not see that that has anything to do with this.

MR. LAMBERT. If your Honor please, the witness testified that he did read an article concerning it; he testified that he did not read it in the News. I am asking him, by way of elimination, did he read it in the Sun or the American?

THE COURT. You may ask that question.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

James McGrath re-direct

(Question read.)

A No, sir.

Q What?

A No, sir.

Q Did you read anything concerning either Archer or Mrs. Garrison in any paper except the Sunday Call?

MR. LEONARD KALISCH. I object to that question. The ground is that he has already testified that he has no recollection of what he read in the Sunday Call. 10

MR. LAMBERT. That is not his testimony.

MR. LEONARD KALISCH. Well, to that effect—that he is not positive that he read it in the Call.

THE COURT. I think the witness said yesterday that he had read either an article or this article.

MR. LEONARD KALISCH. There is another objection, if your Honor please. It might have been published in other papers besides the Sun and the Journal and these other two papers. His attention was only called to those two papers. 20

MR. LAMBERT. That is my question now.

(The stenographer reads from the direct examination of the witness.)

MR. LAMBERT. Well, that substantially answers the question.

THE COURT. Yes, that substantially answers the question.

MATTHEW BRADY sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert. 30

Q Mr. Brady, what is your business?

A Policeman.

Q Where?

A Newark.

Q How long have you been a policeman?

A Going on twenty-one years.

Q In what city?

A Newark.

Q In Newark?

A In Newark. 40

Matthew Brady direct

Q And in 1908, where were your duties at that time?

A The D., L. and W. depot.

Q In Newark?

A Yes, sir.

Q Where do you reside?

A 39 North Third street, Roseville.

Q That is Newark, is it not?

A Yes, sir.

10 Q Do you know George E. Garrison?

A I do.

Q Do you know Mrs. George E. Garrison personally?

A No, only just to see her at the trial of the News.

Q You were a witness at that trial, were you?

A Yes, sir.

Q Now, I show you Exhibit P1, the Newark Sunday Call, Newark, New Jersey, published November 22, 1908, headed "For Extradition of Elliott Archer," and ask you if you saw that article?

20 A I don't remember seeing it in the Call; I don't remember reading the Call.

Q You do not remember reading it?

A No.

Q If you glanced at that article could you refresh your recollection, do you think?

Objected to.

A No, I don't think I could because I think I am almost sure that I didn't read it in the Call; I am sure I didn't read it in the Call, because I didn't read the Call after the publication I saw the News.

30 Q Do you know Mr. Walsh and Mr. McCormack?

A I do.

Q What was Mr. McCormack's business in 1908?

A Night station master.

Q Where?

A The D., L. and W. depot.

Q In Newark?

A Yes, sir.

Q What was Mr. Walsh's business?

A He works at the cutlery business.

40 Q For whom, do you know?

Matthew Brady direct

A Bannister is the man's name, Mr. Bannister, but I don't know his initials.

Q Do you remember having a conversation with Mr. Walsh and Mr. McCormack at the station about November 22 or 23, 1908, concerning Archer and Mrs. Garrison?

A Yes.

Q Now, just state what conversation you had.

MR. LEONARD KALISCH. Well, I object to that. 10
I do not see what connection that has with any previous testimony given by the witness regarding the Sunday Call.

MR. LAMBERT. By this witness?

MR. LEONARD KALISCH. Yes.

MR. LAMBERT. It hasn't; I haven't asked him anything about it yet.

THE COURT. The question that suggests itself to me is that the conversation, although it may have related to Mr. Archer and Mrs. Garrison, may not have related to the publication in the Call, and the question, therefore, in asking for a general conversation on those subjects, may draw out an answer that the Court would have to either restrict or strike out, if it were not limited to the article in the Call or to the effect of that article. 20

MR. LAMBERT. I am asking this, if your Honor please, in view of the testimony of Patrick J. Walsh, who testified that he read this article in the Call and that he had a conversation with this witness and with Mr. McCormack very shortly after the publication in the Call. 30

THE COURT. Yes, Mr. Walsh said he read it.

MR. LAMBERT. Yes, and he also said that he conversed with this witness and Mr. McCormack about it.

THE COURT. You may go on. If the conversation relates to the article in the Call, it is competent; if it does not, it will have to go out.

Q Just state the conversation that you had with Mr. Walsh, as near as you can. 40

Matthew Brady direct

MR. LEONARD KALISCH. I desire to take an exception to the question as it now stands.

THE COURT. Well, if you insist on your objection to the question as being too broad, I shall sustain your objection.

MR. LEONARD KALISCH. That is my objection; I insist upon that as being too broad.

10 THE COURT. Mr. Kalisch wants the question limited to the Call article. I think that is right. The objection is to the question, and as Mr. Kalisch has made the objection, I feel bound to sustain it.

(Question withdrawn.)

Q Did the conversation between you and Mr. Walsh and Mr. McCormack relate to the article published in the Sunday Call about Archer and Mrs. Garrison?

A Walsh told me that he read it in the Call also, as well as in the News. That was on Monday or Tuesday, I think, he said that to us, and he said it was published
20 in the Call as well as in the News, and he said that he thought it was Garrison's wife.

MR. LEONARD KALISCH. I move that that be stricken out.

THE COURT. Strike out the last. It is not strictly an answer to the question. You are entitled to anything that Mr. Walsh said about the Call article.

Q Now, state all that was said at this interview.

A That is all I remember of the conversation.

Q Just restate all that was said?

30 A All that was said?

Q All that was said, as near as you can tell.

A Well, we all thought it was Garrison's wife. That is all I know that I could state as far as the conversation was with him. And he told us that it was published in the Call, and he had read it in the Call.

MR. LEONARD KALISCH. I ask your Honor to strike that out, what he said, that "we all thought it was Garrison's wife," and that he read it in the Call and News.

40 THE COURT. Any conclusion of that kind derived

Matthew Brady direct

from the Call article is competent, and again in connection with the fact that it was read in the Call. I think the two statements may go together. He read the article in the Call and he drew a certain conclusion from it.

MR. LEONARD KALISCH. That is not the language that he employed here, your Honor; he said "we all thought." He can not testify to what the others thought. 10

THE COURT. No, he can testify only to what they said. If you want to strike it out on that ground, I will sustain your objection.

MR. LEONARD KALISCH. Yes, sir.

MR. LAMBERT. That is, where he said "we thought"?

MR. LEONARD KALISCH. "We all thought."

Q Just state the substance of the conversation that you had that brought you to your conclusion as to whether this was Mrs. Garrison that went away with Archer or not—the substance of the conversation, if you can not remember the exact conversation. 20

MR. LEONARD KALISCH. That is rather broad, your Honor, I think.

THE COURT. Perhaps it is. I think the question ought to be as to what was said about the Call article in this conversation.

(After further argument the question is withdrawn.)

Q Did your conversation with the other two gentlemen relate specifically to the Sunday Call, and if so, what was said in that connection? 30

A Well, I just told what was said about him reading it in the News—he read it in the Call—the story in the Call. I don't remember having any conversation outside of that over the case whatever.

Q (By the Court.) You are speaking of Mr. Walsh now, aren't you?

A Yes, your Honor.

Q (By Mr. Lambert.) Now, I ask you, did your con- 40

Matthew Brady direct

versation refer especially to the Call?

A Yes.

Q Now, state what the conversation was. A. That he had read it in the Call; he said he read it in the Call and that it was almost the same story, or the same story, that he had read in the News. I am not sure which he said now.

10 Q Now, what did he say was his judgment as to whether it was true or otherwise concerning Mrs. Garrison going away with Archer?

MR. LEONARD KALISCH. I object to the question, on the ground that he is asking this witness to state what Mr. Walsh's judgment was.

THE COURT. That is Walsh's statement. We have gone all over that. I will admit it.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

20

FREDERIC ADAMS,

Circuit Court Judge.

(Seal.)

(Question read.)

MR. LAMBERT. Whether he belived the story or not.

A He said he thought it was Mrs. Garrison, on account of what he read in both papers.

Q What did Mr. McCormack say, if anything, concerning his opinion in the matter?

30 MR. LEONARD KALISCH. I object to that also on the same ground.

THE COURT. In the first place, we want to learn what Mr. McCormack knew about the Call article, if anything.

Q Did Mr. McCormack state whether he read the article in the Call or not? A No, Mr. McCormack didn't say he read it in the Call; he said he didn't see the Call, he didn't read the Call.

Q Well, did he state his belief as to whether Mrs. Garrison had gone away with Archer or not?

40 Objected to.

THE COURT. There is no foundation laid for that, if he did not read it in the Call.

(After argument.) Well, I might agree with you if you first exclude the idea that Mr. McCormack had heard of it anywhere else; that is, in any other paper—any other source of original information. As the case stands, I think the question is objectionable, without denying what you say.

(Plaintiff's counsel prays an exception.)

Q How long did you continue of the belief that it was Mrs. Garrison who had gone away with Archer? 10

A Well, three or four days, I think it was, or three or four nights—three or four days afterwards; it might be, maybe, longer than that; I am not sure; and then Mr. Garrison—

Q Which Mr. Garrison? A This gentleman.

Q Mr. George E. Garrison? A Yes, sir. He explained that it was not his wife, that it was another Mrs. Garrison that went off with Archer.

Q Where did he explain that? A Down at the depot, when he was there talking—before he took the train. 20

Q And who was present? A Mr. McCormack, myself and Mr. Walsh.

Q How did that conversation come up, how did he happen to explain? A Well, Mr. McCormack said to Mr. Garrison, "I see they have got Archer—"

MR. LEONARD KALISCH. I do not see how that is material, your Honor, in this matter.

THE COURT. I think the fact that the impression was removed at that time by a statement made by Mr. Garrison is competent. I doubt whether anything more than that bare fact is relevant. 30

MR. LEONARD KALISCH. That is what I want to state.

MR. LAMBERT. It seems to me, if your Honor please, that any conversation held between these gentlemen before Mr. Garrison came up showing their belief that Mrs. Garrison had gone away with Archer— 40

Matthew Brady cross-ex

THE COURT. I did not understand that you asked for that.

MR. LAMBERT. I am asking him for the conversation. That simply leads up to what Mr. Garrison said. I think we are entitled to all the conversation had between these gentlemen at that time, just previous to the conversation with Mr. Garrison, and the conversation had when Mr. Garrison was there.

10

THE COURT. You have the fact that this impression was created and that it continued up to that time, and that it was removed by Mr. Garrison's statement. I think that is about as far as you can go.

Q Did you ever hear anybody else talk about the incident of Mrs. Garrison going away with Archer?

A No.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Mr. Brady, you were a witness in the trial against the News, were you not? A Yes.

20

Q You read the articles in the News, did you not?

A Yes.

Q And you formed an impression then, did you not?

A Yes, I thought it was Mrs. Garrison.

Q When you read the News? A After I had read the News.

Q Now, you read in the News both the article of November 21st and the article some four or five days afterwards that was published in the News—two articles?

A Yes.

30

Q And, of course, you did not know Mrs. Garrison?

A No, I did not.

Q And you testified in that case, page 35, against the News, to the question by Mr. Lambert: "When you saw this publication, these two publications in the News, what impression did that have upon your mind as to Mr. Garrison's wife, whether she was the person who had gone away with Archer or not?" and your answer was: "Well, I thought it was Mrs. Garrison; I thought it was George Garrison's wife." You remember that, do you

40

not? A Yes, sir.

George McCormack direct

Q And the question: "How long did that impression continue with you? Answer: Until, well, just about four or five days afterwards, I would not be sure how long it was, until Mr. Garrison made the explanation that that was not his wife, that it was another Mrs. Garrison that was off with Archer." Now, that is the conversation that you had there at the depot. That had reference to what you had read in the News, had it not? A With Mr. Walsh and—

10

Q With Mr. Walsh and the other gentlemen? A Not after Walsh had read—

Q No, I mean what you had in mind. A Oh, yes, that was—

Q That was in relation— A In regard to the News.

Q What you had read yourself in the News? A What I had read myself in the News.

Q You had not read it anywhere else? A No, I didn't read it in the Call or no other paper.

Q And on page 37, to the question: "So before December 4th you had learned that the newspaper story was a mistake, the first newspaper story?" your answer was, "Yes." That is right, is it not? A Yes.

20

GEORGE McCORMACK sworn in behalf of the plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. McCormack, what is your business? A Station master, D., L. & W., night station master.

Q And how long have you been in the employ of the D., L. & W.? A Going on ten years.

30

Q At the Broad street station?

A Yes, sir.

Q And is Mr. Brady the station officer there?

A Yes, he has been there for a number of years; I couldn't tell you for how many years.

Q Do you know Mr. Patrick J. Walsh?

A Yes, sir.

Q How long have you known him?

A Who, Mr. Walsh?

Q Yes.

40

George McCormack direct

A Well, I couldn't tell you how many years; six or seven years, anyhow, or maybe eight years.

Q Do you know Mr. George E. Garrison?

A Yes, sir.

Q Do you know his wife, Mrs. Rose Garrison?

A I do not, only just to see the lady, that is all.

Q I show you Exhibit P1, an issue of the Sunday Call of November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you if you saw that article (shown to witness)?

A No, sir; I did not.

Q You did not see the article?

A No, sir.

Q Did you have any conversation with Mr. Walsh concerning the article which he had read in the Sunday Call?

A I had a conversation there one evening. I didn't know what was in his mind, or anything else, about this conversation, whether it was the News or the Call, when he spoke to us—that is, to Mr. Brady and I; I didn't know whether it was the News or the Call.

Q That is, you did not know?

A I didn't know.

Q Except what he said?

A Only just what he said.

MR. LEONARD KALISCH. I object to that line of examination. It is leading all the way through.

THE COURT. I sustain the objection.

Q What did he say, if anything? What did Mr. Walsh say?

A Just what we thought of it.

Q Well, what did he say?

A I didn't know whether it was the News or the Call.

Q Well, what did Mr. Walsh say?

A That I couldn't tell you, it is so long ago.

Q Tell us the substance of it. You can not recollect exactly, of course, but what was the substance?

A Well, we thought it was Mrs. Garrison. We were talking about it there, and he thought it was Mrs. Gar-

George McCormack direct

ri-son. I said—I didn't say anything at the time; I kept quiet; I waited for a while to find out what he was talking about. He said it was Mrs. Garrison; I said I didn't know.

Q Do you recall whether he mentioned the Sunday Call or not?

A He didn't mention no paper whatever, as I said before; he mentioned no paper whatever.

Q Well, what was he talking about, then? 10

A He was talking about this case at the time.

Q (By Mr. Leonard Kalisch.) The other case, you mean?

A What other case?

MR. LAMBERT. No, that is not true.

(Question and answer read.)

WITNESS. He was talking about the case of Mrs. Garrison.

Q (By Mr. Lambert.) Well, what did he say, what was said? 20

A He wanted to know what we thought of it, and I said I thought it was her at the time. I didn't know what paper, though, it was that he was talking about. I didn't see it in the Call, but I saw it in the News.

Q Well, did you hear him say whether or not he saw it in the Call?

A I did not; no, siree; I did not; no, sir.

Q Were you present a few days later when Mr. Garrison came into the station and made an explanation? Were you present at that time?

A At the station? 30

Q Yes.

A I was; yes, sir.

Q And who was there then besides you?

A Mr. Walsh, Mr. Brady and myself.

Q And what explanation was made, what was said, as near as you can tell—the substance of it?

A On the substance of that?

Q Yes.

A That was the News.

Q What? 40

George McCormack direct

A That was the time of the News.

THE COURT. No, the time Mr. Garrison came in.

Q A few days later, when Mr. Garrison came in and made an explanation, what was said?

A Why, I was sitting at the desk reading the paper—it is very seldom I have time to look at a paper. You know what it is in a railroad station—I hadn't
10 much time to look at it, and I just turned around to the other people there—there was the two of them was there, that is all, Walsh and Brady and myself—and I said, "I see they caught Archer——"

Q Was Garrison there?

A No, sir; Mr. Garrison wasn't there then, but just come in as I mentioned the word. And he said, "Yes, and they got me, too."

Q Who said that?

A Mr. Garrison. Then it brought up the whole thing in our mind, and then he explained it to us.

20 Q And what did he say?

A Why, he told us that his wife was accused of going away with this Archer.

Q What else did he say?

A That is all I can remember.

Q Did he tell you whether it was true or not?

A Sir?

Q Did he tell you whether it was true or not?

Objected to.

A He did so, told us right straight that it wasn't
30 true.

MR. LEONARD KALISCH. I object to that question.

THE COURT. I think it is proper to say that an impression was removed by a statement of the husband.

MR. LEONARD KALISCH. I object to the manner in which the question is put: "Did he tell you whether it was true or not?"

THE COURT. You object to it as leading, I suppose. I sustain your objection on that ground.

40 Q What did he say about it? What did he say con-

George McCormack cross ex

cerning the fact, if he made any statement about Mrs. Garrison going away with Archer?

A He said it wasn't so, that is all. We didn't want to put no questions to the man.

Q How many days was this after the conversation?

A After the first conversation?

Q After the first conversation you had with Walsh and Brady. How many days after was this?

A About four days, to my best—

10

Q Up until the time that Mr. Garrison made the explanation, what was your belief concerning the truth of this statement?

MR. LEONARD KALISCH. I object to the question. The witness testified that he did not see it in the Call, and he further testified—

THE COURT. And that he did see it in the News.

MR. LEONARD KALISCH. He testified that he was talking about the News.

20

THE COURT. He said he saw it in the News.

MR. LEONARD KALISCH. Yes, sir.

THE COURT. He did not see it in the Call. I do not think his conclusions founded on the article in the other paper are relevant here.

(After further argument.) Taking the testimony as it stands, I do not think there is sufficient foundation for your question. I sustain the objection.

(Plaintiff's counsel prays an exception, and the same is allowed.)

30

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q What is your name?

A George McCormack.

Q Just before Mr. Garrison came into the station, where you were reading a paper, you were then reading—

A I was what, reading?

Q Yes.

A Oh, no, I never have no time to read a paper.

Q Well, then, while you looked up—you were sitting 40

George McCormack cross ex

at the desk, and you looked up and said, "I saw they caught Archer——"

A I had thrown the paper to one side.

Q You had a paper, then?

A Yes, sir.

Q And that was the Evening News?

A That was the Evening News.

Q What I want to get at is, you had read that in the
10 Evening News?

A Yes, I read it.

Q And when you looked up to these two gentlemen, Mr. Walsh and Mr. Brady——

A No, they were right alongside of me.

Q They were alongside of you. And then you said, "They have caught Archer"?

A Archer, yes.

Q You had reference then to what you had just before that read in the News, had you not?

20 A Certainly.

Q And then the conversation took place about whether it was George Garrison's wife or not; wasn't that right?

A That is right.

RE-DIRECT EXAMINATION by Mr. Lambert.

Q You had the News—you were reading the News at the time?

A Just thrown it to one side, laid it to one side.

Q And that was at the second conversation in the
30 station, when Mr. Garrison came up?

A The second conversation?

Q Was it, or was that the first conversation?

A No, we were talking before.

Q This was before?

A No, I hadn't seen Mr. Garrison until I saw Mr. Archer was caught, and I threw the paper one side, and I said, "I see Archer is caught;" and I had it in my mind at the time that it was Mr. Garrison's wife, and when I spoke, just at that time Mr. Garrison came in, and then
40 he explained it to me.

Q That was the second conversation that occurred in the station, not the first conversation that you have testified to, when Mr. Brady and Mr. Walsh were there, but the second time, a few days later?

A I couldn't tell you at the time I saw it. I couldn't tell you whether it was two or three conversations before Mr. Garrison explained it to us.

Q But you have testified to two conversations.

A Yes. 10

Q The conversation that you are testifying to now, was that the first or second conversation?

A Both of them.

Q No, when you laid the News down, when you read it and threw it down?

A That was the conversation when he explained to me who it was.

Q Then that was the first conversation?

A Yes, sir.

RECROSS-EXAMINATION by Mr. Leonard Kalisch. 20

Q What other conversation did you have?

