

New Jersey Court of Errors & Appeal

PIERRE P. GARVEN,
Plaintiff-Appellee
vs.
CHARLES V. FINCH,
Defendant-Appellant.

On Appeal, etc.
NOTICE OF APPEAL.

The following are the grounds of appeal urged by the appellant:

The Supreme Court affirmed the judgment of the District Court of the City of Bayonne whereas the said judgment should have been reversed and a new trial granted.

Yours respectfully,
ANTHONY R. FINELLI,
Attorney of Appellant.

June 2, 1921.

NEW JERSEY SUPREME COURT.

Pierre P. Garven,
Appellee,

-vs-

Charles V. Finch,
Appellant.

:

:

On Appeal.

:

Rule of Affirmance &
Remittitur.

:

This cause having been heard at the February Term 1920 of this Court, and the Court having inspected the record and proceedings of the Court below, and considered the reasons assigned for error, and being of the opinion that the judgment of the District Court removed by appeal in this cause should be affirmed.

It is ORDERED that the judgment of the District Court removed by appeal in this cause be affirmed, and the record remitted to the said District Court to be proceeded with according to law and the practice of said Court.

Entered June 5, 1921.

On motion of

A. A. Melniker,

Attorney of Appellee.

New Jersey Supreme Court

No. 446, February Term, 1920.

PIERRE P. GARVEN,

Appellee,

vs.

CHARLES V. FINCH,

Appellant.

Submitted March 18, 1920; decided June 1920.
Appeal from District Court, sitting without jury.

Before Justices Swayze and Parker.

For the appellant, A. R. Finelli.

For the appellee, A. A. Melniker and Robert Carey.

PER CURIAM.

This is a libel suit. The state of demand charged that defendant published of and concerning the plaintiff in a daily newspaper a statement in words and substance as follows:

"I refer to Mr. Garven's having accepted in 1918 \$5,000 of Public Service money which was the Hudson County allotment of the Public Service's contribution of Edge's Senatorial campaign fund."

The case was tried before the district court judge sitting without jury, and he delivered an oral decision or opinion which was taken down and is printed as a part of the case and attacked on this appeal. We do not feel called upon, however, to deal with it except so far as it is involved in the specification of alleged errors of the court below.

The first of these is that the trial court admitted in evidence only part of the newspaper article, consisting

of the extract above quoted and embodied in the state of demand, whereas the defendant claimed to be entitled to have all the article put in, and was not obliged to do this as part of his case. We understand this to be discretionary with the court. *Vigm. Ev. sec. 2102*; but in any event, if harmful error is to appear it must appear by inspection of the entire article, and this the appellant has not laid before us; so that we cannot tell whether there was anything in it to wipe out or mitigate the normal effect of the extract declared on.

The next point is that the court admitted a part of another and later article, when defendant demanded to have it all go in. We cannot find this point was made on the trial; but if it was, the answer is the same as to the first point.

Points three, four and five are that the court erred in holding, when deciding the case, that defendant had not acted in good faith; had acted maliciously; and had not sustained the burden of the defense of justification.

All these are questions of fact, and if supported by any evidence are not reviewable. There was evidence of both bad faith and malice; and malice sufficient to sustain the action is presumed from the publication of the libel. *Kign v. Patterson*, 49 N. J. L. 417. Appellant seems to be correct in claiming that no justification was offered in defense and that the evidence to prove the truth of the statement was introduced only to mitigate the damages; *Merry v. Guardian Pub. Co.*, 70 N. J. L. 177, 81 do. 632. But we are unable to see how this misapprehension on the part of the court constituted legal error, where there was no jury and there is nothing to show that it affected the amount of damages in any way.

The sixth and last point is that the libel did not charge any criminal offense. It seems to us that it reasonably amounted to a charge of participation in a conspiracy to defeat an election, which would certainly be criminal in character; but if we are in error in this view, the adequate answer is that a libel, to be actionable per se, need not charge a crime, but it is sufficient if it tend to bring the party accused into public contempt, odium, or ridicule. 25 Cyc. 250 *Ib.* 253. A charge of political corruption is libelous per se. *Ib.* 262. This is elementary law.

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New Jersey Supreme Court

Judgment Record

(Filed Oct. 28, 1919)

DISTRICT COURT OF THE CITY OF BAY- ONNE

State of New Jersey,
County of Hudson, } ss:
City of Bayonne.

PIERRE P. GARVEN,

Plaintiff,

vs.

CHARLES V. FINCH,

Defendant.

No. 23061

In tort

20

A. A. Melniker and Robt. Carey, Attorneys for
Plaintiff.

A. R. Finelli, Attorney for Defendant.

A summons was issued tested August 6th, A. D. 30
1919, returnable August 19th, A. D. 1919, at ten
o'clock in the forenoon.

The Sergeant-at-Arms returned the summons
as follows, viz:

I served the within summons August 6th, A. D.
1919, on Charles V. Finch, the defendant, by read-

Judgment Record

ing the same to him and delivering to him a copy thereof.

JOSEPH FEDORKO,
Sergt-at-Arms.

10 Plaintiff's demand was filed August 6th A. D. 1919.

This cause was called for trial August 19th, A. D. 1919 at 10 o'clock in the forenoon.

August, 19th, A. D. 1919, the plaintiff appearing and the defendant appearing, the trial of the cause was proceeded with as follows:

On the part of the plaintiff, Walter M. Dear, and Pierre P. Garven, sworn.

20 On the part of the defendant, Chas. V. Finch, Wm. Verdon, J. F. Wallace, J. S. Gruno, S. W. Smith, A. N. Barber, J. F. Galvin, J. W. Zentraf, J. Mounce, R. Briggs, H. B. Lang, W. B. Brenner, N. K. Bugbee, F. F. Paterson, sworn.

D. Murphy, Stenographer, sworn.

Decision Reserved.

Whereupon it is on this 20th day of August, A. D. 1919, by this Court considered and adjudged that said Pierre P. Garven, plaintiff, recover against said Charles V. Finch, defendant, the sum of Two hundred dollars and no cents, debt, and 30 Fourteen dollars and forty cents, cost of suit.

Transcript made August 21st, 1919.

Notice of Appeal filed September 5th, 1919.

Bond of appeal filed September 5th, 1919.

The following is a true copy of the records of the District Court of the City of Bayonne.

(Seal)

GERSENO RUH,
Clerk.

State of Demand

BAYONNE DISTRICT COURT

PIERRE P. GARVEN,

Plaintiff,

vs.

CHARLES V. FINCH,

Defendant.

In tort.

10

The plaintiff residing at number 65 West Fourth Street, Bayonne, New Jersey, complains of the defendant and alleges:

1. The plaintiff is and for a long time has been a resident of the County of Hudson, State of New Jersey. 20

2. On August 2d, 1919 plaintiff was and still is Prosecutor of the Pleas in the County of Hudson.

3. On August 2d, 1919 the defendant caused to be published in the Jersey Journal, a newspaper published and circulated in the County of Hudson, State of New Jersey, a statement concerning the plaintiff in words and substance as follows:

“I refer to Mr. Garven’s having accept- 30
ed in 1918 \$5,000 of Public Service money
which was the Hudson County allotment of
the Public Service’s contribution to Edge’s
Senatorial campaign fund.”

4. That said statement above set forth in paragraph three is false and was maliciously made for the purpose of injuring the plaintiff.

5. The said defendant thereby meant to charge 40

Specifications

and did charge that the plaintiff had committed a crime.

6. Plaintiff demands damages \$200.00.

A. A. MELNIKER,
Attorney for Plaintiff.

10

To the above named defendant:

Take notice that the trial of the above entitled cause will be moved on the return day.

A. A. MELNIKER,
Attorney for Plaintiff.

Specifications

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(Filed Oct. 28, 1919)

NEW JERSEY SUPREME COURT

PIERRE P. GARVEN,

Appellee,

ads.

CHARLES V. FINCH,

Appellant.

On Appeal from
District Court.

30

The following are a specification of the determinations or directors of the District Court, with respect to which the defendant is dissatisfied in point of law:

- 40 1. The Court should not have admitted in evidence a part only of newspaper publication (marked Exhibit P-1) without putting in evidence the whole article containing the alleged libel.

Specifications

2. The Court erroneously denied the motion to non-suit.

3. The Court should not have received in evidence the newspaper article of August 12 1919, published after the libel action commenced.

4. The Court, without any evidence of bad faith erroneously found that publication was not made in good faith. 10

5. The Court erroneously determined that appellant made defense of justification and that such defense failed.

6. The Court erroneously determined that he could infer malice from appellant's failure to make effort to find out truth of what the witness, Mr. Bugbee, said. 20

7. The Court, without any evidence, found that appellant made publication for his own benefit.

8. The Court erroneously determined that publication was defamatory as charging appellee with the commission of a crime.

9. The judgment of the Court was in favor of the appellee and against the appellant; whereas judgment should have been given in favor of the appellant and against the appellee. 30

FINELLI & RIZZOLO,
Attorneys for Defendant-Appellant.

Testimony

BAYONNE DISTRICT COURT

10	PIERRE P. GARVEN, vs. CHARLES V. FINCH,	}	Plaintiff, Defendant.	In tort.
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Appearances:

Hon. Robert Carey and Aaron A. Melniker
Esq., for the Plaintiff;

Frank E. Bradner, Esq., and Finelli & Rizzolo
for the defendant.

Testimony taken in the above entitled matter,
before the HON. PETER STILLWELL, Judge at the
Bayonne District Court, Bayonne, New Jersey,
on Tuesday, August 19, 1919, at 10:30 a. m.

Mr. Melniker: I move the case of Garven vs.
Finch. If the Court please, this is an action for
damages for defamation of character—

30 Mr. Bradner: May I make a motion? Are you
opening the case? Is there to be a jury trial in
this case?

The Court: I do not think a jury has been call-
ed for.

40 Mr. Bradner: Then I desire to make a motion
before it is moved—a motion which will be ad-
dressed entirely to your Honor's discretion. This
is, on the fact of it, an action for libel. The plain-
tiff in it is the public prosecutor of this County—
has been for a number of years. I have observed

Testimony

in the press a statement made by the plaintiff that he will lay this matter before the Grand Jury and endeavor to procure an indictment. If an indictment is found it is quite apparent that the trial of this case before the trial of the indictment would be very unjust and unfair to the defendant, and it would put the plaintiff in this case in the position of merely seeking to get evidence. I concede, if the Court please that we have no legal right to ask either that the case be dismissed or be stayed but I think we have the moral right to ask your Honor to stay the trial of this case until the subject matter can be laid before the Grand Jury, if the Prosecutor deems it his duty to do so, and he has so announced in the public press. I refer your Honor to the case of Blain vs. Hagar, 48 Atlantic Reporter, page 600. That was an action for assault and the defense was made that the defendant had been indicted and that indictment was pleaded in bar. That plea was not sustained, and it was not sustained for this reason: At common law it was the duty of every private citizen to prosecute any person who was supposed to be guilty of a criminal offense. They did not have public prosecutors in those days and a private citizen not only had the duty to perform, but he had to do it at his own expense. And he was not allowed to prosecute a civil remedy for the same tort at the same time. And Judge Fort says in this case: "Assuming the English doctrine to prevail with us, still the reason of it does not require a total postponement of the civil suit until the criminal is terminated. With us, whatever be the English usage, the true rule is believed to be that the party may institute the proceeding for

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Testimony

damages as promptly as he chooses, only he must not bring on the trial in advance of his public duty." Now he does go on to say that "the duty of a private person in this state ceases when he has made his complaint and appeared before the
 10 Grand Jury and secured or failed to secure an indictment. After that the prosecution is in the hands of the public prosecutor and for his acts the private citizen is not responsible, nor chargeable with either his zeal or neglect in prosecuting." As I said before, we have no legal right to ask for this stay, but it being the fact that the plaintiff is the public prosecutor, and that it is his sworn duty to present this alleged libellous
 20 matter to the Grand Jury, I think that we are justified in appealing to your Honor's discretion to stay these proceedings until the Grand Jury has acted, at least.

The Court (After argument by Mr. Carey against the motion): I have concluded that taking the case as it is, the nature of it—a tort—that I will not grant the request to postpone to give the prosecutor time to present the matter before the Grand Jury but will order the case to proceed now.

30 Mr. Melniker proceeds with his opening of the case for the Plaintiff.

The Court: Does the defense want to make any opening now?

Mr. Bradner: It does not seem to be the practice in the District Court to make an opening. If
 40 it is, I will do it.

The Court: Sometimes they do it. If you do

Walter M. Deal—Direct

not care to make it now, I do not care; sometimes they want to make it.

Mr. Carey: It might be very helpful. If their contention there are no pleadings here—is to justify—

The Court: I might ask this: is your defense justification or denial or both? 10

Mr. Bradner: Our defense is a privilege.

Mr. Carey: Not justification—you don't say it is true, but you have a right to make the remarks.

The Court: It is a privileged communication, I suppose on the ground it is done with perhaps the thought of the public interest. You had better swear the stenographer.

Mr. Melniker: We don't offer any stenographer to be sworn to make an official record. We are making a record for our own edification. 20

At this point Therese Cross Bergen was sworn as official stenographer.

WALTER M. DEAL, called and sworn on behalf of the plaintiff, testified as follows:

Direct-examination by Mr. Melniker:

Mr. Melniker: Now, if your Honor please, just for the benefit of getting the record straight, I understand from the defendant that the defense is a privilege—that they don't say now that this statement is true, but justify it on the ground that it is a privileged communication, is that so? 30

Mr. Bradner: I don't say anything of the kind; the defense is priveleged communication. We still have the right to show the truth, without justifying it. 40

Walter M. Deal—Direct

Mr. Carey: Do you take that stand, that it is true?

Mr. Bradner: I don't say anything of the kind; the defense is privileged communication. We still have the right to show the truth, without justifying it.

10

Mr. Carey: Do you take that stand, that it is true?

Mr. Bradner: I will take the stand when the evidence comes out.

Mr. Melniker: If we are entitled to any declaration from the defendant at all, we are entitled to a declaration—

20

The Court: I think you are entitled to state what your defense is. I think the Court is entitled to know. You put your defense that it is a privileged communication and that the statements are true?

Mr. Bradner: We always have the right to show the truth, if your Honor please, in an action for libel or slander.

The Court: Then it is your intention to show the truth of this statement, if you can? We will make it as easy as we can.

30

Mr. Bradner: We do not justify it; we would plead privileged communication. We do not attempt to justify, but if, in the course of the trial, the opportunity should arise to show the truth, we will attempt to show it.

40

Mr. Carey: That is not fair; they could not do that in any other court; they would be confined by their pleadings, and this opening, as I understand it, in this Court, corresponds to the pleadings in a court in

Walter M. Deal—Direct

which there are pleadings filed on the part of the defendant. Now, they cannot come in and put in a plea of that kind, in which they do not plead the truth as justification, we will say in the Circuit Court, and then come in and attempt to prove the truth, and yet that is what they attempt to do here. Now, I think, if your Honor please, we are entitled to know either that they disclaim the truth of this statement, or that they insist upon the truth and are going to prove it. Of course if they cannot prove it, that's another matter; that is up to them. 10

Mr. Bradner: May I say another word? If we were filing an answer to this complaint, our first answer would be a denial. That would be the usual formal answer, a denial, which would be equivalent to the general issue under the common law practice, and under that general issue we could show the truth, and under that general issue we could show the privilege, both. We put in here a general denial, and I am going outside of the pleadings, to be as courteous as possible, and respectful to the Court, to set up a general denial and a privilege at the same time. For instance, suppose that we say we did not libel the plaintiff in this case and at the close of the case we ask the Court to nonsuit upon the ground that the publication is not libellous, that would be a proper motion to make under our plea of the general issue. Suppose the plaintiff was on the witness stand, and we have an opportunity to ask him as 20 30 40

Walter M. Deal—Direct

to the source of this money that was spent in this election proceeding, and we endeavor, and do succeed, in bringing out something which tends to prove the truth of this statement, we have a right to do that.

10

The Court: What is the objection to your saying you are going to try to prove the truth of this statement?

Mr. Bradner: Yes, if we can.

The Court: Many a person tries to prove his defense and cannot. I cannot compel him to.

Mr. Bradner: We do not stand on a plea of justification.

The Court: Well, I think we understand.

20

Mr. Melniker: Then I understand that the defendant will try to prove the truth of this statement, if they can.

Q. Mr. Dear, you are one of the editors and owners, managing editor of the Jersey Journal?

A. I am one of the owners and business manager.

Q. Business manager. You were that on the second of August, 1919? A. I was.

30

Q. You have been subpoenaed to produce an original statement, purporting to have been signed by the defendant in this case Charles V. Finch, which contains certain statements regarding the plaintiff. Will you produce them?

(Witness produces paper.)

Mr. Melniker: I will make this for identification, paper produced by the witness.

Marked Exhibit P-1 for identification.

Q. Mr. Dear, how did this paper marked P-1
40 for identification come to you? A. It was turned over to me by the City Editor.

Walter M. Deal—Direct

Q. Do you know that signature that appears on that? A. Only as I saw it at the time.

Q. Was this statement that appeared in this paper printed in your newspaper? A. It was.

Q. The Jersey Journal is published in Jersey City? A. It is.

Q. Circulates throughout this county? A. It does. 10

Q. What is the circulation of the Jersey Journal? A. Approximately 37,000.

Q. Have you a copy of the paper of the second of August with you? A. I have.

Q. Produce it please.

(Witness produces paper.)

Mr. Bradner: Is that offered?

Mr. Melniker: I haven't offered it yet. I will have it marked for identification. 20

Paper marked P-2 for identification.

Mr. Carey: Perhaps the other side will consent to admit the signature on that paper to be the signature of Mr. Finch?

Mr. Bradner: I assume that it is all in order there. Yes, we will admit that, as far as it is competent as evidence on this issue.

Mr. Melniker: It is admitted that paper P-1 for identification bears the signature of the defendant Charles V. Finch. 30

Q. Now will you produce that paper? This is a copy of the issue of August 2, 1919 of the Jersey Journal? A. It is.

Paper marked Exhibit P-2 for identification.

Mr. Melniker: I want to offer in evidence that much of paper marked Exhibit 40

Walter M. Deal—Direct

10 P-1 for identification which contains: "I refer to Mr. Garven's having accepted in 1918, \$5,000 of Public Service money, which was the Hudson County allotment of the Public Service's contribution to Edge's Senatorial Campaign fund." And also offer so much of the Jersey Journal of August the 2d, which contains this: "I refer to Mr. Garven's having accepted in 1918, \$5,000 of Public Service money, which was the Hudson County allotment of the Public Service contribution to Edge's Senatorial Campaign fund."

20 Mr. Bradner: I object to the limitation of the offer. I think, if the Court please, if the statements go in, they ought to go in in their entirety. There may be something qualifying or explanatory in the rest of the statement.

30 Mr. Melniker: Well, if your Honor please, we are not obliged to offer anything else. If there is anything more, explanatory or qualifying, that is part of their defense. We are entitled to put in just so much of this statement as we allege is libellous.

The Court: If you wish to put it in, you may put it in.

Defendant's counsel prays an exception which is hereby allowed.

No cross-examination.

40

Mr. Melniker: Mr. Bradner, may I ar-

Exhibit P-3

range to put these other papers in and let Mr. Dear go, if we want them?

Mr. Bradner: Yes.

Mr. Melniker: I call upon the defendant to produce a letter written and signed by the plaintiff, dated August the 4, 1919, delivered personally to the defendant on that day, concerning this publication. 10

(Letter produced by defendant's counsel.)

Offered in evidence, without objection, and read as follows:

Exhibit P-3

Letter dated August 4, 1919.

20

Charles V. Finch,
Jersey City,
New Jersey.

Dear Sir:

My attention has just been called to the Jersey Journal of Saturday August the second, 1919, in which a statement is published, purporting to have been made by you. The statement referred to is headed "Finch, attacking Garven, charges \$5,000 Public Service money came to Hudson County G. O. P." In the body of the article you are reported as having stated: "I refer to Mr. Garven's having accepted in 1918 \$5,000 of Public Service money, which was the Hudson County allotment of the Public Service contribution to Edge's Senatorial Campaign fund." In the same article you are further quoted as follows: "If Mr. Garven denies this charge, I will give the name of the South Jersey politician who handed him the 30 40

Pierre P. Garven—Direct

10 money and the name of the man high in public life
in this state and who was aware of the transaction
and who emphatically, though fruitlessly, protest-
ed against it.” This is an absolute falsehood and
made up out of whole cloth. I now request you
20 to answer me whether the statement as published
or any part of it which refers to me in connection
with an alleged contribution by the Public Ser-
vice Corporation in the year 1918 or in any other
year, was the fact authorized by you or is the re-
sult of an interview given out by you to a rep-
resentative of the newspaper mentioned. If you
are correctly quoted, I brand the story as unquali-
fiedly false in all its details and I demand an im-
mediate public retraction; otherwise I will give
20 you a prompt opportunity to give the public any
information you may claim to have on this sub-
ject. Unless I hear from you within the next
twenty-four hours, I shall assume that you are
correctly reported and shall act accordingly.

Yours truly,

PIERRE P. GARVEN.

Letter marked Exhibit P-3.

30

PIERRE P. GARVEN called and sworn on be-
half of the Plaintiff, testified as follows:

Direct-examination by Mr. Melniker:

Q. Mr. Garven, you are the plaintiff in this
case? A. I am.

Q. For how long have you lived in the County
40 of Hudson? A. Forty-four or forty-five years.

Q. Are you married? A. I am.

Pierre P. Garven—Direct

Q. Living with your family in Bayonne? A. I am.

Q. What does your family consist of? A. A wife and two children.

Q. You are also Prosecutor of the Pleas of this county? A. I am.

Q. And were that on August the 2d, 1919? A. 10
Yes.

Q. Did you any time during the year 1918 or at any other time accept \$5,000 of Public Service money for Edge's Senatorial campaign fund.

Mr. Bradner: I object; it is a leading question, sir.

Mr. Melniker: It is a direct question. I don't see how it could possibly be put any other way. Here is a charge this plaintiff accepted \$5,000 as a campaign contribu- 20
tion. How could he possibly deny it, except by asking him a direct question.

The Court: I don't think that such a leading question is objectionable, where it comes to a specific denial of a charge set out in the pleadings, and I will allow that question.

Mr. Bradner: We don't set out any charge in our pleadings.

The Court: I know, but they set out a 30
charge in their pleadings that he took so much money. Now he is asking whether that is true, whether he did take it. I don't see how it could be put any other way.

Mr. Bradner: He didn't ask whether he took it—whether he accepted it.

Mr. Melniker: The words of the allega- 40
tion.

Pierre P. Garven—Direct

The Court: That is simply a form of expression, both the same thing in my mind.

Mr. Bradner: A great deal may depend upon the meaning of the words. I don't understand that a plaintiff in a libel suit has to disprove the allegations in the libel.

The Court: He don't have to, but there is no objection to his doing it if he wants to. I know he don't have to.

Mr. Bradner: I respectfully object your Honor, please.

Defendant's counsel prays an exception, which is hereby allowed and sealed accordingly.

(Sealed)

A. Positively not.

Q. Did you at that time or at any other time get \$5,000 or any other sum from the Public Service Corporation? A. No, I did not.

Q. For Edge's Senatorial campaign fund or for any other purpose? A. No.

Q. Did you get any money from anybody for Edge's Senatorial campaign fund? A. Positively not.

Q. You wrote that letter which was offered in evidence and marked Exhibit P-3, to the defendant? A. I did.

Q. And in reply to that, did you get anything? A. I received a letter purporting to come from Mr. Finch, served on me in my office.

Q. I show you a paper which bears date August the 4th, 1919, addressed to Mr. Pierre P. Garven, Prosecutor's Office, Jersey City, New Jersey, purporting to be signed by Charles V. Finch, and ask you if that is the paper which you received? A. That is the paper which I received.