A What about?

Q About this matter?

A I had no other, only the once.

Q This was the only conversation that you had, which took place that night; isn't that right?

A The two conversations that we had in the station.

Q All that same night, was it not?

A That was it.

Q Counsel wants you to say that you had two conversations. 30

A I had the conversation till it was explained to me who it was, and I believed it was George E. Garrison's wife.

Q And that was the same night, was it not?

A I believe it was. It is too long ago. I have got too much on my mind to bother about things of that kind.

FURTHER DIRECT EXAMINATION by Mr. Lambert.

Q In answer to Mr. Kalisch, do I understand you to 40

George McCormack re-direct

say, then, that you never talked with Brady and Walsh before Mr. Garrison came in on an occasion prior to that some days?

A I told you that before.

Q But you told Mr. Kalisch now that you had but one conversation all together.

A Oh, well, now, say, when men are together, you know what it is to talk.

10 Q Just answer the question. I understood you first to say that Mr. Brady and Mr. Walsh and you talked the matter over when there was some first publication, and then some few days after Mr. Garrison came in and explained. Now, I understand from Mr. Kalisch's question to you and your answer—I do not think you understood it—that you only had one conversation, and that was all at one time, and that was the time that Mr. Garrison came in. Am I correct about that?

A Well, you know what it is to talk—

20 Q Don't you understand me?

A I undersand it good enough, as well as you are putting it to me.

Q (Question read).

A It is not correct, because I told Mr. Kalisch and Mr. Lambert both that we talked about it before, and Mr. Garrison when we were talking—when I read the paper and saw that Archer was arrested, I says, "Here, I see that Archer is arrested." Now, we must have been talking about it before when I told them that.

30 FURTHER CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Well, you read it more than once—you read two publications in the News, did you?

A I read it in the paper—saw it in the paper. We must have been talking about it before, when I saw it in the paper the night that Mr. Garrison came in and explained it, and I said, "I saw Archer was arrested."

Q That is the time that Brady and Walsh were there?

A That was the night Brady and Walsh was there.

40 Q Were they there any other night when you read a paper and said that?

George McCormack re-cross

A They was not, because when I read I read to myself; I don't read to the whole—

MR. LEONARD KALISCH. That is all.

FURTHER DIRECT EXAMINATION by Mr. Lambert.

Q Were they there a night previous when you were not reading a paper and talked the thing over?

Objected to as leading.

10

A They are there every night.

THE COURT. I think it is a proper question, because your question introduced the idea of his reading the paper as one of the features of the situation. I think it is proper to ask the question that is now asked.

(Question and answer read.)

Q You have testified in answer to Mr. Kalisch that they were there when you were reading the paper and Mr. Garrison came in immediately after, and that was the only night when they were there when you were reading the paper. Now, I ask you whether previous to that the other two gentlemen were there and you talked with them when you were not reading a paper?

20

A Certainly I talked with them; I can't be dumb.

FURTHER CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Was it about this case?

A No, sir.

Q Nothing at all to do with Archer and the rest, was it?

30

A Only that night.

Q Only that night?

A Yes.

FURTHER DIRECT EXAMINATION by Mr. Lambert.

Q Well, now, you do not understand—

MR. LEONARD KALISCH. I want to make an objection to the Court. This is the plaintiff's witness, and I think it is going a great ways if the plaintiff's counsel is allowed to keep putting leading questions to the witness

40

George McCormack re-direct

for the purpose of explaining his cross-examination.

MR. LAMBERT. When counsel for the defendant is misleading the witness?

THE COURT. I think the effort of the examination is to find out what the witness wants us to understand. I will not interfere with it. I think it is a matter of very little consequence. We have had direct examination and cross-examination, and recross and redirect, and re-redirect and re-recross, and so on. Now, I think we have
10 gone far enough.

Q Well, Mr. McCormack, now, either you are mixed or we are mixed.

A. How is that?

Q Well, that is what I want to find out. Now I ask you this question: Did you talk at the station with Brady and Walsh about Mrs. Garrison going away with Archer on but one occasion or on two occasions; which, one or two?

20 A I would say only the once. I don't know—I didn't know of it until I saw it in the paper. I didn't know Mrs. Garrison.

BY THE COURT.

Q I think you get off the question. The question is whether you talked with these gentlemen at the station once or more than once—whether you three talked about this matter once or more than once?

A That is a hard question to answer.

Q It is all a question of your recollection; it is for you to say what your recollection is.
30

MR. LAMBERT. I will not pursue the matter further, your Honor.

HENRY C. HINE sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Hine, where do you reside?

A Livingston, Essex county, New Jersey.

Q And what is your business?

A Steam fitting.

Q Were you a steam fitter in 1908?

40 A I was.

Henry C. Hine direct

Q And in whose employ were you?

A W. M. Whitlock.

Q Newark?

A Yes.

Q I show you Exhibit P1, an issue of the Newark Sunday Call, under date of November 22, 1908, the second page, fourth column, and ask you to look at the article at the head of that column, "For Extradition of Elliott Archer," and ask you if you read that article 10 (shown to witness)?

A I did.

Q Where were you residing at that time?

A Livingston, New Jersey.

Q Did you take the Call?

A No, sir.

Q Where did you read the article?

A I borrowed the Call from a neighbor and read it that Sunday in my home.

Q The Sunday it was published? 20

A Yes, sir.

Q Did you know Mr. George E. Garrison?

A Not previous to this time.

Q Did you know Mrs. Garrison?

A Not previous to this time.

Q You mean to November 22, 1908?

A Yes, sir.

Q Did you know where Mr. Garrison resided?

A This time only.

Q Did you have occasion to see Mr. Garrison, or was Mr. Whitlock doing some work for Mr. Garrison at that 30 time?

A Yes, sir.

Q What was he doing?

A Installing a heating plant in his house.

Q Which house?

A I can't designate the difference in the number, but it was the house adjoining the one he was living in. He owns two houses together there. He was not living in the one I was working in.

Q And who was with you? 40

Henry C. Hine direct

A A helper.

Q At the time you read the article did you believe that Mrs. Garrison was the person who had gone away with Archer?

A Yes, sir.

Q How long did that opinion continue with you?

A Over a year, nearly two years.

10 Q You did not get acquainted with Mrs. Garrison, then, while you were working—

Objected to.

Q Did you get acquainted with Mrs. Garrison while you were doing that work?

A I did.

Q Well, she was in the house, was she, next door to where you were working?

A Yes, sir; came in every day while I was doing my work.

20 Q And then while you were working there were you of the opinion that it was she who had gone away with Archer?

A I was.

Objected to as leading.

THE COURT. It is already answered. He said he continued of that opinion for nearly two years. Necessarily, therefore, he was of that opinion while doing this work.

Q How was this opinion corrected?

A By Mr. Garrison seeing me in connection with the trial of the News.

30 Q Two years ago?

A Yes, sir.

Q And did you know that it was not Mrs. Garrison who had gone away with Archer until he saw you about that trial?

A I did not.

Q You were subpoenaed, were you, as a witness in the trial against the News?

A I was.

40 Q Whom did you talk with, if anybody, about the matter?

Henry C. Hine direct

A Mr. and Mrs. Caldwell, in the house, the tenant in the house where I was working.

Q That is, in the Garrison house?

A Yes, sir.

Q And what conversation did you have with them about it and when was it?

A The Monday following the publication.

Q In the News?

A In the News. 10

Q That would be the 23d of November, 1908. Just state the conversation that you had with them about what you saw in the Call.

A I was upstairs in Mr. Caldwell's apartments. Both Mr. and Mrs. Caldwell were present. The question was asked, "I wonder if it could be possible that this was Mrs. Garrison?" And in the conversation the impression left with both of us was that it was Mrs. Garrison. Mr. Caldwell said that they had little dealings with Mrs. Garrison, she collecting the rent from them occasionally, but afterwards Mrs. Caldwell would have less to do with Mrs. Garrison. 20

Q Did you talk with anyone else besides Mr. and Mrs. Caldwell?

A My helper.

Q And who was that?

A Mechanics working with mechanics oftentimes don't know their names. This one I called Will. He was with me quite a short time. Neither Mr. Whitlock or I knew his last name; neither could remember his name. 30

Q Did you talk with Mr. Whitlock about it?

A No, sir.

Q Or anyone else?

A Well, in the restaurant we talked, a number of us, at the table the next day.

Q How many at the table?

A A number of small tables; about eight or ten there.

Q How many days was that after November 22, 1908?

A The next day following. 40

Henry C. Hine direct

Q Do you know the people with whom you were talking?

A No, sir.

Q Strangers to you, were they?

A Yes, sir.

Q What did you hear? What was the subject of the conversation?

10 A The subject of the conversation turned on the case of Archer, the extradition of Archer.

Q Well, what opinion was expressed, if any, by any of those people?

A The question arose, could it possibly be about Mrs. Garrison? My working there, I mentioned Mrs. Garrison's name several times, and I quoted the opinion that, being in the News and in the Call both, it must be well founded in fact, or the papers wouldn't have published it.

Q Was any correction made at that time as to whether it was Mrs. Garrison or not by anyone present?

20 A No, sir.

Q (By the Court.) You mean at that table?

A At that table.

MR. LAMBERT. At that table, on that occasion, yes; that is, on Monday, the 23d.

Q Were you in the same restaurant after that?

A Yes, sir.

Q Did you hear anyone on other days after that talk about the matter?

A No, sir.

30 Q Have you heard anyone else talk about the matter, excepting at the restaurant, and Mr. and Mrs. Caldwell and your helper, anyone else that you can recall?

A Up to the present date?

Q No, up to the time when the correction was made, when Mr. Garrison subpoenaed you for the last trial?

A No, sir.

Q How many days did you work there prior to this Sunday?

A About three or four days; I don't remember exactly.

40 Q Did you see Mrs. Garrison during those days?

Henry C. Hine direct

A I would see her every day, and Mr. Garrison not getting up until a late hour of the day, she would inform me as to any changes or any particular location where my work was to be installed in the house.

Q From what you saw of Mrs. Garrison on those occasions, those three or four days before this article was published, did you notice whether there was anything disturbing her mind or not?

A She was very cheerful and could show me very plainly what she wanted done as to the location of the radiators, where she wanted them put. They had hot air in it, and locating radiators, they would be located in different places from where hot air would, and she was very clear and distinct as to where she wanted them put. 10

Q Did she exhibit any worriment of mind?

MR. LEONARD KALISCH. I object. It is leading and it is in contradiction of what the witness answered to the previous question. 20

THE COURT. Perhaps he did not answer fully. He said she talked intelligently about hot air.

MR. LEONARD KALISCH. Yes, he said first she was very cheerful, and then that she talked intelligently and explained everything about where the radiators should be placed and did all the work in the place of her husband. Now the question of counsel is whether she exhibited any worriment. I claim that that is leading.

THE COURT. Yes, it is leading, but the counsel had already asked a general question, and got an answer about one kind of hot air. Now, perhaps he wants to specify, to direct the witness's attention, not to Mrs. Garrison's attention to business details, but what the question asks; that is, to worriment of mind, whether there was any indication of that character. As the general question was asked, a specific question may now be asked. 30

Defendant's counsel pray an exception to this ruling of the Court. 40

Henry C. Hine direct

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

(Question read.)

A She did not.

Q Did you do some work in this same house, putting
10 in a radiator, in 1910?

A I think the year is wrong.

Q Well, when was it?

A I did work last year.

Q (By the Court.) 1912?

A 1911.

MR. LAMBERT. The year before.

Q (By Mr. Lambert.) Did you see Mrs. Garrison at
that time?

A I did.

Q How many days were you working there then?
20

A Two days.

Q What did you observe, if anything, concerning
Mrs. Garrison's mind at that time?

A Well, when I got to the house I had to ascertain
what the description of the work was to be done. I was
sent there for general work, no definite statement, and I
had to wait until Mrs. Garrison could appear and tell me
where the work was to be done. She referred to my judg-
ment as to the location of it, tried to determine which of
two places to locate the radiator, and finally she had to
30 give up and withdraw from it and leave the room.

Q Why?

A She wasn't able to positively determine which of
the two places she would have it put in.

Q How did her mind appear to you at that time?

MR. LEONARD KALISCH. I object to the question.
Last year, I understand, you are talking about.

MR. LAMBERT. 1911.

THE COURT. There is a sense in which it might be
40 understood in which it is a proper question: whether she

Henry C. Hine direct

showed agitation of mind. If she did, it goes for nothing, unless it is connected, of course, with the publication. I think, if the witness will understand the question in that sense, he may answer it.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

10

(Seal.)

(Question read.)

A I can't describe her mental condition, except as to the location of that particular radiator, trying to tell me where to put it and couldn't determine, spoke slowly and couldn't get the words through her mouth.

Q Did she exhibit any worriment of mind?

Objected to.

THE COURT. I will allow it now. I think there is 20 foundation enough for it.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

THE COURT. You may answer that question yes or no.

A Yes, sir.

30

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q I understood you to say, Mr. Hine, that you did work there at the house of Mr. Garrison in 1908, in November?

A What is that, sir?

Q That you were doing the heating arrangements for Mr. Garrison's house in November, 1908; is that correct?

A Yes, sir.

Q And the number of the house was 436½, was it not?

A Yes, sir.

40

Henry C. Hine cross ex

Q He lived at 436, and the house that you were working at was next to the one he was living in?

A Yes, sir.

Q Now, you were a witness, I understood you to say, in the case against the News; is that right?

A Yes, sir.

Q And that was two years ago, about; do you remember that?

A Yes, sir.

Q June, 1910, was it not?

A Yes, sir.

Q And in that case you testified that you read two articles in the News, did you not?

A No, sir.

Q Did you not testify to that?

A I testified I read one article in the News.

Q Only one?

A Yes.

Q You testified that you only read one, eh? Is that true?

A Yes, sir.

Q And do you know when you read that?

A The day of publication.

Q Do you know the date?

A Yes, sir.

Q When was the date?

A Saturday, November 21st.

Q November 21, 1908?

A Yes, sir.

Q Did you read your testimony that you gave in the case against the News any time this week before you went upon the stand?

A Yes, sir.

Q A transcript of your testimony that you gave in the News trial?

A Yes, sir.

Q That was read to you, was it?

A Yes, sir.

Q Let me call your attention, then, to the question that was asked you at that trial: "I show you the New-

Henry C. Hine cross ex

ark Evening News, marked Exhibit P1, last column, first page, and ask you if you ever saw that article?" and your answer was, "I did." Do you remember that?

A Yes, sir.

Q "Question: I also show the News of November 25, 1908, headed 'Will Cross Continent for Edward A. Archer,' and ask you if you saw that?" and your answer was, "I did." Now, you stated a moment ago that you only saw one article. Now, were you correct when you testified in the case against the News or are you correct now, which is it? 10

A I was correct at the time I testified as to the News; it was fresh in my mind then.

Q Then you did see two articles?

A Yes.

Q Did you read all your testimony?

A No, sir.

Q This transcript?

A No, sir. 20

Q How much of it did you read?

A I was asked by one of the witnesses as to a remark, and I took a look at it on that occasion; I didn't read it all; I looked it over to see what the remark was that was made by Mrs. Caldwell. That is all I had occasion to read it.

Q So that you could testify to what she said, eh?

A She didn't say anything.

Q Well, what she had testified at that time. Now, you said that you had read the article in the Sunday Call? 30

A Yes, sir.

Q Do you recollect what the article in the Sunday Call was?

A No, sir; not in detail.

Q Well, what did it say generally?

A In connection with the Archer case and Mrs. Garrison?

Q No, give me, as near as you can remember, what you read with reference to Mrs. Garrison in the Sunday Call? 40

Henry C. Hine cross ex

THE COURT. No, the witness is not obliged to consult his memory as to a portion of a printed document. The rule is to show him the document.

Q You knew Mrs. Garrison while you were working there?

A Yes, sir.

Q And she directed you a great deal in the work that you were to do?

10 A Yes, sir.

Q I am speaking now of 1908, around November.

A Yes, sir.

Q Now, I will show you this article (shown to witness). I call your attention to the article in the Sunday Call, Exhibit P1, the second page of the paper, the fourth column, an article headed "For Extradition of Elliott Archer." That article is about how long on the page?

A Less than half a column.

Q Now, I call your attention to that part of the article which reads, "At the time of his arrest Archer is
20 alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue." That was not the same house that you were working at, was it?

A No, that number wasn't.

Q Nor the one next to it?

A No, sir.

Q And you knew Mr. Garrison, George E. Garrison, did you not?

A Yes, sir.

Q And this article also said, "Who, it is said, deserted
30 her husband, a broker." You knew that Mr. Garrison was not a broker?

A I knew nothing of Mr. Garrison's business whatever until the date of my work there.

Q Well, you knew he was employed in New York on a newspaper, did you not?

A No, sir; I didn't know the newspaper end of it; I knew he was employed in New York. Further than that I knew nothing.

Q You testified a moment ago that this impression
40 that you had obtained by reading the News and Call, I

Henry C. Hine cross ex

presume—was it not?

A Yes, sir.

Q —Continued for two years before it was removed?

A Approximately two years.

Q Of course, your impression was caused, to some extent, by the two articles in the News, too, was it not?

A Yes, sir.

Q Now I call your attention to the question asked you at the trial against the News: "How long, Mr. Hine, did you continue of the opinion that Mrs. George E. Garrison here, the plaintiff, was the person who had gone away with Archer?" and your answer was, "Until within sixty days." Is that right? 10

A Yes, sir.

Q Now, you were working there in 1908?

A Yes, sir.

Q And while you were working there you said something about Mr. and Mrs. Caldwell? 20

A Yes, sir.

Q And in that conversation did they not say that that was not the Mrs. Garrison?

A No, sir.

Q Are you sure about that?

A Yes, sir.

Q They lived in the house, did they not?

A Yes, sir.

Q While you were working there?

A Yes, sir.

Q Do you mean to say that Mr. Caldwell said that this was the Mrs. Garrison that ran away with Archer, or went away with Archer? 30

A He didn't say it was; he said if it was.

Q He said if it was. Did not Mrs. Caldwell say at that time that he thought it applied to Mr. Garrison's former wife?

A Not at the time of the conversation with me; no, sir.

Q Well, you only had one conversation?

A Only one conversation. 40

Henry C. Hine cross ex

Q Now, on the trial against the News you were asked, "Do you remember hearing anyone else outside of these ten or a dozen at the restaurant?" and did you answer, "No, sir?"

A No.

Q I ask you whether you remember answering that way at that time. You do not remember it?

(Question read.)

10 A I will qualify that question. Does the question mean whether I remember anyone else talking to me at that time or——

BY THE COURT.

Q Do you remember giving that answer at the trial?

A Do I remember giving that answer at the trial?

Q Yes.

A Yes, I remember giving the answer.

BY MR. LEONARD KALISCH.

20 Q What neighbor gave you the Sunday Call to read?

A Mr. John J. Force.

Q On Sunday, November 22d?

A Yes, sir.

Q Now, in your testimony against the News you did not mention reading it in the Sunday Call, did you?

A No, sir.

Q Your testimony was that your impressions were formed by what you had read in the News?

A Yes, sir.

Q Did you not so testify?

30 A. Yes, sir.

REDIRECT EXAMINATION by Mr. Lambert.

Q Now, Mr. Hine, you were not asked anything about what you had read in the Sunday Call at that time, were you?

A I was not.

Q The article to which Mr. Kalisch has called your attention, of November 22, 1908, from which he has quoted, says, "At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison, 40 formerly of 426 Summer avenue, of this city." Did you

Henry C. Hine re-direct

know where Mr. and Mrs. Garrison had resided prior to the time you did the work there in 1908?

A No, sir.

Q Did you know whether they had ever lived at 426 Summer avenue or not?

A No, sir.

RECROSS-EXAMINATION by Mr. Leonard Kalisch.

Q The conversation that you had with Mr. and Mrs. Caldwell that you spoke of, that was in reference to what you saw in the News, was it not? 10

A The combined papers.

Q Did you not testify that it was on account of the publication in the News at the trial before?

A Yes, sir.

Q Did you testify that the conversation with Mr. and Mrs. Caldwell, at the trial against the News, was with reference to the publication in the News? Did you not so testify?

A Yes, sir. 20

G. WISNER THORNE sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Thorne, you reside in Newark?

A Yes.

Q And are connected with the Sunday Call, are you?

A Yes, sir.

Q What is your position?

A The president of the company, also one of the editors.

Q How long have you been the president of the company? 30

A Since 1900.

Q Do you know Annie G. Randolph?

A Yes, sir.

Q And was she in 1902 connected with the Sunday Call in any way?

A She had a voluntary connection with the Sunday Call.

Q What was her connection?

A She was an occasional outside contributor. 40

G. Wisner Thorne direct ex

(Answer read.)

WITNESS. A frequent outside contributor.

Q Was she not a frequent contributor?

A Yes.

Q What did she write, what particular news?

A She used to bring in social news, personal news and church news.

10 Q She was paid for her services, was she not?

A Paid for her contributions; yes, sir; but not under salary.

Q And her duties were to report specially social functions?

A No.

Q Or social matters?

A No, we have another woman for that, whom we depend upon. Mrs. Randolph, I think I may say, in order to add to her income, brought in such items of social news, church news and personal news as she
20 found.

Q Mr. Thorne, I show you the issue of the Newark Sunday Call, dated September 7, 1902, the seventh page, first column, under the head of "Familiar Recognitions," and I show you this item: "Mrs. Everett G. Garrison, of 426 Summer avenue, is spending a few days at Rockaway, New Jersey." Is that the column that this lady that I called your attention to, Mrs. Randolph, furnished items for?

A One of the columns, yes.

30 MR. LAMBERT. I will offer that in evidence.

MR. LEONARD KALISCH. I object to that. It has nothing to do with this case at all.

THE COURT. (After argument.) Well, I do not see it very clearly yet, but it seems to be in some way connected with some testimony that you are going to produce, and if you desire to renew the offer after we understand the situation a little better, I will consider the matter. At present I will exclude it.

40 MR. LAMBERT. I will not offer the paper in evi-

G. Wisner Thorne cross ex

dence at the present time, then.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q This Mrs. Randolph, was she ever sent out by your paper to interview any person, to your knowledge?

A It is extremely improbable.

Q Improbable?

A Of course, I can't speak positively, but it is highly improbable. I would not think any more of sending Mrs. Randolph on a piece of general news than I would think of sending the musical critic to report a boxing match. 10

RE-DIRECT EXAMINATION by Mr. Lambert.

Q You had nothing to do with the reporters yourself, had you?

A No—I had supervision.

Q Just general supervision?

A General supervision. The city editor had charge of the reporters. 20

Q Who was the city editor at that time?

A Mr. Ehlers.

Q Mr. Ehlers?

A Yes, sir. Before I leave the stand I would like to ask a question.

Q Whether Mrs. Randolph was asked to interview Mrs. Garrison or not, of course, you knew nothing about it.

A No.

Q She was not, to your knowledge?

A No. Was it understood that I said Mrs. Randolph was connected with the paper in 1902? 30

THE COURT. No, I understood that she was an outside contributor, who would bring in social news, and so on.

WITNESS. Whether she was doing that in 1902 or not, I am unable to say; she was doing it for a number of years.

Q What is Mr. Ehler's first name?

A Herbert E. Ehlers. 40

John H. Sanderson direct

JOHN H. SANDERSON sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Mr. Sanderson, you reside in Newark, do you?

A I do; yes, sir.

Q What is your business?

A Police officer.

Q How long have you been a police officer?

10 A About thirty-seven years.

Q And where are you stationed now?

A At the City Hall.

Q Inside?

A Inside.

Q Mr. Sanderson, I show you Exhibit P1, an issue of the Sunday Call, dated November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you if you read that article (shown to witness)?

A I have read that; yes, sir.

20 Q On the Sunday it was published?

A Yes, sir.

Q Did you know George E. Garrison at that time?

A I did.

Q Did you know his wife?

A No, sir.

Q Had you seen her with him?

A I had. I seen a lady with him; I supposed it was his wife.

30 Q At the time you saw that article what was your belief as to whether it was George E. Garrison's wife who had gone away with Archer or not?

A Well, I believed that it was.

Q How long did that impression continue with you?

A Oh, probably a couple of weeks, something like that.

Q And how was your impression corrected, if you can tell?

A Well, I seen a correction in the newspaper.

Q Which paper?

A In the News.

40 Q Well, did you see any correction in the Call?

John H. Sanderson direct

A I am not positive.

Q And until you saw that correction, did you believe it was Mrs. George E. Garrison who had gone away with Archer?

A I did; yes, sir.

Q Did you talk with anybody about the matter?

A Well, I talked with some police officers that I knew that was acquainted with Mr. Garrison, and I have spoken to my family about it—a general conversation with my family. 10

Q That was during that two weeks you talked with them?

A I am not positive about talking to the police officers during that two weeks, but I think so. I know I spoke to my family about it during that time.

Q Well, what was their belief, if they stated?

A Of course, they didn't know either of the parties, and they believed, of course—I told them I believed that it was Mrs. Garrison, and they coincided with my belief, that is all. 20

Objected to.

THE COURT. Strike out what he told them.

Q From what the police officers said, what did they believe?

A They believed the same thing; they were all in sympathy with Mr. Garrison.

Q Did you talk with anybody else, outside of your family and the police officers, that you can recall?

A Not that I know of; no, sir. 30

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q You read the article in the News, did you not?

A What, the contradiction?

THE COURT. No, the original article.

WITNESS. Yes.

MR. LEONARD KALISCH. The article in the News, Exhibit P1.

THE COURT. Not the News. Exhibit P1 in this 40

John H. Sanderson cross

case is not an article in the News; it is an article in the Call.

MR. KALISCH. Yes.

Q I mean you read the article in the News when it was published, did you not?

A Yes, sir.

Q Do you know the date?

10 A Well, that I couldn't say now.

Q You do not remember that?

A I don't remember. It was about this time, I know, but I don't remember the date.

Q How many articles did you read in the News?

A I read two articles in the News, the occurrence and the contradiction.

Q Well, the article that you read in the News was before you read the article in the Sunday Call, was it not?

20 A I presume it was; yes, sir.

Q Did you not see the correction in the Sunday Call?

A I might and I might not; I am not positive about that. I saw the contradiction, but I won't say whether I saw it in the Call or not.

Q And the contradiction in the News was about three or four days after it was published in the News?

A The contradiction in the News satisfied me——

Q That it was not Mrs. George E. Garrison?

A Yes, sir.

30 Q And that was published some three or four days after it appeared in the News, was it not?

A I believe it was; yes, sir.

Q As near as you can remember?

A As near as I can remember; yes, sir.

RE-DIRECT EXAMINATION by Mr. Lambert.

Q Do you remember the date when the explanatory article in the News was published?

A I do not; no, sir.

40 Q Now, in answer to counsel you testified that the correction appeared in three or four days. I understood you to say it was a couple of weeks awhile ago before

Roswell D. Grant direct

you knew of any correction?

A I don't recollect when the contradiction—when I read the contradiction; I couldn't say about when I read that.

Q Well, did you know that an error had been made in the matter until the article in the News was published making the correction?

A No, sir.

10

RE-CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q I want to show you the Sunday Call here, the third column of the Sunday Call, dated December 6, 1908, and ask you whether you did not read this: "Correction Made"—

MR. LAMBERT. That is not an article that is in evidence. I will not object to it, because it will inconvenience this witness to return. Practically speaking, it is not proper evidence, but at this time I will not make any objection.

20

Q Did you read that?

A I don't remember whether I did or not; I might; I don't remember it.

ROSWELL D. GRANT sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Doctor, where do you reside?

A 1007 Broad street.

Q How long have you resided in Newark?

A About four years.

Q And you are a physician, are you?

30

A Osteopath.

Q How long have you been an osteopath?

A Four years; I graduated in June, 1909.

Q Do you know Mrs. Rose G. Garrison?

A I do.

Q Has she ever been under your care?

A She has.

Q When?

A As near as I can tell you—I haven't the records in the case; I mislaid them—about the fall of 1910.

40

Roswell D. Grant direct

Q 1910?

A Yes, sir.

Q How many months did you have her in your care?

A About three months, as near as I can judge.

Q What was her difficulty?

A She came to me——

Objected to.

(Question withdrawn.)

10 Q I will say to you, Doctor, that I do not want you to testify anything about her physical difficulties. What did you observe, if anything, concerning her mind, her mental processes?

A That is a rather difficult question; I don't know just how to answer it.

Q Did you observe anything concerning her mental capacity?

A I observed nothing——

Objected to.

20 THE COURT. Mental capacity is the question, the object of the inquiry, I suppose, being to show incapacity. Under the rule which we have had occasion to consider, that, I think, would be excluded for two reasons. In the first place, because it is a disease, or something analagous to a disease, and, second, because it is not generally pleaded. This case being, as I take it, an action on a written, or printed, paper that is actionable per se, special damage can not be recovered unless it is specially pleaded. There is nothing in the
30 declaration that makes any claim for compensation for any disability, either mental or physical, attributable to the libel.

MR. LAMBERT. I do not ask it in that view, if your Honor please.

THE COURT. I sustain the objection to the question, which relates on its face to the subject of capacity.

Q Did you notice whether Mrs. Garrison had any worriment of mind?

Objected to as leading.

40 THE COURT. The subject of leading questions is

Roswell D. Grant direct

very much within the discretion of the Court. I will allow this to be asked as directing the attention of the witness to the subject.

A At the time she came to me I didn't particularly think she was worried, no.

Q What?

A I didn't think she was worried at the time she came to me, no. 10

Q When she first came?

Objected to.

Q (By the Court.) I suppose you mean when she first came, do you not, Doctor?

A Yes, sir.

Q (By Mr. Lambert.) Did you observe anything after she first came to you during your treatment?

A I observed that she had a particular disturbance of speech. This disturbance of speech, as I take it, came from some mental worry or anxiety, or something of the kind; that was my idea. 20

MR. LEONARD KALISCH. I object to that line of examination, your Honor, and ask that that answer be struck out.

THE COURT. A disturbance of speech is a physical disability. Strike it out.

Q Doctor, do not tell anything about her physical disability or anything else. I am simply asking you about any worriment of mind or mental anguish that she had that you noticed.

A I noticed none whatever. The only thing I can say about Mrs. Garrison is with relation to her physical condition. 30

Q I cannot hear you.

A About the only thing I have to say about Mrs. Garrison relates to her physical condition. I don't know her personally very well, except what I treated her for.

Q It is her physical condition, you think, which led back to the causes?

A Yes.

Q Did she exhibit any nervousness? 40

Roswell D. Grant direct

MR. LEONARD KALISCH. I object to that. The witness having said that he noticed nothing, I think that ought to end it. I think where we have an intelligent man on the witness-stand, the questions ought to be put in the proper method.

THE COURT. I think the witness may be asked this question.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

(Question read.)

MR. LAMBERT. At the time of your treatment of her?

A Yes, I may say she did.

20 Q Did she exhibit any mental anguish?

A Not at that time.

Q Any mental strain?

A Not at the time.

MR. HARRY KALISCH. Your Honor, I think this testimony so far has not been connected at all with the alleged libelous publication. They have not shown that it was caused by this alleged libel, and I think it would be necessary to connect her condition with the libel that she has brought suit for, which, I suppose, might be done. I do not know how they would do it; but, at any rate, they have not connected it at all, and I move to strike out the testimony.

30

THE COURT. (After argument.) I will let the testimony stand.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

40 (Seal.)

Roswell D. Grant cross ex

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q Doctor, you did not know Mrs. Garrison's condition before she called upon you in 1910, was it?

A Yes, sir.

Q The fall of 1910?

A You say I knew her condition before?

Q Yes, her physical condition.

A No, I did not; I never saw her before.

Q Or her mental condition before the fall of 1910? 10

A I know nothing whatever of Mrs. Garrison before she called at my office.

Q When she called at your office in the fall of 1910 were you aware that she had just gone through one lawsuit and that she had three more lawsuits pending against newspapers?

A Not when she came to my office.

Q You never were told that?

A I was.

Q Well, after she called on you? 20

A Yes.

Q Now, Doctor, you take a person, a woman, who had just gone through a trial against a paper and had three more suits against other papers; hasn't that something to do with a person's nervousness?

A It might make a person nervous, yes.

RE-DIRECT EXAMINATION by Mr. Lambert.

Q You were asked by counsel whether you knew her physical condition—

MR. LEONARD KALISCH. Mental. 30

MR. LAMBERT. You said physical and mental condition. It seems to me that lets in something about the physical condition.

THE COURT. No, an irregular cross-examination will not let in an irregular re-direct examination. Mr. Kalisch did not go into the matter.

WILLIAM S. HARRINGTON sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert. 40

Wm. S. Harrington direct

Q Mr. Harrington, you reside in Newark, do you?

A Yes, sir.

Q What is your business?

A Automatic computing scales.

Q Did you marry a sister of the plaintiff in this case, Mrs. Garrison?

A I did; yes, sir.

10 Q You were a witness in the case against the News in 1910, were you not?

A I was.

Q Now, Mr. Harrington, I show you Exhibit P1, the issue of the Sunday Call, dated November 22, 1908, the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you to look at that and tell us whether you ever saw that article before (shown to witness)?

A I did.

Q And when did you see it?

20 A Sunday.

Q The date of its publication?

A Yes, sir.

Q Where were you residing at that time?

A Orange.

Q Where, what street?

A Waverly place.

Q At the time you read that article, Mr. Harrington, did you know whether it was true that your sister-in-law had gone away with Archer or not?

A I did not.

30 Q When did you learn of that—when did you learn the fact?

A After visiting my sister-in-law's home.

Q And when was that?

A Oh, probably five or six hours afterwards, in the evening some time.

Q (By the Court.) You then learned that it was untrue?

A I learned then that it was untrue; yes, sir.

40 Q (By Mr. Lambert.) Did you ever have anybody speak to you about this publication in the Sunday Call—

Wm. S. Harrington direct

did anyone ever speak to you about it?

A Yes, lots of people.

Q Can you relate any circumstances where you had occasion to talk with people about the article?

A Yes, in the railroad stations, talked with my own family about it, talked in the restaurants about it, on the trains, and hotels.

Q And the people that you talked with, did they express any opinion to you as to their belief in the truth or falsity of the charge? 10

A Yes, they all believed it, in fact, until I relieved their mind, convinced them that it was not so.

Q How many people, as near as you can tell, did you make the correction with all together, who believed the truth of the statement up to the time you made the correction?

A Well, that I really don't know, how many. I didn't make any record of it.

Q Well, as near as you can tell? 20

A Between twenty and thirty people.

Q And how long after this publication of November 22, 1908, did you continue to make explanations—find it necessary to do so?

A Oh, possibly—well, it was only here the other day I made a correction.

Q How long ago?

A The Star had an article in about this suit against the Sunday Call, and I made a correction—

Objected to.

THE COURT. You were merely asked as to the period within which you made corrections. 30

Q What corrections did you make at that time and with whom?

A That it was not my sister-in-law that went away with Archer.

Q Whom were you talking with?

A I was talking with Charles McGee.

Q What was his opinion, if he stated it?

A He was rehashing the story of 1908, and I told him at the time that it was not the Mrs. Garrison referred to. 40

Wm. S. Harrington direct

and he said that he was always under the impression that it was until he had seen this article in the Star.

Q About this present trial?

A About this present trial.

Q Who is Charles McGee?

A He is a travelling man.

Q Do you know where he could be found? Do you
10 know where he is now or don't you know?

A He is on the road all the time; I meet him occasionally.

Q What line is he in?

A I really couldn't say what his business is.

Q Where did you meet him?

A Here in Newark.

Q How long prior to that time did you find it necessary to correct this error?

A Oh, I should judge a year or so afterwards.

Q A year or so ago?

20 A A year or so afterwards, after the publication.

CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q This Charles McGee that you speak of, where does he live?

A Well, he hasn't any real home; he is a travelling man.

Q Well, he has got some place to sleep, has he not, when he gets through with his work?

A I suppose he has; yes, sir.

Q Where does he live?

30 A Why, I don't know where he lives.

Q Does he live in Newark?

A He did live in Newark.

Q When?

A Why, he lived in Newark for a couple of years.

Q When?

A Several years ago.

Q Well, he has not lived in Newark since several years?

A Yes.

40 Q And whom does he work for?

Wm. S. Harrington cross ex

A That I don't know. I never ask a man who he works for, because—

Q I do not care about "because." I want to know if you know whom he works for?

A No, sir; I do not.

Q You do not know where he is now?

A No.

Q And you do not know when he went on the road? 10

A No, sir.

Q Or what part of the country he is in?

A No, sir.

Q And that is the man that asked you about Mrs. Garrison, is it?

A Yes, sir.

Q Where did he ask you, in Newark?

A Yes, sir.

Q When?

A In Bamberger's store.

Q When? 20

A The other day.

Q And you do not know anything about him?

A No, I don't know anything about him, because I was never interested in the man.

Q You read the article in the News, did you not?

A Yes, sir.

Q November 21st?

A No, sir; I didn't read it on November 21st.

Q You did not read it on November 21st?

A No, sir. 30

Q When did you read it?

A On Sunday.

THE COURT. Now we are speaking of the article in the News.

WITNESS. Yes, sir.

MR. LEONARD KALISCH. The first publication in the News.

WITNESS. The November 21st publication, you mean? 40

Wm. S. Harrington cross ex

MR. LEONARD KALISCH. In the News.

WITNESS. Yes, I read that on Sunday; I read it with the article in the Call.

Q You read it at the same time?

A Yes.

Q How many articles in the News did you read?

A I read the two articles in the News.

10 Q In the News?

A Yes, sir.

Q When did you read the article in the Call?

A The Sunday of its publication.

Q Well, you read that after you had read the News, did you not?

A No, I generally read the Call the first thing Sunday. I don't read the Saturday evening papers until Sunday, because I am generally busy on Saturday.

Q Well, you are a travelling man, you say?

MR. LAMBERT. He did not say so.

20 Q What is your business?

A I am in the scale business now.

Q Well, at that time you were a travelling man?

A No, sir.

Q Also in the scale business?

A No, sir.

Q What business?

A I was in the contracting business at that time.

Q And you mean to say that you read the article first in the Call and then in the News.

30 A Yes, sir—I read them both at the same time; after I saw the one in the Call, then I looked in the News to see if it was also in the News.

Q And you discovered that she was not the person how soon after?

A Well, probably five or six hours afterwards. I called on Mr. Garrison Sunday evening to find out if it was so.

Q Sunday evening?

A Yes, sir.

40 Q And these people that you say you have talked to about it, where were those people, where did they live?

- A Oh, mostly in Orange.
- Q You say Mrs. Garrison is your sister-in-law?
- A Yes, sir.
- Q That is, your wife's sister?
- A My wife's sister, yes.
- Q Now, how long were you married to your wife?
- A Since 1900.
- Q You were married in 1900? 10
- A Yes, sir.
- Q And your sister-in-law was married in 1901, was she not?
- A 1901; yes, sir.
- Q And did you visit her frequently, you and your wife?
- A Well, my wife visited her more than I did.
- Q But you have visited her?
- A Oh, yes, yes, sir.
- Q And you knew that after she was married to Mr. Garrison they lived at 436 Summer avenue? 20
- A Yes, sir.
- Q You knew that?
- A Yes, sir.
- Q And when you read the article in the Sunday Call, and it said "Mrs. George E. Garrison, formerly of 426 Summer avenue," you knew that she did not live there?
- A I knew she did not live at 426, yes.
- Q And when it said that her husband was a broker, you knew that did not apply to Mr. George E. Garrison?
- A No, I didn't know anything of the kind. 30
- Q You knew that he was a stereotyper?
- A At the present time, yes.
- Q And at that time?
- A At that time. But formerly, too, that he was a broker.
- Q When was he a broker?
- A Well, I can't remember the year.
- Q How long have you known Mr. Garrison?
- A I have known Mr. Garrison since 1899.
- Q 1899?
- A Yes, sir. 40

Wm. S. Harrington cross ex

Q And don't you know that Mr. Garrison worked for the World?