Pierre P. Garven—Direct

Offered for identification, and marked Exhibit P-4 for identification. (6 sheets)

Q. Do you know Mr. Finch's signature? A. No.

Mr. Melniker: The signature on paper marked P-4 for identification is admitted by the defendant Charles V. Finch as his signature. I offer in evidence the following excerpt from this exhibit: 10

Mr. Bradner: I object to anything being eliminated. The whole paper should go in evidence.

The Court: I think that letter ought, all of it, to be admitted, unless it is altogether a foreign matter.

Mr. Melniker: If the Court please, I was starting to say that we are entitled to merely put in that part of this letter, or any other letter or any writing, which is addressed directly to our case. 20

The Court: Yes, I agree to that that that is as far as you need to go, but everything that is in that letter that bears upon this case in answer to the other letter, ought to go in.

Mr. Melniker: Everything that bears on this charge.

The Court: Everything in answer to his request. If he has put in anything outside of that, I don't see that has anything to do with it, but everything that relates to his answer, all his qualifying expressions. 30

Mr. Melniker: This letter contains six pages. Five of them relate to matters that are entirely extraneous to the issue 40

Pierre P. Garven—Direct

in this case; it may be that they have a bearing. If so, it is part of the defense; your honor can rule on them when the defendant offers them. We are only concerned with the part of this letter which refers to the allegation of this complaint.

10

The Court: You read in all that refers to his answer to the letter that Mr. Garven sent him. That is what you must read in. Now, if he has started on some other subject, I don't see that is necessary, and if they want that in, that is for them to put in.

20

Mr. Melniker. I offer the following part of this letter: "Your letter inquiring if I was correctly quoted in the Jersey Journal of August the second in regard to the five thousand dollars contribution from the Public Service Corporation to the Edge campaign fund, which was given to you in 1918, is at hand. I was correctly quoted. You demand that I retract the statement. Obviously I cannot do that because it is true. You further state that upon my failing to retract you will give me a prompt opportunity to give the public any information I have on the matter. Nothing should please me more. However I shall not wait altogether upon your moving, and will take advantage of the present opportunity to divulge a part of the information I have." Now that is all I offer. The letter was directed to this defendant was whether he wrote this. He admitted it. The only purpose in offering

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Pierre P. Garven—Cross

this is to prove the defendant's admission.

Mr. Bradner: I object. I think the whole letter ought to go in evidence.

The Court: Well, I don't think the whole letter should go in evidence. I will adhere to what I said. I will have to leave it to the judgment of the lawyer to read such portions, and if you can disclose that he hasn't read it all, I will allow it in evidence. You may have an opportunity on cross-examination. I will have everything which bears on the answer put in. 10

CROSS-EXAMINATION by Mr. Bradner:

Q. Mr. Garven, was the whole letter read, that you received from Mr. Finch? A. I think not. 20

Q. Did Mr. Finch inform you that the man who handled the Public Service contribution to the Edge campaign fund was Frank Patterson, of Camden? A. I don't know whether it was in that letter or not. I saw some statement. The letter speaks for itself.

Q. I find on the bottom of the first page of the letter the statement that I just made to you. Do you remember reading it? A. I read it in some letter. I don't know whether it is that particular letter or not. I mean I read it in some statement. 30

Q. Do you know Mr. Frank Patterson? A. I do.

Q. Do you know whether he handled any of the Edge campaign fund? A. I do not.

Q. Did you communicate with him prior to the Election in November, 1918? A. I have never communicated with him. 10

Pierre P. Garven—Cross

Q. Were you officially connected with the Senatorial Election in 1918? A. Officially?

Q. Otherwise than as Prosecutor? A. Nor as Prosecutor was I connected with it. As Pierre Garven, an individual, I was.

10 Q. You were not on the committee for any candidate, were you? A. No, sir.

Q. This allegation that there was a five thousand dollars campaign fund contributed by the Public service was not anything new in political circles? A. Decidedly so to me.

Q. Hadn't you ever heard of it before? A. Never.

Q. Didn't you see some publication relating to it in November, 1918? A. I did not.

20 Q. Do you read the Jersey Journal? A. I do.

Q. Did you read it during November, 1918?

A. I suppose I did; I have no distinct and particular recollection of reading the Journal, but I am pretty sure that I did.

Q. Well, I will call your attention to a publication in the Jersey Journal on November 21, 1918, to the effect that the Edge men had got five thousand dollars from two trolley companies.

Mr. Carey: Just what—

30 Q. Did you see that? A. I did not.

Q. And you never heard of this statement before? A. Never heard of this statement before.

Mr. Carey: May I ask one question? Do you infer that that article, whatever it was, that you are quoting, charged Mr. Garven with having received any moneys from any railway companies?

40 Mr. Bradner: I don't think so, no. I only want to see if he had heard about it.

Pierre P. Garven—Cross

Q. And your attention had never been called to the charge that either the Public Service or certain trolley companies had contributed to Edge's campaign fund? A. That's right.

Q. I will read you an extract from that publication as follows: "The money was placed in the hands of two Hudson men prominently identified with Garven organization." Did you ever hear of that before? A. Never heard of that before. 10

Q. Did you know what was referred to as the "Garven organization?" A. I cannot fathom the kind of the man that wrote that; nobody can. But if you are speaking about an organization that I am a part of, it refers to the organization that I am a part of.

Q. And what is that composed of? A. A political organization—Republicans. 20

Q. Incorporated? A. No.

Q. Just an association of individuals? A. The Republican Club of Bayonne is incorporated. The County Committee of Hudson County is not a corporation.

Q. This organization, is it an individual matter with you—something that you had organized?

A. It is not. As a lawyer you know that isn't so.

Q. What is it, a regular party organization? 30
A. Yes, sir.

Q. Does it handle any campaign funds? A. Not to my knowledge.

Q. Did your organization have any funds in hand for the campaign of 1918? A. The organization did not, so far as I know.

Q. Do you know of any funds being allotted to Hudson County? A. No, sir. 40

Pierre P. Garven—Cross

Q. Hudson County had funds? A. I don't know anything about it.

Q. Don't you know that a considerable amount of money was spent in that election? A. I don't know anything about it.

10 Mr. Carey: I would like to draw counsel's attention to the fact that the Election Law provides the machinery for raising and spending money for campaign purposes. Campaign managers are appointed and Treasurers selected by candidates and organizations who are required to file their reports with the County Clerk.

The Court: I suppose the lawyer knows that.

20 Mr. Bradner: I think I do.

Mr. Carey: I wasn't sure.

Mr. Bradner: I am always glad to be instructed.

Mr. Carey: Sure, we are always ready to help each other.

Mr. Bradner: Some are more ready than others.

30 Q. I refer, of course, Mr. Garven, to legitimate expenses. Do you know of any money being provided for legitimate expenses? A. Not a dollar.

Q. Well, there was money used in the Edge campaign in Hudson County in November last, was there not? A. I don't know of a dollar being spent.

Q. Did you have any watchers at the polls? A. I did not.

40 Q. You don't know that there were two in each polling district, do you? A. I do not.

Pierre P. Garven—Cross

Q. If there was any money supplied for that fund, who naturally would handle it? A. I don't know, except the campaign manager.

Q. Who was the campaign manager? A. So far as I know, there wasn't any of candidates that I was interested in.

Q. Were you interested in Senator Edge's campaign? A. Yes. 10

Q. He had no campaign manager? A. I didn't say that. I don't know who he was.

Q. At the time of this publication on August 2d in the Jersey Journal, were you a candidate for any public office? A. State Committeeman—Republican State Committeeman.

Q. And that fact was referred to in the publication was it not? A. I am not sure. 20

Q. I call your attention to the first part of the article, "Giving for the first time public utterance to stories that have been gossip in the State House at Trenton and in Hudson County political circles for ten months, Republican State Committeeman Charles V. Finch, who is running for re-election at the September primaries on the Verdon ticket this morning caused a big flare up by throwing bricks at Prosecutor Pierre P. Garven, who is candidate on the Garven-Rotherham ticket for State Committeeman in opposition to Finch." That is a fact, is it not; you are a candidate—A. Just a minute, no; that isn't a fact; what you have read isn't a fact. 30

Q. Is it a fact that you are a candidate for State Committeeman? A. I said that a few moments ago. I am a candidate for State Committeeman on the Republican ticket. 40

Q. That's all.

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RE-DIRECT-EXAMINATION by Mr. Melniker:

Q. Mr. Garven, did Frank Patterson ever give you any money at all for any purpose? A. He did not.

10 Q. Did you have anything personally to do with the running of the campaign for Edge last fall, hiring of watchers or anything like that? A. I did not.

Q. Or spend a dollar for it? A. Not a cent.

Mr. Bradner: May I ask another question in that connection?

Q. Did anybody in your office have anything to do with it? A. So far as I know no, except an individual possibly as a Republican voting at
20 the polls. I don't know whether they worked there or not.

Mr. Melniker: Your Honor, I assume, takes judicial notice of the fact that Senator Edge was elected at an election which was held last fall, November, 1918.

Mr. Carey: That will be admitted, won't it?

Mr. Bradner: Yes.

Plaintiff rests.

30

Mr. Bradner: Your Honor please, I move for a non suit on the ground that plaintiff has failed to prove the publication is defamatory, in the sense alleged in the complaint. The complaint alleges that the plaintiff is public prosecutor. That, in the common law proceeding, would be what
40 they call a colloquium. It then sets up the alleged libellous publication, and then by

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way of innuendo the complainant attributes a meaning to this publication, which of course he has a right to do under the Practice Act, but he must sustain that meaning, either as a question of law or as a question of fact which is now submitted to your Honor for determination. The words are "I refer to Mr. Garven's having accepted in 1918, five thousand dollars of Public Service money which was the Hudson County allotment of the Public Service's contribution to Edge's Senatorial Campaign fund." The defendant thereby meant to charge, and did charge that the plaintiff had committed a crime. I suppose that an objection to that complaint would have been very properly made that that allegation is too general, because it does not specify the crime, but I contend, if your Honor please that there isn't anything in that article which even suggests that a crime has been committed. You have to force it and try to read something into it that a crime has been committed by the plaintiff as public prosecutor. The article refers to the plaintiff as an individual. The effort is made in this complaint to fasten upon the defendant a libel of the public prosecutor as the incumbent of a public office, and there isn't the slightest indication that the defendant charged or intended to charge that the public prosecutor violated his oath of duty as public prosecutor in accepting money from the Public Service. What he

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10 did he did as an individual. It may be that these words are, in a sense, defamatory, but the plaintiff has eliminated that and the plaintiff has said that they are defamatory because they charge me with the commission of a crime. What crime do they charge him with? It may be contended on the other side that he is charged with the crime of receiving the contribution and using it in the campaign and not giving credit in his accounts and in his bank deposits to the person from whom it was actually received. That's the only statute that I can find that has any bearing upon it at all.

20 Mr. Carey: Section 38 of the Election Act and Section 47 of the Election Act.

30 Mr. Bradner: Section 38 of the election Act prohibits a corporation from making a contribution, but that has nothing to do with the person who receives the contribution, and in order to disclose an illegal contribution, the person who receives it is bound to credit it to the person from whom he actually receives it. Now, there is nothing of that kind charged in this; and moreover it must be charged that he did it knowingly. But perhaps that would be rather drawing the line pretty fine. If he accepted it, he did it knowingly; but what I mean to say is this: there isn't anything in that article which charges the commission of a crime, and the plaintiff is bound by that. If he had specified the crime, I would be better able to answer the complaint. He makes it a general crime. But

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I must go a little further than that, if your Honor please. It is a settled law in this state that the crime with which the plaintiff is charged, must be a crime that involves moral turpitude. It cannot be something that is merely prohibited by law. It must be something that in its essence, in itself, involves a bad heart, a bad, vicious mind, a person who intends to do wrong and does wrong of itself, because it is wrong, and revels in it. If it had charged him with the commission of assault and battery, it would not be libel, and still it might be defamatory in a sense, but it wouldn't be libel. So there would be nothing in this complaint and nothing in the evidence to point out what the crime was that he claims he was charged with, and nothing to show that it was a crime that was evil in itself and not merely something prohibited by law. The publication is not libellous, and I therefore submit to your Honor that the plaintiff should be non suited. I refer your Honor on that last point to the case in 17 N. J. Law, p. 12, *McCuen vs. Ludlam*.

The Court (After argument): I will refuse to nonsuit now. What I will do with it afterwards—

Mr. Bradner: Your Honor will note my objection?

The Court: I will give you an exception.

Defendant's counsel prays an exception to the refusal of the Court to grant a non suit, which is hereby allowed.

Charles V. Finch—Direct

CHARLES V. FINCH, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Bradner:

Q. Mr. Finch, you are the defendant in this action? A. I am.

10 Q. Where do you live? A. 424 Ogden Avenue, Jersey City.

Q. I call your attention to the—do you hold any public office now? A. State Committeeman.

Q. Republican State Committeeman? A. Republican State Committeeman from Hudson.

20 Q. I call your attention to the publication set out in the complaint "Garven Got Five Thousand dollars." The words are as follows "I refer to Mr. Garven's having accepted in 1918 five thousand dollars of Public Service money, which was the Hudson County allotment of the Public Service's contribution to Edge's Senatorial Campaign fund," and ask you, at the time you made that statement to the Jersey Journal, what knowledge did you have, or information relating to the fact therein stated? A. What was told to me in good faith.

30 Q. Who told it to you? A. It was told to me, yes.

Q. Who told it to you? A. Newton A. K. Bugbee.

Q. And who is he? A. He was then the Chairman of the State Committee.

40 Q. And when did he tell it to you? A. Right after Election, I think it was November the 12th. There was rumors around that there was money in Hudson County—at least a certain man said to me on Wednesday—Election was on the 5th

Charles V. Finch—Direct

of November, and on the 6th I met this party. He says "Charlie, how is it you are in the committee, a member of the State Committee and Garven's faction got money off of the State and you being a member of the State didn't get no money?"

Mr. Carey: I ask that be stricken out; purely hearsay? He says somebody on the street told him something or another.

A. No, I will mention the man told me if you give me a chance.

Mr. Carey: No; just a minute. I make the objection and want to get a ruling on the proposition. There is too much of this sort of statement in all these trials of just that character.

The Court: As I understand the law, it is that you may give, in a case of this kind, testimony of what you have heard, so as to show whether he acted in good faith. Their defense is privileged communication. Now, if a person hears a statement affecting a candidate, and he in good faith—if he believes it to be true, and in good faith, for the public weal, makes the statement, why I think that is within the privileged communication. But in order to give his testimony, he is obliged to give first the source of his information and then he can show to the Court that he knew, or had this information at the time he resorted to publication. I think that is the law.

Mr. Carey (After argument): I won't press the objection.

Q. Mr. Finch, please try to confine yourself to

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the questions. I think we will save a little time and not go too far astray. A. All right.

Q. You got certain information from Mr. Bugbee? A. Yes.

Q. And when was that? A. That was on November the 12th.

Q. 1918? A. 1918.

Q. Where did you see Mr. Bugbee? A. In the Comptroller's office.

Q. Where? A. At Trenton.

Q. Was he State Comptroller at that time? A. He was.

Q. And what time of the day was it? A. Well we left here on the 8—or 9:08 train, and got in Trenton something like twenty minutes after ten. It was between—well, around eleven o'clock, something like that.

Q. You did say, I think, that Mr. Bugbee was Republican State Chairman at the time. Is that the reason that you visited him? A. Yes, sir.

Q. Who was present at your interview with him? A. Why, Sam Smith and Mr. Verdon.

Q. Anybody else? A. That's all at that time.

Q. And you four persons were in the room? A. Yes, sir.

Q. Anyone else within hearing? A. The door was closed; it is a big room like this, with a little office off.

Q. What did Mr. Bugbee say to you? A. I protested about the money being put in Hudson County, had heard different stories that it was located here and there and before I went down I telephone down—

Q. Just confine yourself, what did Mr. Bugbee say to you? A. Well, he says "Charlie, it's

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an absolute lie. There is no money put in Hudson County from the State Committee," and he slapped his hands like this. "Absolute lie" he says. "There was no money put in Hudson County from the State Committee." "Well," I says "There was money put in there in Hudson County." He says "Frank Patterson got five thousand dollars of Public Service money as the allotment to Governor Edge's candidacy for Hudson County and gave it to Garven." 10

Q. What reason did you have for believing or not believing Mr. Bugbee's statement? A. I didn't get that.

Q. What reason did you have at that time, if any, for believing or not believing the statement he made to you? A. I believed at that time the statement was true. Had no reason to disbelieve it. 20

Q. And since that occasion had anything occurred which tended or otherwise to confirm your belief? A. I think on November 21st there was an article in the Jersey Journal about it.

Q. Do you know whether any reply was made to that article? A. Not to my knowledge.

Q. Did you ever see any? A. No, sir.

Q. Was there anything further occurred afterwards and prior to August the 2d which tended to confirm your belief? A. No. 30

Q. Did you understand my question? Anything occur since that November 21st publication which tended to confirm your belief in Mr. Bugbee's statement? A. Only what the article was in the paper.

Q. Did you ever ascertain whether any money had been actually used in Hudson County? A. In 40

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different parts, yes, I believe Mr. Anderson from 635 Palisade Avenue met me the day after Election and he said "Charlie, how is it that you are in the Committee and Bob is in the Committee with you, and Joe Hurdle got money from the Prosecutors to work on November?" I says
10 "I don't know; might have been some money that was put in there from Edge that I know nothing about, but I am quite sure there was no money of the State Committee put in Hudson County. If there was I knew nothing of it."

Q. At the time you gave this publication to the Jersey Journal, what was your belief about the truth of the statements? A. I believed it was true.

20 Q. What was your purpose in making the publication? A. Why, my purpose was because Garven was running for State Committeeman opposing to me and he had attacke me and I thought it was about time for me to come out and defend myself.

CROSS-EXAMINATION by Mr. Carey:

Q. Mr. Finch, you are a member of the Republican State Committee now? Correct? A. Right.

30 Q. Have been for the past three years? A. Yes, sir.

Q. And during the past year or so you have identified yourself with what is known as the Verdon faction in Republican politics? A. No, sir.

Q. You haven't? A. No, sir, regular organization faction.

40 Q. Regular organization we will call it, but

Charles V. Finch—Cross

you have been associated very actively with Mr. Verdon in the politics of that so-called Regular organization, have you not? A. As a Republican.

Q. Yes, as a Republican, of course. A. Yes, sir, regular organization.

Q. And with Mr. Sam Smith of Kearney, correct? A. That's right. 10

Q. And you three have been meeting rather frequently and repeatedly since the time of the Edge election, have you not? A. We have met occasionally, sure.

Q. You meet down at his office in Hoboken, Mr. Verdon's office? A. Sometimes; sometimes they meet in my house.

Q. And where do you meet when you meet in Hoboken? A. At his home. 20

Q. And the meetings there consist of you and the other two gentlemen whom you say went down to Trenton with you on the occasion of this talk with Mr. Bugbee? A. A number of other men there.

Q. A number of other men there; man named Wallace for instance? A. He was my newspaper write up.

Q. Oh, he was your newspaper write-up? A. Yes; in other words, he was—

Q. By the way, this article that appeared in the Jersey Journal, which you sent over your signature, did you write it or did Mr. Wallace? A. I dictated it over the phone and met him and he wrote it for me. 30

Q. Well, let me see; let me get that right. You dictated it to him? A. I told him the story.

Q. Just a minute; you dictated it over the phone; that right? A. I told him the story over the phone. 40

Charles V. Finch—Cross

Q. Well you saw him every day down at Mr. Verdon's place? A. I am not there every day.

Q. Whenever you went down there you saw him? A. Only through appointment.

10 Q. Did you have an appointment this particular day to give him that story? A. I sure did.

Q. And you called him up on the telephone to give it to him? A. I did.

Q. And stated it over the telephone? A. What I wanted him to put in, yes.

Q. And did you see it prepared before you signed it? Of course you did, I assume. A. I looked it over carefully.

Q. Did you look it over carefully to see that it was correct? A. I certainly did.

20 Q. So that there was no mistake about it? A. To the best of my knowledge, yes, sir.

Q. By the way, I notice you use the word "platitudinous;" what did you mean by that? A. What's that?

Q. Platitudinous?

(No answer.)

Q. You never heard that word before, did you? A. Well, I read it; maybe he put that into it.

Q. Did you read it? A. Yes.

30 Q. Is it in there? A. I don't—

Q. You don't know it is in there? A. I read the article sure.

Q. Now, you dictated this story? A. I told him the story I wanted and said "Now, make the best out of it."

40 Q. "Make the best out of it." You didn't care how far he went, did you? That right? A. (No answer.)

Q. You have stated, in answer to a question of

Charles V. Finch—Cross

your counsel that you were acting in absolute good faith in this transaction? A. Yes.

Q. Now, what do you mean by saying "Make the best of it" to this man Wallace? A. Give me a good article.

Q. Give you a good article for what, for publication? A. Sure, because he attacked me. 10

Q. For use in campaign purposes was that the idea? A. He attacked me as being a spineless man; I says "This is time for me to go back and put a curb on him."

Q. You were going back to put a curb on him so you went to your friend Wallace? A. I telephoned Wallace.

Q. Why pick out Wallace? A. He is a friend of mine.

Q. Was he selected as a friend of yours by Mr. Verdon? A. No, sir. 20

Q. Where did you get him on the telephone? A. I think I called up 3000 Beekman if I remember right.

Q. That's New York City? A. Yes, sir. Times building I believe.

Q. Where did you meet him when you got the article to put your signature to it? A. I met him in Mr. Verdon's house.

Q. You met him in Mr. Verdon's house? A. Yes, upstairs. 30

Q. And wasn't that article written in Mr. Verdon's house when you were there? A. I saw it written.

Q. You saw it typewritten while you were there, didn't you? A. Yes, and I signed it.

Q. Then, as a matter of fact, the article was not written as the result of dictation of yours 10

Charles V. Finch—Cross

over the telephone, but was written when you, Mr. Verdon and Mr. Wallace were present together? A. He had part of the story wrote.

Q. How much of it? A. Well, part of it, not all of it, and then we finished it up when I got there.

10 Q. Who worked together in the completion of this job? You, Verdon and Wallace? A. No, Verdon wasn't in it.

Q. Verdon was there? A. Downstairs.

Q. Oh, he stayed downstairs while you did this piece of work, is that right? A. That's right.

Q. Is that correct? A. That's right.

Q. Was Mr. Smith there? A. Not at that time.

Q. You are sure about that? A. Quite sure.

20 Q. It was only just you and Wallace—in what room in Verdon's house did you do this piece of work? A. One flight up.

Q. In the front or back room? A. Front room.

Q. Typewriter there? A. Yes.

Q. Who operated the typewriter? A. Mr. Wallace.

Q. Did Mr. Verdon write any of this? A. No, sir.

Q. Did he take any part in the preparation of it? A. Not till after it was completed.

30 Q. Did he go over it before you signed it? A. No, sir.

Q. Didn't you show it to him to get his advice? A. No; don't need it.

Q. You don't advise with Mr. Verdon, do you? A. I don't get you.

Q. You don't advise with Mr. Verdon politically, do you? A. Sometimes I do.

40 Q. Don't you know that this was written in his

Charles V. Finch—Cross

house and you were sent for to sign it, and didn't know what was in it? A. No, I was there when it was written.

Q. Of course you understood the article, didn't you, except that word "platitudinous"? You didn't understand that? A. That got me; I am not a lawyer. 10

Q. You didn't know whether platitudinous meant murder or arson? A. I am a regular organization business man; that might be a joker you are trying to put over.

Q. This is not a joke; this is serious business. Now the word "orgy;" I think you used that; what did you mean by orgy?

(No answer.)

Q. Don't you know?

Mr. Bradner: Is this cross-examination, your Honor please? 20

Mr. Carey: I think this is perfect cross-examination. The good faith of this witness is involved.

Mr. Bradner: Your Honor please, the letter is not in evidence. Plaintiff eliminated all except one part. The rest is not in evidence.