A Yes, sir.

Q Since 1895?

A No, I didn't know that.

Q When did you ever know that he was a broker?

A From our conversations.

10 Q You knew that in 1908, or 1902, that he was not a broker?

A Yes, not at that time.

Q He was not a broker then, was he?

A No, sir.

Q He was going to New York right straight along, was he not?

A Yes.

Q And this article states, "who formerly lived at 426 Summer avenue, and whose husband was a broker." That did not fit your sister-in-law, did it?

20 A It fitted so far as the name was concerned.

Q And that is all, is it not?

A I didn't know of any other Garrison on Summer avenue.

Q I say the name, George E., that was all that fitted her, was it not?

A Well——

Q Well, answer it. Wasn't that all that fitted her?

A As far as the article, the name, yes.

Q Did you read the Sunday Call two weeks afterwards?

30 A I did.

Q And read the correction?

A I did.

Q And you knew that your sister-in-law did not run away with Archer, did you not?

A After I found it out, yes, sir.

Q No, right along?

A No, sir; I did not.

Q Why, she had only been married a year, just before 1902?

40 A Yes.

Wm. S. Harrington cross ex

Q And this article referred to 1902?

A Yes.

Q You knew she had not run away in 1902 with Archer, did you not?

A What do you mean?

Q Your sister-in-law. Just what I say. This article said, "A Six-Year Search Ended," and went on to state that when Archer went away, in 1902, six years before the writing of the article, he went away with Mrs. George E. Garrison. You knew that he did not go away with her, did you not? 10

A After I found it out, yes.

Q Did you not see her in 1902?

A 1902? Yes.

Q You saw her all the time from 1902 on, did you not?

A 1902?

Q 1902 up to 1908?

A Yes. 20

Q And did not the article say that that Mrs. Garrison was spending most of her time out in Seattle, a good deal of time in Seattle with Archer? Didn't that say so?

A Yes.

Q And you knew that it was not your sister-in-law?

A Yes, after I found it out.

Q What had you to find out?

A That it wasn't her.

Q Why you knew it all the time, did you not?

A Yes.

Q That she was in Newark? 30

A After I saw her.

Q This said she was out there all the time, and you were visiting her. You knew it was not she?

A Yes.

Q All the time? You knew it was a mistake, did you not?

A Of course it was a mistake.

Q Without finding out, you knew it was a mistake; isn't that so?

A I can't grasp what you are getting at. 40

Wm. S. Harrington cross ex

Q What I am getting at is, you had confidence in your sister-in-law to know that she would not do such a thing?

A I have got confidence in nobody until I know them.

Q That is what I am getting at, if you want to know in plain language. You were visiting her right along?

A No, I was not visiting her right along.

10 Q Your wife was?

A My wife visited the family.

Q And she knew that she had gone away at no time with another man; isn't that so?

A Yes.

Q Now, do you mean to tell us that you had to first find out—

A Certainly, I had to call at their home.

Q To see whether this was the Mrs. Garrison that went away with Archer six years before?

A Certainly, I had to visit their home to find it out.

20 Q And you were the brother-in-law?

A Yes.

Q Did your wife go along with you?

A No, sir.

Q She stayed home?

A Yes, sir.

Q And you went down to Newark to find out whether your wife's sister was the woman who went away with Archer?

A Yes, sir.

30 REDIRECT EXAMINATION by Mr. Lambert.

Q Mr. Harrington, there is a question I neglected to ask you. Have you observed since November 22, 1908, whether your sister-in-law has any worriment of mind?

Objected to as not redirect examination.

THE COURT. No, it is not, but I will allow it as an omitted question. Judge Lambert, put it on that ground.

(Question read.)

A I have, yes.

40 THE COURT. What have you observed?

Wm. S. Harrington re-direct

Q What have you observed?

A I know that her mind is so affected that she can't remember some things, and when she goes to talk she becomes nervous, and her speech is affected. I saw her at Asbury Park when she couldn't talk at all, and I saw her when her husband would try to ask her questions so as to bring back her memory, and he would have to write down the questions to her on a pad.

MR. LEONARD KALISCH. I think that all ought to be stricken out. 10

THE COURT. Strike it out.

MR. LAMBERT. All of it?

THE COURT. The physical disability.

MR. LAMBERT. About the memory?

THE COURT. I cannot distinguish between one part and another.

Q I do not want you to state what the effect was upon her at all, nothing concerning her physical disability, whatever it may be, loss of speech, or anything else; I simply want to ask you whether you observed any mental anguish or disturbance of mind, nervousness? 20

A Yes, her nervousness—

THE COURT. You may answer this question yes or no.

WITNESS. Yes.

Q And after this publication when did you first notice this mental anguish? 30

A Well, I advised several months later—
Objected to.

THE COURT. No, when you first noticed it?

WITNESS. Oh, I can't say exactly; it might be three or four weeks later, possibly a month.

Q Now, you saw her, you say, down at Asbury Park?

A Yes, sir.

Q And when was that, how long after the publication of 1908? 40

Wm. S. Harrington re-cross

A Why, I think it was in July, 1910.

Q 1910?

A Yes, sir.

Q And did she exhibit any nervous or mental anguish then?

A She did.

10 MR. LEONARD KALISCH. I think that is rather leading, your Honor.

THE COURT. I will let it stand. But it is a very dangerous line of examination. If it is followed up it may mislead to a mistrial.

(Question and answer read.)

20 THE COURT. You see, there is a great difference between showing you the testimony of the witness and other people that a publication calculated to wound her feelings and agitate her did so, and it would be only natural; the jury would assume it if there were no evidence of it, because of human nature being what it is; but that is quite a different thing from undertaking to show a permanent condition, existing for years, of a particular kind, amounting, perhaps, to mental or physical disability. I think you are running very close to the line which excludes evidence of disease in an action of this kind as an item for compensation. I have tried to keep it on the safe side of the line.

MR. LAMBERT. I am trying to do that also, if your Honor please.

30 RE-CROSS-EXAMINATION by Mr. Leonard Kalisch.

Q How is it, Mr. Harrington, that you have observed her so much since this publication and not before? Your sister-in-law, I am speaking of.

A Because I know that she was very much worried and in a highly nervous condition, and I noticed her at Asbury Park because——

Q Because what?

A Because I was down there myself.

Q Well, you knew she had a lawsuit in 1910?

40 A Yes, sir.

Wm. S. Harrington re-cross

Q In June?

A Yes, sir.

Q And that was about a month before she went to Asbury Park?

A Yes.

Q And did you not know that the nervous strain of the lawsuit was what sent her down to Asbury Park?

A No, sir; I did not know it.

Q Now, I omitted to ask you on my previous cross-examination whether you remember testifying in the suit against the News thus, on page 54: "Question: How many people do you suppose you have heard talk about the matter?" and your answer was, "I have not kept a record of it, but for the last ten years I have been answering questions on and off, different times, to people, trying to convince them it was not Mrs. Garrison"? 10

MR. LAMBERT. If your Honor please, that question was stricken out in the former trial; it is not in the evidence. 20

MR. LEONARD KALISCH. Did you not so state? Whether it was stricken out or not, it is a matter on the record here.

At 1:20 o'clock P. M. the Court takes a recess until 2:30 o'clock P. M.

AFTER RECESS.

WILLIAM S. HARRINGTON resumes the stand in behalf of plaintiff.

RE-CROSS-EXAMINATION (continued) by Mr. Leonard Kalisch. 30

Q The question was asked you before recess: You were a witness in the trial against the News, were you not?

Yes, sir.

Q And that trial was in June, 1910, was it not?

A Yes, sir.

Q Now, did you in answer to the following question, page 54—the question was as follows: "And how many people do you suppose you have heard talk about the 40

Wm. S. Harrington re-cross

matter?" Your answer was, "I have not kept a record of it, but for the last ten years I have been answering questions on and off, different times, to people, trying to convince them it was not Mrs. Garrison"?

MR. LAMBERT. I do not care about this examination, with the exception that this question and answer were ruled out in the other trial; but it does appear that
10 such an answer was made; it appears on the record in that trial. If the Court thinks it is proper for this to go in, I do not make any objection to it.

THE COURT. Let me look at the record and see what the ruling was. (Book handed to the Court.) I suppose the objection to the question was that it goes back of the date of the alleged libel.

MR. LEONARD KALISCH. From what I can read of the record, the reason that reference was struck out was because in that case the Court ruled out any publications
20 that were made in 1902, which is not the case here.

THE COURT. Nevertheless, this particular question goes back of the date of the alleged libel, which was in 1908, and I do not see how it is material what impressions people had anterior to the libel. It is the libel that is said to have created the impressions.

MR. LEONARD KALISCH. Any more than if he had made a statement to a person outside that he had been correcting this thing for the past ten years. It would merely go to the value of the testimony of this witness.
30

MR. LAMBERT. I will withdraw any objection to it.

THE COURT. I do not think that discussions between the witness and other persons prior to the date of the alleged libel can throw any light upon the effect produced by the libel. That is my difficulty. It must refer to something else.

MR. LEONARD KALISCH. Well, of course, I might call his attention, then, to two or three more questions previous to that question, showing that it referred to
40 the libels of 1908 in all the papers.

Wm. S. Harrington re-cross

THE COURT. But that is less than ten years ago.

MR. LEONARD KALISCH. Of course, it is, but it is merely to show the reckless manner in which the witness testified.

THE COURT. Well, you will have to contradict the witness by manners that are relevant, not by matters that are irrelevant.

MR. LEONARD KALISCH. And this ten years in- 10
cluded some of the period.

THE COURT. I will exclude the question, so far as it relates to matters prior to the libel, as irrelevant.

MR. LEONARD KALISCH. How am I going to separate it from what the question was?

THE COURT. You will have to drop it altogether, or else frame a question of your own.

MR. LEONARD KALISCH. Then the Court excludes 20
this question?

THE COURT. Yes, on the ground that we have nothing to do with anything that is anterior to the libel in the way of opinion created by the libel.

MR. LEONARD KALISCH. But in this case, your Honor, there is admitted in the case the publications of 1902, which we know nothing about just now; they have not been read yet. They are put in evidence.

THE COURT. But those are not the libels com- 30
plained of. How can anything that antedates the libel throw any light upon the effect produced by the libel in the minds of others? I do not see.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,

(Seal.)

Circuit Court Judge. 40

Rose G. Garrison, re-called.

ROSE G. GARRISON, plaintiff, recalled in her own behalf.

DIRECT EXAMINATION by Mr. Lambert.

Q Mrs. Garrison, when you were on the witness-stand before you testified concerning some person, whose name you could not recall, as coming to you from the Sunday Call. Do you now recall the name of the person?

10 A Annie G. Randolph.

Q And when did you recall the name?

A When did I recall the name?

Q How long after you were on the stand?

A Why, that night.

Q How?

A That night.

Q Now, just state what conversation you had with Annie G. Randolph.

Objected to.

20 THE COURT. (After argument.) It strikes me, so far as the proof goes, it falls short of establishing such an agency as would bind the company by her statements or her knowledge. That being so, I would exclude, in the present stage of the proof, any further testimony on that subject.

CROSS-EXAMINATION WAIVED.

GEORGE E. GARRISON sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

30 Q Mr. Garrison, where do you reside?

A Summer avenue, Newark.

Q What number?

A 436½.

Q Do you own the property where you reside?

A I do.

Q Did you formerly own 436 Summer avenue?

A I did.

Q And do you own that now?

A I do not.

Q Who owns it now?

40 A Mr. Daniel Wettlin.

George E. Garrison direct

Q And when did you sell it to him?

A In 1908, I think.

Q 1908?

A 1909—in May, 1910, I think; I think it was the last of May, 1910.

Q That is right, is it, April or May, 1910?

A 1910.

Q When were you married, Mr. Garrison?

A In 1901.

10

Q And Rose G. Garrison, the plaintiff in this case, is your present wife?

A She is.

Q You were married prior to that, were you?

A I was.

Q How long prior to that marriage did your wife die?

A About two years.

Q And where were you married to your present wife?

A In Orange, New Jersey.

Q How long had you known her prior to the marriage?

20

A Well, about six months. I want to say here that my attention was called to a statement I made in the last trial—about two years. I stated at that trial that I knew her about two years. I had in mind that I had—

Objected to.

Q Well, I will ask you the question: What did you have in mind, if you made such a statement?

THE COURT. The witness apparently wants to correct a date. He may do so.

30

MR. LEONARD KALISCH. Not a date; it is an event in the trial against the News.

THE COURT. I understood the witness wanted to correct a date.

MR. LEONARD KALISCH. No, sir; he wants to state now that he stated differently in the case against the News about this event, about his having known his wife.

THE COURT. Well, what is the objection?

40

George E. Garrison direct

MR. LEONARD KALISCH. Well, there is this objection. He is now examined in chief, and it is not for the witness to anticipate that he is to be cross-examined, and the prior statement made, upon which the jury had deliberated, is now on the record.

10 THE COURT. But why may not the witness say, either out of court or in court, "Such and such is the fact. I once stated it otherwise, but I was mistaken. This is the way it was?" I do not see any objection to that.

(Answer read.)

A The time between the death of my first wife and my marriage to my present wife. That is what I had in mind when I made my answer.

Q (By the Court.) That is, two years, but you had known your present wife about six months?

A About six months.

20 THE COURT. It is not of any great importance, anyway.

Q (By Mr. Lambert.) After your marriage, Mr. Garrison, where did you go to reside?

A 436½ Summer avenue.

Q And is that the place where you reside now?

A It is.

Q Was No. 436 Summer avenue built at the time you went to live at 436½

A It was not.

30 Q How long after you moved to 436½ Summer avenue did you build 436?

A About ten years.

Q You were married in 1901; that would make it 1911, then, year before last. Is that the time you built 436?

A No, 1905 I built that.

Q Then why did you say that it was ten years?

A From 1895, when I built 436½.

40 Q I did not ask you that; I asked you from the time you were married and moved to 436½ Summer avenue, how long after that did you build 436?

George E. Garrison direct

- A It was about five years.
- Q You did not understand my question.
- A I didn't understand your question, no.
- Q After you built 436 did you move into it?
- A I did.
- Q And were you living there in November, 1908?
- A We were.
- Q Did you know Everett G. Garrison?
- A By sight only. 10
- Q Did you ever speak to him?
- A Never in my life.
- Q Did you know his wife?
- A By sight.
- Q Did you ever speak to her?
- A Never.
- Q What is your business, Mr. Garrison?
- A Stereotyper.
- Q And where are you employed?
- A The New York World.
- Q Did you have any other business before you be- 20
came a stereotyper?
- A I did.
- Q What was it?
- A Not before, but at the same time I was a stereo-
typer.
- Q What was it?
- A I was a broker.
- Q What kind of a broker?
- A A ticket broker; I acted as broker for the Old
Dominion Line and B. and O. Railroad. 30
- Q Something has been said about your driving horses
on this trial, or owning horses, or something.
- A Well, I have been an enthusiastic horseman all my
life, and here in Newark I took an active part in trot-
ting horse affairs, and I was one of the first that started
the ball rolling for the Speedway in Vailsburg. I went
to the Newark Daily Adevrtiser then—
- Objected to.
- MR. LAMBERT. That is sufficient.
- THE COURT. That is a side issue. 40

George E. Garrison direct

Q Now, Mr. Garrison, I want to show you Exhibit P1 (shown to witness). I show you Exhibit P1, publication of the Sunday Call, under date of November 22, 1908, and call your attention to the second page, fourth column, headed "For Extradition of Elliott Archer," and ask you if you saw that publication? Did you see the publication at the time?

10 A I did.

Q Did your wife ever run away with Elliott A. Archer?

A She did not.

Q Or any other man?

A No.

Q In this article of November 22, 1908, it is stated, "At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison." Is that statement true?

A No, it is not true.

20 Q It is also stated, "It is said she has been with him much of the time since." Is that true?

A It is not true.

Q When did you first see this publication in the Sunday Call to which your attention has just been directed?

A On the day it was published.

Q Do you know Mr. William S. Harrington?

A I do.

Q Did you see him on that day?

A I did.

Q At what time?

30 A I can't state just exactly the time, but it was late in the afternoon on the day of the publication.

Q Did you have any conversation with him about this article?

A I did.

Q State the conversation.

A He came down to me——

Q Where were you?

A At 436 Summer avenue.

Q Was your wife present when he came in?

40 A I don't remember. She was there—not when he

George E. Garrison direct

came in; I don't remember that—she was there during the afternoon, because we had dinner together.

Q Did he stay there to dinner?

A He stayed there to dinner.

Q Now, state the conversation that you had with Mr. Harrington about this affair.

A Well, he came down, and he says, "Well, George," he says, "I came down to see if Rose ran away." I said, "I guess she didn't." And then we talked about this publication, and also the publication in the News the day before. Of course, it was talked about 'most all the time Mr. Harrington was there, simply the same thing over again.

Q Had you heard of the publication in the Sun or the American at the time you were talking to him?

A No, not at that time.

Q Well, after Sunday, November 22, 1908, did anybody make any inquiry of you concerning this publication in the Sunday Call?

A Oh, I have talked to a great number of people about the publication.

Q And can you recall some of them?

A Well, I can recall a number of people. There must be nearly—oh, it must run up into two hundred and fifty or three hundred people. I am always talking about it, always; right down to the present day I am talking about it.

Q I am not asking you what you are talking about, but I want to know the people who have talked with you or asked you about it, that you found it necessary to make any explanation to, how many there were.

A I found it necessary in the different places where I boarded, I found it necessary on my way to work, I found it necessary when I went away on my vacation, and I am finding it necessary every day to make an explanation.

Q What did you do, if anything, immediately after this publication of November 22, 1908, to dispel the idea abroad that your wife had gone away with Archer?

A I talked the matter over with Mrs. Garrison, and

George E. Garrison direct

we decided—

Q No, tell us what you did, not what you and she decided to do. What did you do?

A The very next day or second day after, I won't be positive, we came down to your office and notified you—

10 Q I am not asking you that. What did you do in order to dispel the statement that your wife had run away with Archer—what did you do, if anything, to notify the public?

A Why, after this publication we kept house up until the following April, I think it was, and Mrs. Garrison became so nervous that we decided to break up house, and we thought that by going out amongst the people—

Q Tell us what you did, not what you thought.

A That is what we did; we boarded.

Q Where did you board?

20 A We took a furnished room at Mr. Simons's, on Highland avenue, Forest Hill.

Q And how long were you there?

A We were there about six weeks, I should judge.

Q From there where did you go?

A We left there and went to Mrs. Van Ness's on Summer avenue.

Q How long did you stay there?

A Stayed there about a month.

Q Did you find it necessary to make any explanation there?

30 A I did.

Q How did that come about?

A There was kind of a coldness came in the house—that is, amongst the people that were stopping there—and I talked it over with Mrs. Garrison, and I decided probably they knew something about this publication, and I thought I should make an explanation.

MR. LEONARD KALISCH. I object to that and move to strike it out.

THE COURT. Strike it out.

40 Q Not what you talked to Mrs. Garrison; what did

George E. Garrison direct

you do? Eliminate Mrs. Garrison from your talk.

A I talked with the boarders in the house, and told them about this publication, and told them that it was not my wife that had run away.

Q Well, from Mrs. Van Ness's where did you go next to board?

A To board?

Q Yes.

A We went to Mrs. Jeffries's, on Fourth avenue. 10

Q How long were you there?

A There about nine months.

Q How did you come to leave there?

A I was ordered out.

Q Who ordered you out?

A Mrs. Jeffries.

Q Just state the conversation you had with Mrs. Jeffries, if it referred to this matter, this publication.