Mr. Carey: I have a right on cross-examination—to examine him on that letter or on any other letter. 30

The Court: Or any other circumstance to show whether he did it in good faith.

Mr. Bradner: That doesn't go to his knowledge or his learning.

The Court: It goes to this, whether these are his words or whether he got somebody else to use them. 40

Charles V. Finch—Cross

Mr. Bradner: They are not complaining about the other words in the letter; they are complaining about those particular words they have in their complaint.

The Court: I understand; I allow the question.

10 Q. Now, what did orgy mean? O-r-g-y, very simple word, four letters? A. I don't know what the meaning was.

Q. Don't know what orgy means do you? A. No.

Q. Well, take the word "solicitude;" what does that mean?

(No answer.)

Q. Give it up? A. Yes, I give it up.

20 Q. Give that up. Now, you used the word—you charged Mr. Garven with becoming an "accessory after the fact." Would you mind telling us what you meant by that? A. You can explain that. I refuse to answer that question.

Q. You refuse to answer? A. That question, yes.

Q. You mean you don't know what you said when you wrote this article? A. I read it over; I don't know the meaning of every word.

30 Q. You wanted Wallace to go the limit? A. I said "Go the limit on this thing."

Q. You said "Go the limit on this thing" and you didn't care what was in the article as long as Wallace and Verdon put it up to you and said sign. A. No, they didn't put it up to me and say sign, I signed it myself.

Q. Why did you sign an article with a lot of 40 words in it you didn't understand? Why?

(No answer.)

Charles V. Finch—Cross

Q. Can't you answer? A. I answered as long as I had the stuff in what I wanted put in, yes.

Q. Now, you charged him with being an accessory before or after the fact. Now, what did you mean by that? A. I don't know what the meaning of it is.

Q. You never heard of it before, did you? 10

(No answer.)

Q. What did you mean to charge Mr. Garven with, when you accused him of being an accessory after the fact? A. Charged him with accepting as an individual the money that was handed to him by Mr. Patterson.

Q. That's what you think you meant by that? A. It was told to me.

Q. It was told to you? A. Yes.

Q. Now—oh, you used the word "gouging;" 20
what did you mean by that; do you know what the word "gouging" means? A. Yes, taking advantage of somebody, I suppose.

The Court: He says taking advantage of somebody.

Q. Taking advantage of somebody; now "emulation;" how do you spell that, do you know—very simple word?

The Court: Is that necessary? A man may know the meaning of a lot of words— 30
I know the meaning of a lot of words, but I don't know how to spell them.

Mr. Carey: Your Honor wouldn't put out an article over your signature, without knowing what was in it.

The Court: Without taking spelling lessons? I might.

Q. You have taken spelling lessons; what did 40

Charles V. Finch—Cross

you mean by "emulation;" I won't ask you to spell it. A. I don't know what the meaning of it is.

Q. Don't know the meaning; what did you mean by "philanthropic," did you know? A. No, I do not.

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

Q. Was there anything about that article that you did really know? A. What the story was told to me, yes, about the money.

Q. All you know what the story was told to you? A. Yes.

Q. Why didn't you say in that article that Mr. Bugbee, the Chairman of the Republican State Committee, told you that Mr. Garven had received that money? A. Because I thought I would keep that back for awhile.

Q. What did you want to keep it back for? A. The man higher up.

Q. The man higher up? A. Yes.

Q. Oh, you want to refer to him as "the man higher up"? A. Yes.

Q. What did you mean by the "man higher up"? A. He is the man that told the story to me.

Q. Is that what you mean that he was the man that told the story or the man that was responsible for the giving of the money? A. No, I don't say—he said "I protested against the money being used."

Q. Well, now, in this article, you didn't say anything about a man higher up telling you, did you?

(No answer.)

Q. Can't you answer that question? A. I don't know.

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Q. You don't know what's in the article now, do you? A. No.

Q. No; you read it last night too, didn't you? A. I sure did.

Q. Now, what did you read it last night for, to refresh your memory? A. No, sir.

Q. Who was present with you when you read it last night? 10

(No answer.)

Q. Mr. Verdon, wasn't he? A. Mr. Verdon was there and Mr. Smith.

Q. And Mr. Sam Smith and Mr. Wallace? A. No, sir.

Q. Where were you, at Mr. Verdon's house last night? A. Yes, sir.

Q. Getting ready for today; is that right? A. 20 Yes.

Q. Then you read this thing over last night and you cannot even remember what's in it now? A. I don't remember it all, no.

Q. Now, as a matter of fact, don't you know that this document was prepared for you by William Verdon and his scribe Mr. Wallace, and was presented to you for your signature, and that you didn't know what was in it until you read it in the newspaper? A. Oh, no, I looked it over before 30 I signed it.

Q. You looked it over? A. Yes, sir.

Q. Did you make any comment on it, as you went along, you read it over? A. I thought it was good stuff, yes.

Q. You thought it was good stuff; that's all you were thinking about? A. Yes.

Q. What was your purpose, to hurt Mr. Garven? A. He was attacking me; I thought it was 40 about time to go back and attack him.

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Q. Was it your purpose to hurt Mr. Garven?
A. To hurt him individually?

Q. Yes. A. As a public man I have a right to; he is a candidate; as a candidate.

10 Q. Answer my question; was it your purpose to hurt or injure Mr. Garven? A. No, not intentionally, no, but he was a candidate.

Q. Did you mean to charge him with a crime?
A. I haven't charged him with no crime.

Q. Did you mean to charge him with a crime?
A. No.

Q. Did you know at that time that it was improper for the Public Service Corporation to contribute moneys for political purposes? A. Did I know what?

20 Q. That it was improper for the Public Service Corporation to contribute money for political purposes? A. There is lots of things improper, Judge.

Q. I don't ask you how many things are improper; did you know that that was improper?
A. I know it is; there are lots of things improper.

30 Q. Did you know that it was unlawful at that time for Mr. Garven to receive money from the Public Service Corporation to use in a campaign?
(No answer.)

Q. Can't you answer that? A. Just recite that again.

(Question repeated by stenographer.)

A. I know there is a law for stopping Public Service from contributing, but that don't say that they do that.

40 Q. As a matter of fact, when you made this charge against Mr. Garven, your purpose was to

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convey to the public mind the notion that Mr. Garven, a public official of the county, had done a crooked thing; was that not right? A. Not as a public official of a county; as Garven as a candidate for Republican State Committee.

Q. Your idea was to give the public, the voters 10
a notion that he was criminal; is that correct?

A. Not at all.

Q. That he did a criminal thing; is that right?

A. No, sir; not that at all.

Q. What was your purpose if it wasn't that?

A. He attacked me as a spineless man and I went back at him, that's all.

Q. What was your purpose in accusing him of committing a crime? A. I didn't accuse him of committing a crime.

Q. What was your purpose in accusing him of 20
getting \$5,000 from the Public Service Company?

A. It was told to me.

Q. How long before you signed this article was that told to you? A. That story was told to me on the 12th of November.

Q. What did you keep it in your crop for all that time? A. It was published on the 21st of November.

Q. Published where? A. In the Jersey Jour- 30
nal.

Q. Don't you know that there was not a line published in the Jersey Journal on the 21st of November, accusing Mr. Garven of getting a dollar for any purpose? A. Not accusing him; the Garven committee.

Q. Don't you know that the name, Mr. Garven, wasn't used? A. The Garven committee was 40
used.

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Q. Are you sure about that? A. Quite sure.

Q. Just as sure as of everything else, is that right?

(No answer.)

Q. Is that right? A. The Garven Committee
10 was used, I am pretty sure.

Q. Now, let's see; you were a member of the Republican State Committee when you—oh, just before we get to that, who sent this article to the Jersey Journal? A. Mr. Wallace.

Q. Who told him to? A. I did.

Q. Mr. Wallace work for you? A. Yes, sir.

Q. Did you pay him? A. I haven't paid his bill yet.

Q. Oh, he has never sent you a bill, has he?
20 How long has he worked for you? A. From the first article on.

Q. Is this the first article I have in my hand, the letter? A. August the 2d.

Q. Is that the first time that he was employed by you? A. Yes, sir.

Q. Did he make any agreement with you as to what his employment should be? A. No, sir.

Q. Who suggested that you employ him? A. My own suggestion.

Q. Did you know him before that? A. Sure,
30 he always was a—

Q. Where did you meet him? A. Hudson County; he was a Journal reporter when I first met him.

Q. Used to meet him in Mr. Vernon's, regularly? A. No, he used to come up to the Hudson Republican Club to talk one night at a smoker
40 I was there.

Q. How did you come to pick up Mr. Wallace?

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A. Because he done a lot of work, helped us with a lot of work.

Q. That was in 1915? A. Yes.

Q. And four years after—A. No, I kept in touch with him right along.

Q. Did he ever do any work for you before 1915? A. Wrote up different articles when I ran before. 10

Q. Did he do any work during the last four years other than these Garven articles? A. I had no other work to be done.

Q. Has he written them all? A. Yes, sir.

Q. Call him up on the telephone to give him the data every day? A. Yes, sir.

Q. Or do you meet him every day? A. I don't meet him every day.

Q. Meet him every night, don't you? A. No; 20
I am in the ice business, Judge; I am not meeting every night. I am in the ice business, get out very early in the morning. I am not hanging out every night either.

Q. You are so busy in the ice business you don't have time to prepare these interviews, do you? You get somebody else to prepare them for you? A. That's right.

Q. And haven't you been getting William Verdon and Wallace to prepare them? A. Oh, no. 30

Q. And haven't every one of them been written on the typewriter of William Verdon? A. That I don't know.

Q. You don't even know where they were written? A. I know the first letter was written in Mr. Verdon's office.

Q. And do you know anybody else's typewriter was used in the preparation of these letters? 40

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A. I don't know; he may have done them in his office as far as all I know.

Q. He does them and then shoves them to you to sign? A. I generally look over the things before I sign them.

10 Q. Now, Mr. Finch, you say that the intimation that you had of this viciousness on the part of Mr. Garven came to you a day or two after election; is that right, last year? A. Yes, sir.

Q. You were interested very much, of course, in the election, as State Committeeman, weren't you? A. Sure was.

Q. You were interested in the election of Senator Edge, weren't you? A. No, I wasn't.

Q. Didn't you vote for Senator Edge? A. No, I did not.

20 Q. Why, he was the candidate of the party that you were representing, was he not? A. Sure was.

Q. And why didn't you go down to Trenton to endeavor to get money so that you could operate a campaign for Senator Edge? A. I did not.

Q. What did you go down there for? A. This was after election I went down.

Q. Didn't you go down before at all? A. No, sir.

30 Q. What's the matter? Were you on the outs before election? A. No, sir.

Q. What was the trouble with you and the Republican candidate for Senator prior to election? A. No trouble at all.

Q. Why weren't you for him if you were State Committeeman for Hudson County? A. I found
40 him out to be a liar.

Q. You thought the Governor was a liar? A. Yes, sir.

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Q. Did you go down to tell him so? A. Yes, sir.

Q. Mr. Verdon go with you? A. No, sir.

Q. Went alone that time? A. Yes, sir.

Q. Did Mr. Smith go with you? A. No, sir.

Q. So you determined you wouldn't support Senator Edge for Senator? Right? A. Sure; right. 10

Q. Then a day or two after you went down to Mr. Bugbee who is State Chairman, to find out why it was you haven't got money up in Hudson County? A. I went down to clear my own end as State Committeeman?

Q. Clear how? A. Because it was told to me that there was money coming from the State Committee and I as the member of that state committee had no knowledge of it. 20

Q. You went down there to find out where some money had gone; is that right? Election was over? A. That was after the election, yes.

Q. You weren't interested in Senator Edge's election anyway except his defeat? A. Not at all.

Q. You voted against him? A. Didn't vote at all.

Q. Didn't even vote as State Committeeman? A. Didn't vote for him at all.

Q. Did you vote for his opponent George Lamonte? A. No, sir. 30

Q. Now, did you talk this matter of your attitude toward Mr. Edge over with Mr. Verdon and with Mr. Sam Smith? A. No, sir.

Q. Did they tell you that they were going to vote against him too? A. No, sir.

Q. Well, they were working with you in that campaign? A. No, they weren't. 40

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Q. And the three of you were sulking in the same way? A. The only thing we were working in was the county ticket.

Q. You didn't care anything about the State ticket? A. Not about Edge after I found him out
10 to be a liar I had no use—

Q. And you treated Mr. Baird the same way?

A. I wasted a good many years in Hudson County, which you know.

Q. And you treated Mr. Baird the same way?

A. No, sir.

Q. Did you run a campaign for Mr. Baird? A.
No, sir.

Q. Did you vote for him? A. Yes, sir.

Q. Did the others vote for him in your little
20 coterie? A. I don't know about that.

Q. Did you talk about that? A. No.

Q. Now, in view of the fact that you had that attitude of mind at that time, of course you knew Mr. Bugbee was a friend of Senator Edge's, you knew he was Chairman of the State Committee that had been managing the campaign to help aid the election of Senator Edge, is that right? A.
Yes.

Q. You went down to Mr. Bugbee; did you tell
30 Mr. Bugbee when you went that you had opposed Edge's election? A. Why?

Q. Did you tell him? A. No, I did not.

Q. All you went down there for was to see about where the money had gone; is that right? A. Went down to see about where the money had gone; yes; who got it.

Q. You hadn't gotten any, had you? A. No,
40 sir.

Q. You hadn't acquired any money from any

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source for the camapign purposes, had you? A. No, sir.

Q. And right after election, when somebody on a street car—A. Not on a street car.

Q. Where was it, on a corner? A. No, sir.

Q. Was it in Verdon's office? A. No, sir; Mr. Anderson, 635 Palisade Avenue told me that the Prosecutors had given money in the First District of the Twelfth Ward and then there was a rumor on Central Avenue where this fellow Besser, he says "Garven goes down, gets money off the State Committee; Finch is a member of it and Finch couldn't get it." That was my errand down there to find out where the money came from. 10

Q. You went down there; saw Mr. Bugbee? A. Sure did. 20

Q. And took Mr. Verdon down with you? A. And Mr. Smith.

Q. Why did you take Sam Smith down with you? A. We always travel together.

Q. Oh, you fellows always travel together? A. Yes; a number of times I met you on the same train, so you—

Q. But you didn't go down with me? A. Yes; you were travelling with me.

Q. I was in the same train? A. Yes. 30

Q. When you say you went down with Mr. Smith, you don't mean you went down in the same way you went down with me? A. Went on the same car.

Q. We happened to meet socially on the same train? A. Yes.

Q. But Mr. Smith and you went down by appointment? A. No, sir. 40

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Q. Didn't you make arrangements to meet Mr. Smith to go down? A. You mean Mr. Smith; oh, yes; I talked over with him the following week, we agreed to go down see Mr. Bugbee the following Tuesday.

10 Q. Why did you talk about it to Mr. Smith; he wasn't a member of the County Committee? A. Because he done a lot of work out there in Hudson and was always a good Republican.

Q. He was what you call the Verdon representative out there? A. No, he was a Republican; I don't know anything about Verdon representative.

Q. You thought his standing in the community warranted your taking him down with you? A. What's that?

20 Q. You thought his standing in the community was the thing that should regulate your taking him down with you? A. Sure.

Q. You wanted someone as a witness? A. No, I never thought about it.

Q. Why didn't you go down alone? Were you afraid? A. No; not a bit.

Q. Wouldn't Verdon let you? A. I didn't have to ask him.

30 Q. You went down with Verdon and Smith? A. Sure did.

Q. Why did you ask William Verdon to go down with you to see Mr. Bugbee about a personal matter of years? A. He always went with me.

Q. Why did you ask him to go on this particular occasion when you wanted some confidential information from the State Chairman? A. No

40 reason.

Q. Can't you answer that? A. Why did I ask him what?

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Q. Why did you ask Mr. Verdon to go down with you to see Mr. Bugbee when you were going down to find out about some money? A. Because he was interested too.

Q. Did Verdon ask you where the money had gone? A. No.

Q. How was Mr. Verdon interested in the question of whether or not money had been paid out in connection with this campaign? A. Because we had a county ticket and were entitled to the money if there was any money put in Hudson County.

Q. So you and Verdon and Sam Smith, finding that no money had come to Hudson County, meaning you, Verdon, and Sam Smith, thought you would go down as interested parties to see about it; is that right? A. That's right.

Q. And you were really disappointed no money had come to you three? A. Not so.

Q. Were you mad about it? A. Not a bit.

Q. Then why did you take a whole day to go to Trenton if you didn't care about it? A. Went down to satisfy our own mind.

Q. Why did you want to satisfy your mind, that you didn't get it or someone else did? A. That the State Committee hadn't put it in there.

Q. You knew they hadn't put it in to you? A. Yes.

Q. If you knew they hadn't put it in to you, why did you want to find out that they put it in somewhere else? A. It was my duty as State Committeeman to know it.

Q. You did this as a matter of public duty? A. Yes.

Q. And you took Verdon down as a matter of public duty? A. Yes.

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Q. And Smith down also as a matter of public duty? A. Yes.

Q. And you three went down to see Mr. Bugbee and when you went in what did you say to Mr. Bugbee? A. I asked him about the money
10 that was put in Hudson County.

Q. What did Mr. Bugbee say? A. He says
“Charlie, it’s an absolute lie; there was no money
put in Hudson County from the State Committee.”

Q. Then what did he say next? A. I says
“Well, there was money put in Hudson County
anyhow” and he hesitated a minute. He says finally
“Yes, Frank Patterson got \$5,000 of Public
Service money as an allotment to Hudson County
for Edge’s candidacy as United States Senator
20 and gave it to Garven.”

Q. Now, did he tell you that Patterson was putting up money because the Republican party had been doing something for Public Service? A. And the way he told it, he didn’t care whether the whole world knew it.

Q. You mean to say Mr. Bugbee came out and said the Public Service Corporation had contributed money to the Republican campaign fund at that time? A. At that day he said that.

Q. No question about that? A. Yes, sir; and I
30 got two witnesses to back it up.

Q. Yes, Verdon and Smith—right. Nobody else, was there? A. Well, you might have been along if you had went in the State House.

Q. Nobody else except those two, that right? A. That’s right; those two.

Q. When he told you that Frank Patterson had put up the \$5,000, did he tell you Frank Patterson
40 had given \$5,000 to Pierre Garven? A. He said “And gave it to Garven.”

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Q. Did he say "And gave it to Garven"? A. "Gave it to Garven."

Q. No question about that? A. That's the way it was said.

Q. Why is it in some of these subsequent articles you have been publishing in the papers this last week you have changed that whole story and charged that it was given to Rotherham and Garven? A. Because I have witnesses here to prove that Rotherham was one of the paymasters in certain parts of Union Hill that gave out some of this money. 10

Q. Why is it you changed your story in the newspapers to the fact that the man higher up told you that this money was given to Rotherham and Garven? 20

Mr. Bradner: I object; the newspapers ought to be produced to see if that is the story.

Q. Now, in your letter to Mr. Garven dated August 4th, when he demanded of you a retraction, you said "The man who handled the Public Service contribution to the Edge campaign fund was Frank Patterson of Camden. He was instructed to give the Hudson County apportionment to Garven and Rotherham. He followed instructions." Now, who told you that? A. Rotherham is a part of the Garven faction. 30

Q. Never mind what Rotherham is; who told you what you just stated in that letter? A. Why, Mr. Bugbee told the story that Garven got the money.

Q. Mr. Bugbee told you that? A. That Garven got the money. 40

Q. Did Mr. Bugbee tell you that Frank Pat-

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terson was instructed to give the Hudson County apportionment to Garven and Rotherham? A. No, he said to Garven.

10 Q. Well, then, why did you, in your letter of August 4th say that he was instructed and you were told that he was instructed to give that money to Garven and Rotherham? A. Why, Rotherham could have got the money the same time that Garven could have got it.

Q. Well, why did you make the statement in that form, if Mr. Bugbee didn't make that statement to you? A. It was one organization.

20 Q. Well, don't you know that you were quibbling when you wrote that letter and that you didn't have the facts to warrant the statement that you had made and you were trying to hedge by that statement of August 4th; is that right? A. I don't think it is.

Q. Why didn't you stick to your first statement that Mr. Bugbee, or the man higher up, had told you that it had been given to Garven? A. That's the way it was told to me, that it was given to Garven.

Q. That's the way Wallace wrote it, isn't it? A. At that time, yes.

30 Q. You didn't care how it was written, did you? A. He answered the letter; is that the one you are referring to, the one to Garven, yes.

Q. You didn't care how it was written, did you? (No answer.)

Q. Did you? A. Why—

Q. Why did you put it in quotation marks in the letter then if you didn't care?

40 (No answer.)

Q. You know what quotation marks are, don't you? A. Yes.

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Q. You know that when you put quotation marks around things in a letter, that that means that the words are being accurately stated? A. Yes.

Q. Why did you put quotation marks in that letter around Garven and Rotherham? A. One organization, the Garven organization. 10

Q. Didn't you do it because you were trying to shift your position, so that you would be freer to meet the allegation that Mr. Garven, the day before, had notified you was going to be made?

A. I don't know; might have done it.

Q. You might have done it for that reason. You began to get worried about this a little? A. No, not so much.

Q. Do you remember the article appearing in the Jersey Journal on the evening of August the 7th? A. Yes, sir. 20

Q. Didn't you state in that article, changing it all again, that the money that came from the Public Service, came to the Garven organization in Hudson County? A. Yes.

Q. Why did you shift again? Why didn't you stick to your statement the money came to Garven? A. One faction, all means one.

Q. Isn't the reason the same as the reason you gave before, that Wallace was pouring his stuff out from the Verdon factory in Hoboken that you were standing for anything that they put out? A. No. 30

Q. You wouldn't stand for anything they would put out, would you? A. No.

Q. Or everything? Pretty near, though, didn't you, in these letters? 40

(No answer.)

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Q. You didn't turn down a single letter that was prepared for you, did you? A. Oh, yes, I did.

Q. Did you? A. Sure did.

Q. You gave Mr. Wallace the stationery of the
10 Republican State Committee to write these letters on? A. I sure did.

Q. And you used them just as he prepared them? A. Yes, sir; sometimes made some changes.

Q. Well, on any of the letters that you wrote—statements—can you suggest any changes that you made? A. Not just now I cannot, no.

Q. Don't you know you didn't make any changes, you took them just as he and Verdon
20 prepared them? A. Verdon never prepared them.

Q. Well, you and Verdon were together all the time; you said that you went to Trenton together? A. Sure.

Q. Didn't you discuss with Verdon what took place at Mr. Bugbee's office in the preparation of these articles? A. Didn't have to discuss it, because he knew it.

Q. Well, didn't you discuss it with him when
30 you were preparing these articles for publication? A. After the thing was over, after it was put in we showed it to him, yes.

Q. Then you and Verdon went over it. You don't mean after it was put together you went over it with Verdon; what you mean to say is after Verdon put it together you went over it? A. Verdon had nothing to do with it. Wallace
40 was the man put it together.

Q. What did Verdon say when he was down in

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Mr. Bugbee's office, after you made the statement you made? A. I don't know just what was said.

Q. Don't know what he said; what did Sam Smith of Harrison or Kearney say? A. He was sore because the money was put in that way.

Q. I don't care how sore they were; I asked you what they said to Mr. Bugbee. A. I don't just remember the conversation. 10

Q. Well, now, the only thing you can remember is just what Mr. Bugbee said, and you cannot remember another thing? A. That was enough for me to remember.

Q. That was enough to be remembered; how long were you in Mr. Bugbee's office? A. Perhaps maybe 20 minutes, half an hour.

Q. Now, there must have been something said besides just what you said, in the course of 20 minutes. A. We were talking over different matters, not concerning this. 20

Q. You were perfectly friendly with Mr. Bugbee in the matter? A. Yes, sir.

Q. Friendly now? A. Yes, sir, as far as I am concerned.

Q. Are you supporting his candidacy now? A. I am.

Q. Do you think he is a truthful man? (No answer.) 30

Q. Do you? Can't you answer that? A. Yes, I can answer that.

Q. Do you think he is truthful? A. I will have to see first.

Q. You will have to see first; what do you mean by that? You mean that if he denies what you said, then you will think he is not truthful? A. I sure do. 40

Q. Yes; so that the purpose of your hesitation

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in answering my question, you reached that thought? A. Oh, no.

Q. Have you at this moment any reason to believe that Mr. Bugbee is not an honest man, at this moment? A. He may be honest, as far as I know.

10 Q. Have you any reason to believe he isn't a truthful man, have you? A. Yes, I have.

Q. What makes you think Mr. Bugbee isn't truthful? A. Oh, different bills that was put in which I won't reveal now. I am not going to open up the secrets of the State Committee.

Q. You think there are a lot of secrets of the State Committee that might ruin Mr. Bugbee? A. This is outside of the State Committee.

20 Q. Do you trust him? A. On some things, yes.

Q. On some things. Do you know you are under oath, Mr. Finch? A. I know I am, yes.

Q. Do you believe he told you the truth the day you were down there? A. I certainly do.

Q. Why do you believe that? A. Because I think he had an object in telling us.

Q. Don't men sometimes tell the untruth when they have an object? A. Sure do.

30 Q. Well, what was there about the particular object that warranted you believing he told you the truth at that time of the type that you have testified to? A. Right after the convention, why he was up in the air about some things.

Q. Up in the air? A. Yes.

Q. What convention? A. The State Convention.

Q. Of this year? A. This last year, yes.

40 Q. This last year up in the air about the attitude of you and— A. No, no, different men in—

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Q. All different men and different things? A. In the state, yes.

Q. Oh, well, you don't think because a man goes up in the air over something, that therefore he cannot be trusted? A. I think he can be trusted.

Q. Have you any reason to believe he is not a truthful man now? A. I believe he is a truthful man, yes. 10)

Q. You believe he is truthful and you would believe him under oath, wouldn't you? A. Yes.

Q. And if Mr. Bugbee should say today that you have not told the truth, you would believe then that he was telling the truth? A. I would not, because I am not here to lie for Mr. Bugbee or you or anybody else.

Q. Not even for Mr. Finch? A. No, sir. 20)

Q. Not even for Mr. Finch? A. No, sir.

Q. And nobody else is here to lie for you, is there? A. No, sir.

Q. You talked last night with Sam Smith and Verdon about how they would testify here today? A. No, sir.

Q. What were you together for last night, you three? A. To know how he was coming down, whether he was going to pick me up and bring me down; never talked about the case at all. 30)

Q. You don't mean to say all you three met together in Hoboken last night to talk about how you should get to Bayonne? You don't mean that? A. I wanted to know what time he was going to leave, whether I should go down to his house or whether he would pick me up at my house.

Q. Why didn't you telephone to him? A. I did try to get him on the phone. 40)

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Q. There was no trouble getting Mr. Verdon on the phone? A. In the office nobody answered.

Q. Did you telephone his house? A. No, I did not; I went down there.

Q. Now, you just said a minute ago you didn't talk about the case at all last night? A. Yes.

Q. And one of the first questions I asked you on cross-examination was whether you hadn't, at Mr. Verdon's last night, read this article over to familiarize yourself with it, and you said yes. Now, what do you mean by saying you didn't discuss the case? A. I might have read the article over and not discussed the case.

Q. What did you read the article over at Verdon's last night—what for? A. Why, to refresh my mind about the case, that's all.

Q. Who handed you the article to read? A. I had it in my pocket.

Q. Did Verdon read it last night? A. Not that I know of.

Q. Did you read it aloud? A. No, sir.

Q. Did Smith read it? A. I don't know.

Q. While you were reading it at Verdon's house last night, what were Verdon and Smith doing? A. Talking over different things.

Q. What were they talking about? A. About putting trucks to work for the Swift and Armour Company, I believe, same as was talked in regards to some heavy trucks that he had for to go to work for Swift.

Q. You and Verdon and Smith never talked over this case? A. Some time before; not last night.

Q. When was the last time you three talked it over? A. The last time I talked it over was in my lawyer's office out in Newark.

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Q. When was that, day before yesterday? A. No, I think last Thursday.

Q. Last Thursday or Friday? A. Yes.

Q. Prior to that you talked with Smith and Verdon as to what you were going to say naturally? A. No.

Q. You asked Verdon "Now, isn't that true, Billy?"—you remember that, don't you? A. No, no. 10

Q. Well, you discussed the thing, prepared it for trial, didn't you? A. At the lawyer's office in Newark.

Q. As a matter of fact didn't you meet last night to complete the frame up of the defense in this case? A. No.

Q. When did you first get together on this proposition in November? A. Thursday after Election. 20

Q. Thursday after Election where? A. What do you mean, to go down to Mr. Bugbee's?

Q. Yes? A. Thursday after Election.

Q. Where did you get together, at Verdon's house? A. I called up Verdon and asked him if he had heard of any money being from the State Committee and he said he had; then I called up Mr. Smith if he had heard in his section, if he had heard of any money from the State Committee, and then we met at Mr. Verdon's office and decided to go down to see Mr. Bugbee. 30

Q. Well, now, there was nobody present, as I understand, at Mr. Bugbee's office but Mr. Bugbee, is that right? A. Only the men that was working.

Q. And you three? A. Only the men—

Q. The door was closed. You started in, spoke 40

Charles V. Finch—Cross

about the money and he said "It is a lie, no money has been sent to Hudson?" A. From the State Committee.

Q. Then you said they did get money, you said?
A. Yes.

10 Q. Then he said "Yes, Patterson gave \$5000 to Garven?" A. Yes, sir.

Q. Did he tell you where Patterson got it? A. Public Service money, he said.

Q. Did he say he got it from the Public Service? A. Yes, sir.

Q. Did he tell you whom he got it from? A. No, didn't say who.

Q. Did you ask him who? A. No.

Q. Did you ask him why he got it? A. For
20 Edge's candidacy.

Q. Did he tell you they had to do it that way to avoid the law? A. No, didn't say anything about the law.

Q. Did you ask him any further questions about it? A. No, sir.

Q. Didn't you ask him why it was Patterson didn't look after you fellows? A. No, sir.

Q. Didn't you say you were mad because Patterson didn't give you the money? A. No.

30 Q. When you found out Patterson had given the money, did you think there was anything wrong? A. As long as I was satisfied it didn't come from the State Committee.

Q. Did you think there was anything wrong about it? A. No.

40 Q. If you didn't think there was anything wrong about it, why did you and Verdon and Smith get together and hire the man Wallace to write it all up? A. Why, Mr. Garven was running for State Committeeman against me. He

Charles V. Finch—Cross

come out with an article. I thought that was good stuff to get back.

Q. Don't you know the whole stuff was manufactured in the Verdon factory in Hoboken? A. No, sir.

Q. Don't you know that? A. No, sir.

Q. Now, I draw your attention to the Evening Journal of August the 12th. I ask if you didn't use these words, referring to this \$5000 fund: "I have charged it was handled in this county by the Garven machine?" That right? A. Yes. 10

Q. Why did you see those words in that interview of the 12th day of this month? A. That's the Garven organization.

Q. That was another link in the shifting away from Garven, wasn't it?

(No answer.) 20

Q. Don't you know today that Pierre Garven didn't receive a dollar of money from the Public Service? A. Don't know anything about it.

Q. Do you believe Pierre Garven tells the truth? A. I don't know whether he does or not.

Q. You never caught him in a lie? A. No, and he has never caught me in a lie.

Q. I am not asking what he caught you; that's for others to determine. Did you personally ever catch Mr. Garven in a lie? A. No, sir. 30

Q. You never knew him to tell an untruth in his political life in this County, have you? A. I don't know as to that.

Q. You don't recollect any times, do you? A. No.

Q. He is a pretty frank, straightforward, clean spoken man, isn't he? A. Personally I think he is. 40

Charles V. Finch—Cross

Q. You never knew him to do anything wrong in politics? A. I don't know him to be in politics long enough to know if he has done anything wrong.

10 Q. You know he has been in politics as Mayor of Bayonne and Prosecutor of this County for the last fifteen years in various capacities? A. With the exception of a few years.

Q. And you know he hasn't done anything wrong to your knowledge?

(No answer.)

Q. Don't you, yes, or no. A. No.

Q. Now, what do you mean by that interview that you gave to the Jersey Journal August 8th, while you were at Sea Girt. "Finch stated that he had the goods on Garven." Did you make
20 that statement? A. Sure.

Q. What did you mean by that "you had the goods on Garven?" A. The way it was told to me I meant it in good faith.

Q. Well, now, this was long after Mr. Garven had denied the thing to you and you had a full chance to think it over; wasn't that true? A. I made that statement, sure.

Q. And what did you mean by that statement? "I have got the goods on Garven?" A. On his
30 machine, that they got money.

Q. Didn't you state down there that when this case comes to trial, you will show him up and prove his whole character? A. No, I didn't state that at all.

Q. Did you make any such statement? A. No, I simply stated that I had the goods on Garven.

Q. What goods on Garven did you refer to?
40 A. The way it was told to me.

Charles V. Finch—Cross

Q. Just what was told to you—nothing else?

A. That's all.

Q. Nothing else you can think of? A. No.

Q. You didn't mean that you had any proof that Garven had got money, did you? A. Only what was told to me.

Q. Well, outside of that you had no proof, had you? A. That's all. 10

Q. And you haven't now, have you? A. In the way it was told to me, that's all.

Q. You don't like Garven, do you? A. I have got nothing against Garven.

Q. You have been fighting him pretty hard sometimes because he opposes you? A. That's politics.

Q. It is politics and you and Mr. Smith and Verdon are all anti-Garven in the bitter sense? 20

A. We are the regular organization.

Q. By that you mean you represent about seven of the county Committeemen in the County? A. Oh, no, you know better than that, Judge.

Q. Well, as a matter of fact, you and Verdon and Smith have been getting together day after day to try to injure the candidacy of Mr. Garven, haven't you? A. That's my duty to try to injure him if I can.

Q. It is your duty to injure him? A. As a 30 candidate; he is a candidate.

Q. And so you didn't care how hard you went at it, so long as you could deliver the goods on Garven; that was your idea, wasn't it?

(No answer.)

Q. And suddenly out of a clear sky somebody thought of this visit down to Mr. Bugbee last November? A. Nobody thought of it; we knew 40 about it.

Charles V. Finch—Cross

Q. Who suggested it first as a campaign argument—Willy, wasn't it? A. Well, he published it in the paper on November the 21st.

10 Q. Yes, I know, but who first thought of it as a campaign argument against Garven, Mr. Verdon, wasn't it? Right? A. I don't know as he suggested it.

Q. Well, you didn't suggest it, did you, out of the brightness of your mind, did you? A. I may have done it at that. Sometimes—

Q. You may have done it. Don't you know who did it? Here is a libel published a month ago and cannot you tell who originated it? A. Yes; I started the story.

20 Q. Then what did you mean by saying you didn't know who did it? A. I stand by what I say in that.

Q. Where did you have the first talk about using this as a campaign argument? A. Mr. Verdon's office.

Q. In Verdon's office; then it wasn't over the telephone to Wallace, your scribe, was it? A. I called up Wallace and told him the story; then he met me in Mr. Verdon's home that night.

30 Q. Now, just a minute; then you first discussed this thing with Mr. Verdon in his office and you and Verdon called up Wallace on the phone? A. I called up Wallace.

Q. With Verdon there? A. No, Verdon wasn't there.

Q. Well, who did you discuss it with then? A. I met Mr. Wallace in Verdon's house.

40 Q. No; you state you called up Mr. Wallace on the phone first? A. Yes, from my home—3000 Beekman.

Charles V. Finch—Cross

Q. I asked you where you first discussed the utility of this matter as a campaign argument and you stated at Mr. Verdon's office? A. Yes.

Q. Now, I ask you now who it was you were with when you first discussed its utility as a campaign argument; was it Mr. Verdon? A. Mr. Verdon was by. 10

Q. Yes, Mr. Verdon; who else? A. That's all—Mr. Wallace.

Q. Mr. Wallace wasn't there when you began the discussion, this with Verdon? A. I met him by appointment there.

Q. He didn't come until after you and Verdon had thrashed it all out? A. No, I think—

Q. You know he came in later? A. I think he was there at the time.

Q. You don't know, do you? A. Yes, he was there at the time. 20

Q. Now, when you were down at Trenton at Mr. Bugbee's office, at this very important conversation, when you left there did you make any memorandum about it? A. No, sir.

Q. Wrote nothing about it? A. No, sir.

Q. You didn't put it in the morgue book of Mr. Verdon, did you? A. Oh, no.

Q. You have seen the morgue book, haven't you? A. I don't know what you refer to. 30

Q. You have been down in Mr. Verdon's office at a lot of preparations for the issuance of political propaganda, haven't you, during the last year? A. What do you mean?

Q. Don't you know what "propaganda" means? A. Yes, political fights; yes, I have been down there a number of times.

Q. And all these things are gotten together by 40

Charles V. Finch—Cross

him from his newspaper file books, is that right?

A. I don't know.

Q. When did you first become indisposed towards Senator Edge? A. After he broke the promise with the regular organization in Hudson County.

10 Q. When was that? A. That was shortly after the Election, or he was in the Governor's chair.

Q. What was the promise that he broke? A. Why, he made a speech in Hudson County at the Hudson Republican Club when he said "You boys ought to be congratulated for being Republicans in Hudson County in a Democratic County," he says "You are not Republicans for holding jobs, you are Republicans from the bottom of your heart," and he said "If I am elected Governor, I will see Finch, President of the Hudson County Republican Club, "which I organized personally for him and ran off a dollar dinner the night of October the 15th which you was there—

20 Q. Yes, good dinner. A. Yes, sir, fine; and he says "I will see that you get prestige to keep this organization going, if I have to take it out of other counties and put it in Hudson."

30 Q. All right; now, you haven't told me when Governor Edge broke the promise and over what? A. He never give us anything; that's the way he broke the promise.

Q. Oh, he never gave you anything? A. No, sir.

Q. What you mean was that you became bitter against Edge, because he wouldn't let you fellows distribute the jobs in Hudson? A. No, I didn't want to distribute the jobs.

40

Charles V. Finch—Cross

Q. What did you want? A. He said he would take care of the laymen of our organization.

Q. What was he to do that he didn't do? A. He said he would give us some jobs.

Q. What jobs did you go after that you didn't get? A. We didn't go after any special job.

Q. You weren't down in Trenton nearly the entire session of his administration hunting jobs weeks after week? A. No, no; I like that, the only recreation I have is going to Trenton during the legislature work. 10

The Court: How do you figure that this is relevant at all?

Mr. Carey: It is cross-examination.

The Court: I am not going over the entire history of the Republican party.

Mr. Carey: I want to show the maliciousness of this witness. 20

The Court: Yes, but now you are trying to show his maliciousness toward Governor Edge.

Mr. Carey: Yes, because he links him up to Garven. I want to show that this is just a scheme of this man to try to punish three or four Republicans who wouldn't do as this man wanted them to do. I will only ask 4 or 5 more questions and I will quit. 30

The Court: All right.

Q. Now, one of the things you had trouble with Governor Edge over was his appointment of Mr. Garven as Prosecutor; wasn't it? Right? A. I was opposed to Garven for that appointment, sure.

Q. And when he wouldn't appoint your man 40

Charles V. Finch—Cross

Prosecutor, you broke with the Governor, didn't you? A. Not on that job alone, no.

Q. What other job did he break with you on?

A. He promised to take care of the Hudson Republican Club, for the Hudson Republican Club was the first club that brought Edge in Hudson County and you knew it.

Q. All right; never mind what I know. If I should tell what I know, I might change your views. A. Well, I might change mine too.

Q. What other jobs were wanted from Governor Edge that he didn't give to you and Mr. Verdon and Sam Smith or your friends, that prompted you to take the attitude that you did against him and determine that he was a liar?

A. He said he would take care of the Hudson Republican Club and when he didn't do that, he broke his promise, because I was paying the freight for that club, Judge, if you want to know it, \$27.50 a month—(interrupted)

Q. You were candidate for County Tax Commissioner? A. —for over a year. What's that?

Q. You were candidate for County Tax Commissioner, weren't you? A. Personally I don't know nothing of that.

Q. Didn't you go down and ask them to stand for you? A. I never asked him for the job, and I don't have to ask him for a job.

Q. I know you don't. A. But I did ask him for jobs for to keep his promise to the Club that first brought him in Hudson County to run off a dollar dinner for him.

Q. Now, just answer another question, not about this club, about what I am asking this: Answer this: Name me an appointment that the

Charles V. Finch—Cross

Governor refused to make that you say proved that he was a liar and that prompted then your making these statements? A. He was going to give us jobs in the Hudson Republican Club; he didn't specify any jobs; he said "I am going to take care of you boys in this club" and he has never took care of one member of it. 10

Q. Is Mr. Archibald a member of your Club?

A. No, he doesn't belong to our Club.

Q. Any other judges members of the Hudson Republican Club? A. No, very few lawyers members of the Hudson Republican Club; they were all outdoor, hard working men.

Q. What jobs did you want from the Governor that he didn't give you that proved that he was a liar? A. He suggested he was going to take something and help us—I didn't ask him, to tell you the truth, I hadn't a line on all the jobs that was due to Hudson. 20

Q. You wanted them all? A. Oh, no, I didn't; I was green at that, Judge.

Q. Now, outside of the Governor refusing to turn over the patronage of the State to you and William Verdon, what else has he done that proves he is a liar? A. He didn't take care of the members of the Hudson Republican Club. 30

Q. You were very solicitous of those members?

A. I was because I kept the Club going a couple of years, paid it out of my own pocket.

Q. What particular member did he disappoint?

A. No particular one; he said "I will take care of the Hudson Republican Club;" he said that with two or three friends by.

Q. As soon as he didn't make them Prosecutors and Judges, you let the club go on the 40

Charles V. Finch—Cross

rocks? A. I surely did; I didn't want to pay \$27.50 any more.

Q. If the club went on the rocks, what did you get mad about? A. I was the first club brought him in here; that's what made me mad.

10 Q. Outside of that, when you referred in this article about Garven to the crookedness of the Governor that's what you meant, nothing else? A. That's all.

Q. You don't mean that he did anything dishonest other than that, do you? A. Not as far as I know.

Q. Not as far as you know and if you knew you would tell through the factory at Verdon's place, wouldn't you? A. I wouldn't have to—

20 Q. The news factory. By the way after this suit was started, you came down here to Court; who did you bring down here with you, Mr. Verdon? A. This morning?

Q. No, when you came down here when this case was on before, when the summons was served on you? A. That was the same day I was out to see my counsel. We came from Newark here to get some more subpoenas.

Q. Brought Verdon here and he was in Newark with you? A. Yes.

30 Q. You haven't been sleeping with him, have you? A. No.

Q. You made an accusation that Governor Edge knew about this money coming to Garven, didn't you? A. I don't know.

40 Q. And didn't you make an accusation that the money came because Edge permitted the Public Utility Commission, or directed them or got them to give certain favors to the Public Service Company?

Charles V. Finch—Re-direct

Objected to.

Question withdrawn.

Q. Didn't you get a letter from Governor Edge since this case started? A. No.

Q. Or prior to this case beginning? A. No.

Q. Denying absolutely— A. No.

Q. —any knowledge of any such situation? 10

A. No; not up to this time, I haven't got no letters.

Q. I think that's all.

RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. I call your attention, Mr. Finch, to your reply to Mr. Garven's letter; do you recall that you stated in your reply that if Mr. Garven wished you to, you would give him the name of your informant? A. Yes. 20

Q. Did he ever ask you to give him the name of your informant? A. No.

Q. In your opinion as a public man, politician, believing that the facts that you had heard were true, did you consider that Mr. Garven was a proper man to be elected State Committeeman?

Mr. Carey: I object; that is not re-direct-examination.

Mr. Bradner: Technical objection. 30

Mr. Carey: I think it is a good one.

Q. Has the cross-examination changed the opinion that you had when you gave this publication? A. No, sir.

Q. You are still of the same opinion that you were at the time you gave this matter to the newspaper? A. I am.

Q. That's all. 40

Charles V. Finch—Re-cross

RE-CROSS-EXAMINATION by Mr. Carey:

Q. And what keeps you of the same opinion, obstinacy or conviction? A. Because it is the truth.

10 Q. You know what I mean when I say "obstinacy or conviction" don't you? A. Yes.

Q. You know what conviction means? A. Yes, sir.

Q. And what obstinacy means? A. Yes.

Q. Well, now, if you are of the same opinion today that you were when you issued that statement, why is it that you haven't made a statement since you made that first statement charging Garven with having received that money? A. I cannot get that.

20 (Question repeated by stenographer.)
A. No reason.

Q. No reason at all; just accident; right? The scribe had slipped his pen; is that right? A. Yes.

Q. That's all.

Mr. Bradner: I suppose, your Honor, the testimony that counsel gives will not be considered by you?

The Court: I suppose not.

30 Mr. Bradner: The questions all incorporate facts that are not in the case.

The Court: I don't pay much attention to them; not half as much as lawyers sometimes think I do.

William Verdon—Direct

WILLIAM VERDON, called and sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Bradner:

Q. Where do you live, Mr. Verdon? A. One thousand two hundred forty-four Bloomfield, Hoboken. 10

Q. Are you the gentleman referred to by Mr. Finch as going to Trenton with him to see Mr. Bugbee? A. Yes, sir.

Q. On that occasion what did Mr. Bugbee say to you? A. He told Charlie Finch in my presence that he had put no money in Hudson County, but that Frank Patterson had got \$5,000 from the Public Service as Edge's campaign contribution and given it to Garven.

Q. Who were present at that time? A. Samuel Smith. 20

Q. Who else? A. Charlie Finch and Newton A. K. Bugbee; just four in the room.

Q. When was that? A. That would be the Tuesday after the Election. I figure that would be about the second Tuesday, that is the week following the election on a Tuesday.

Q. Do you know anything about the publication in the Jersey Journal on November 21, 1918 relating to this Public Service fund? A. Yes, sir. 30

Q. Was there such a publication? A. There was at my orders.

Q. Did you make the statement for the Journal that "the money was placed in the hands of two Hudson men prominently identified with the Garven organization and how much of the \$5,000 was used I do not know?" A. The story was given as Finch put it, but the Journal was a little bit nerv- 40

William Verdon—Cross

ous and they put it that way, so that if Mr. Edge denied it or Garven denied it, then we could come back with a full statement of facts. I give the Jersey Journal the same statement Finch gave to the Journal on August 2d.

10 Q. The newspaper people changed it? A. Yes, sir.

Q. To your knowledge was the story in the Journal on November 21st ever denied? A. Never denied not even, no, sir. I was boxing them for an answer, but I couldn't get it.

Q. Have you got that paper here? A. Do you want that paper. Sam, go down to the automobile bring up the Bible.

The Court: Is that what Judge Carey called the "Morgue?"

20 Mr. Carey: No. I don't call that the Morgue.

The Witness: You are right you don't, Robert.

Mr. Bradner: May I reserve putting in the paper?

The Court: You may put in the paper when it comes up.

CROSS-EXAMINATION by Mr. Carey:

30 Q. Let's see, Mr. Verdon, you say you went to Trenton with Mr. Finch; on what date was it? A. I would figure, I wouldn't be very positive, I would figure it would be the week after Election and would be about Tuesday.

Q. You were very much interested in that Election, weren't you? A. I always am.

40 Q. Yes, you always are; you were interested in the candidacy of Governor Edge? A. I had 17 candidates out of 19 on the ticket; was vitally

William Verdon—Cross

interested in the 17; 12 assemblymen, 2 Freeholders, 2 Coroners—

Q. Don't make a speech, Mr. Verdon; you are not in your apartment house in Hoboken now. A. I understand; I know my duties here.

The Court: No, I will have to prescribe the duties, Mr. Verdon. Now, don't do anything except answer the question, and I will try to keep Judge Carey in check as much as I can. 10

Counsel makes the objection.