A The butler came in to the table one day, while I was at lunch one day, and told me that Mrs. Jeffries wanted to see me in the parlor. I went in the parlor, and Mrs. Jeffries said, "Mr. Garrison, I have never had to do this thing before but once, but," she said, "I have got to ask you to give up your room." I said, "What is the reason?" "Well," she said, "I don't care to state any reason." I said, "It is a serious thing," I said, "to ask respectable people to leave a boarding-house." And she said, "I know!" she says, "and I have never had to do this but once before." And I said, "There is some good reason. What is the reason?" And she said, "I don't care to tell." Then I said, "Well, now, there is some reason for it." "Well," she says, "Mr. Garrison, I could get along with you all right, but I don't want Mrs. Garrison in the house." And I said, "Mrs. Jeffries, do you know that there was a publication stating that my wife had run away with a Mr. Archer?" She says, "No, I don't know anything about it." I says, "Well, there was," I said, "I have a suit against the Newark News, and," I says, "I am going to prosecute every paper that printed that story. It is not true." "Oh," she said, "I guess you have a good case." I said, "I thought you 40

didn't know anything about it." "Well," she said, "I don't." I said, "Mrs. Jeffries, if there is any stories coming from you in regard to this, I will certainly come back and see you again." That is the conversation I had with Mrs. Jeffries almost word for word, as I can remember it.

Q Well, did you leave the house?

A I did, that very night.

10 Q Where did you go then?

A I went to Mrs. Grevey's, on Oriental street.

Q And how long were you there?

A About a month, I should judge.

Q And then from there where did you go?

A We went from Mrs. Grevey's to Asbury Park.

Q How did you come to go there?

A Well, Mrs. Garrison was suffering from nervousness, mental anguish. I went to Dr. McCartie and Dr. McCartie—

Objected to.

20 Q No, do not tell us what Dr. McCartie said. Did you go there on the advice of Dr. McCartie?

A I did.

Q And how long were you at Asbury Park?

A About two and a half months.

Q And then when you returned where did you go first?

A We went to Mrs. Garrison's sister's.

Q Well, and then?

A I was there just for a day or two, and then I went down to Mrs. Drake's, on Second avenue.

30 Q And how long were you there?

A About a month or six weeks.

Q And from there where did you go?

A I went with Mrs. Garrison's sister; she took a larger apartment—

Q Mrs. Harrington?

A Mrs. Harrington.

Q And how long did you stay with her?

A From December until August.

Q What year?

40 A From December, 1910, until August, 1911—August

George E. Garrison direct

24th, I think, 1911.

A And then you went to keeping house again?

A Then we went to keeping house again.

Q At what place?

A At 436½ Summer avenue.

Q What was done, if anything, when you went to Mrs. Harrington's, about her taking you there to board?

A Well, she hired larger apartments so that she could accommodate us. 10

Q Why did you go to Mrs. Harrington's instead of remaining at some of the other boarding places?

A Because I had to have—I thought it was best to have Mrs. Garrison's sister right near her to look after her; she was not capable of taking care of herself.

Q Immediately after the publication of November 22, 1908, what effect, if any, did you notice it had on Mrs. Garrison—not physical effect; mental effect?

A She was very nervous.

MR. LEONARD KALISCH. I submit that is coming very close to the line again. 20

THE COURT. I have allowed the testimony to go thus far as to the nervous condition which was about coincident with the publication. In my opinion, there is a distinction to be made, as I think I have remarked before, between evidence of mental agitation and distress and annoyance that can be rationally and legitimately connected with the publication, and the consequences of a mental disturbance of that kind resulting in some fixed condition of mind or body which would require medical attention. The existence of annoyance or disturbance 30 may be proved, if it is traceable to the publication. The ulterior consequences of it, I think, fall under a different category. This particular testimony, I think, is unobjectionable.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,

Circuit Court Judge. 40

(Seal.)

George E. Garrison direct

(Question and answer read.)

Q How was that exhibited? A Well, she seemed to be agitated by the fear that she was going to be arrested—

MR. LEONARD KALISCH. Now, if your Honor please, I ask that that be stricken out, on the ground that it does not come under the head under which damages can be sought here.

10 THE COURT. I think so.

MR. LEONARD KALISCH. That may be caused by entirely other grounds than what are stated here.

THE COURT. I think it very evidently does fall within the sphere of legitimate proof. I overrule the objection.

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

20 Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

Q I will ask you, Mr. Garrison, whether there was any incident or any other cause at that time connected with Mrs. Garrison which would cause her to fear arrest? A None, whatever.

Q How long did that nervous state continue? A It still continues.

30 Q What was her mental condition—that is, as to worry or mental distress—at the time you went to Asbury Park? A At the time she was very flighty; I had to get up in the middle of the night and go out and walk the streets with her. That state of affairs kept up until about July 12th at Asbury Park, when—

Q What year? A That was in 1910. And she seemed to collapse entirely for awhile; she lost her reason.

MR. LEONARD KALISCH. I ask your Honor to strike out all this testimony. I do not think counsel
40 ought to bring these things out when he knows the an

George E. Garrison direct

swer that is coming to the question.

THE COURT. Strike out the last statement. I warn counsel of the danger of pursuing this line of inquiry.

Q I do not want you to say anything whatever that touches on her physical difficulties, whatever they may have been or whatever occurred, Mr. Garrison; only her mental anguish or mental distress; nothing except that. I think I have said that to every witness. Have you ever heard anyone speak in Mrs. Garrison's presence about this publication, which required an explanation from her? Have you ever heard any such incident? I do not know whether you have or not; I just ask you—in her presence? A I can't bring to mind just now. 10

Q Did you ever accompany Mrs. Garrison to Orange? A I did.

Q For what purpose? A For the purpose of showing people in Orange that she had not run away.

Q When was that? A That was right after the publication. 20

Q How many times did you go and how did you go? A We had a horse and runabout, and we used to go that way.

Q How often did you go, how many times? A Maybe three or four times a week.

Q For how many weeks? A I went up there until—well, it may have been three or four or five weeks, until there was a story came back that she was back again with me, and I thought it was a useless task.

Q What streets did you go through? A Went through Main street, Lincoln avenue, Ridge street, went up to Park avenue, up through Llewellyn Park, Lincoln avenue, Taylor street, Center street. I covered the Oranges pretty well. 30

Q And was she acquainted in those streets, did she have acquaintances? A She was; that was my object in going up there.

Q Did you ever talk with anyone in the D., L. & W. depot, making any explanation about this affair? A I did.

Q With whom? A Mr. Walsh, Mr. Brady and Mr. McCormack. 40

George E. Garrison direct

Q And when was that? A That was some nights after the publication.

Q And can you give us the conversation? A Why, they were talking of this Archer affair, and I explained to them that——

Q Just what you heard, just what they said to you and you said to them. A I happened to overhear them say "Archer;" Archer's name came up as I was coming
10 in the door.

Q Go on and tell us what was said. A I said, "I see they have me all mixed up in that affair again;" and then I made an explanation that it was not my wife that had run away.

Q Can you recall any other particular incident, without going into all these incidents? Do you recall some particular incident where you explained that it was not your wife that had gone away with Archer? A Why, when I went in to see Dr. Grant I talked over Mrs.
20 Garrison's condition and then told Dr. Grant——

Objected to.

Q No, not what you told Dr. Grant. Did Dr. Grant say anything to you about this publication? A No.

Q Never mind, then. I do not want you to tell us what you told different people, but what people have told you, if you can recall particular incidents. Do you recall particular names, or do you not recall them—particular people that you talked with or that talked with you? A I can't bring to mind just now.

30 Q Mr. Garrison, just prior to this publication of November 22, 1908, what was the condition of Mrs. Garrison's mind as to worryment?

Objected to.

Objection overruled.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

THE COURT. Before this publication?

MR. LAMBERT. Just prior.

A Her mind was perfectly normal.

Q Was there anything, to your knowledge, worrying her at the time of this publication, November 22, 1908, before that publication, just prior? A We had lost a little girl; we lost our little daughter.

Q And how long before was that? A That was about a month before. 10

Q And she was in mourning at the time of the publication? A She was.

Q And what effect did this publication have on her then, if you noticed, as to her worriment? A Well, it didn't worry her, but it was a sorrowful, mournful condition that she was in.

Q That is, as to the child? A As to the child, yes.

Q But I am talking about the publication. What was her condition as to the publication, her mental condition, as to worriment? Did it change at all? and if so, how? A As to the publication? 20

Q After the publication. A Oh, she became very flighty and all worked up over it.

MR. LEONARD KALISCH. I want to call your Honor's attention to that last answer, where the witness says she was flighty. I think that is right within the prohibition.

THE COURT. I do not think that means anything more than a state of mental excitement. 30

MR. LAMBERT. That is the way I take it.

MR. LEONARD KALISCH. I think it means to the general mind more than that. It might perhaps to some persons, but you take the ordinary person, when you say a man is flighty, they think there is something the matter with his head.

MR. LAMBERT. That is just what we say.

MR. LEONARD KALISCH. Then I ask that it be stricken out. 40

THE COURT. It is to be taken in connection with the context. "Became very flighty and all worked up over it." I take it all together to mean a state of mental excitement and distress, disturbance of mind, rather than a case of mental disease.

MR. LEONARD KALISCH. What I mean is that the ordinary mind would probably look upon it in that way
10 I therefore ask to have that stricken out.

THE COURT. No, I do not think it is necessary to strike it out.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

20 CROSS-EXAMINATION by Mr. Leonard Kalsich.

Q Mr. Garrison, you have lived in Newark how long?

A Since 1893.

Q And where did you live when you first came to Newark? A At 432 Summer avenue.

Q And you were then a stereotyper, were you not?

A I was.

Q In 1893? A I was.

Q And have been such ever since, have you not?

A I have.

30 Q And in 1894 you lived where—also in Summer avenue, did you not? A Summer avenue; not at that address.

Q 383, was it not? A 383.

Q Were you married in 1893 to your first wife?

A Oh, yes.

Q And your name is in the directory, is it not, from 1893 up to the present time—in the Newark city directory? A That I don't know.

Q And do you not know that you are designated in the directory as a stereotyper? A Yes, I know that; I
40 have seen it there.

George E. Garrison cross

MR. LAMBERT. We admit that he was a stereotyper, Mr. Kalisch, all these years.

Q Do you know where E. G. Garrison lived—Everett G. Garrison? A Yes, I did know.

Q Whereabouts? A At—

Q 426? A 426 Summer avenue.

Q He lived there, in 1899, did he not? A That I don't know.

Q Well, you lived at 436 Summer avenue? A I did. 10

Q And did not Everett G. Garrison live at 426 in 1899, 1900, 1901 and 1902? A That I don't know.

Q And do you not remember him being at that house during those years? A I have seen Mr. Garrison about three or four times in my life, to my recollection, and whether he was there in those years or not I can't bring to mind just now.

Q You knew him by sight? A I do.

Q And if he had lived in the neighborhood four years, within three doors of where you were, have you not seen him oftener than you have mentioned? A No, I can't say that I have. 20

Q How did you know it was E. G. Garrison? A He was pointed out to me as a namesake of mine.

Q And he was living then at 426? A He was living at four twenty—

Q 426, was it not? A I won't say at that time. I remember him being pointed out to me as a namesake of mine, and he had a patch of gray hair; his hair was black with a patch of gray—

Q I do not care about his hair. Just answer the question, whether he was living in that place at that time? A I couldn't say. 30

Q Now, you never lived at 426? A Never.

Q And you mean to say you were a broker. A I do.

Q What kind of a broker? A I was a ticket broker.

Q When? A In 1888.

Q 1888? A 1888; yes, sir.

Q That is how many years ago?

MR. LAMBERT. Well, that is a mathematical calculation, is it not? 40

George E. Garrison cross

Q (By the Court.) That is twenty-five years ago, is it? A Yes, sir; the time I was a broker.

Q (My Mr. Leonard Kalisch.) What do you mean by a broker in tickets, a ticket scalper? A I mean that I acted as agent and broker for the B. and O. Railroad and for the Old Dominion Line——

Q You were a ticket seller, or what? A No, we had
10 an office on Broadway above——

Q Who had the office? A Turner & Garrison, the firm of Turner & Garrison.

Q They had an office there? A Yes, sir.

Q You bought tickets and sold them; is that it? A We sold tickets on commission for the B and O. and Old Dominion Line and other roads.

Q And you call that a broker? A That is what we called ourselves.

Q And did you not have a sign up, "Ticket Office"?

A I don't remember distinctly the sign we had there.

20 Q And that was in 1888? A 1888; yes, sir.

Q How long have you been a stereotyper? A I was a stereotyper at that time; since 1886 I have been a stereotyper.

Q Since 1886? A Yes, sir.

Q Well, who is the Garrison who was in this ticket office? A I was.

Q When did you work at the stereotyping? A I had charge of the National Press Company at that time, and used to leave the office about twelve o'clock, and go up to the office, the ticket office, from twelve until about
30 three.

Q And the rest of the time at stereotyping? A The rest of the time I was in the National Press Company's place.

Q How long did you have this ticket place in New York? A About six months.

Q Then for about six months you were a broker? A I was.

Q You were not living in Newark then, were you? A I was not.

40 Q Now, when this publication appeared in the News

George E. Garrison cross

you were in New York, were you? A I was.

Q And your wife telephoned to you? A She did telephone to me.

Q And that is the time she telephoned to you that she feared she was going to be arrested, did she not?

A She did, she telephoned that to me.

Q Did you come home right away? A I did not.

Q And you did not come home until next day? 10

A Not until I was through my work the next day.

Q Now, then, the article appeared in the Sunday Call, which you have seen there? A Yes.

Q Did you read that article during that day? A I did.

Q And you did not stay home that night, did you?

A Which night?

Q Sunday night, the Sunday that this article appeared. A That I don't remember.

Q What? A I don't remember whether I stayed home that night or not. 20

Q You do not remember that evening at all? A I don't remember staying home that night.

Q Well, then, that made no impression on your mind at all, did it? A What?

Q Why, the appearance of the article and your wife's condition? A It certainly did.

Q And you do not remember now whether you stayed home or not? A I do not.

Q But you do remember a brother-in-law coming down to see you on that day, do you not? A I do, distinctly. 30

Q And you also remember him taking dinner at your house? A I do.

Q But you do not remember whether you went to work that night or not? A I can't remember.

Q When did he take that dinner? A When did he take the dinner?

Q Yes, what time? A I would judge that we had the dinner, it may have been around five o'clock in the evening.

Q Five o'clock? A Late in the afternoon. I can 40

George E. Garrison cross

bring to mind that.

Q That you can bring to mind? A Yes.

Q Well, how long did he remain? A That evening?

Q Yes. A I don't remember what time he went away.

Q Now, you also stated that he wanted to know whether your wife had run away with Archer; isn't that what you said? A Yes.

10 Q Whether Rose ran away with Archer? A Yes.

Q Those are the words you used? A Yes, he said he came down to see if Rose—

Q Now, was there anything in the publication of the Sunday Call that stated that she had run away with Archer? A I don't quite get the meaning of your question.

Q Well, I will put it this way—

MR. LAMBERT. Does not the article speak for itself?

20 MR. LEONARD KALISCH. He is under cross-examination.

Q Where did Mr. Harrington live at that time? A Waverly place, Orange.

Q In 1908 this was, was it not? A 1908.

Q And he had visited your house, had he not? A When?

Q Well, any time from 1902 up? A He had.

Q How often, do you know? A Not very often; I can't remember how many times, but not very often. I probably wouldn't see him once in eight or nine months.

30 Q And you visited them, did you not, with your wife? A Yes, I have been up there.

Q And in 1902 you visited them, did you not? A I did.

Q And he visited your house? A In 1902?

Q Yes, shortly after you were married. A I can't bring to mind his visits in 1902; he may have done it, but I can't bring it to mind.

Q You were only married then a year to his wife's sister? A Yes.

40 Q And you were friendly all the time, were you not?

George E. Garrison cross

A Yes.

Q And on visiting terms? A Yes.

Q What I want to know, then, is, you say he asked you whether Rose had run away with Archer? A Yes, he came down, and that was one of his first questions.

Q That was one of his first questions? A Yes, sir.

Q Well, he did not say to you that he saw that in the Sunday Call, did he? A He did; he mentioned it during the conversation. 10

Q That he saw that in the Sunday Call? A That is what he mentioned.

Q And that he saw it in the News? A I believe he did; I believe he mentioned both publications at the time.

Q Both papers. Did you have the Sunday Call there while he was present? A It was in the house, yes.

Q And did you show him the Sunday Call and tell him there was no such thing in the Sunday Call? A Tell him that? 20

Q Yes. A No.

Q You did not tell him that? A Tell him——

Q Tell him there was no such thing, that Rose ran away with Archer? A Show him the Sunday Call and——

Q Yes, show him the Sunday Call and show him there was no such thing in it? A No.

Q You did not say that? A No.

Q And he saw your wife there? A I am positive he did.

Q And you took dinner together? A Yes. 30

Q Did you not discuss the article? A We certainly did.

Q Well, if you discussed it, did you not show him that it did not refer to your wife at all? A No, I didn't show him the story, that I remember of.

Q What? A No, I don't remember that at all. We discussed the article. I had read the story and he had read it.

Q Well, did he not know already that it was not your wife? A No, not to my knowledge, because that was 40

George E. Garrison cross

one of the first words he had to speak when he came in.

Q Well, when you came to discuss the article, did you not read it over to him? A No.

Q And he did not read it to you? A No.

Q Now, Mr. Garrison, you mean to say that the mental distress that your wife experienced about that time was caused by the Sunday Call and News and other papers? A No, I didn't say other papers; I won't say
10 other papers at that time, but in the Sunday Call and the News at that time, at that particular day.

Q But you said that you had lost your second child, your daughter, October 26th? A My first.

Q 1908? A Yes.

Q A little less than a month before the publication? A Yes.

Q And do you mean to say that that did not cause the distress of mind? A It was a different distress altogether.

20 Q What? A It was a different distress altogether.

Q Do you know the difference between the two distresses? A Yes, sir.

Q Do you mean to say that the loss of that daughter did not work upon your wife's mind? A It did.

Q It did work upon it? A It did, it certainly did.

Q And had a great deal to do with her mental distress, did it not? A No, absolutely no.

Q Nothing at all? A Some, but not in that way.

Q That was more to her than a mere article in the paper, was it not, the loss of that daughter? A It was
30 not the same affliction.

Q Well, was it not a more severe affliction—the loss of that daughter? A That would be hard to answer.

Q How old was that daughter? A She was within two weeks of six years old.

Q And you mean to tell me that that was not the distress that she suffered and that that did not make her ill? A I mean to tell you that the loss of that daughter broke her heart; I mean to tell you that—

Q One moment.

40 MR. LAMBERT. Let him answer it.

George E. Garrison cross

THE COURT. I think he ought not to be interrupted.

A And I mean to tell you that the publication—while she recovered from the loss of our daughter, that the publication of that story is still fresh in her mind and causes her mental anguish.

Q And the loss of her daughter does not, eh? A At this time?

Q Yes. A It doesn't bother her now, no. The memory is there. 10

Q But that publication does? A It does; it will live with her till she dies.

Q And did she not break up housekeeping on account of the loss of this daughter? A No.

Q And did you not go boarding on account of the loss of this daughter? A No.

Q And did she not go to those different physicians that you spoke of, Dr. Grant and Dr. McCartie, on account of the nervousness which she was suffering and the illness which she was then afflicted with on account of the loss of this daughter? A Absolutely, no. 20

Q How soon after the loss of this daughter did she recover from her sorrow and frame of mind, how soon after? A From her sorrow?

Q Yes, from her sorrow? A Naturally, she——

Q No, how soon after? Not "naturally." I want to know the time, that is all. A She has really never recovered from the loss of her daughter.

Q And the nervous strain upon her, when did she recover from that, after the loss of her daughter? A The nervous strain? 30

Q Yes, the nervous-strain? A I don't know as she had any nervous strain from the loss of her daughter.

Q None at all? A Not that I noticed.

Q Nor no mental strain? A Not that I noticed.

Q You noticed no mental strain after you lost your daughter, six years old? A Not that I noticed. The strain was a sorrowful strain.