Q. Mr. Verdon, you didn't answer my last question; just answer it.

(Question repeated by stenographer.)

A. I didn't lose sleep over him.

Q. Didn't lose any sleep over him. You weren't interested in his candidacy, at all, were you? A. Oh yes; as I say I wasn't warmed up; I didn't perspire, didn't get overheated; true. 20

Q. You didn't do any particular work for him; you and Edge were on the outs at that time? A. No, no; he speaks to me when he sees me.

Q. Yes; has to, doesn't he? A. Oh, no.

Q. At that time you were openly advocating his defeat weren't you? A. Oh no; no, sir; don't you say it either now.

Q. No, I wouldn't say it. You weren't working for him, were you? A. I didn't do a thing against him; I was working for the whole ticket. 30

Mr. Bradner: I object to this line of questions and I insist, if your Honor please, must insist that we keep this case down to the issue.

The Court: I cannot see that with this witness it is necessary—with Mr. Finch it was different; it was a question of good 40

William Verdon—Cross

faith. The good faith of this man isn't in question at all.

(After argument, question withdrawn).

10 Q. Now, Mr. Verdon, right after the Election, or prior to the Election, did you go to Trenton to see if you could get some State funds? A. No, I didn't.

Q. Didn't go at all; did you talk with Finch about getting State funds? A. No.

Q. Did you talk with Sam Smith about it? A. No.

Q. Used to meet them every day in your factory in Hoboken or was it your house? A. Well I met them—not a factory, my office please.

20 Q. Your office building. You have a factory over there; you manufacture oleo, don't you? A. No, sir, you are dreaming.

Q. What do you manufacture? A. Automobile trucking.

Q. Have you gotten out of the oleo business? A. I am getting promoted.

Q. Whatever it was, was it at your automobile factory where this thing happened? A. What's that?

30 Q. Where you met these men? A. They come to my house, my office, regularly; and hundreds of others; not them alone.

Q. I am talking about these three leaders? A. Well, they will come to my house; sometimes I go to Kearney; sometimes go to Finch's house.

Q. Wallace comes quite frequently? A. Not too often.

40 Q. He has been in your employ right along? A. What do you mean in my employ?

Q. Exactly what I say, on your pay roll? A. No, sir.

William Verdon—Cross

Q. No, sir; he does all this work for nothing, doesn't he? A. Don't put that to me.

Q. Oh no, I wouldn't; but he does all this scribe work that he does over at your office for nothing?

A. Did Garven pay him when he worked at Bayonne?

Q. I say he does all this for nothing? A. Absolutely; he is my friend; anything for me personally he is my friend. 10

Q. Right after the Election, when Governor Edge was elected to the United States Senate, when was it that you and Finch and Smith determined to go to Trenton? A. Now get your ear set: on Thursday the 'phone rang and Finch asked me if I had discovered anything that there was money around Hoboken on Election Day? 20

Q. What did you say to him? A. I says yes.

Q. Yes; just that way, did you? A. Now let me get that right; that was, I say Thursday—we will say this was Election Day, eh?

Q. Yes. A. Election Day; I says "Yes, there is workers all around, it looks to be, two at a precinct and they are looking for workers. The money is kicking around free" and I says "You had better drop down to see me Thursday" I says, "You had better call Sam"— 30

Q. This was on Tuesday or Thursday? A. This was on Election Day; we made a date to meet on Thursday; I figure that's the best dope I can give.

Q. You call that "dope"? A. Yes; so do you.

Q. Now that that is the best dope you can give, go right on tell what happened Thursday. A. When he come down Thursday, he says he found out that there was money in Jersey City and the report was around it was the State Committee 40

William Verdon—Cross

money. "Well," I says "I got some report here there was quite a few men working; they rumored to me they got the money from the State Committee." Finch,—I mean Smith, had the same thing. So then I said "You better go down, you are the
 10 State Committeeman; you go down see Newton, our friend,"—because I been his friend since he entered politics.

Q. Did you tell him that? A. I suggested that we ought to go down.

Q. "See our friend Newton?" A. Yes.

Q. You used the words "our friend," I suppose? A. Yes, I was his friend before you were his friend.

Q. Certainly; but I say you used that word?
 20 Of course Finch didn't know he was your friend before that moment? A. Finch has been as good a friend as I have been.

Q. So you said "We will go down, see Newt?"
 A. Go down see Newt and see about this money coming in from the State Committee.

Q. What did you want to go down for; this was three days after Election? A. Do you want to know why? They all call Verdon the boss; I was responsible for 17 candidates on that ticket. Now
 30 them 17 candidates wanted to see something done for them. We had no money to put workers out as to them 17 candidates; so the committeemen who were following my end of it we couldn't put to work. Your crowd, which is the Garven crowd, Robert, was putting men to work. Now, if I found that was so, that Newton Bugbee had given money to the Garven crowd, do you understand, and not
 40 to ours, I would have broke with Bugbee right away and I am his best friend and am to-day, and

William Verdon—Cross

I would have broke with him right away. When he told me then or told Finch he had nothing at all to do with it, I was satisfied that Mr. Bugbee, he had nothing at all to do with it.

Q. Now just a little further back. On that day, on Thursday, after Finch told you about some men getting money, you said "We will go to our friend Newton and talk about it," did you have the record of the names of any men who had money? A. Yes. 10

Q. What names are they? A. Mr. Lambert, Garven's committeeman in Hoboken had sent a letter out,—I seen the letter the night before Election—wait till I get through—

Q. Enclosing money? A. Now wait a minute; and asking my committeeman to go there. 20

Q. And did your committeeman go there to your knowledge? A. Yes.

Q. Did they get money? A. Yes.

Q. And they got some money from Mr. Lambert? A. Yes.

Q. They told you so? A. Yes.

Q. Then your Committeemen did have money to run the campaign? A. No, not from us though.

Q. Who did they have the money from? A. From Mr. Lambert.

Q. You said a moment or two ago your committeemen couldn't work because they didn't have money. A. That's true. 30

Q. Now, you tell me they got money. A. Not from us fellows, what Garven give us was trying to steal our fellows away; but we personally had none for them.

Q. Did they steal your fellows away? A. They tried to. 40

William Verdon—Cross

Q. Well, did they? A. No; they tried their best.

Q. So your men were all paid for their Election work by somebody? A. Yes.

Q. Therefore they must have worked very enthusiastically? A. Don't ask me; I wasn't
10 inside to know what they were doing.

Q. Why did you go down to Trenton if you didn't know what they were doing? A. To find out if Mr. Bugbee and the State Committee stood to give Garven who had no right to State Committee money, money for the Election Day in Hudson County.

Q. You didn't want anybody but Bill Verdon to have it? A. The ones entitled to it.

Q. Were you entitled to it? A. No, but the
20 Chairman Mr. Finch.

Q. Were you entitled to it? A. No, but the organization which I represent.

Q. You thought you, Smith and Finch— A. No, no, the organization which we represent.

Q. The organization? A. Yes.

Q. Not Sam, whom you referred to a few moments ago, he wasn't a part of it? A. Of the organization.

Q. Now, what part of the organization did Mr. Smith play? A. Why Mr. Smith is the County
30 Chairman in Kearney and looks after the interest of the organization in Kearney.

Q. That's the Verdon organization? A. The regular organization established by the State Committee where you tried to upset it and you couldn't do it; put you on your back.

Q. You believe all you are saying, don't you?
40 A. You know me a good while.

Q. Yes, you know what perjury is, don't you?
A. Yes, I do.

William Verdon—Cross

Q. What is it? A. Do you want me to say?

Q. Yes, answer the question. A. If I swear falsely here.

Q. Do you know what perjury is? A. Yes, sir.

Q. Nothing mentally irresponsible about you?

A. No, but you say there is.

Q. But there isn't is there? A. No.

10

Q. You know exactly what you are doing? A. Yes.

Q. And what you are saying? A. Yes.

Q. Now, on this Thursday when you determined to go down to investigate this thing, where did you three meet? A. Where, on Thursday,—oh at my office.

Q. At your office? A. Sure.

Q. And did you meet at your office the night before? A. What night before was it? 20

Q. The night before Thursday? A. No, on Tuesday is Election Day, Finch telephoned me, I told him I would meet him at my office Thursday.

Q. What time Thursday did you meet him? A. Some time in the afternoon.

Q. When did you go to Trenton? A. On the following Tuesday.

Q. On the following Tuesday; and when you went down there, did you go down there for the avowed purpose of discussing this matter with Mr. Bugbee? A. Absolutely. 30

Q. Nothing else? A. Nothing else.

Q. Not another thing in your mind? A. Not another thing.

Q. When you saw Mr. Bugbee, who spoke first? A. Finch was State Committeeman; he spoke first; I am supposed to be boss, you know. 40

Q. You kept very quiet just as you have done on the stand? A. Yes.

William Verdon—Cross

Q. You didn't suggest anything in the conversation? A. No, I let Finch do the talking.

Q. Just went in when you went in Finch says "Mr. Bugbee, what about Garven getting money in Hudson?" That right? A. Something like that?

10 Q. Well, was it something like that? A. Yes.

Q. Did he mention Garven right off the reel?

A. He says there was money in Hudson.

Q. Did he mention Garven right off the reel?

A. Wait a minute. You know I ain't got the stenographic notes ahead of me; I want to be honest in what I state here, do you understand. eh? He went in, said there was a rumor there was money in Hudson, eh? I couldn't swear now whether he mentioned Garven; may have used the word but I remember Bugbee mentioned it.

20 Q. You don't remember whether Finch mentioned Garven? A. He mentioned Garven's crowd had money; whether he mentioned Garven personally or Garven organization I don't remember which.

Q. You don't even know that, no. A. I am not going to lie on it.

Q. Did he mention Rotherham? A. No, he said the Garven organization.

30 Q. Did he say the Garven organization? A. Yes, the Garven organization.

Q. Just a moment ago you said you didn't know which? A. Don't be twisting; everybody knows I am telling the truth here now, do you understand.

Q. I am glad you feel that way; it is a fine spirit to be in. Now, when you said before you don't remember whether he said the Garven organization or Garven or how, you meant that, didn't you? A. Meant what?

40

William Verdon—Cross

Q. What you said that you didn't remember?

A. No; just at that moment then.

Q. You didn't mean it? A. No; just that moment then.

Q. Three minutes ago you didn't remember whether he said it; now you think he did say it. 10
A. That's it.

Q. What did he say? A. I will tell you what he did say to the best of my knowledge. He walked in, said "Hello, Newton, the Garven crowd—I wouldn't be sure of 'Garven crowd' or 'Garven organization'—

Q. Which did he say? You say both now. A. I wouldn't be sure now.

Q. I want you to be sure. A. How can I be sure when I am not sure whether he said the Garven organization or the Garven crowd. 20

The Court: He cannot be sure if he is not sure.

The Witness: He wants me to lie.

Q. Are you sure or not? A. I am sure of the 'Garven.' Whether he said the crowd or organization I ain't sure which. It is crowd I would give them anyhow.

Q. You don't know whether he said crowd or organization or Garven or just what he said? A. Oh yes, he said Garven. 30

The Court: You know the name Garven was mentioned, but you don't know whether it meant Garven individually, Garven organization or Garven crowd?

The Witness: Yes, that's it.

Q. All right; now when you first went in there you don't know whether Finch mentioned Garven at all? A. Oh yes. 40

William Verdon—Cross

Q. Did he? A. Yes, when he went in and said "Hello."

Q. Did Finch mention Garven first? A. He said the Garven organization got money; money went to Hudson County to the Garven machine.

10 Q. A moment ago you said you didn't remember whether he said Garven or not? A. Go back; you are quite a kidder you know.

The Court: Mr. Verdon, try to answer the questions.

The Witness: I am afraid he is saying something I didn't say.

Q. You are not afraid; what are you afraid of? A. Go ahead; I am never afraid of you.

Q. No, you are not afraid of anybody.

20 The Court: Now, don't, Mr. Carey.

Q. Now, Mr. Verdon, when Mr. Bugbee said the State Committee hadn't given any money to Hudson, then what did Finch say? A. Well, he says they got money.

Q. What did you say? A. I didn't say a word; he was the State Committeeman.

Q. Not a word; you were late State Committeeman, have precedence? A. I was the second.

30 Q. First time you were ever in Trenton when you weren't first? A. No, I was always the second.

Q. Where was Smith, third? A. He was bottle holder.

Q. That's the job that he pursues in your triumvirate, isn't it? A. (No answer.)

40 Q. Didn't you mean, instead of bottle holder, bag holder? A. What do you mean by "bag holder?"

Mr. Bradner: There wasn't anything to put in the bag.

William Verdon—Cross

Q. There wasn't anything to put in the bag, was there? A. Don't ask me.

Q. If they had delivered any money, \$5,000 to your organization, meaning you, Smith and Finch, why you would have refused it, wouldn't you? A. It wasn't offered, was it?

Q. You would have refused it? A. What's the use asking me a question ain't before me now? 10

Q. You would have refused it? A. That ain't in this case at all. Do I have to answer that.

Mr. Bradner: I object to it.

The Court: I think I will sustain the objection.

A. That's a foolish question.

The Court: Now, Mr. Verdon, understand this, that this is a court room and not anywhere else, and I want you to simply answer the question and no need of any remark or comment on it. 20

Q. Well, now, what did Mr. Finch say next? A. After what?

Q. After Mr. Bugbee? A. Well, he told him that they had money up there. Finch wanted to know if it came from the State Committee, said there was a report, rumor around Garven got the money from the State Committee. That happened very suddenly, see; then of course Bugbee said no. 30

Q. What did Bugbee say? A. Says "No, the State Committee didn't put a cent in.

Q. After that what did Finch say when he said "The State Committee hasn't put a cent in." A. Finch says "Well, they got money."

Q. Then what did Bugbee say? A. Then he says "Well, Garven got \$5,000—Frank Patterson give Garven \$5,000 from the Public Service 40

William Verdon—Cross

Corporation as Edge's contribution to Hudson County."

Q. Now you have got that right, have you? A. Around that way.

Q. Bugbee did say Frank Patterson gave Gar-
10 ven \$5,000? A. I said that first off.

Q. Why, before you said you didn't know whether Garven organization, was used, or Garven association or Garven crowd.

The Court: No, no, when Mr. Finch was talking he don't know whether Mr. Finch said Garven, individually, Garven crowd or Garven organization.

Mr. Carey: I went further—

20 The Court: I am going according to what I heard. We will turn back to the minutes to find out.

Mr. Carey: I want your Honor to do it, because I had left what Mr. Finch said and turned to what Mr. Bugbee said; then I asked two or three times why is it you could not remember what Mr. Finch says, but you now remember what Mr. Finch says, but you now remember what Mr. Bugbee says;—then your Honor asked him
30 "Mr. Bugbee used the word Garven—"

The Court: I didn't say Mr. Bugbee.

Mr. Carey: I may be wrong, but I was not talking about Finch at that time.

The Court: I don't think I used the name Bugbee. Let him say now who used the words.

Q. Mr. Bugbee said—just repeat that so I will
40 get it right. A. Bugbee said that Frank Patterson give Garven \$5,000 Public Service Corpora-

William Verdon—Cross

tion money as "Edge's contribution to Hudson County?"

Q. For Edge's contribution? A. Allotment to Edge in Hudson County.

Q. Did he use the word "allotment?" A. No, to use for Edge in Hudson County.

Q. Was the word "allotment" used? A. I 10
couldn't say.

Q. You heard the testimony of Mr. Finch, where he used the word "allotment"? A. It may have been used.

Q. You just used the word allotment and then struck it out of your mind a moment ago? A. No, I wouldn't swear whether it was used or not. He said anyhow Frank Patterson gave Garven \$5,000 for Hudson County in the interests of Walter 20
Edge.

Q. There was no mistake about his using the word Garven? A. No.

Q. He used it point blank, that "he gave it to Garven?" A. Yes.

Q. What did you say then? A. Not a word. Want me to answer?

Q. Yes, I ask you to answer. A. When Bugbee cleared himself, that cleared himself in my heart, I was still his friend; he cleared himself, made a 30
full confession. I says "Go to Communion."

Q. That was what you call the confession of the man higher up to you? A. Well, he cleared himself that the State Committee had nothing at all to do with it.

Q. As soon as that was said, you withdrew; your hands were washed. A. Bugbee was still my friend.

Q. He is still your friend, you think? A. Why 40
do you say 'you think?'

Recess.

William Verdon—Cross

Afternoon session.

WILLIAM P. VERDON resumed the stand.

Cross-examination by Mr. Carey (continued):

10 Q. Mr. Verdon, do you remember the day when this alleged libelous article was prepared? A. Yes, I remember the night, not the day.

Q. The night, yes. Who prepared it? A. Why, Mr. Wallace; Mr. Wallace was at the orders of Finch.

Q. Did Wallace tell you it was being done at the orders of Finch? A. Yes.

Q. You knew it without his telling you? A. He told me Finch had him on the 'phone and told him what he wanted.

20 Q. And then he came over to your house to do the job? A. I don't know whether it was finished upstairs. He came there with it. I don't know wheher it was finished at my house or not.

Q. Did you see it before it was finished? A. Upstairs is the library where the typewriter is.

Q. Yes? A. And that is where the business was done.

Q. And that is where he did the business, was it? A. Downstairs was the reception room. I was busy downstairs.

30 Q. You were busy? A. Absolutely.

Q. You weren't interested, of course, in the campaign much, were you? A. What do you mean by interested?

Q. Take interest in it. A. What do you mean by interested?

40 Q. The usual significance of the word. Did you have an interest in it? A. Only that it was Finch's fight against Garven.

William Verdon—Cross

Q. Yes. And so, when Finch went upstairs to Wallace's room, in your house, the library where Wallace did this kind of work, you left them there alone? A. I wasn't upstairs at all. They were upstairs.

Q. They were upstairs? A. Wallace was there first. 10

Q. Did you send Wallace up alone? A. He goes up alone.

Q. He goes up alone when he wants to? A. Yes.

Q. He does so much of this work there that he has general access to the room? A. When it is necessary.

Q. Nearly all these attacks and interviews given out are written by Wallace? A. What do you mean by attacks? 20

Q. Attacks upon gentlemen in political life in connection with this campaign. A. Must I answer that?

Q. Can't you answer that? A. I can answer it.

Q. Well, answer it. A. Not all the time.

Q. Most of the time? A. Not most of the time.

Q. About five-sixths of the time? A. Yes.

Q. And all these interviews given out by William P. Verdon and Finch and these others come from your library, are prepared by this man Wallace and then signed by you or the men whose names are affixed to them when they are given out publicly? A. A lot of times they are sent over the wire and then it is in the paper when it is made up. 30

Q. Once in a while you give a wire, do you? A. Yes. 40

Q. If it isn't a wire statement, it is one of these

William Verdon—Cross

printed or typewritten statements prepared by Wallace and signed by you or whoever happens to be there? A. By the man interested.

Q. He generally happens to be there? A. He had to be there.

10 Q. Did Wallace have any of the article completed when he came to your house? A. That I couldn't say. He went upstairs.

Q. Didn't you talk to him? A. I did talk to him.

Q. What did he say when he came in?

Mr. Bradner: I object.

The Court: What is the ground of the objection, Mr. Bradner?

Mr. Bradner: Hearsay.

20 The Court: Why should he give Mr. Wallace's statements?

Mr. Carey: Mr. Wallace was the agent for this man and declarations of the agent or agency are admissible as against the principal. Here Finch says he told Wallace to do this thing and I want to show just what was done.

30 Mr. Bradner: Well, call Mr. Wallace and you can find out from him. I object on another ground,—because it is not cross-examination.

The Court: I think myself that your cross-examination ought not to extend as far as this.

40 Mr. Carey: Except for this, if your Honor please. It is related to the subject matter which he testified to. He said he made a visit and here is the preparation of the document predicated upon that. However, I won't press that question.

William Verdon—Cross

Q. When the article was completed, did you see it? A. I seen the paper; I didn't read it.

Q. Did you have it read to you? A. No, sir.

Q. Did you see it signed? A. I seen it signed.

Q. What were you doing there when it was signed if you didn't see it? A. By the time it was typewritten the crowd was gone. I went up in the library and just sat down. Finch and Wallace were up there. 10

Q. And had gone? A. No, they were all evening upstairs.

Q. You said you saw it signed? A. I seen it signed.

Q. Did you tell them where to sign it? A. Me?

Q. Yes, you. A. No.

Q. Didn't you ask him what was in it when he signed it? A. No. When Wallace came he asked if Finch was there and he says Finch wanted him to write a statement for the paper. 20

Q. Yes? A. And then he went upstairs. Jack went upstairs and Finch followed. I said, "Jack is upstairs."

Q. And you didn't volunteer any information what was to be in the statement? A. Didn't have to.

Q. Didn't have to. And everything in it was true? A. Yes, sir. 30

Q. It was? A. Yes, sir.

Q. Was the statement therein contained, that Pierre Garven received \$5,000 true? A. Bugbee told us. We have the utmost confidence in Bugbee.

Q. You would believe anything Bugbee says? A. At that time, yes.

Q. Wouldn't you now? A. Not if he went back on it now. 40

William Verdon—Cross

Q. You haven't had any occasion to doubt Mr. Bugbee's word, have you? A. No.

Q. If Mr. Bugbee should take oath now and swear that was a lie, what would you say then?

A. Then I know he is lying.

10 Q. Then you know he is lying. Then you would have nothing further to do with him, would you?

A. I wouldn't be very close to him.

Q. No, not as close as you are now. You know Mr. Bugbee gave a statement to the press last night saying it is a lie.

Mr. Bradner: I object.

The Court: Objection sustained.

Q. Now, Mr. Verdon, who sent this letter to the newspaper; you? A. Me? No.

20 Q. Was it delivered personally? A. I don't know.

Q. How did it leave your house that night?

A. I don't—

Mr. Bradner: I object to that, if your Honor please. This witness is not a defendant and his testimony is limited strictly to the visit Mr. Bugbee and what Mr. Bugbee said on that transaction.

Mr. Carey: I want to show this witness cannot be believed.

30

The Court: You have a right to do that, but have you a right to go to the extent of everything on the face of the earth to show it?

Mr. Carey: I want to show his interest in it and in the production of it and the use of it. I want to show this man was the man more interested than even Finch was.

40

The Court: Possibly he was, but he was then only interested.

William Verdon—Cross

Mr. Carey: Part of the trio.

The Court: It doesn't follow from that I shouldn't believe him any more than I should believe the parties in suit because he has an interest in the suit.

Mr. Carey: But you always allow for the fact that he was interested. 10

The Court: Interest in the litigation is proper cross-examination of any witness in the suit, but no other.

Mr. Carey: Keep in mind, if the Court please, this man has travelled all around with Finch, has practically lived with him, came here to the Court to get subpoenas gone out to witnesses cancelled, and has been a part of this whole preparation of this what we claim was a complete lie and frame-up. It is entirely pertinent I should interrogate him on it. Perhaps I have gone far enough. 20

The Court: You have brought out the facts, from this witness and the other witness, Mr. Finch, by which it appears that they were very much together at the time of the preparation of this article. I don't know how much further you want to go. Nobody denies it. 30

Mr. Carey: I would like to press this one question.

The Court: Even Mr. Finch hasn't denied it. Why keep losing time when you have it already?

Mr. Carey: Except for this: Mr. Finch tried to give the impression that he was sponsor of this article. I want to show that 40

William Verdon—Cross

the man in the witness chair is the man who is responsible for this vicious attack and that Finch was just used.

The Court: Suppose you do.

10 Mr. Carey: It shows that Finch never acted in good faith. It shows he was simply allowing himself to be used as a tool.

Q. Mr. Verdon, didn't you send that to the newspaper office? A. No, sir.

Q. Do you know who did? A. I don't know whether Finch or Wallace. I don't know which.

Q. Do you know who took it out of your house? A. I don't know which one had it going out. They both left together.

Q. Did you keep a copy of it for your scrap 20 book? A. I knew it would be in the newspaper.

Q. You knew that was the purpose of it? A. Absolutely.

Mr. Bradner: Have you the newspaper of November 21st, 1918?

The Witness: Yes, sir.

Mr. Bradner: Is that a copy of it?

The Witness: It is right in the book there, too.

Mr. Carey: We have no objection to this newspaper article.

30 Mr. Bradner: I offer it in evidence.

Received in evidence and marked Defendant's Exhibit No. D-1.

Defendant's Exhibit D-1 read by Mr. Bradner.

Mr. Bradner: November 21st, 1918. I think you said on your direct-examination, Mr. Verdon, you never saw any reply to that article. 40

Q. Now, Mr. Verdon, here is an article which

William Verdon—Cross

you yourself said you gave out to the public in 1918; is that right? A. Yes, sir.

Q. And the matter, of course, when you gave out that article was fresher in your mind then than it is now; is that right? A. Yes, sir.

Q. And you stated in that article that two men received money— A. Pardon me. 10

Q. Just listen to me. You stated in that article that two men received money from the Public Service Corporation. Who told you that two men received money from the Public Service Corporation? A. I told the reporter but one man. That is up to himself.

Q. You have just said this was your statement. A. I want to rectify things in that. All I gave over the wire to Grunow was the conversation with Bugbee and I charged the organization with taking it. The other stuff was written by the reporter himself. He is here himself. 20

Q. That statement was written by your man Wallace, wasn't it? A. No, sir.

Q. Who wrote it? A. Mr. Grunow.

Q. And you gave it to him over the telephone and told him it was given to Garven? A. I told him that was the information I had from Bugbee.

Q. Did you tell Mr. Grunow that at that time? A. I did. 30

Q. And did you see the newspaper publication afterwards which said this money was placed in the hands of two Hudson men? A. Yes.

Q. Why didn't you correct that then? A. We expected another denial from the Garven crowd and we gave him another one.

Q. Why didn't you correct that if you knew it was not true? A. We were waiting for the answer. 40

William Verdon—Cross

Q. You were waiting for the answer. Then you would change it, wouldn't you? A. We would do it.

Q. Did you intend that should be in the paper just as it is? A. No, I did not. It was the newspaper way of doing business.

Q. You say you told Mr. Grunow at that time that Mr. Garven received \$5,000 and that instead of putting it in the paper as you told it, Mr. Grunow put it in the paper that you told him two men received the \$5,000? A. He is right here. Put him on the stand.

Q. All right. You also charged in that article that that money was paid in return for the kindness shown by Governor Edge's Public Utility Commission in increasng the trolley rates from five cents to seven cents? A. That was put in by the newspaper. I didn't give that.

Q. You didn't give that? A. I gave the meat of it, about the \$5,000.

Q. Do you mean to say that Mr. Grunow, in publishing an interview with you, quoting you in the interview, put that in without your having mentioned it? A. He wanted to polish it up, I suppose.

Q. Answer the question. A. Oh, yes, that is right.

Q. You didn't say that? A. No, I gave the meat of the story and Garven's, Bugbee's and Patterson's names mentioned in it.

Q. Did you say this to Mr. Grunow: "I now await an answer from the Garven organization or from Governor Edge." A. No.

Q. You didn't say that either? A. No.

Q. All this stuff was manufactured, in your

John T. Wallace—Direct

judgment, by Mr. Grunow? A. I put in the vital parts, about the \$5,000.

Q. Did you tell Mr. Grunow to say you expected an answer from Mr. Garven and then you would give him more? A. No.

Q. Didn't mention Mr. Garven to him? A. I 10 mentioned Garven in the article.

Q. Did you mention Edge in the article? A. Yes.

Q. What did you say about Edge? A. I told him Edge is campaigning Hudson.

The Court: It has just occurred to me we have a new stenographer and he has not been sworn.

Mr. Bradner: I was just going to suggest that.

Daniel F. Murphey, Cerified Shorthand Report- 20 er duly sworn.

JOHN T. WALLACE, a witness called in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

Q. What is your occupation, Mr. Wallace? A. 30 I am a newspaper man.

Q. Are you connected with any particular paper? A. New York Tribune.

Q. Have you reported the speeches or statements of public men in this county? A. In this county and in other counties and other states.

Q. For how long in this county? A. Well, for 40 —I first came to this county in 1911 and I left for

John T. Wallace—Direct

Michigan in 1917. That would be about six years; approximately six years.

10 Q. Will you state some of the men with whom you came in contact? A. Pardon me, Mr. Bradner. And since then, from last October until now, while I have not been employed on any newspaper here, I have been doing publicity work in Hudson County for different public men and politicians and candidates.

20 Q. And will you give me the names of some of the men in this county for whom you did publicity work? A. I have done it for candidates supported by Mr. Verdon. I did it last May in the city of Bayonne for the ticket of City Commissioners known as the Garven-Daly ticket, which was supported by Mr. Garven, the plaintiff in this case.

Q. Then you know Mr. Garven? A. I do.

Q. Did you write the article published in the Jersey Journal on August 2d, referred to in this case? A. I did.

Q. From whom did you get your information originally? A. From Mr. Finch, the defendant.

30 Q. And where did you write out the article? A. I wrote it in the residence of Mr. Verdon, 1244 Bloomfield Street, Hoboken.

Q. Who was present when you were doing the writing? A. Mr. Finch most of the time. I had started it before Mr. Finch came there.

Q. Where had you seen Mr. Finch before that? A. In reference to this matter?

40 Q. Yes. A. I hadn't seen him. He telephoned to me; called me at the Tribune office early in the evening, whatever it was, the evening before the publication.

John T. Wallace—Cross

Q. Whose language is the composition? A. Whose language? It is my language.

Q. Do you know whether Mr. Finch read the article or whether it was read to him? A. He read it.

Q. Did you see him sign it? A. I did. He signed it with a fountain pen which I handed him. 10

Q. Do you know what the purpose was in making this statement for publication? A. Why, yes. The purpose was two-fold, as I take it, if I may be a trifle explanatory. Mr. Finch being a candidate for State Committeeman and Mr. Garven being his opponent, it was the natural thing for Mr. Finch to want to defeat Mr. Garven; and his other purpose—so he said—was to give to the public things which he believed, which he said he believed, to be true, which he said were true, 20 which would show that Mr. Garvin was not a fit man to be State Committeeman.

CROSS-EXAMINATION by Mr. Cary:

Q. The purpose, as they expressed it to you, was to do as much damage as possible to the candidacy of Mr. Garven; correct? A. Nobody expressed that purpose to me; no, sir.

Q. You just stated you understood that was one of the purposes, to prevent Mr. Graven's success and to show the public he was not fit to be State Committeeman. A. My comomn sense told me that was the purpose. 30

Q. Your common sense. Nobody else told you? A. It was not necessary for anybody to tell me, sir.

Q. You had done so much of that kind of work, you knew just what was expected, didn't you? 40

John T. Wallace—Cross

A. As I say, I am endowed with ordinary common sense and I know when any candidate for an office makes a statement attacking his opponent, he is doing it in order to discredit his opponent.

10 Q. And you knew that was the express purpose in this particular production? A. Express and natural purpose.

Q. Express and natural. And weren't you told by Mr. Finch "Go the limit."? A. I don't recall him using any such expression.

Q. You heard him so testify today, didn't you? A. Perhaps he did.

Q. Do you remember whether it was so or not? A. I told you I do not recall any such expression. It is quite possible he made it.

20 Q. Quite possible. You won't deny it, will you? A. No.

Q. Did he give you all this information over the telephone? A. Yes, he gave me substantially the statements that are made in—

Q. The entire statement? That entire article he gave you in a brief talk over the telephone; is that correct? This three-quarter page article? A. Yes. Yes, that is correct.

30 Q. And those things that he said. He didn't use the word "ogre," I know. Did he? A. What word?

Q. Ogre; o-g-r-e. A. I don't know. Did anybody use it?

Q. Did he use it? A. I don't recollect.

Q. Or "platitudinous?" A. No, I know he didn't use it.

Q. Or "accessories after the fact?" A. No.

40 Q. Did you use it? A. Yes.

Q. What did you use it for? A. Because it gave the substance of what Mr. Finch had told me.

John T. Wallace—Cross

Q. Was it done for the purpose of accusing Mr. Garven of a crime? A. No.

Q. You knew that it was accusing him of a crime, didn't you? A. Knew that what was accusing him of crime?

Q. When you charged him with being an accessory after the fact to the use of such moneys. A. I didn't know it and I don't know it now. 10

Q. No. You are not endowed with common sense enough to know that, are you? A. I do not know it now.

Q. Do you know this article contained a criminal accusation? A. I didn't know it and I don't know it now.

Q. And you didn't care, did you? A. Didn't care what? 20

Q. Whether it contained a criminal accusation or not. A. I didn't care whether the accusation which Mr. Finch made was an accusation of crime or not; no.

Q. And you didn't care whether it was true or not, did you? A. Oh, yes. I believed it.

Q. How do you know it? A. I don't know it, but I believed it.

Q. You believed it because Finch told it to you? A. Yes. 30

Q. And no other reason in the world. Did Verdon tell you it was true? A. No.

Q. Didn't talk to Verdon about it? A. I have not.

Q. And didn't Verdon tell you, "I know it is true because I was there"? A. No, he did not.

Q. Never even mentioned the fact that he was there? A. No. 40

Q. Did William Smith tell you that he was there? A. I don't know him.

John T. Wallace—Cross

Q. Samuel Smith? A. No.

Q. You know Samuel pretty well? A. Yes, I do, and think a very great deal of him.

Q. A very fine fellow to you. You met him there, too, pretty frequently? A. I have.

10 Q. You did the propaganda work for the Verdon propaganda factory, didn't you? A. If your Honor please, I don't understand what counsel means.

Q. You seemed to be endowed with so much common sense—

The Court: I think, Mr. Carey, you might just as well not use slang expressions. That may be pertinent to all of them.

20 Mr. Carey: Propaganda isn't slang, if the Court please. Propaganda is a well understood English word describing a well settled proposition.

The Court: Propaganda in the ordinary sense of the word is a little different from what it is as used in political parlance. Propaganda is not sending out information in order to kill or knife the other fellow.

Mr. Carey: Oh, yes, it is in politics.

30 The Court: Propaganda as I always understood it is to send out information to boost one's own side.

Mr. Carey: If this witness doesn't know what it means, if the Court please, I will reframe the question.

The Witness: If your Honor please, I do know what propaganda means, but I do not know what the counsel means.

40 The Court: You used the expression "Verdon political propaganda factory" or something like that. Let us—

John T. Wallace—Cross

Mr. Carey: I will withdraw the question.

The Court: Let us have it withdrawn permanently.

Mr. Carey: I will withdraw that question permanently.

The Court: Why can't we use ordinary language and not use the expressions that always have the signification of sneering or sarcasm? 10

Mr. Carey: There is nothing sneering or sarcastic about that.

The Court: You do not have to call it the "Verdon propaganda factory."

Mr. Carey: I think that is the most delicate term I may apply to it. I will withdraw the question if the Court please. 20

The Witness: May I request your Honor to ask counsel to accord me the same respect that I am requested to accord him?

The Court: He should, and if you complain of lack of respect shown to you, I will insist that the counsel must treat the witness as he expects to be respected by the witness.

Mr. Carey: A man who makes his business sitting down writing libels for other people don't have to be belittled. 30

The Witness: I won't let you belittle me.

Q. Now, when you wrote that article in Mr. Verdon's library with Mr. Verdon's typewriter, who was present? A. Mr. Finch was present most of the time. I stated before that I had begun to write it before Mr. Finch came there.

Q. Did you read it, what you had written when he came in, to him? A. No. 40

Q. So that he didn't know what you were doing

John T. Wallace—Cross

until the job was completed; is that right? A. Oh, yes; he knew what I was doing.

Q. Did he see what you were doing? A. Yes.

Q. Was he looking at you do it? A. No.

Q. Was he going over the pages as you finished
10 each page? A. He wasn't looking at what I was writing.

The Court: Just answer the question. If you know he was, answer "Yes," and if he was not, answer—

Q. When you finished a page, did you turn it over to him to read? A. I think I did.

Q. And did he read it? A. Presumably.

Q. Did he make any comment about it? A. Yes.

Q. Did he make any corrections to it? A. I don't
20 think he made any corrections to that statement.

Q. That whole four or five pages went through just as you turned it out from the machine; right?
A. That is my best recollection.

Q. Yes. And he made no suggestions or promptings to you while you were writing it? A. Once or twice while I was writing it I refreshed my memory of what he had told me over the 'phone, asking about one little point or something; I don't remember just what it was.

30 Q. You talked to him a great deal about various letters which were prepared over there? A. What was that?

Q. You talked to him a great deal about various letters and statements prepared over there? A. About this time?

Q. About that time. A. On this particular night?

40 Q. No; about that time. That night, a few weeks before or after. A. I talked over all the statements he made.

John T. Wallace—Cross

Q. And prepared them all, didn't you? A. All that was published; practically all.

Q. Did you do it for pay? A. No, I haven't been paid anything.

Q. Did you present him a bill? A. No.

Q. Did you have any contract with him? Oh, he 10
intimated he would pay me what it was worth. I have sent him no bill and do not intend to.

Q. Why not? A. Nobody could pay me any money for doing anything for the friends of Billie Verdon.

Q. Nobody could pay you for doing work like this? A. For Billie Verdon.

Q. This was done for Billie Verdon? A. A friend of Billie Verdon.

Q. Wasn't it done for Billie Verdon and at Billie 20
Verdon's express orders? A. It was not.

Q. Why should you be putting yourself out night after night to write letters for someone about something you had no concern about? Simply because of love for Billie Verdon? A. As he is a dear, personal friend of mine.

Q. And did Billie pay you anything for this work? A. No, he didn't, and I wouldn't permit him.

Q. Finch says he expected to pay for it. A. I 30
presume he does.

Q. How much are you going to charge him? A. Nothing.

Q. Nothing at all. You have done this kind of work for Verdon for years, haven't you? A. Huh, huh.

Q. Can't you say "yes"? A. Yes.

Q. See if you can be civil as well as counsel. Was 40
it all this same kind of work? A. Yes.

Julius S. Grunow—Direct

Q. And that is the kind of work you have been doing for years for Verdon, isn't it? A. I would like to explain that.

Mr. Carey: If the Court please, I insist on the witness answering.

10 The Witness: My answer was "Yes."

Mr. Bradner: What is your explanation, Mr. Wallace?

The Witness: My answer was "Yes" to counsel's question as to whether all the work has been this kind of work. By "this kind of work," I understood him to mean campaign political publicity work.

Mr. Carey: Everybody understood that, I think, if the Court please. That is all.

20

JULIUS S. GRUNOW, a witness called in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

Q. Are you connected with the Jersey Journal?

A. I am.

Q. Were you on November 21, 1918? A. I was.

30 Q. Did you get a statement from Mr. Verdon for publication at that time? A. I did.

Q. You heard it read here? A. I did.

Q. I call your attention to Mr. Verdon's testimony here that there was some change made in the statement of facts differing somewhat from what he stated. Do you recall that? A. I omitted the

40 use of the names.

Q. What names did you omit? A. The names of Mr. Garven and Mr. Edge, I think. I think that

Julius S. Grunow—Cross

was all of them. There might have been a third name mentioned. I am not positive as to that. I think there was a third name mentioned.

Q. In part of the article you say "the money was placed in the hands of two Hudson men prominently identified with the Garven organization." Did you omit the names of the men to whom the money was paid? A. I think I did. 10

CROSS-EXAMINATION by Mr. Carey:

Q. Mr. Grunow, that article is substantially as was stated to you by Mr. Verdon, isn't it? A. That is my understanding, except that the names were left out.

Q. And the charge made that the \$5,000 was paid for the purpose of effecting the increased fare on the Public Service system. That was the charge made by Mr. Verdon to you and published by you, wasn't it? A. I talked that matter over with him at one of our interviews. I talked to him about fifteen minutes. I should imagine. 20

Q. He stated here a few moments ago that he never stated that to you. Is that true? A. He mightn't have meant it to be a part of the article.

Q. He said that that particular portion of the article he never stated to you. A. I referred to that matter in our statement. 30

Q. And didn't he state that to you over the telephone? A. He told me what it was.

Q. Now, he said that you eliminated the name or names that he gave you. In this statement which you wrote at that time, you didn't say that the money was placed in the hands of a Hudson County man; you said the money was placed in the hands of two Hudson men. Did he tell you that? A. That is my recollection. 40

Alfred N. Barber—Direct

Q. You wouldn't have written it that way unless he did tell you that, would you? A. No.

Q. No. That is all.

10 ALFRED N. BARBER, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

Q. Mr. Barber, are you Secretary of the Public Utility Commission? A. I am.

Q. Have you records with you showing when the Public Service Railway Company made the first request in 1918 to raise the fare? A. I have.

20 Q. What date was it? A. I will tell you as soon as I get the papers.

Mr. Carey: If you have the date, Mr. Bradner, I will admit it.

The Witness: The first petition was received by the Board August 6th, 1918.

Q. What action was taken on that; I mean the resultant action? A. That petition was subsequently amended—I beg your pardon, I wish the stenographer would strike that out if he will—the first
30 petition was submitted March 5th, 1918. It was subsequently amended by petition of March 19th, 1918, the amendment merely making the petition one for emergency relief. The decision of the Board was filed on July 10th, 1918.

Q. What was the decision? A. The decision—

Q. Generally. A. Yes. Permitted the company to charge one cent on all initial transfers on and
40 after the first day of August, 1918, in addition to any and all charges now imposed, that is, imposed at the date of the decision.

Alfred N. Barber—Direct

Q. Was that for a limited time? A. That was not in accordance with the prayer of the petition. It was the finding of the commission which dismissed the original petition and it was in order to permit the company to obtain the sum of \$860,000, to be raised to meet the emergency which had been caused by an increase in the wages of the company's employees and it was to be regarded as an emergency charge, not as a permanent charge. 10

Q. And how long was that to continue? A. Without date. The company was required to file with the Board monthly statements showing its revenues, revenue deductions, and the Board retained jurisdiction for the purpose of modifying or abrogating the charge if the conditions changed.

Q. Was the original request to raise the fare from five cents to six? A. From five to seven. 20

Q. Five to seven. And that was denied? A. That was denied and they are to charge two cents for each transfer issued on a carfare and an additional charge of one cent for a transfer issued on transfer.

Q. When was that denied; July 10th, 1918? A. At the date I just gave.

Q. After that was there another petition filed? A. Yes, there was. 30

Q. What was that date? A. That was received August 6th, 1918.

Q. What was the purport of that? A. The purport was to the effect that the Board, in its report and order of July 10th, had included \$1,086,000 as the amount necessary for the company to raise to admit of the wage increases testified to by the company; that on the first day of August, 1918, the War Labor Board made awards 40

Alfred N. Barber—Direct

increasing wages to employees over and above the said sum of \$1,086,000, which would entail upon the company a further cost for wages in addition to the \$1,086,000 of \$1,854,031, of which amount \$877,571 must be paid prior to December 31st, 1918, and the petition also recited the financial difficulties of the company in financing under existing conditions and—

10 Q. Did they ask for a seven cent fare there? A. Yes. They asked for a fare of seven cents where a fare of five cents is now charged, such increased fare to be in addition to the charge of one cent for each initial transfer provided for in said order of July 10, 1918.

20 Q. Did the Board dispose of that petition by decision? A. Yes.

Q. When? A. September 25th, 1918.

Q. Granting the seven cent fare and addition of one cent? A. No, not at that time it didn't. It provided that on and after the effective date of the order—the order becoming effective October 15th, 1918, it was filed on September 25th—that there was fixed as a just and reasonable charge to be observed, a charge of seven cents where five cents is now charged, up to and including March 31st, 30 1919. There was fixed as a just and reasonable charge to be observed on and after April 1st, 1919, a charge of six cents where five cents was then charged, those charges to be in addition to the charge of one cent for each additional transfer allowed by the Board.

Mr. Carey: No questions.

Joseph F. Galvin—Direct

JOSEPH F. GALVIN, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Q. You are in the Secretary of State's office? A. Yes, sir.

Q. Did you produce some papers here? A. Yes, sir.

Q. What have you produced? A. I have a statement by Governor Edge in which he declares himself a candidate for the office of United States Senator and in which he names himself as campaign manager and designates the Mechanics National Bank of Trenton as the depository for his campaign fund. I also have a statement of receipts and expenditures of that campaign fund and a statement from the Mechanics National Bank of Trenton.

Q. Is that a sworn statement of receipts and expenditures? A. Yes, sir.

Q. It is a pretty long document? A. No, it is not very much.

Mr. Bradner: With the Court's permission, I would like to have it read into the record. I don't suppose he can leave the original papers here.

Mr. Carey: We will admit anything you want us to admit that is relevant.

The Court: What do you wish to show? I suppose one of the things you want to show is what contributions were made. There is nothing in there of a contribution from the Public Service Railroad or Utility Commission, is there?

Mr. Carey: I think that is improbable, to expect to find anything there if there was such a contribution.

Joseph F. Galvin—Direct

The Court: It is something you want to show that isn't there; not so much what is there.

Mr. Bradner: Is there anything there, any allotment, to Hudson County, any disbursements to Hudson County?

10 The Court: Is there any allotment there or any money to Hudson County?

The Witness: No, sir.

The Court: Or any official in Hudson County?

The Witness: No, sir.

The Court: Or any person whatever in Hudson County?

The Witness: No, sir.

The Court: Doesn't that cover that?

20 Q. Any payment made to Mr. Patterson, Mr. Frank L. Patterson? A. There is one expenditure here in Jersey to the Jersey Journal for advertising, \$180. Mr. Patterson is not mentioned.

Q. Any contribution to the State Committee?

Mr. Carey: I suppose we have the right to ask the relevancy of this. I can't see what relevancy this has. I am willing to admit anything the record shows to save time, but as to where the relevancy of all this is, I can't see.

30 The Court: I can think of how they might want to use it.

Mr. Bradner: Cross-examination would make it necessary more than anything else.

Mr. Carey: Oh, no. Cross-examination never makes anything necessary. I won't make any objection, if the Court please. I just want to save time.

40 Q. Did you find any contribution to the State Committee? A. No, sir.

Samuel W. Smith—Direct

CROSS-EXAMINATION by Mr. Carey:

Q. That is the sworn statement of Senator Edge, isn't it? A. Yes, sir.

Q. In which he says, and it does not appear, that he gave any money to Mr. Garven or anybody else in Hudson County? A. Yes, sir. 10

SAMUEL W. SMITH, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

Q. Mr. Smith, where do you live? A. Fifty-five Johnston Avenue, Kearny. 20

Q. Do you hold any public office? A. No, sir.

Q. Aren't you a member of the County Committee in Hudson County? A. Yes, sir.

Q. Were you in November, 1918? A. Yes, sir.

Q. Did you go to Trenton about November 12th with Mr. Finch and Mr. Verdon? A. Yes, sir.

Q. Where did you go at Trenton? A. To the State House.

Q. To anyone's office? A. Mr. Bugbee's.

Q. And who did you see there? A. Mr. Bugbee. 30

Q. And who was present at the time? A. Mr. Finch, Mr. Verdon and Mr. Bugbee.

Q. Did you hear Mr. Bugbee make any statement to Mr. Finch, while in your presence, relating to any \$5,000 fund? A. Yes, sir.