Q Well, are you a physician? A I am not.

Q Don't you know that when a person loses one who is most dear to them that there is a mental strain? 40

George E. Garrison cross

A Yes.

Q Did she not have that? A She naturally felt bad, sorrowful and mournful, at the loss of her child.

Q Well, does not that affect the mind? A No, it was a different thing entirely from her trouble, a different thing.

Q Then you say you went boarding at different places? A Yes, sir.

10 Q And moved out from different places? A I did.

Q Then you finally went to Jeffries's, or, rather, you boarded at Jeffries's, and you were there nine months?

A I did.

Q And Mrs. Jeffries, through her butler, told you that she wanted to see you? A Yes.

Q And then told you that she wanted your room? A Yes.

Q Is that it? A That is the fact.

Q And you wanted her, Mrs. Jeffries, to say that she
20 was turning you out on account of this publication?

A No, I did not; I wanted her to give me the reason that she was turning us out.

Q And you asked her if she had read anything in the papers about Archer? A I had that in mind, that that was the reason she was turning us out.

Q And did you not ask her that? A I certainly did.

Q And she said she hadn't read it? A No, I didn't ask her if she read it.

Q Whether she knew anything about it? A Yes.

Q And she said she did not? A Yes.

30 Q And you insisted that she should give you some reason for putting you out? A Yes.

Q Now, then, did she not give you this reason: that your wife and the butler had trouble about the food? Did she not give you that reason? A I don't remember that.

Q What? A I don't remember that.

Q Did she not tell you—— A Yes, she did; she spoke of that.

Q And that your wife had trouble with the other
40 boarders? A No, I don't remember that.

George E. Garrison cross

Q And that she could not stand for that? A No, I don't remember that.

Q And that is the reason she wanted you to go? A No, I don't remember that.

Q And is not that what she told you? A No, I don't remember a word of that. I remember the food incident.

Q You remember about the food? A Yes, I remember that. 10

Q That is, your wife had thrown the food at the butler? A No.

Q Or something to that effect? A No.

Q Or had quarreled with the butler? A Yes.

Q And the butler told Mrs. Jeffries about it, and for that reason she wanted your room? A No. I will explain that to you, if you wish.

Q But you have explained it in your direct examination. A Yes.

Q You said in your direct examination that she would not give you the reason? A The food— 20

Q That Mrs. Jeffries would not give you any reason for putting you out, or telling you to go, rather? A Yes.

Q Did you not say so in your direct examination? A Yes, sir.

Q Now, I am asking you—and you have answered it—that the reason she gave you was on account of the trouble that your wife had with the butler; is not that true? A On account of the food, yes.

Q Yes. Is not that the reason? A You have just said that the trouble was between my wife and the butler, through this food that she sent back. It was not she. 30

Q Well, the trouble between your wife and the butler; that was the reason she gave you? A It was the food.

Q The food was not good? A The food didn't suit me, and Mrs. Garrison called the butler and gave it to him back again, and then shortly after that the butler came in and said that Mrs. Jeffries wanted to see me.

Q And that was the reason she wanted your room. 40

George E. Garrison cross

was it not? A I don't know; she didn't say so.

Q What? A No.

Q That is what she called you in for, was it not?

A She called me in to tell me that she wanted my room.

Q And she told you about the trouble between your wife and the butler, did she not? A She mentioned about the food and the butler, yes. There were complaints in that boarding-house all the time about the food, between that and the butler.

Q Now, the second or third day you rushed down to Mr. Lambert's office, did you not? A The second or third day, when?

Q After the publications in the paper.

MR. LAMBERT. Did he use the word "rush?"

MR. LEONARD KALISCH. Well, immediately went down.

A I think I said the first or second day.

20 Q Well, how many days after the publication?

A Well, that is what I say now: I think it was the first or second day.

Q The first or second day, you immediately went down to Mr. Lambert's office? A Yes.

Q You did not go to the office of the Sunday Call to ask them to rectify it, did you? A No, I did not.

Q You did not go to the Evening News, did you, and ask them to rectify it? A I did; I asked Mr. O'Toole and explained the entire falsification and—

Q That was in the News? A Yes, sir.

30 Q You never went near the Sunday Call, did you? A No.

Q Now, did you read the correction in the Sunday Call? A I did.

Q Did you read your testimony that you gave in the trial against the News? A Did I read it?

Q Yes. A I glanced over it this morning here in court, I believe.

Q Have you not glanced over it more than this morning? A No, I have looked at it, but not went through it.

G. Herbert Allen direct

Q What? A I have glanced at it, but not went through it.

Q Well, you found that place where you said that you had known your wife two years before you married her? A Yes.

Q You found that place, did you not? A Yes, and I knew that immediately after the last trial; my wife called my attention to it.

Q You did not explain at the last trial about it, did you? A I didn't have a chance; this is the first opportunity I have had. 10

G. HERBERT ALLEN sworn in behalf of plaintiff.

DIRECT EXAMINATION by Mr. Lambert.

Q Doctor, you are a practicing physician, are you?

A I am.

Q And where are you located? A 195 Roseville avenue.

Q Newark? A Newark.

Q Were you formerly at Asbury Park? A I was. 20

Q Were you there in— A 1910.

Q In 1910? A Yes, sir.

Q And did you meet Mrs. Rose G. Garrison, this lady sitting here (indicating), at that time? A I did.

Q Who was treating her then? A Why, I was treating her, with Dr. Bryan, of Asbury Park, Joseph H. Bryan.

Q Well, did you notice anything concerning her state of mind, whether she was nervous or in a state of worriment?

MR. LEONARD KALISCH. I object to the question. 30

THE COURT. The objection is overruled.

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

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.

(Seal.)

A I did.

Q Just state what you noticed of her. How did she 40

G. Herbert Allen direct

appear to you? Do not go into the physical part or what you did for her. A Do you mean just her mental condition?

Q Just her mental condition, as you saw it. A Why, when I first saw her she was in a semi-conscious condition and wholly incapable mentally in that respect. She was capable in one way, but not in another. I believe she could read, but you couldn't talk to her.

10 Q Never mind the physical part. What did you notice about her mind or her state of mental worryment, if she had any?

MR. LEONARD KALISCH. Of course, I want an exception to all those questions without asking for it.

THE COURT. Take a general exception.

Exception allowed; let it be sealed, and it is sealed accordingly.

20

(Seal.)

FREDERIC ADAMS,
Circuit Court Judge.

MR. LAMBERT. Go ahead.

(Question read.)

A Well, I said before that she had it, and she was—well, practically wholly incapacitated to do anything at the time, and she was in bed and couldn't get up.

Q No, not physically. A Well, that was mental, in a way; it was due to her mind, or her brain, at least. And she was practically oblivious to everything, so far
30 as she was concerned.

Q How many times were you there, Doctor? A I don't know the number of times. I know that from about the middle of July until the end of August she was in Asbury Park, and we looked after her during that time.

MR. LEONARD KALISCH. Well, I would like to move to strike out all that testimony, your Honor.

THE COURT. I think it all ought to go out. It is a result of condition. I do not think it is permissible
40 under the rule. Strike it out.

Callie D. Jeffries direct

MR. LEONARD KALISCH. The whole of it?

THE COURT. The whole of it.

CROSS-EXAMINATION WAIVED.

PLAINTIFF RESTS.

ADJOURNED until to-morrow, Friday, February 14,
1913, at ten o'clock, A. M. 10

FOURTH DAY.

Friday, February 14, 1913.

Met pursuant to adjournment.

Present, counsel as before stated.

Mr. Leonard Kalisch opens for defendant.

CALLIE D. JEFFRIES sworn in behalf of defendant.

DIRECT EXAMINATION by Mr. Leonard Kalisch. 20

Q Mrs. Jeffries, where do you reside? A 87 Fourth
avenue.

Q How long have you resided there? A Seven
years last September.

Q Are you in business there? A I have a boarding-
house.

Q Do you know Mrs. George E. Garrison? A Yes.

Q And do you know her husband? A Yes.

Q Did they board at your house? A Yes, sir.

Q Do you know when they came there? A Septem- 30
ber 1, 1909, I think; yes, I am sure of it.

Q September 1, 1909? A Yes.

Q How long did they board with you? A Until
1910, the last of May or beginning of June; I couldn't
just tell the exact date.

Q (By the Court.) Of the following year? A Yes,
in 1910.

Q (By Mr. Leonard Kalisch.) Did you request
them—

Objected to as leading.

Q How did they come to leave? A I asked them to 40

Callie D. Jeffries direct

leave.

Q On what ground? A Well, Mrs. Garrison and the butler had had some difficulty—

THE COURT. That means, what did you say?

Q Yes, I want to know what you said. A Well, I asked Mr. Garrison—I asked him in the parlor, and I told him that I would like him to vacate his room when
10 his week was up.

Q Well, what did he say? A He wanted to know the cause.

Q And what did you say? A I told him because the butler and Mrs. Garrison had had some trouble, and he had told me that he would leave, and I said that I would speak to Mrs. Garrison and ask for the room, and that he should never mind it, it would be all right.

Q Was there any other ground? A Not at all.

Q Did Mr. Garrison say anything else to you at that
20 time? A No.

CROSS-EXAMINATION by Mr. Lambert.

Q Mrs. Jeffries, do you think you recollect all of the incidents that occurred on that occasion? A I do; yes, sir.

Q What time of day was this that you had your interview with Mr. Garrison? A After lunch.

Q And where did it occur? A What do you mean, where did what occur, my talking with him?

Q Yes. A I took him in the parlor.

Q Was anyone present? A No, sir; not at the time.
30 Mrs. Garrison came in before we had finished.

Q She came in while you were talking? A Yes, sir.

Q What did you first say to him when he came in the parlor? A I asked him to come in, and told him that, as Mrs. Garrison and Cornelius had had trouble, that I thought it would be best for him to give me the room when his week was up, that I didn't like to have them be there any longer.

Q Did you say that immediately, as soon as he came in? A Oh, I spoke to him about it.

40 Q Did you speak to him about the trouble with the

Callie D. Jeffries cross ex

butler as soon as he came in? A Yes, sir.

Q Can you remember the exact words that you said to him when he first arrived in the parlor? A Oh, no, I can't remember that, just the exact words.

Q Did you not say to him, "Mr. Garrison, I would like to have you vacate your room"? Wasn't that the first thing you said? A Well, I can't remember just the words exactly, but just the sum and substance of it.

Q That was the substance of it? A That was the substance of it, that I wanted the room.

Q And did he not ask you why? A Yes, sir, I told him.

Q Did you give him a reason at once? A I did.

Q Did he ask you whether there was any other reason? A I don't think he did at that time, no.

Q Had he paid you? A Yes, sir; always.

Q Had he paid you on that day the amount that was due? A No, he hadn't paid me then.

Q Did he pay you at the same time? A No, not then. Before he went out he did.

Q Did you remain in the parlor, and did he not go out and draw a check and bring it down to you?

A That I don't remember.

Q Now, you remember these other things. See if you can not remember that. A I do not remember about the check, but I think he gave it to me later.

Q When you had the first interview with him you told him about the butler? A Yes.

Q And that was all the interview that you remember at that time? A At that time. In the evening before he went he had a little talk with me.

Q Let us have the talk in the evening. A He merely asked me if that was the cause that I wanted him to vacate the room, and I said that was the cause and nothing else.

Q You remember that he spoke to you about this publication in the papers? A Yes, he asked me if that was the cause, and I said, "No, Mr. Garrison, not at all; that has not anything to do with the case at all."

Q You knew about the publication, though, did you

Callie D. Jeffries cross ex

not? A I didn't know anything about the case, never read about it at all.

Q You heard it discussed in your house among the people? A Not at all, never heard it discussed at all.

Q You knew of the fact? A I don't understand.

Q You knew about this publication? A I knew she had some trial with some papers, but anything further I didn't know anything about it.

10 Q You knew it had been published that she had run away with Archer? A No, sir; I never read of it.

Q You remember Mr. Garrison saying to you, "I have got a suit against the News?" A No, he didn't tell me that.

Q And did you not tell him that you guessed he had a good case? A No, sir.

Q You do not remember that? A No, sir.

Q Well, you might have said that? A No, sir; it never concerned me at all.

20 Q Mr. Garrison has testified that you said that. A. No, sir.

Q Just think and see if you can not recall that. A No, sir; he came in and asked me if that was the reason, and I said, "Mr. Garrison, no, not at all."

Q You have said that once. A Well, that was all.

Q Just answer the questions, please. Did you not say to Mr. Garrison, "I have nothing against you, but I do not want Mrs. Garrison in the house?" A I may have said that, but I don't remember.

30 Q Mrs. Garrison made this complaint about the food, did she not? A Yes, sir.

Q Well, that is the reason you wanted them to vacate? A That is the reason.

Q Because Mrs. Garrison complained to the butler about the food? A Yes, sir.

Q She sent some food back, did she not? A Yes, sir.

Q She did not like it? A No, sir.

Q You have had other people do the same thing, have you not, frequently? A Do what?

40 Q Send food back. A I don't know.

Callie D. Jeffries cross ex

Q What is the reason you do not know? A Well, I don't remember sending it back.

Q How long have you been keeping a boarding-house? A Seven years.

Q Have you not had other people complain about the food besides Mrs. Garrison? A They may have.

Q Did you always tell them to get out when they complained? A No. It was the way she complained— 10

Q Did you always tell them to go out of the house when they complained? A No.

Q If you did, you would not have many boarders, would you?

Objected to.

Q All you know about the complaint about the food is what the butler told you, is it not? A No, I knew about it.

Q Did you hear Mrs. Garrison say anything about the food? A No. 20

Q Did you hear Mr. Garrison say anything about the food? A No.

Q How do you know about it, because it came back into the kitchen? A No, I was not there.

Q How did you know about it? A Well, I was told about it.

Q That is what I say, you were told about it? A Yes.

Q That is the only way you knew about it, is it not, because you were told about it? A No, it was not the first time. 30

Q Oh, there had been other complaints about food, too, had there not? A With Mrs. Garrison, yes.

CORNELIUS EVANS sworn in behalf of defendant.

DIRECT EXAMINATION by Mr. Leonard Kalisch.

Q Where do you reside, Cornelius? A 87 Fourth avenue.

Q Now? A Oh, now?

Q Now. A 134 Stone street.

Q And what is your business now? A Well, I work 40

Cornelius Evans direct

with a chemical firm.

Q And in the year 1910 where did you live? A I worked at Mrs. Jeffries's.

Q At what place? A Mrs. Jeffries's, 87 Fourth avenue.

Q In what capacity were you there, what did you do there? A Well, I was butler then.

Q Did you wait on the table? A Yes, sir.

10 Q And did you know Mrs. George E. Garrison?

A Yes, sir.

Q And Mr. Garrison? A Yes, sir.

Q And did you wait on them? A Yes, sir.

Q Now, did you have any difficulty there? A Well, only with Mrs. Garrison.

Q Whom? A Mrs. Garrison.

Q What was it? A On account of some croquettes I brought her one Friday evening—Friday afternoon.

Q And what was it? A Well, she was a Catholic,
20 you know.

Q What was it? A She had some words about some croquettes.

Q What did she say?

THE COURT. You said something else. This was Friday afternoon. Go on from there.

Q After that? What did she say? A Well, she said she didn't like them croquettes.

Q What did she do? A She shoved them back at me, and then I took them in the kitchen and told them
30 about it.

Q And is this the only time? A Well, several times she used to kick about the coffee, it wasn't hot enough, and everything like that.

Q And you reported that, did you? A Yes, sir.

Q To whom? A To the cook.

CROSS-EXAMINATION by Mr. Lambert.

Q These were croquettes, were they? A Yes, sir.

Q What kind of croquettes? A Well, I don't know what kind of croquettes they were.

40 Q You cannot always tell what croquettes are made

Cornelius Evans cross

of, can you? A Well, I think these were made of beef.

Q Kind of a hash? A No, I don't know about hash.

Q Mrs. Garrison did not like them, did she? A No, sir.

Q She told you to take them back? A This was on Friday. I made a mistake, you know, in taking these croquettes to Mrs. Garrison.

Q Why? A Well, I had forgotten it was Friday 10
afternoon.

Q What difference did that make? A Well, she was a Catholic and she didn't eat any meat on Friday.

Q And that was the reason she sent them back, was it? A Yes, sir.

Q And that was the only reason she sent them back, was it, so far as you know? A Well, that was the only reason that day she sent them back.

Q And all you did was to go out to the kitchen and report that Mrs. Garrison sent back the croquettes, did you not? A Well, she shoved them at me. 20

THE COURT. Answer the question.

Q (Question read.) A Yes, sir.

THE COURT. The question is as to what you did, not as to what Mrs. Garrison did.

Q Yes or no will answer. A Yes, sir.

Q You never served her with meat on Friday, did you? It was not the rule, was it? A No.

Q And Mrs. Jeffries knew that you did not serve her with meat on Friday, did she not? A Yes, sir. 30

Q Then it was your fault in serving her the meat instead of her fault in refusing it, was it not? A That day it was.

RE-DIRECT EXAMINATION by Mr. Leonard Kalisch.

Q Now, what other day? A Well, sir, the other days she used to kick in the morning, and she used to kick about the coffee, it wasn't hot, and everything; and that day she called me down in the dining-room, and so I told Mrs. Jeffries I was going to leave, I wasn't going to stand it any more. 40

Cornelius Evans re-direct

MR. LAMBERT. I object to what he told Mrs. Jeffries. I ask that that be stricken out.

THE COURT. Strike it out.

Q What was her manner that day when she shoved the croquettes back at you?

MR. LAMBERT. I object to that. What difference does it make what her manner was?

10 THE COURT. It is part of the interview. I think you may ask the question.

Q In what way did she do it? A Well, she took them and shoved them back at me like that (illustrating). She said, "You know I don't eat those things."

RE-CROSS-EXAMINATION by Mr. Lambert.

Q The coffee was not hot, was it? A The coffee was hot, because I put the cup in the stove and heated it up, so that it would be hot for her, and she said it wasn't hot.

20 Q That is, you had the coffee poured and had it on the stove to heat it up? A No, I took the cup and put it in the stove and heated the cup up, and then the coffee was boiling, and then she said it wasn't hot.

Q You did not put your finger in to see whether it was hot or not, did you? A No, I didn't put my finger in.

Q Wasn't it the cup that was hot instead of the coffee? A The coffee was hot, because the coffee was boiling.

30 Q Did you see the coffee boiling in the cup? A I saw it boiling in the pot.

Q But did you see it boiling in the cup? A No, sir.

Q How long had it been in the cup before you served it? A About three minutes, I guess.

Q You poured it out and let it stay in the cup about three minutes before you served it? A Well, about three minutes to fix up my orders.

Q Well, you poured the coffee and then fixed up your orders and went in the dining-room, did you? A I fixed up the orders and went in the dining-room.

40 Q And the coffee was waiting for you, was it?

C. May Chambers direct

A No, I poured the coffee the last thing.

Q Well, how was it three minutes in the cup before you took it in? A I had a couple of other people to serve.

Q It took you about three minutes to go from the kitchen into the dining-room? A Well, it took me about three minutes to wait on the people.

C. MAY CHAMBERS sworn in behalf of defendant. 10

DIRECT EXAMINATION by Mr. Leonard Kalisch.

Q Mrs. Chambers, where do you reside? A 87 Fourth avenue.

Q How long have you lived there? A Five years.

Q You board with Mrs. Jeffries? A I board with Mrs. Jeffries.

Q Were you there in 1910? A Yes, sir.

Q Do you know Mrs. Garrison? A Very slightly.

Q You knew her as a boarder, did you not? A I knew her simply as a boarder.

Q And Mr. Garrison? A Yes, just as coming in the house, that was all. 20

Q Did you ever have any conversation with Mrs. Garrison regarding her health? A Oh, yes—

Q While she was boarding there in 1910? A Just in a sympathetic way, as one person with another. I asked her how she was occasionally. She didn't seem to be—she was pretty well, as I remember it, most of the time she was there.