Q. What was it he said? A. He said that the State Committee had no funds to distribute in Hudson County, but that Mr. Patterson had given Garven \$5,000 of the Public Service money. 40

Samuel W. Smith—Cross

CROSS-EXAMINATION by Mr. Carey:

Q. How old are you, Mr. Smith? A. Forty-seven.

Q. And how long have you lived in Kearny? A. Twenty-one years.

Q. And what is your business there? A. Coal dealer.

10 Q. And you have been in politics for how long? A. Twenty years; twenty-one years.

Q. You have held office in the county, haven't you? A. Yes, sir.

Q. You were a member of the County Board of Elections? A. Yes, sir.

Q. You lost that office, didn't you? A. Yes, sir.

Q. Through proceedings that were beyond your control? A. Yes, sir.

20 Q. And since losing that office, you have held no other office, have you? A. No, sir.

Q. You have been attending to the coal business pretty actively? A. Yes, sir.

Q. And giving a great deal of your side time to politics? A. Yes, sir.

Q. In fact, you have worked in politics continuously with Mr. Verdon and Mr. Finch? A. Yes, sir.

30 Q. And you three are sort of a triumvirate that ran that faction of the party? A. You say so.

Q. What do you say? A. I associated with Mr. Verdon.

Q. You and Verdon and Finch ran that faction of the party? A. Not necessarily.

Q. Right? A. You say so.

40 Q. I say so. Who else is there in the management of that particular branch of the party but you three? A. Tony Hogan.

Samuel W. Smith—Cross

Q. Tony Hogan. Who else? A. Johnnie Coyle.

Q. Johnnie Coyle. Don't you know that you haven't seen either Tony Hogan or Johnnie Coyle at one of your meetings for months, at one of your conferences at Verdon's house? A. I emphatically deny that statement.

Q. Were they there last night? A. Yes, sir. 10

Q. Did anybody ask Johnnie Coyle to come to testify here today? A. No, sir.

Q. Did anybody try to get Johnnie Coyle to come and testify that he was with you down in Trenton? A. No, sir.

Q. Now, what were you at Verdon's house last night for? A. To consider the preparation of this case here today.

Q. What did you need to consider this case here today for when you had done it last Thursday at Mr. Bradner's office in Newark? A. I don't say so. You say so. 20

Q. I am asking you? A. Why did you prepare your case?

Q. You are not asking me questions; I am asking you. I will answer you when I am ready. Now you just answer my question. Why were you at Mr. Verdon's place preparing this case last night? A. Who had a better reason?

The Court: Can't you answer why you were there? 30

The Witness: The question is silly and the counsel knows it is silly. He knows that he and his gang met—

The Court: You just answer the questions, whether they are silly or not. They may appear silly, but may not be so silly. 40

The Witness: All right.

Samuel W. Smith—Cross

Q. You just said "he and his gang met." Did you refer to your conference of last night as just a meeting of some other gang; is that what you mean? A. No, sir.

10 Q. Now, when you met last night there were three of you there, or five? A. Three.

Q. Three. Who were they? A. Verdon, Finch and myself.

Q. Coyle wasn't there last night, was he? A. No, sir.

Q. And Mr. Hogan wasn't there? A. No, sir.

Q. At that executive session, there were just you three, is that right? Or don't you know what I mean by executive? A. No.

20 Q. No, you don't. Now, when you three met there last night, did you have the Journal article that contained this alleged libel? A. No, sir.

Q. You did not? A. No, sir.

Q. Didn't you hear Mr. Finch testify here to-day that you did have it there last night and he read it? Didn't you hear that? A. No, sir.

Q. Didn't hear that? A. No, sir.

Q. Where were you when he was testifying? A. I don't know. I didn't hear that, though.

30 Q. Where were you when he was testifying? A. Part of the time in this room.

Q. Part out? You mean that, do you? A. Possibly.

Q. If I refresh your recollection by saying Mr. Finch did read that last night, what do you say? Was it read or wasn't it? A. It may have been.

40 Q. It may have been. Are you changing your mind now? You said a moment ago it was not. A. What?

Q. You said "no." A. I say "no" still.

Samuel W. Smith—Cross

Q. You say that it was not, now? A. No.

Q. What do you mean by saying it may have been? A. I don't know what was done while Mr. Finch was there.

Q. Weren't you there with him? A. Part of the time.

Q. Weren't you there with him and didn't you 10
leave together? A. No.

Q. Who went there first? A. I did.

Q. You and he left there together? A. Yes.

Q. You were there all the time? A. No.

Q. Where were you in the meantime? A. I went outside.

Q. Where did you go outside? A. To get something to eat.

Q. Did you go alone? A. Yes, sir.

Q. What time did you go to get something to 20
eat? A. Quarter to eight.

Q. While you were away, what were they doing; getting the case prepared? A. The case was all prepared.

Q. While you were preparing this case you never read this article? A. Never.

Q. Any reference made to it? A. No.

Q. What did you need to meet together to prepare the case last night for? A. To arrange as 30
to the manner in which the witnesses would be presented.

Q. Didn't your lawyer look after that phase of the case for you? A. We were assisting him.

Q. You were assisting him last night? A. Yes, sir.

Q. Was he there? A. No, sir.

Q. Weren't you arranging as to what you three 40
would testify to when you got to court today? A. No, sir.

Samuel W. Smith—Cross

Q. You read in last night's Evening Journal what Mr. Bugbee said? A. No, sir.

Q. Did you go over that? A. No, sir.

Q. Never mentioned it to each other? A. No, sir.

10 Q. Do you mean to say you three men got together to prepare this case last night without reading that statement given to the press by Mr. Bugbee and never discussed it when it bore on the principal subject? A. Yes, sir.

Q. That is absolutely true? A. Yes, sir.

Q. You know what perjury is, don't you? A. Yes, sir; so do you.

Q. Yes, I certainly do. Now, didn't you three last night read the article Mr. Bugbee gave to the newspapers by way of interview and didn't you then plan as to what your testimony should be today in order to save Mr. Finch the possibility of a verdict in this case? A. No, sir.

20 Q. Now, when you went to Trenton on this occasion you speak of going to Trenton, what date was it, do you remember? A. Tuesday.

Q. Tuesday what? A. November 12th.

Q. November 12th? It was not November 21st, was it, the date of that Journal interview? A. No, sir.

30 Q. It was not the day before? A. I might have been there that day, too.

Q. You remember that interview that appeared in the Journal of November 21st of November? A. No, sir.

Q. Didn't you see that? A. No, sir.

Q. The interview Mr. Verdon gave out referred to here today in court? A. No, sir.

40 Q. In which the two men were accused of getting

Samuel W. Smith—Cross

that fund? A. I didn't see that; not until today.

Q. The interview you had couldn't have been in the week of the 21st, the date of that publication in the Journal, could it? It must have been Tuesday of the preceding week; is that right? A. Yes, sir.

Q. How did you come to go to Trenton that Tuesday? A. I go over frequently all through the session. 10

Q. You went over Tuesday, didn't you? A. Yes, sir.

Q. There was no session in August. What are you talking about? A. This wasn't August; this was November.

Q. Was there a session of the Legislature in November? A. I have business in Trenton. 20

Q. You just said you went to the legislative session on Tuesday. A. I said I am in Trenton very frequently.

Q. Are you there every Tuesday? A. Very near.

Q. On this particular Tuesday when you went down there, what did you go down for? A. To inquire with Mr. Finch.

Q. About what? A. As to who was responsible for the placing of money in Hudson County.

Q. Why were you interested? The campaign was all over a week. A. No, it was not. 30

Q. One week over. A. That is true.

Q. Then why were you interested in what happened when that was one week after the campaign was over? A. I am always interested to know the who and the how and the wherefore of the Republican Party. 40

Q. So you gave your day from your business,

Samuel W. Smith—Cross

your coal business, to find the who and the where and the how on Tuesday before election day; is that right? A. So do you.

Q. Is that what you were doing? A. Yes.

Q. You weren't selling any coal down in Trenton that day, were you? A. Yes.

10 Q. Mr. Verdon negotiated several coal contracts for you down there, didn't he? A. No, sir.

Q. Did you go down on coal business that day or on Verdon's business? A. Finch's business.

Q. Finch's business. Well, it wasn't Finch's business then, was it? A. Yes, it was.

Q. Why? A. He was the State Committeeman.

Q. And you went down because he was State Committeeman? A. Yes.

20 Q. Did he tell you he wanted you to go down on that account? A. Yes.

Q. Did he tell you he was going to talk to Bugbee and he needed your help? A. Yes.

Q. What were you going to help Finch do that day? A. I can't answer.

Q. You can't answer, can you? You were not going to help anybody that day in Trenton, were you? A. Yes.

30 Q. Mr. Finch told you he was going to see Mr. Bugbee; is that right? A. Yes.

Q. He didn't need your help to see Mr. Bugbee, did he? A. No.

Q. He didn't tell you he was afraid Mr. Bugbee would use the word "ogre" or something like that and he wouldn't understand and he needed you there? A. No, sir.

40 Q. You didn't go down to interpret for him. You went down why? A. To prove that there was money in Hudson County.

Samuel W. Smith—Cross

Q. You knew it, didn't you? A. Did Mr. Bugbee know it?

Q. Mr. Finch could ask Mr. Bugbee without your aid. A. Yes, sir.

Q. Didn't you trust Mr. Bugbee? A. Yes.

Q. You were a little suspicious of him at that time? A. No. 10

Q. Didn't you go down there to frame up Mr. Bugbee? A. No.

Q. You wouldn't do that, would you? A. No.

Q. Mr. Verdon has been witness for you in cases, hasn't he? A. What has that got to do with it?

Q. I will show you. You are ~~only~~ lying for him now. I won't press it if you don't want to answer it. Did you believe Mr. Bugbee was a truthful man at the time you went to Trenton? A. Yes, sir. 20

Q. If you thought he was a truthful man, why did it require three of you to go down there to get the truth, three busy statesmen, you, Verdon and Finch? A. To verify the statement that Finch made that there was money in Hudson County.

Q. Didn't you trust Finch? A. Yes.

Q. You were going down to see that Finch wasn't putting anything over that wasn't proper? A. No. 30

Q. Why did you go down? This is important. A. To verify the statement that there was money in Hudson County other than what should be handled by the regular County Committee.

Q. When you went in there, who opened the conversation? A. Finch.

Q. Who did all the talking? A. Finch. 40

Q. Didn't you do any? A. Very little.

Samuel W. Smith—Cross

Q. Didn't you do any? A. Yes.

Q. What did you say? A. I couldn't say at the present time.

Q. You can't remember anything you said there, can you? A. Yes.

10 Q. What did you say? A. I said there was positively money in Hudson County.

Q. I thought Finch said that? A. I said so, too.

Q. What did Verdon say? Did he say so, too? A. Yes.

Q. And all three of you said, "There is positively money in Hudson County"? A. Yes.

Q. In chorus or did you take turns? A. In turns.

20 Q. Don't you know nothing like that occurred at all? A. It did.

Q. If Finch said, "Money has been used in Hudson County," why didn't you let the thing alone and let Mr. Bugbee talk to you instead of you saying, "Yes, sir, there has been money used in Hudson County" and then follow it with having Verdon chime in, "There has been money used in Hudson County"? Why did you do that? A. I couldn't answer that. You couldn't, either.

30 Q. No, I will admit it. What else did you say in the course of that interview besides "There is money in Hudson County"? A. I don't know.

Q. You didn't say another word, did you? A. Yes, there was plenty of conversation.

Q. What? A. I can't recall it.

Q. Why can you remember one or two lines and not the rest of it? A. What do you want?

40 Q. I want to know what took place? A. I told you.

Q. Tell me what you said, the rest of it. A. I can't remember it.

Samuel W. Smith—Cross

Q. You can't remember anything, can you?
You can't remember a word Mr. Verdon said except "There has been money in Hudson County"?

A. Not just now.

Q. And at no other time have you been able to remember it, have you? A. The witness isn't in a very good frame of mind to be antagonized with a counsel in this position. 10

Q. The witness isn't in a very good frame of mind? A. You wouldn't be, either.

Q. You are on the witness stand under oath? A. I am.

Q. And you know what an oath is, too, don't you? A. So do you.

Q. Yes, I know I do, and, knowing that fact, I want you to tell me what it was that was said by Mr. Verdon to Mr. Bugbee there. Now tell us. 20

A. Mr. Verdon said, "Newton, we have every good reason to believe that there was money spent in Hudson County."

Q. Yes? A. "If that was the case, Finch should have been in on it.

Q. Finch should have been in on it? A. Yes.

Q. And what did Finch— A. He is the authorized State Committeeman.

Q. Did he tell that to Bugbee? A. Yes. "And we are here to see if the money was passed in over Finch's head." 30

Q. He said that all to Bugbee? A. Yes.

Q. And what did Bugbee say? A. "Well, I will admit there was money."

Q. Bugbee said that? A. Yes.

Q. "I will admit there was money." Are those the words he used about that? A. "But not from the State Committee. The State Committee had no money." 40

Samuel W. Smith—Cross

Q. You are sure he put it that way, "I will admit there was money, but not from the State Committee." He didn't put it this way, "The State Committee didn't pay any money in Hudson County," and then, afterwards, didn't he sort of shrug his shoulders and say, "Well, Patterson gave some money to Garven." He didn't put it that way, did he? A. Not according to my recollection.

Q. How did he put it; the way I put it or the way you put it? A. The way I put it.

Q. You didn't hear the other fellows testify to that subject this morning? A. They may have done so.

Q. Don't you reemember? A. Do you remember all that was testified here?

Q. I am asking you what you remember. You have been in a case before and you know how to testify, don't you? A. You bet I do.

Q. Yes. You know Mr. Patterson, don't you? A. Yes, sir.

Q. Very well? A. No, sir.

Q. You know him pretty well? A. No, sir.

Q. Did you know he was interested in the politics of the State? A. Yes, sir.

Q. When you heard the name "Patterson" used, why didn't you go and see Mr. Patterson? A. What for?

Q. I didn't ask you what for. You were trying to find out where the money came from and what it was put out for. A. I wasn't trying to find out where the money came from.

Q. You didn't care? A. No, sir.

Q. What were you trying to find out? A. I was trying to find out if the State Committee put out any money.

Samuel W. Smith—Cross

Q. You know you were trying to find out where the money was from. A. I said I wasn't.

Q. You didn't care at all? A. No, sir.

Q. As soon as you found out you were not going to get any your interest dropped? A. I didn't say so.

Q. Is that the fact? A. I didn't say so.

10

Q. What did Mr. Bugbee say after that conversation of about twenty minutes, after the reference to Garven? A. I don't recall.

Q. You don't even recall anything took place after that? A. No.

Q. Did you ask him why the money was given to Garven? A. Yes.

Q. Did he tell you? A. Yes.

Q. Why? Did he tell you? A. Because Verdon was antagonistic to the Public Service interests.

20

Q. Mr. Bugbee added "The reason we gave the money to Garven;" "We gave the money to Garven"? What did he say? "The reason" what? A. "The money was put into Hudson County was because Verdon was antagonistic to Edge and to the Public Service."

Q. Are you sure that was said by him? A. Yes.

Q. You heard Mr. Verdon's testimony. He didn't say anything like that, did he? A. I don't know.

30

Q. Don't you know that was never uttered by Mr. Bugbee? A. No.

Q. Do you believe Mr. Bugbee to be an honest man? A. Yes.

Q. Do you believe he would tell the truth under oath? A. Yes.

Q. Would you believe it if he says under oath here this afternoon that that never took place?

40

Samuel W. Smith—Cross

Would you believe it? A. He may be as much mistaken as I may be.

Q. You may be mistaken, then? Are you mistaken? A. No, sir.

Q. What do you mean by that? Is your memory good? A. Not very.

Q. You have a poor memory. You never contrasted your memory with Verdon's and Finch's? Is it as good as theirs, as far as you can say? A. Yes.

Q. You think it is as good as theirs? A. Yes.

Q. Now let me have that again. The statement was made by Mr. Bugbee that they gave the money to Garven because Verdon was against Edge and against the Public Service? A. Yes.

Q. Is that right? A. Yes.

Q. I think you said you went down to find out why Finch didn't get the money, and you know Finch has testified that he wasn't against Edge. A. And that is the explanation given why the State Committee had no money; the money that did come into the county came in in that money.

Q. Of course, you don't know whether any money came in or not, do you? A. Yes, I do know.

Q. Did you see it? A. Yes.

Q. Did you see any money come from the Public Service to anybody? A. No, not from the Public Service.

Q. Have you any knowledge or information obtained from a single living soul that money came from the Public Service, directly or indirectly, to Mr. Garven, other than the statement you say came from Mr. Bugbee? A. I have this information.

Q. Have you any such? A. That the Committee-

Samuel W. Smith—Cross

men were paid five dollars apiece to work in the district when there was no money of the County Committee or the State Committee, and hence it must have been coming from some source and what other source could it be?

Q. I am asking you again. Have you any information of any sort, kind or character, proving that the Public Service Corporation put up a single dollar? A. Only this statement made by Mr. Bugbee. 10

Q. That is the only thing you have got and if your statement of what you say he said it not true, then you haven't any proof at all? A. That is my opinion.

Q. And isn't it a fact that you got together with Mr. Verdon and Mr. Verdon has asked you to stand with him by Finch and put this thing over? A. No, sir. 20

Q. Didn't you tell Mr. Verdon that you wouldn't do so unless he would stand too? A. No, sir.

Q. Isn't that why you got together last night to put the finishing touches on it so that you would all have your nerve up to come and testify that way this morning? A. No, sir.

Q. Wasn't it agreed that Mr. Verdon should take the stand before you did? A. No, sir. 30

Q. Didn't you make the argument with him that he had to come over with the story first? A. No, sir.

Q. Now, after this interview that you had down in Trenton with Mr. Bugbee in which Mr. Bugbee told you that a crime had been committed by the Republican Party—You knew it was a crime, of course, didn't you? A. No, sir. 40

Samuel W. Smith—Cross

Q. You have been so active in politics and member of the County Board of Elections and do not know that that was a crime? A. Not a crime to take money or pay money?

Q. Not a crime to take money? A. No, sir.

10 Q. That is your judgment of the political game, is it? A. Yes, sir, if it is proper.

Q. All the money you get if it is proper? A. If it is properly handled; yes, sir.

Q. All the money properly handled by you, Verdon and Finch? A. You are trying to make it so.

Q. When it isn't handled by you, Verdon and Finch, then it ought to be the subject of an attack in the newspaper upon a man's character; is that right? A. I wouldn't say so.

20 Q. You wouldn't say so? A. No, sir.

Q. When you came back from Trenton, when did you first hear of this proposed attack upon Mr. Graven in connection with this fund? A. Not until August of this year.

Q. Forgot all about it during those eight or nine months? A. I did.

Q. Didn't think anything more about it, did you? A. No, sir, I—

30 Q. You thought it was a part of the campaign, didn't you? A. Yes, sir.

Q. You would take money from any source, wouldn't you? A. Any source; yes, sir.

Q. You would take it from any source no matter how good or how bad the source? A. Money is good no matter where it comes from, even from Garven.

40 Q. That is your theory of the morality of politics? A. And yours, too.

Q. Is it mine, too? Don't you fool yourself. A. There was a time when you were glad—

Samuel W. Smith—Cross

The Court: There is no need of that.

Mr. Carey: I know there isn't, but I want him to understand my code is not the same as his.

The Witness: His code was very welcome at one time. I could shout for him for Congress-
man and his friend Garven licked him. 10

Mr. Carey: I didn't know you were as old as that.

Q. Now, you certainly didn't contribute anything to my campaign, did you? A. Lots of effort; yes, sir.

The Court: You put in here an application for a jury. Remember that the jury was not drawn.

Mr. Carey: Yes, sir; I have a full appreciation of that fact. I want the witness to understand it. 20

Q. You believed, as far as money was concerned, not in giving any, but getting it; that was your idea? A. No, sir.

Q. Now, when you found out that Garven had gotten this money, you didn't think any crime had been committed, did you? A. No, sir; I did not.

Q. Have you ever read the election laws? A. Yes.

Q. And you didn't speak of that again until August of this year to anybody? A. No. 30

Q. Never mentioned it? A. No.

Q. Then in August in this year who was the first person to mention it to you? A. I don't recall.

Q. Someone mentioned it to you first. This was August, within this present month. You don't
mean to say you can't tell us something within 40

Samuel W. Smith—Cross

this present month and you can tell us what happened in November, 1918? A. I can't say who was the first person. Many persons.

10 Q. Who was the first person this month, in your judgment or memory, that mentioned that visit of yours to Trenton? Nobody else knew it but the other two, did they? A. No.

Q. Nobody knew it but Finch and Verdon that you went to Trenton on that errand, did they? A. I would imagine other people did; yes.

Q. Who did you tell; anybody? A. No.

Q. You never told a soul, did you? A. No.

Q. Now, you told us before that the reason you went to Trenton was to be able to get some facts so you could tell the people where the money came from. Now you say after you found it out you never told anybody. What do you mean by that? A. Not publicly.

— Q. But you told people privately and you make that a distinction, do you? A. Yes, sir, certainly.

Q. Whom did you talk with, about the first of August this year, about that visit of yours to Trenton? Somebody, or you wouldn't be here in court today. Who was it? You are not ashamed to say the name "Verdon," are you? A. No.

30 Q. Was it Verdon? A. No. The case had been on two or three days before I heard of it.

Q. Before you knew anything about it? A. Yes, sir.

Q. You saw the articles in the newspapers? A. Not until they were mailed to me.

Q. Who mailed them to you? A. I don't know.

Q. You don't know who mailed them to you? 40 A. No, sir.

Q. Didn't you recognize the handwriting? A. No.

Samuel W. Smith—Cross

Q. It wasn't Wallace's handwriting? A. I don't know Wallace's handwriting.

Q. It wasn't Verdon's? A. I don't think so.

Q. When you found out the case was on, did you go to Verdon's office to talk it over? A. (No answer.)

Q. Yes or no? A. Yes. 10

Q. Why didn't you say so without waiting? A. Are you in a hurry?

Q. I am in a little more hurry than you seem to be to answer. A. We have all day.

Q. Why did you go to Verdon's? A. Why?

Q. Yes; why did you go to Verdon's? You weren't interested in this thing? A. Who said I wasn't interested?

Q. You said it was all right, Garven got the money and that was the end of it. A. So it was. 20

Q. You weren't interested in it any more. Why did you go to Verdon's? A. I go to Verdon's very frequently.

Q. How often? A. Once a week.

Q. Did you go on a visit on this account or accidentally? A. It might have been accidental.

Q. Don't you know? A. No.

Q. When you went down, did you talk it over with Billy? A. Yes.

Q. Did he tell you Wallace had written these articles? A. No. 30

Q. Wallace was there while you were there, wasn't he? A. No.

Q. Did he tell you who wrote that word "ogre" and "platitudinous" and all those other words? A. No.

Q. You understood them, of course, when you read them, didn't you? You thought they were 40
bully, didn't you? A. I didn't say so.

Samuel W. Smith—Cross

Q. You didn't understand them at all? "Accessory after the fact" didn't mean anything to you at all? A. No.

10 Q. After you had read this article and you talked it over with Verdon, did Verdon propose to you then that you would have to testify in the case? A. No.

Q. Did he ask you to? A. No.

Q. How did you come to be a witness in the case? A. How did I come?

Q. Yes. A. Because I was a witness to this statement made by Bugbee.

Q. How did you come to be a witness? Did you volunteer your services? A. Volunteered.

Q. When did you volunteer? A. Two weeks ago.

20 Q. Why did you volunteer two weeks ago to be a witness to that statement when you didn't know two weeks ago that Mr. Bugbee would deny any such insinuation? A. That didn't make any difference to me what he would do.

Q. It didn't make any difference? A. No.

Q. What was the date of the time when you volunteered to be a witness, do you remember? A. No, I do not.

30 Q. Was it three weeks ago? A. About two weeks ago.

Q. Two weeks ago? A. About two.

Q. Was the suit commenced at that time? A. I don't think so.

Q. Then, before any suit was commenced, you volunteered to become a witness in the case? A. I didn't say so.

40 Q. You have just sworn so. Did you mean it or didn't you? You said you had volunteered to become a witness in this case, then I asked you

Samuel W. Smith—Cross

when it was and you said it was before the case had been commenced? A. I might have been mistaken.