Q Well, what did she say to you? A At what time?

Q Well, when you had this conversation with her about her health. 30

THE COURT. I do not think the matter of health enters into this case at all.

Q Did you notice anything else—did you notice whether she was sick or not?

Objected to.

THE COURT. How does that enter into the case?

MR. LAMBERT. If Mr. Kalisch wants to open the door, I am perfectly willing, if I may go into it. 40

G. Wisner Thorne direct

THE COURT. No.

MR. LAMBERT. Then I take it that all the testimony ought to be stricken out thus far.

THE COURT. No, the witness says she knew Mr. and Mrs. Garrison as boarders.

MR. LAMBERT. But her testimony as to her being pretty well.

10

THE COURT. I will strike it out as to the health.

CROSS-EXAMINATION by Mr. Lambert.

Q You knew about this suit against the News, did you? A No, sir; nothing about it.

THE COURT. How is that cross-examination?

MR. LAMBERT. It is not. That is all.

G. WISNER THORNE recalled in behalf of defendant.

MR. LAMBERT. I will admit that the article was published, if that is what you want.

20

MR. KALISCH. Well, I had better read it.

DIRECT EXAMINATION by Mr. Leonard Kalisch.

Q You are the president, I understand, of the defendant company? A Yes.

Q How old is the Sunday Call, how old a paper is it?

A Forty-one years next May.

Q And it is published only on Sundays? A Yes.

MR. LEONARD KALISCH. Is it admitted that no request was made for a retraction?

30

MR. LAMBERT. Yes, I will admit it.

MR. LEONARD KALISCH. It is admitted that no request for retraction was made by the plaintiff?

MR. LAMBERT. Yes.

Q Now, I call your attention to the Sunday Call of December 6, 1908, and ask you whether there is anything in that paper of that edition referring to Mrs. George E. Garrison (paper shown to witness)? A Yes.

40

Q What is it? What is it headed, if anything?

G. Wisner Thorne direct

A It is headed "A Correction Made."

Q Where does that appear, in what part of the paper? A First page of part one, the most conspicuous page in the paper.

Q What column? A Third column.

Q Will you kindly read what it says. A "A Correction Made. In the Sunday Call of November 22d, in an article announcing Archer's arrest in Seattle and telling the story of his crime, it was said that when he ran away from Newark he was accompanied by Mrs. George E. Garrison, of 426 Summer avenue. This statement has naturally proved distressing to Mr. and Mrs. George E. Garrison, who have their home in the same neighborhood, namely, at 436 Summer avenue. The woman who went away with Archer was not Mrs. G. E. Garrison, but Mrs. E. G. Garrison, the full name being Mrs. Everett G. Garrison, and her home was at No. 426, the address given in this paper two weeks ago. The fact that two persons with similar names lived within four or five doors of each other explains the unfortunate error. It is regretted by the Sunday Call. Of course, Mrs. George E. Garrison's friends knew that she had not left Newark, nevertheless it was unpleasant to her to have her name linked with that of Archer."

MR. LEONARD KALISCH. I offer that paper in evidence.

THE COURT. It will be D1. It is not necessary to mark the files. We will call it D1.

CROSS-EXAMINATION by Mr. Lambert.

Q You do not know, Mr. Thorne, who wrote that article, do you? A Which article, this one?

Q This particular article? A I wrote it.

Q How did you get your information on which to found this article? A I think we saw a similar correction in the Evening News.

Q Are you sure about that? A Almost positive.

Q Well, did you get all of your information from the Evening News upon which to found the article?

A This correction?

G. W. Thorne cross

Q Yes. A I can't say positively. In some way the fact came into the office that the original article was incorrect, and then we wrote this.

Q Do you know in what portion of the article in the Evening News that was published, that correction made, in what part of the article?

Objected to.

10 THE COURT. How is that relevant to this case?

MR. LAMBERT. The witness says that he saw a correction in the News, and that was the foundation of this correction, if I understand his testimony.

THE COURT. What difference does it make where he got the material as long as he printed the retraction?

MR. LAMBERT. Well, the only point is this. I want to show that a reporter was put upon this and went up and saw Mrs. Garrison, if I can.

20 THE COURT. That is another question.

MR. LAMBERT. I was leading up to that. I do not know whether I can do that or not. I tried to get in the other day that a reporter from the Call had been to see Mrs. Garrison and she made the explanation. Now I want to see if it was not the reporter——

THE COURT. Well, direct your inquiry to that point. I sustain the objection to this question about the details of the News retraction.

30 Q Do you know now, Mr. Thorne,—can you recall whether you got your information from any source except what you saw in the News? A With respect to this correction?

Q Yes. A No, my memory is not clear about that; I do not really know positively where it came from.

LOUIS HANNOCH sworn in behalf of defendant.

DIRECT EXAMINATION by Mr. Leonard Kalisch.

Q Mr. Hannoch, you are connected with the Sunday Call? A Yes, sir.

40 Q In what capacity? A Business manager.

Louis Hannoeh direct

Q How long have you been with the Sunday Call?

A Thirty-seven or thirty-eight years.

Q Did you examine the Newark city directory for 1908? A I did.

Q Under what name? A The name of Garrison.

Q And did you count the number of Garrisons that you found in that directory?

Objected to as not the best evidence.

10

THE COURT. (After argument.) The objection being made, I think I will hold it good.

MR. LAMBERT. I will say this, if the Court please. If Mr. Kalisch wants to produce the book, if he hasn't the book now, I will consent to its going in and being marked as an exhibit as soon as it is produced.

(Defendant's counsel produce book.)

MR. LAMBERT. Offer it in evidence; I have no objection.

20

MR. LEONARD KALISCH. I offer it in evidence.

Q What have you there in your hand (book handed to witness)? A The city directory of 1908.

Q Just turn to the Garrisons. A I have it.

Q Now, will you count the number of Garrisons that appear in that directory? A Twenty-nine.

Q Are there any there by the name of Goerge? A Yes, sir.

Q How many? A Three.

Q Just state what they are. A George; George E., stereotyper, and George W., driver.

30

Q And what other? A And George, machinist. There are three: George, machinist; George E., stereotyper, and George W., driver.

MR. LEONARD KALISCH. The book is offered in evidence.

(Marked Ex. D2.)

CROSS-EXAMINATION by Mr. Lambert.

Q Where does George live, what is the residence of George, the first one you mention? A 136 Springfield 40

Louis Hannoeh cross

avenue.

Q And what is his business? A Machnist.

Q George E., what does it say about him? A Stereotyper; house, 436 Summer avenue.

Q George W.? A Driver, boards 94 Sylvan avenue.

Q Does it state his color? A No.

Q Does it not say "colored?" A No.

Q What number do you say? A George W.?

10 Q George W. A 94 Sylvan avenue.

Q Do you find any other Garrison residing in Summer avenue? A No, sir.

Q Do you find the name of Everett G. Garrison?

A I do not.

Q You know George E. Garrison, do you not, Mr. Hannoeh? A Very well.

Q How long have you known him? A Seventeen or eighteen years.

20 Q He used to be employed by the Sunday Call, did he not? A As stereotyper; yes, sir.

Q How long ago? A Fifteen or eighteen years ago.

Q Did you read this article published in the Call?

A Possibly I did.

Objected to.

THE COURT. This, of course, is not cross-examination.

Q Among the Garrisons there do you see any named there as a broker? A (After examining book.) I do not, no.

30 Q As soon as you saw that article you knew, did you not, that it referred to the wife of George E. Garrison?

Objected to.

A I did not know it.

Objected to as not cross-examination.

THE COURT. Do you think it is cross-examination?

MR. LAMBERT. Well, I think so, if your Honor please. This witness has been produced and he has testified to the number of Garrisons; looking over the
40 Garrisons, he has testified to the number by the name

Louis Hannoeh cross

of George, George E. and George W. Now, I think I have the right to go into what he knows about the Garrisons to which he has testified. It seems to me that is direct cross-examination.

THE COURT. But that is not your question.
(Question read.)

THE COURT. That is not asking him what he knew about those other Garrisons. 10

MR. LAMBERT. No, it is asking about George E.

THE COURT. Nor even about George E.
(Question withdrawn.)

Q Did you know Mrs. George E. Garrison? A I did not.

Q Did you ever see her? A Not until I saw her in the courtroom.

Q You knew that George E. resided at 436 Summer avenue? A I didn't know it. 20

Q Did you ever know where he resided? A I did not, until within a day or two.

Q What? A Until this trial came on.

Q You knew he was a stereotyper? A Yes, sir.

Q You knew he was the only stereotyper mentioned in the directory? A Yes.

Q And the only George E. Garrison mentioned in the directory? A According to this directory, yes.

Q Now, did you not know that this article referred to George E. Garrison's wife? 30

Objected to.

THE COURT. That is the same question in another form. I do not think it is cross-examination.

DEFENDANT RESTS.

Mr. Leonard Kalisch sums up for defendant.

Mr. Lambert sums up for plaintiff.

At 1.30 o'clock P. M. the court takes a recess of one hour. 40

Charge

The Court charges the jury as follows:

ADAMS, J.

Gentlemen of the Jury. I need not say to you that the amount mentioned in the papers as the amount claimed is not proof of the amount of the injury. It is merely a sum which, in case a verdict is obtained, the verdict cannot exceed. Mr. Garrison, as counsel has correctly remarked, is out of the case, and you will, therefore, pay no attention to him, but consider the question as arising between Mrs. Garrison and the defendant.

The plaintiff, Mrs. Rose G. Garrison, alleges that the Sunday Call, a newspaper of this city, published of her certain defamatory words, and that—I read from the declaration—“by means thereof the plaintiff, Mrs. Garrison, has been and is greatly injured in her good name, fame and credit, and brought into public scandal, infamy and disgrace with and amongst all her neighbors and other good and worthy persons, in so much that divers of those neighbors and persons to whom the innocence and integrity of the said plaintiff, Rose G. Garrison, in the premises were unknown, have on account of the committing of the said several grievances by the said defendant as aforesaid, from thence hitherto, suspected and believed, and still do suspect and believe, the said plaintiff, Rose G. Garrison, to have been guilty and to be the person guilty of adultery with Elliott A. Archer and of having deserted her husband, the said George E. Garrison, and of having eloped with one Elliott A. Archer, and to have been guilty of lewd and lascivious conduct with the said Elliott A. Archer, and to have had improper and questionable relations with the said Elliott A. Archer, and have by reason of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto, wholly refused and still do refuse to have any transaction, acquaintance or discourse with the plaintiff, as they were before used to do.” That is the plaintiff’s claim. It is for that that she asserts a right to compensation.

Now, what are the words that are complained of?

Charge

They occur in an article printed in the Sunday Call, and that portion of it which affects Mrs. Garrison is this: "At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a broker, when Archer first disappeared from the city. It is said she has been with him much of the time since. Archer's wife is living in this city," &c. Now, what is the natural import of that language? It is for you to say. Is it that Mrs. Garrison had gone away and was living in adultery with Archer? 10

In the case of libel any words will be deemed defamatory if their natural effect and manifest tendency will be to expose the person of whom they are spoken to hatred, contempt and ridicule or obloquy, to injure that person in his profession or trade or to cause that person to be shunned or avoided by his neighbors. To use such words is an actionable wrong, for it is calculated to impair the great right of personal security. The law seeks to protect the reputation as well as to protect the person of the individual. If these words which I have read from this article are defamatory, within the meaning of this definition, then they constituted an actionable wrong, and gave the person of whom they were spoken, unless they were true, a right of action. Were they spoken of Mrs. Rose G. Garrison? This is a question of intent, and as intent is largely an inference from acts, we judge of intent not merely by what the person who is said to have the intent tells us—of course we cannot go into his bosom—but also by his conduct, by what he does—men being presumed, in a general way, to intend what they do and to intend the natural consequences of their own acts. 20 30

In answering this question as to intent, as to whether it was the intent of the paper to speak these words of Mrs. Garrison, it is for you to consider, not merely any declaration on behalf of the defendant, the paper, but all the circumstances; as, for instance, the extent to which the plaintiff corresponds or fails to correspond with the description in the article, and whether the evi- 40

Charge

10 dence shows that there was any other definite person then known to the defendant to whom the description could naturally be applied. The question is not whether some other woman by the name of Garrison, or of some other name, went away with Archer, but whether at the time this article was written the words were intended to be spoken of Mrs. Rose Garrison, or whether they were intended to be spoken of some other person, of whom the writer of the paragraph, the article, or the editor and publisher, who are responsible for the publication, then had knowledge. And the defendant, the paper, was under an obligation to make due inquiry, and if, through failure to make due inquiry, the defendant was carelessly misled, and made a statement which was so expressed as to be calculated to produce a reasonable, general belief that it was spoken of the plaintiff in this case, and put it in its paper, why, then, upon that ground, the plaintiff would be entitled to your verdict, if the statement was defamatory and untrue.

20 If you are satisfied that Mrs. Rose Garrison was the person intended by this article, and that the article was defamatory and untrue, you will give a verdict for the plaintiff. If you say no, then your verdict should be for the defendant—subject to the remark that I have previously made as to the effect of want of due inquiry in leading the paper into an error.

30 If you should find for the plaintiff, you will award her such damages as the law allows. What those damages are I will now mention. We have a statute, passed in 1898, from which I will read a section. "In every civil action for libel against the owner or owners, manager, editor, publisher or reporter of any newspaper, magazine, publication, periodical or serial in this state, the defendant may give proof of intention, and unless the plaintiff shall prove either malice in fact or that the defendant, after having been requested by him in writing to retract the libelous charge in as public a manner as that in which it was made, failed to do so within a reasonable time, he shall recover only his actual damage proved and specially alleged in the declaration." What

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Charge

is meant by the statute in using the words "actual damage?" That is settled by decisions in our courts.

"When the plaintiff alleges in his declaration for libel that he is injured in his good name, fame and credit among his neighbors by the alleged libelous publication, and hence is damaged, he is entitled to recover compensatory damages, notwithstanding this act. Under such a declaration he can recover his actual damages. 10

'Actual damages specially alleged,' as used in this act, means such as would be compensatory damages at common law. Under this act an averment in the declaration that plaintiff was 'injured in her good name, fame and credit, and brought into public scandal, infamy and disgrace,' amounts to a special allegation of damages sufficient to warrant the award of substantial compensation to the plaintiff as against the publisher of a newspaper, although there be no request for retraction and no evidence of express malice." Therefore the question that arises in case you find that these words were spoken, as I have mentioned, upon the question of damage, is this: What are the damages which naturally and in the ordinary course of events might fairly allegations of the declaration, that Mrs. Garrison had been greatly injured in her good name, fame and credit, and that her neighbors and friends have suspected and believed her to have been guilty of adultery and of having eloped and to have had questionable relations with 20

Archer, so that they have given her the cold shoulder? Just so far as facts of that class are, to your satisfaction, proved they constitute a basis for compensatory damages. Of course, it is easy to understand how any woman of good reputation would be greatly disturbed, aggrieved, how her feelings would be wounded, how her reputation would be affected, by a charge of this kind, and whatever evidence demonstrates to you, to your satisfaction, that she has been aggrieved and injured in this way will constitute proof for your consideration as to the extent of compensation to which she ought to be entitled. That which the plaintiff can recover in 40 30

Charge

a case of this kind is not damage by way of punishment, not damage for any impairment of bodily or mental health, not damage caused by any other newspaper, but compensation for any injury which this particular article in the Sunday Call may have inflicted upon the reputation and feelings of the plaintiff. In case you award damages, the amount should be merely compensatory, according to your own sober judgment of what, under all the circumstances, would be just compensation—a matter which is necessarily left very much to the good sense of a jury.

I have been requested to charge certain propositions, which I will now dispose of. I am requested by the defendant's counsel to charge "That by an act entitled 'An Act relating to libels,' approved June 13, 1898, the legislature of this state has enacted that in every civil action for libel against the owner of any newspaper, unless the plaintiff shall prove either malice in fact or that the defendant, after having been requested by the plaintiff in writing to retract the libelous charge in as public manner as that in which it was made, failed to do so within a reasonable time, the plaintiff shall recover only the actual damage proved and specially alleged in the declaration." That is just what I have been telling you. I so charge.

Secondly, "In this case it is testified by plaintiff that she made no demand in writing, or in any other manner, on the defendant to retract the alleged libelous matter contained in the publication of November 22, 1908. She can, therefore, recover only the actual damage proved and specially alleged in the declaration." I so charge.

Thirdly, "If the jury believes that the defendant did publish a complete retraction of the alleged libel in as public manner as that in which it was made, within a reasonable time, the plaintiff shall recover only the actual damage proved and specially alleged in the declaration." I so charge.

Fourth, "If the jury believes that the article published by the defendant November 22, 1908, does not refer to the plaintiff as the person intended, then there should

Charge

be a verdict for the defendant." I so charge.

I am requested to charge the following proposition, which I am not willing to charge in the form in which it is made. After I have read it in its original form, I will state what I do charge. I am requested to say, "If the jury believes from the evidence that the defendant made an honest mistake in the name in the article published November 22, 1908, and that, from the reading of the whole of the article, it refers to a person other than the plaintiff, there should be a verdict for the defendant." I will say this: If the jury believes from the evidence that the defendant, after due inquiry, made an honest mistake in the name in the article published November 22, 1908, and, on reading the whole of the article, it appears that it refers to a person other than the plaintiff, there should be a verdict for the defendant. On the contrary, if the jury believes from the evidence that the defendant, without due inquiry, published the article, and that it was reasonably, naturally and generally supposed to refer to the plaintiff, who was injured thereby, the plaintiff is entitled to your verdict. 10

I charge the sixth request: "That if the jury finds for the plaintiff, the plaintiff is only entitled to compensation for the actual injury to her reputation and feelings." 20

I charge the seventh request: "No punitive or exemplary damages are recoverable in this case." That means damage by way of punishment.

I charge the eighth request: "If the jury finds for the plaintiff, they cannot include damages for physical illness or bodily sickness." 30

I charge the ninth request: "If it appears from the evidence that the same alleged libelous matter contained in the defendant's newspaper was also published on the day preceding its publication in the Newark Evening News, and was also published in the New York Sun and the New York American, that under these circumstances the defendant is liable only for that portion of the entire injury resulting from these publications in the four papers named as can be attributed particularly to the 40

Charge

publication by the defendant in the Newark Sunday Call." That I have already said, and, in point of fact, it does not appear what it was that was published in the News or in the Sun or in the American. It is fairly to be inferred that it was something analogous to this article in the Call, something that related to the same general matter, but just what it was we do not know.

I charge the tenth request: "In order to find a ver-
 10 dict in favor of the plaintiff, the jury must be satisfied from the evidence in the case that the alleged libel published in the defendant's newspaper November 22, 1908, referred to the plaintiff."

With these remarks, gentlemen, I will give the case to you.

(The jury retires.)

MR. HARRY KALISCH. If your Honor please, I
 20 take an exception to your Honor's refusal to charge the fifth request, and also to what your Honor said in modification of it—all that your Honor said on that subject.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS.

(Seal.)

Circuit Court Judge.

DEFENDANT'S REQUESTS AND EXCEPTIONS.

Defendant's counsel request the Court to charge the jury as follows:

30 (1) That by an act entitled "An Act relating to libels," approved June 13, 1898, the legislature of this state has enacted that in every civil action for libel against the owner of any newspaper, unless the plaintiff shall prove either malice in fact or that the defendant after having been requested by the plaintiff in writing to retract the libelous charge in as public manner as that in which it was made, failed to do so within a reasonable time, the plaintiff shall recover only the actual damage proved and specially alleged in the declaration.

40 (Charged.)

Requests to charge

(2) In this case it is testified by plaintiff that she made no demand in writing, or in any other manner, on the defendant to retract the alleged libelous matter contained in the publication of November 22, 1908. She can, therefore, recover only the actual damage proved and specially alleged in the declaration.

(Charged.)

(3) If the jury believes that the defendant did publish a complete retraction of the alleged libel in as public manner as that in which it was made, within a reasonable time, the plaintiff shall recover only the actual damage proved and specially alleged in the declaration. 10

(Charged.)

(4) If the jury believes that the article published by the defendant November 22, 1908, does not refer to the plaintiff as the person intended, then there should be a verdict for the defendant.

(Charged.)

(5) If the jury believes from the evidence that the defendant made an honest mistake in the name in the article published November 22, 1908, and that, from the reading of the whole of the article, it refers to a person other than the plaintiff, there should be a verdict for the defendant. 20

(Denied.)

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly. 30

FREDERIC ADAMS,

Circuit Court Judge

(6) That if the jury finds for the plaintiff, the plaintiff is only entitled to compensation for the actual injury to her reputation and feelings.

(Charged.)

(7) No punitive or exemplary damages are recoverable in this case.

(Charged.)

(8) If the jury finds for the plaintiff, they cannot in- 40

Requests to charge

clude damages for physical illness or bodily sickness.

(Charged.)

(9) If it appears from the evidence that the same alleged libelous matter contained in the defendant's newspaper was also published on the day preceding its publication in the "Newark Evening News," and was also published in "The New York Sun" and the "New York American," that under these circumstances the
10 defendant is liable only for that portion of the entire injury resulting from these publications in the four papers named as can be attributed particularly to the publication by the defendant in the "Newark Sunday Call."

(Charged.)

(10) In order to find a verdict in favor of the plaintiff, the jury must be satisfied from the evidence in the case that the alleged libel published in the defendant's newspaper November 22, 1908, referred to the plaintiff.

20 (Charged.)

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PLAINTIFF'S EXHIBITS

P. 1.

The Sunday Call, Nov. 22, '08.

FOR EXTRADITION OF ELLIOT ARCHER.

10

Absconding Grain Broker Arrested in Seattle May Be
Brought to Newark Shortly.

A SIX-YEAR SEARCH ENDED.

Through information furnished to Prosecutor Wilbur Mott on Thursday by General Joseph W. Plume, president of the Manufacturers' National Bank, and later by Prosecutor Mott to the police, Elliot A. Archer, for whom the local authorities have been searching for nearly six years to answer to ten indictments for forgeries amounting to more than \$40,000, was arrested in Seattle, Washington, Friday night. In response to a request for instructions from Chief of Police Irving Ward of the western city the local authorities wired for him to hold Archer until extradition papers are ready. These papers will be made out and signed by Governor Fort early this week and unless Archer combats extradition he will be brought here to answer the charges at an early date. 20 30

Archer's arrest follows a search which had led around the world and which has kept the police of this and several other cities in this country, as well as European authorities, on the lookout for him. The arrest was the direct result of a letter received by a prominent Newark business man from an acquaintance in Seattle, who had recognized Archer. The latter was passing under the name of C. Archer Carter and was employed 40

in the offices of the Seattle-Tacoma Power Company. The business man who received the letter informed General Plume, as he knew that the Manufacturers' Bank had lost heavily through Archer's forgeries. At the time of his arrest Archer is alleged to have been in the company of Mrs. George E. Garrison, formerly of 426 Summer avenue, this city, who, it is said, deserted her husband, a broker, when Archer first disappeared from the city. It is said that she has been with him much of the time since. Archer's wife is living in this city, at 124 Lincoln avenue.

Archer is wanted for the forgery of receipts for bills of lading through which the National Newark Banking Company and the Manufacturers' National Bank, with which Archer and his mother, Mrs. Laura Archer, who composed the firm of A. E. Howe & Co., in the Prudential building, did much business. Both banks had the Howe & Co. receipts to the extent of \$40,000 each, but the National Newark Banking Company recovered \$33,000 from the Lackawanna Railroad in a suit, as that much of its paper was genuine. Archer carried on grain operations on a large scale while he was in Newark, and effected his forgeries in much the same manner, it is said, as that which was used by Van Vissengen, the Chicagoan, who last week confessed to using a glass and tracing signatures on notes.

After Archer left Newark, he traveled all over the globe, appearing at one time in Cape Town, South Africa, where he was recognized by a sea captain named Mahaffey, who communicated with the authorities. The word came too late to prevent Archer from making his escape to Australia. Later he was heard from in Denver and in San Francisco, but the local police were never able to apprehend him. In Seattle, Archer had a position paying him \$125 a month salary and is said to have lived in moderate fashion.

Since Archer's disappearance, Detective Sergeant Frank Tuite had been working on the case. Circulars were sent by the local authorities to almost every city in this country and to several foreign cities as well.

PLAINTIFF'S EXHIBITS

P 2.

The Sunday Call, August 31, 1902.

ARCHER HAD MONEY. 10

Missing Grain Broker Was Well Prepared for a Long
Absence.

CURIOUS BUSINESS WAYS. 20

Cargoes of Grain Resold for Lack of Evidence as to Its
Owners.

Nothing has been heard from Elliot A. Archer, of this city, who disappeared about a week ago, and there is much mystery connected with his disappearance. At his home, 124 Lincoln avenue, all information was refused last evening. It was said that Mrs. Archer was still confined to her bed and could not be seen. 30

Mr. Archer was last seen in Newark a week ago last Friday, when he left his office, in the Prudential building. His family had been at Avon-by-the-Sea for the summer, and Mr. Archer was with them the Wednesday night preceding his departure from Newark. He returned to Newark on Thursday morning, when it was understood that his wife would return to her home in this city on Saturday.

Mrs. Archer did return to Newark Saturday morning, but her husband had left the night before and has not been seen in this city since. It is said that he had a very large sum of money with him when he went away.

Archer was in business under the firm name of A. E. Howe & Co., and had offices on the ninth floor of the Prudential building. He was a grain broker and has done a large business. So far as can be ascertained he has been
10 the only representative of the firm in recent years. The firm was organized about twelve years ago with Mrs. A. E. Howe, Mr. Archer's aged grandmother, as senior partner. John C. Lay, a brother of Mrs. Archer's, was also interested in the firm until about three years ago, but he withdrew and since that time Mr. Archer has been the sole representative.

Mr. Archer is said to have traded very largely through T. H. Miner, of New York, who is a member of the New York Produce Exchange and of the Chicago Board of
20 Trade. At times transactions were heavy, and while they were not always profitable, it is the general belief in the trade that Mr. Archer has cleared \$15,000 or \$20,000 this year. It is understood that Howe & Co. were somewhat involved in the failure of George B. Harrison & Co., of Montclair, a few months ago, but the loss was only partial.

Mr. Archer's affairs appear to be very much mixed. His papers and books are badly involved and some of them have recently been destroyed. It is said that just
30 before his departure Mr. Archer destroyed a number of letters and other papers. George W. W. Porter, the counsel of the missing man, is engaged in going over the accounts in the office, with the assistance of the clerks there, for the purpose of ascertaining something about the condition of affairs.

Those in a position to know are thought to have some knowledge of Mr. Archer's whereabouts and the reason for his departure. A letter was received from him on Monday last, but all information regarding the contents
40 of the letter or the place from which it was mailed is re-

fused. It is said that the envelope in which the letter was enclosed, was destroyed before the postmark was observed.

Western traders have been heavy shippers of grain to A. E. Howe & Company of late and it is understood that owing to the destruction or loss of some papers the disposition of some of this grain has become gravely involved. A large number of carload lots have been received in this city during the last week, since Archer's departure, consigned to the firm, but these will be resold or disposed of in some other way. Many of them have already been resold by other brokers. Shipments have been made over several of the trunk lines from the West, but most of them have come by the Lackawanna route. 10

A number of prominent grain dealers in this city and New York have been at the office of A. E. Howe & Company this week to learn if any trace had been found of the missing man. Among them were Drake & Company, Simonson & Company, Joseph Regan, F. O. Hull, A. Cyphers, J. R. Bradner and T. H. Miner, of New York. It is thought that there will be no serious losses in Newark, or to the banks, unless it is to some of the railroads or local representatives. One or two local banks are said to hold personal notes of Mr. Archer's, but they are amply protected by endorsements and the amounts are said to be small. A number of drafts from the West, for grain shipped, are said to be held by one or two banks for collection, but these are amply secured so far as the banks are concerned. 20 30

A local railroad man said yesterday that his road had received some grain for Howe & Co., but the grain had not been delivered. "Railroads or their local freight agents are sometimes put to considerable loss," said the railroad man. "This matter of billing goods is very complicated, and I know of a recent instance in this city where a local freight agent lost several thousand dollars, which he was required to pay out of his own pocket. 40

“Freight agents are under heavy bonds and must assume personal responsibility for their acts or the acts of those under them. In the instance above referred to the grain was delivered here without the proper bill of lading. It was on grain shipped from the West. When the grain is sold at Chicago it is put on the cars for shipment, and the bill of lading, showing the shipment, the consignees and consignors, is deposited in a Chicago bank for collection. The Chicago bank frequently pays
10 the amount called for in the bill immediately to the consignee, and then sends the bill of lading, with a draft, for collection to a local bank in the town where the consignor is located. If the draft is paid the bill of lading is suitably indorsed and delivered to the consignor, who presents it to the railroad company in the locality to which the grain is shipped as an evidence of his legal right to receive the shipment. The local freight agent must examine the bill of lading to see that it coincides with his way bill and to see that it is properly indorsed
20 before he delivers the goods. If he delivers them without the bill of lading, or if the indorsements prove to be faulty, the delivery is made at his personal risk. Fifteen or twenty car loads of grain, worth \$600 or \$700 a car load soon bring the total up to several thousand dollars. The drafts with the bills of lading may go unpaid, and if so are returned to the bank issuing them, and the bank holding the claim looks to the railroad for settlement.”

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PLAINTIFF'S EXHIBITS

P 3.

The Sunday Call, December 21, 1902.

ARCHER'S CASE TO GO TO GRAND JURY.

10

Bills of Lading Used Fraudulently by Missing Broker.

MAY BE FORGERY CHARGE.

Banks Advanced Money on Bills Which Railroads Have
Refused to Honor—Suits Begun. 20

Subpoenas were issued yesterday which will take before the Grand Jury on Tuesday next men who will testify as to some of the business transactions of Elliott A. Archer, who fled from this city on August 22 last. The outcome of the investigation now under way by the criminal authorities will determine whether Archer has been guilty of forgeries involving between \$30,000 and \$40,000, and perhaps more, in connection with the grain brokerage establishment of A. E. Howe & Co. 30

Archer was the concern's manager, and, though it had seemingly been prosperous, it dropped out of existence as suddenly as Archer left the city. It is said that there is no need of legal proceedings to wind up the firm's business, which is said to have been owned by the missing man's mother, as there are no assets.

Shortly after Archer went away, leaving his wife and three children here, the Call set forth the methods by 40

which he manipulated consignments of grain and bills of lading in order to borrow money from banks, intimating that the transactions were not exactly straight. Interested persons later denied that there was any irregularity in Archer's transactions, particularly as they related to his dealings with the Lackawanna Railroad Company, over the lines of which he received his grain shipments from the West.

- 10 Recent development, however, indicate that the denials were made either in haste or in ignorance of the true facts. This is shown by the fact becoming known yesterday that the criminal authorities of the county have taken up Archer and his affairs and will seek his indictment. The matter to be gone into this week will be the question of whether bills of lading for quantities of grain were altered and negotiated for loans by Archer, and whether what are known in the commercial world as railroad receipts, and which are given by railroad freight agents in exchange for bills of lading, were
20 forged in whole or in part by Archer and used to get money from banks. The genuineness of a number of bills of lading and railroad receipts is in dispute.

Of the former the word "order" appears on several which will figure in the criminal inquiry as well as in a civil action which was begun yesterday in the Supreme Court by the National Newark Banking Company to recover \$30,000 from the Lackawanna Railroad Company, on the ground that the latter illegally disposed of forty-four cars of grain which was the only security held by
30 the bank for loans of about \$15,000 made by it to Archer. He was given the money on bills of lading, but when the bank presented them the discovery was made that the grain had been sold by the railroad company.

It will be the effort of the bank, through its counsel, Pitney & Hardin, to show that the grain was given up by the railroad company without the latter receiving for it the bills of lading.

It will also be shown that the word "order" on the
40 bills of lading makes them more negotiable than those

made out simply to the person or firm to whom grain is consigned, and in the criminal investigation the question will be raised whether the word "order" was on the bills in question when Archer received them, or whether he placed it there in order to obtain money on them more readily.

Although the Supreme Court action has been brought in the name of the National Newark Banking Company, the transactions involved were had by Archer with the Newark City National Bank, which has since become part of the institution which now seeks to recover its losses from the railroad company. 10

Rumor last week had it that the First National Bank, of Orange, and the Manufacturers' National Bank, of this city, are involved in a similar manner because of dealings with Archer. Investigation showed that the former institution is not a loser in any way through Archer. At the time of his disappearance the Orange bank had some commercial paper on hand in which he was interested, but it was later taken up by his customers. 20

When Archer went away the Manufacturers' Bank, of this city, had on its hands railroad receipts for some of his grain consignments, on which he had received loans said to amount to from \$10,000 to \$15,000. Some of them were honored by the Lackawanna agents, and some of them will figure in the coming Grand Jury probing.

Former Judge John A. Miller, attorney for the Manufacturers' National Bank, said last night that Archer kept an account at that bank, and loans were made to him on Lackawanna Railroad receipts for carloads of grain delivered here for Archer. 30

"But the railroad company honored the receipts held by the Manufacturers' Bank," said Judge Miller, "and turned the cars over to the bank, which sold the grain and credited the proceeds to Archer's account. The bank will not have any suit against the Lackawanna Company, but might have a suit against Archer, if it 40

would do any good. The claim of the bank against him is not large, nothing like what you say rumor has it."

Judge Miller said he had nothing to say about reported forgery in connection with receipts or bills of lading for grain shipped to Newark, nor could he say whether other local banks besides the National Newark and the Manufacturers' had dealings of the same character with Archer. But he did say that the transactions of Archer with the National Newark were different from those with the Manufacturers' Bank. He added that he was not at liberty to say what the claim of the latter bank against Archer amounts to, but the directors knew of all the dealings with him and are aware of the present situation.

Receipts such as those held by the Manufacturers' Bank are regarded as even more desirable for negotiation in exchange for cash loans than bills of lading marked "order." They have the advantage of bearing the names of local men on a paper which attests that the person to whom the grain or other commodity was shipped has presented the bill of lading for it—in fact, that the goods have practically been delivered to him.

On the receipts which figure in the Archer case the name of John Remer, until recently freight agent of the Lackawanna, appears. It was transferred by a rubber stamp, and beneath it appears what purports to be the signature of J. H. Burrell, an attache of the freight department, who had authority to use the genuine Remer rubber stamp. In the case of some of the receipts the question to be determined is whether the stamped and written names are genuine or forgeries.

In reply to questions in regard to Archer transactions last night, former Freight Agent Remer would neither deny nor affirm the contention which it is said will be made in the suit of the National Newark Banking Company—that the forty-four cars of grain involved were disposed of by the railroad to persons without bills of lading calling for them.

"It would be a grave error for any railroad agent to deliver carloads of grain or any other goods without bills of lading," said Mr. Remer.

Pressed further, he said:

"This matter is entirely in the hands of Mr. Walter N. Ross, general counsel for the Lackawanna Railroad, and has been for some time. I can not discuss it. Some day the whole story and the truth may come out."

"Have you seen any bills of lading or railroad receipts," he was asked, "in which Archer had an interest, on which there were forged names or other forgeries?" no which there were forged names or other forgeries?" 10

"This is a direct, leading question," he answered. "The matter is in the hands of Mr. Ross."

Efforts to find Mr. Ross last night were unavailing. Prosecutor Chandler W. Riker would not discuss, in detail, last night the things in connection with Archer's doings which have come to his notice. He admitted, however, that a dispute has arisen as to whether portions of bills of lading and railroad receipts for quantities of grain consigned to Archer are genuine or forgeries, and said that this week the Grand Jury will begin a rigid investigation of the whole subject. Should it result in Archer's indictment and the latter be found, he will be prosecuted. 20

As to Archer's whereabouts nothing, so far as is known, has been heard by his family, erstwhile friends or business associates since his disappearance. Rumor has placed him at various times in different parts of the world, the latest one locating him in South Africa. 30

Rumor had it, too, that a woman figured in Archer's disappearance, but nothing definite as to what has developed other than that a woman of his acquaintance disappeared about the time he left Newark, and that up to last night those who declared that they know, asserted that nothing has since been seen of her here.

PLAINTIFF'S EXHIBITS

P 4.

The Sunday Call, December 28, 1902.

10

ARCHER'S WHEREABOUTS.

A Rumor That He Is in South Africa.

His Wife Says She Has Not Heard From Him.

20

How He Forged Railroad Receipts.

30 Mrs. Elliott A. Archer was asked at her home, 124 Lincoln avenue, about a story that her husband had secured a business position in South Africa, and had written her to join him there. "O, I hope he is doing well," she said. "This is the first I have heard of the story. I have not heard from him, and do not know where he is."

"It was said, Mrs. Archer, that you were to go to South Africa alone, and that if you liked it there the children would follow."

"I always tell the reporters the truth," Mrs. Archer said, "for I have nothing to conceal. As to my husband's business affairs or other matters I know nothing. Even if he is in South Africa I would not think of going
40 so far away."

It has been learned that the loans which Archer obtained from the Manufacturers' National on railroad receipts during the last ten years amounted to about \$1,000,000, and that the bank's loss was a little more than \$10,000. As was explained last week, Archer had carloads of grain consigned to him here from the West and, giving up his bills of lading to the Delaware, Lackawanna and Western Railroad Company at its freight depot here in Newark, obtained instead receipts showing the value of the grain. They were stamped in red ink, with a rubber stamp, and underneath was written the name of J. H. Burrell, an attache of the freight office. 10

Archer apparently had no cash capital, and consequently did a kiting business. As soon as he got a receipt he turned it into a bank and obtained a loan upon it. As the company would deliver the grain only upon the presentation of the receipt, the bank felt that the grain was collateral security for the loan which it made.

These dealings were carried on without loss for ten years. But when Archer left town the Manufacturers' Bank had about \$10,000 of his receipts for grain, and it was soon discovered that they were forgeries. Mr. Burrell's name was so skillfully forged that he was loath to say that the signatures to the receipts were not written by him. It was the red letters on the receipts which showed that forgery had been committed. Archer had used a rubber stamp that differed slightly in the arrangement of its letters from the only stamp that the railroad company had used on the receipts in ten years. 20 30

It was said in the Sunday Call last week that Prosecutor Riker intended to submit the Archer case to the Grand Jury on Tuesday. Some of the witnesses in the case were observed in the Grand Jury room on Wednesday.

PLAINTIFF'S EXHIBITS

P 5.

Book of circulation.

November 22, 1908. *

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35,764.

PLAINTIFF'S EXHIBITS

P 6.

New York, August 12, 1910.

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Mr. George E. Garrison, Newark, N. J.

Dear Sir:—Will you please call on me either in the morning before ten-thirty or in the evening say after eight o'clock? I want to see you in regard to your mortgage. I can possibly arrange some other time, if you will telephone me in advance.

Yours very truly,

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F. H. SMITH, JR.

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DEFENDANT'S EXHIBIT

D. 1.

The Sunday Call, December 6, 1908.

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A CORRECTION MADE.

In the Sunday Call of November 22, in an article announcing Archer's arrest in Seattle and telling the story of his crime, it was said that when he ran away from Newark he was accompanied by Mrs. George E. Garrison, of 426 Summer avenue. This statement has naturally proved distressing to Mr. and Mrs. George E. Garrison, who have their home in the same neighborhood, namely at 436 Summer avenue. The woman who went away with Archer was not Mrs. G. E. Garrison, but Mrs. E. G. Garrison, the full name being Mrs. Everett G. Garrison, and her home was at No. 426, the address given in this paper two weeks ago. The fact that two persons with similar names lived within four or five doors of each other explains the unfortunate error. It is regretted by the Sunday Call. Of course, Mrs. George E. Garrison's friends knew that she had not left Newark, nevertheless it was unpleasant to her to have her name linked with that of Archer.

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