Q. You might have been mistaken; yes. You don't care what you swear to, do you? Pretty careless? A. You are trying to say so. 10

Q. Don't you think I am justified? A. No, sir.

Q. Now, a minute ago when you said that you volunteered to be a witness in this case before it was started, you weren't telling the truth, were you? A. I didn't say so. I didn't understand the question?

Q. You didn't understand the question? A. No.

Q. When I asked you point blank when did you volunteer to become a witness and you said two weeks ago about or a little more and I asked you whether it was before this case commenced or not and you said it was before, there was no question about that, was there? A. I didn't understand— 20

Q. What was there you didn't understand about my question, plain as English could be? Just answer that. What was there you didn't understand? A. I was trying to answer, possibly, quicker than your question run in my brain.

Q. Wasn't you answer true? A. Yes.

Q. Your answer was that you volunteered as a witness before this suit was commenced. Is that true or isn't it? A. Not true. 30

Q. It is now not true. How many days after this suit commenced did you volunteer to become a witness? A. Possibly two days. The exact date I can't say.

Q. Then you said you would become a witness, did you? A. Yes. 40

Samuel W. Smith—Cross

Q. Did you go down to Verdon's and say, "Now, Billy, you were a witness for me when I was in trouble at the court-house and now I will do likewise for you." Did you put it up to him in that way? A. No, sir; he wasn't a witness for me.

10 Q. He was a witness for you at the court-house.
A. He might have been.

Q. Don't you know? A. No.

Q. No; you don't even know. Why? You used to be Chairman of the Republican County Committee, weren't you? A. Yes, sir.

Q. And you are not Chairman now? A. No, sir.

Q. By the way, were you against Edge in the last campaign? A. No, sir.

Q. Were you with him? A. Yes, sir.

20 Q. When Mr. Bugbee said, "The reason I didn't give any money to Verdon was because he was against Edge,—" That is what he said, wasn't it? A. Yes.

Q. Why didn't you say, "We were not against Edge"? You didn't say it, did you? A. No, sir.

Q. Why didn't you say, "Bugbee, you know Finch and I have been red hot Edge men all through the campaign"? Why didn't you say that? A. Would it have suited him if I said that?

30 Q. I ask you if you said that? A. Who could answer such a silly question as that?

Q. The reason you said was you didn't say you were with Edge. A. I say you are a liar; I was with Edge.

The Court: We can't have anything of that sort here. Tell the truth. That is all you have got to do.

40 Q. Getting mad because you think I am making a liar out of you? A. No, sir.

Samuel W. Smith—Cross

Q. I haven't made a liar out of you, have I? A. Your questions—

Q. Everything you said has been the truth, hasn't it? A. Yes, sir.

Q. Even when you said you volunteered to be a witness before the suit was started; that was true? A. No, sir. 10

Q. Who first told you that this suit for libel had been started? A. The newspapers.

Q. To whom did you volunteer as a witness? A. Charlie Finch.

Q. Where? A. At his house.

Q. I thought you volunteered two days after you heard it, at Verdon's, when you called there? A. I called at Charlie's.

Q. Didn't you say you volunteered two days after you heard the suit was commenced? A. About that. 20

Q. At Verdon's office, where you went once a week? A. Yes.

Q. Which is right? Did you volunteer at Charlie's or did you volunteer to Verdon? A. To Charles and Verdon both.

Q. Why did you volunteer to Verdon? He wasn't in it. A. Yes, he was.

Q. How? A. It was a factional fight, or else you wouldn't be in it. 30

Q. You think I wouldn't be in it? A. No.

Q. And you went down there, knowing it was a factional fight, in your judgment, to put your efforts with Finch and Verdon because that was the faction you belonged to; was that right? A. If you want to make it that way.

Q. I ask you if that is right. A. Yes; there is no harm in that. 40

Samuel W. Smith—Recross

Q. And that is about the only excuse you have for making the statements you have, isn't it? A. It you want to like it that way, take it.

Q. I do like it that way, because it seems to me to be that way. That is all.

10 RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. Mr. Smith, did you see a notification in the Jersey Journal that Mr. Garven threatened to take this matter before the Grand Jury? A. Yes, sir.

Q. Do you know whether that was before or after this libel suit was commenced? A. Before.

Q. And after seeing that, did you approach Mr. Finch or Mr. Verdon? A. Yes, sir.

20 Q. You then came forward and reminded them that you had been with them? A. Yes, sir.

Mr. Carey: That strikes me as rather leading questions.

Mr. Bradner: Entirely new matter.

Mr. Carey: You can't lead on new matter.

Mr. Bradner: You certainly can.

30 RE-CROSS-EXAMINATION by Mr. Carey:

Q. Now you say, when the counsel puts the answer into your mouth in the form of questions, that the reason you volunteered your services was not on account of the suit at all, but was on account of the fact that you read in the newspapers that Mr. Garven was going to take the matter to the Grand Jury; is that true? A. Yes, sir.

40 Q. What you said before isn't true? A. Yes, sir.

Samuel W. Smith—Recross

Q. It is all true, no matter what you say or which way you put it. You said, also, in response to his question that he gave you, and the answer all in the question, that you went to Mr. Finch and told him your story and what part you would take in the case as soon as you read the article about his going before the Grand Jury; is that right? A. Yes, sir. 10

Q. Did you do that? A. Yes, sir.

Q. Was that the occasion when you went to see Mr. Verdon? A. Yes, sir.

Q. And it wasn't within two days after the suit had commenced, then, at all, was it? It was not two days— A. That, too.

Q. They were not both the same day, were they? A. They were two days apart or three days apart. 20

Q. Don't you know the suit was not commenced until three or four days after that? A. Two days after that.

Q. Don't you know the suit was not commenced until three or four days after that? A. I don't know the date of the suit.

Q. Now, let us see. After two days you made a visit. Was it made two days after this suit was commenced or two days after the article appeared in the paper about Garven referring the matter to the Grand Jury? A. Two days after the article regarding Garven referring it to the Grand Jury. 30

Q. And you wouldn't have thought of that unless Mr. Bradner had asked you? A. I answered his question.

Q. You haven't thought of it in the entire time I examined you? A. No.

Q. And you would be willing to answer anything following what he suggested to you? A. Your witnesses the same. 40

Charles W. Zentgraf—Direct

CHARLES W. ZENTGRAF, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

10 Q. Where do you live Mr. Zentgraf? A. 417
Liberty, Union Hill.

Q. Did you take any interest in the election on November 4th, was it, last; 118? A. I did. I was a candidate for office.

Q. When was the primary election that year? A. The primary election? Well, I don't happen to recall today.

Q. You don't remember the date and the month? A. It is generally September, I think.

20 Q. You were a candidate for what position? A. Recorder.

Q. Recorder? A. Recorder.

Q. Do you know anything about any money being paid out by Mr. Rotherham?

Mr. Carey: I object. What has that got to do with this case?

Mr. Bradner: I suppose we will have to make some connection.

30 The Court: If they will connect it up it might be relevant.

Mr. Carey: They made no proof of any money received by us from the Public Service. I think it is up to them to prove that first.

40 The Court: They are trying to prove there was money used there; that none came from the State Committee; therefore, it must come from the Public Service Railway Company. Now, that is a big jump.

Charles W. Zentgraf—Direct

Mr. Carey: No such inference can be drawn in law, reason or fact.

The Court: I am not a long jumper. That is what I think they are trying to do. I don't know how much of a bridge they are going to make. I am inclined to let them try to bridge it, if they can. 10

Mr. Carey: If they can and it has any relevancy, I don't care anything about it. In the first place, this must be all hearsay evidence anyhow. It couldn't bind us in any way, shape or form. As far as any expenditures are concerned in the county, they were shown by the statements filed by the campaign managers of the county. They are filed in the County Clerk's office. 20

The Court: It might be and it might not be. Sometimes politicians forget these little things. They must connect the plaintiff.

Mr. Carey: They must do it within a reasonable time. If they are going to subpoena all the witnesses to say, "Did you get any money or didn't you?"—

The Court: I don't know how soon they will exhaust the patience of the Court, and the Court will try the case absolutely strict. 30 I could say now I will not hear this until there is something shown me it is connected up, but I am not just ready to do so. If they are going to call fifty witnesses in that way, I am not going to listen to fifty witnesses without I know there is some possibility of connecting it. 40

Mr. Carey: Will they state to us now

Charles W. Zentgraf—Direct

that they will connect it up? If they make that statement, I will withdraw any objection. I think I can trust to the honor of counsel.

Mr. Bradner: Connect it up with what?

10

Mr. Carey: With us or with this case.

The Court: You are going to prove there was Hudson money used in this campaign. I am not going to infer that it was given to Mr. Garven or even given by the Public Service Railway Company, because it might have been given by any number of people that were interested in the work.

20

Mr. Bradner: It isn't put in on that theory. The theory is that we are justified in our belief that money had come from some outside source.

The Court: I see what your theory is. Are you going to call fifty witnesses for that purpose?

Mr. Bradner: I don't know how many we have. We have several here.

The Court: It seems to me if you have a few along that line, it isn't necessary to have fifty of them.

30

Mr. Carey: What is it you want us to admit? We will admit and save time.

The Court: Go ahead and let us have a few witnesses.

Q. Did you see Mr. Rotherham and any other men on November 4th, or the night before the election? A. Yes, sir.

40 Q. Where? A. I was asked to meet them on the corner, of Bergenline Avenue and Liberty Street around about eight o'clock in the evening.

Charles W. Zentgraf—Direct

Q. Who was the other man? A. I met a few men of our own party, like Mr. Gardner, Mr. Nagel, and three or four others who were standing in a doorway on the northeast corner of Bergenline Avenue and Liberty Street waiting patiently for the men and the money to come along. Finally Mr. Rotherham came along with two of his friends and I was introduced to them all and finally Mr. Rotherham said, "Now, I have got the money. Is there any place where I can pay that money over to you?" 10

Q. Who were the other men? A. I gave a list of them the night after election. I think Mr. O'Reardon has that list yet, I believe.

Q. Would you remember the names if I suggested them to you? A. Yes, sir. 20

Q. Thomas MacDonald? A. A big tall man. I have never been introduced to those men but once in my life.

Q. Thomas Rollins? A. Yes, that is familiar.

Mr. Bradner: Is Rollins here?

(Man stood up in court room.)

Q. Is that the man? A. Yes.

Mr. Rollins: I was in your house?

The Court: Now, wait a minute.

Mr. Bradner: Is Mr. Thomas MacDonald here? 30

The Witness: He is a big tall man.

(Man in court room stood up and said,

"I'm here.")

The Witness: That is MacDonald. MacDonald, Rotherham and a small gentleman.

Mr. MacDonald: After you heard me say I was MacDonald. 40

Q. Did you see any money there at that time?

Charles W. Zentgraf—Director

A. Well, you haven't given me a chance to finish my story, so I can connect it up. Mr. Rotherham said, "Is there any place around here where I can pay the money?" and one of the men said, "Let us go over to Charlie's office." I said, "All right," and eight or nine or ten men went into my office and there the question came up about paying the money for workers on election day and Mr. Rotherham said, "All I can give you is just about one hundred thirty dollars. There are twenty-six districts in the town and it is ten dollars a district," and Mr. Veitweiler jumped up and said, "Now, Mr. Rotherham, you got to do better than that. We can't carry the town on one hundred and thirty dollars." He said, "That is all I can give you," and that is all he paid over as far as the paying over of that one hundred and thirty dollars for workers on election day. I was a candidate on the Republican ticket myself. I had no representation from the Republican Party in the third ward of Union Hill and I asked to send some of the workers up there and help me out. In fact, there were no candidates on the third ward bill except Mr. Edge and myself. They didn't think it wise sending men up there, so I put two men up there. The two of them were paid; the two of them up there in the third ward was paid by Mr. Morehouse, who is now working in Mr. Garven's office. They got two dollars and a half apiece, and another man by the name of Beck was paid. The Treasurer of the Republican Committee was paid at the rate of five dollars for his day's work. That is all I know of the case.

Q. How many districts did you say were in

Charles W. Zentgraf—Cross

Union Hill? A. There are thirteen election districts and each was figured out at ten dollars a district.

Q. Two workers for each district? A. Yes, two workers for each district and Mr. Rotherham paid, to my knowledge, one hundred and thirty dollars in cash. 10

Q. Who were they working for? A. They were working for the—well, they were working in the interest of the Republican candidates.

CROSS EXAMINATION by Mr. Carey:

Q. I guess that is the smallest amount you ever got up in that town. A. Very small, I should say.

Q. There didn't seem to be as much money that year as usual? A. I don't know anything about what they got prior to that as I never took any interest in politics in Union Hill. 20

Q. From what you heard, that was the smallest amount ever came up? A. I couldn't say how much or how little they got.

Q. Were you the Verdon candidate? A. No-sir-ee. I was my own candidate.

Q. Are you a friend of Verdon? A. Yes.

Q. Very close friend? A. To a certain extent, yes. 30

Q. Are you on his bond? A. Yes.

Q. Is he on your bond? A. No, sir.

Q. Are you on his bond? A. No, sir.

Q. What did you mean by "Yes"? A. I didn't catch your question.

Q. What did you think I meant? A. "On his bond" and I jumped at it. That was something new to me. He isn't on my bond or am I on his. 40

Q. Is he on your bond as Justice of the Peace? A. No, sir.

John Mouncey—Direct

Q. Who is? A. Two gentlemen. One is Max Miller and another gentleman.

Q. Max Miller is Mr. Verdon's right hand man in Hoboken, isn't he? A. I don't know.

Q. Who is the other man? A. I don't even recall his name.

Q. You don't even recall your bondsman's name? A. No, sir; I do not.

Q. Who got the bondsmen for you; Mr. Verdon? A. Yes, sir.

Q. You and he are very closely tied? A. We ought to be. If a man does me a turn—

Q. You are ready to do a turn for him. A. I asked the Garven men in the county to get the bonds for me and they refused and he got the bonds for me.

Q. He got the bonds for you and here you are for Verdon? A. Yes, sir, and always will be.

Q. No wonder the republican party doesn't grow in Union Hill.

JOHN MOUNCEY, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

30

Direct-examination by Mr. Bradner:

Q. Where do you live, Mr. Mouncey? A. 244 Duncan Avenue, Jersey City

Q. Jersey City? A. Yes, sir.

Q. Did you work at the polls in the Fifth District, Ninth Ward, of Jersey City at the last November election? A. Yes, sir.

40

Q. Were you paid? A. Yes, sir

Q. How much? A. Ten dollars.

Reginald Briggs—Direct

Q. Who paid it to you? A. Thomas Loughran.

Q. Who is he? A. He is in Court.

Q. Does he hold any office or position? A. Investigator of elections.

Q. For what office? A. District Attorney; the Prosecutor's office.

10

The Court: Thomas who?

The Witness: Thomas Loughran

Mr. Carey: No questions.

REGINALD BRIGGS, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

20

Q. Where do you live? A. 837 Willow Avenue.

Q. Are you a Republican Committeeman? A. Yes, sir.

Q. From what district? A. Second District, Fifth Ward.

Q. Hoboken? A. Yes, sir.

Q. Did you work at the polls on election day? A. I did.

Q. At whose request? A. Mr. Lambert's.

30

Q. Who is Mr. Lambert? A. He is the head of the Garvan faction in Hoboken, I believe.

Q. Do you know whether he is in the Prosecutor's office? A. That I couldn't say.

Q. Were you paid? A. Yes, sir.

Q. How much? A. Five dollars.

Mr. Carey: No questions.

40

William A. Bremner—Direct

HARMON B. LYNG, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Bradner:

Q. Where do you live, Mr. Lyng? A. 205 North
10 Third Street, Harrison.

Q. Did you work at the polls last election day?

A. I did sir.

Q. At whose request? A. What is that?

Q. At whose request? A. Mr. Patterson, I believe.

Q. Who is Mr. Patterson? A. He is a man in my ward.

Q. What is his first name? A. Edward.

Q. How many workers were at the polls at the
20 time? A. I think two.

Q. Were you working on the Republican side?

A. Yes, sir.

Q. How many were there? A. I think two.

Q. Who was the other? A. I think his name was Mr. Rouch, I think.

Q. Do you know whether he was paid? A. I do not.

Q. Were you paid? A. Yes, sir.

Q. Who paid you? A. Mr. Patterson.

30 Q. How much? A. Five dollars.

Mr Carey: No questions.

WILLIAM A. BREMNER, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

40 Direct-examination by Mr. Bradner:

Q. Are you from the County Clerk's office? A. Yes, sir.

William A. Bremner—Direct

Q. Have you statements and vouchers and affidavits by Thomas Loughran in behalf of John H. Armitage and George W. Trotter, candidates for Freeholder and for Supervisor last year? A. Yes, sir.

Q. Have you got them with you? A. Yes, sir

Q. Will you look in the expense account and see if you find the name of John Mouncey, a worker?

A. On which one?

Q. On Mr. Loughran's statement. A. No, sir.

Q. Nothing there? A. Nothing there.

The Court: On whose statements is this.

The Witness: This is Thomas A. Loughran, the campaign manager of the George W. Trotter and John H. Armitage candidates for Freeholder and Supervisor.

Q. Do you find on that list the name of Reginald Briggs? A. There isn't anything on this statement. It is simply a statement of receipts and disbursements and they claim they haven't received anything in the way of campaign contributions or expended any. There are no means of any workers or any information on these statements.

Q. Nothing to show? A. Nothing to show except what I told you.

Q. Haven't received any and haven't expended any? A. That is all.

Mr. Carey: No questions.

Defendant rests.

Rebuttal

NEWTON A. K. BUGBEE, called in rebuttal, being first duly sworn, testified as follows:

Direct-examination by Mr. Carey:

10 Q. Mr. Bugbee, where do you reside? A. Trenton.

Q. What is your present position? A. State Comptroller.

Q. You have been State Comptroller how long? A. Three years next February.

Q. What was your official station in life prior to that? A. Chairman of the Republican State Committee.

20 Q. How long were you Chairman of the Republican State Committee? A. Since September, 1913.

Q. Until when? A. Until February of 1919.

Q. Were you Chairman of the Republican State Committee in November of 1918? A. I was.

Q. And were you actively identified with the campaign of Walter Edge for the United States Senate? A. I was.

Q. And the campaign for the election of the legislators last year? A. Yes, sir.

30 Q. You know Mr. Verdon? A. Very well; yes, sir.

Q. And you know Mr. Finch? A. Very well.

Q. And you know Sam Smith? A. Very well.

Q. And do you recollect those three gentlemen coming to your office shortly after election last year? A. Either before or after, I do not remember which, these three gentlemen were in my office, in the State Comptroller's office.

40 Q. At the State Comptroller's office in Trenton? A. Yes.

Newton A. K. Bugbee—Direct

Q. Did they discuss with you there the question of the expenditure of moneys by the State committee? A. They did.

Q. In Hudson County? A. Yes, sir.

Q. Did you at that time tell them, or either one of them in any language of any sort, kind or character, that five thousand dollars or any other sum of money had been conveyed or given directly or indirectly to Pierre Garven by Mr. Patterson for campaign purposes? A. I did not. 10

Q. Did you at that time tell them, or any one of them directly, or indirectly, or by any sort of words or language or suggestion, that the Public Service Company had given moneys for campaign purposes and that five thousand dollars of that money had been turned over to Pierre Garven? A. I did not. 20

Q. Did you know at that time of your own knowledge or in any other way of the fact that the Public Service Company had contributed any money last year for campaign purposes for anybody? A. I did not.

Q. Now, can you say now, as the former Chairman of the Republican State Committee, whether or not the Public Service Company, directly or indirectly, contributed any money toward the campaign of Walter Edge for United States Senator? A. Not only in that campaign did they not contribute, but they never contributed in any campaign when I was connected with the Republican State Committee. 30

Q. How long have you been connected with the Committee? A. Six years.

Q. Six years; and during that time has a dollar of contribution been received from the Public 40

Newton A. K. Bugbee—Direct

Service Company, directly or indirectly, for campaign purposes? A. It has not.

Q. Did anyone ever tell you that Mr. Patterson had given five thousand dollars to Mr. Garvan? A. Nobody.

10 Q. Did you know that he had? A. Never knew it.

Q. Did you, at the time these gentlemen are alleged to have heard that conversation from you, have in your mind the slightest conception of a thought that Mr. Patterson had given five thousand dollars to Mr. Garvan? A. The only intimation that could have possibly been gathered was that if there was money in Hudson County, I made the statement that it must have come from somebody

20 outside of the State Committee.

Q. Because you didn't give them any? A. That is right.

Q. Did you give any money from the State Committee to Hudson County that year? A. The only money that was contributed was contributed to Mr. Ross, who was running for Congress.

Q. Who was running for Congress, in the other end of the County; is that correct? A. That is right.

30 Q. Was a statement made, as far as you know, and filed with the Secretary of State showing the expenditure of all moneys under the control of the State Committee? A. It was.

Q. Or any of its auxiliary bodies? A. Yes.

Q. Then you would say, then, as a matter of fact, today that, as far as you know, no money was given to Mr. Garvan? A. So far as I know, no.

40 Q. And you never made any statement in the presence of Mr. Verdon or Mr. Smith or the other

Newton A. K. Bugbee—Direct

member of the trinity, Mr. Finch, did you? A. No, sir.

Q. Now, Mr. Smith testifies a little differently than the other two did. He testified this: "In the conversation Bugbee said, 'I admit there was money put into Hudson County, but not from the State Committee.' He said 'The reason you didn't get the money, substantially, was because Verdon is against Edge and the Public Service'." Did any such conversation take place? A. No. My memory, of course, isn't as keen as the memory of these gentlemen. This occurred a year ago, without any special significance. It wasn't impressed upon my mind in any way, the conversation that we had, except that I know that never could have been said, because I had no knowledge of any such conditions.

Q. Of course you would know that if any such moneys were contributed by the Public Service Corporation it would have been a crime? You knew that? A. Yes. And how was I to know it? Nobody would tell the Chairman of the State Committee of any such contribution.

Q. And you never heard of any such contribution? A. No.

Q. And do you believe there was any such contribution? A. I do not.

Q. And if you did know it, would you be apt to tell these three gentlemen that you had been party to a crime?

(Witness shook his head.)

Q. You are a candidate? A. Candidate for Governor.

Q. For Governor now? A. Yes, sir.

Q. And you appreciate fully what it means to tell the truth here? A. Yes, sir.

Newton A. K. Bugbee—Cross

Q. And you are telling it absolutely, aren't you?
A. Yes, sir.

Q. Mr. Bugbee— A. Nobody ever accused me of telling anything but the truth.

10 Q. Mr. Verdon says he would believe you under oath; Mr. Finch says he would believe you under oath if you would say what he would like you to say, and Mr. Smith says he thought you were always very truthful. Do you know of anything that would warrant a change in this belief of these gentlemen? A. I do not.

Q. You were subpoenaed by these gentlemen, weren't you? A. Yes, sir.

Q. They brought you here and they haven't even called you to the stand? A. Yes, sir.

20

CROSS-EXAMINATION by Mr. Bradner:

Q. Mr. Bugbee, these three gentlemen were at your office? A. Yes, sir.

Q. Was there anyone else present at the interview? A. No, sir. The door was closed and these three men and myself were in the office.

Q. You corroborate that statement of theirs that they were all there, don't you? A. Yes, sir.

30 Q. And what were they there for? A. They came down to protest against the expenditures of certain moneys in Hudson County from sources which they deemed irregular.

Q. You told them it hadn't come from the State Committee? A. I told them exactly that, sir.

40 Q. But your recollection does not go so far as to recall that you might have suggested that it came from some other source? A. I did suggest that if any money was spent here, it must have come from some other source, because I hadn't given it.

Newton A. K. Bugbee—Cross

Q. Could you give us now the name of any person or corporation that you had in mind that it might have come from? A. No, sir. I didn't know anything about anybody who had contributed. In the first instance, if I remember the statements correctly, the statement was made that the money was sent here by Mr. Patterson in behalf of Mr. Edge. Mr. Patterson was not interested in Mr. Edge. He was interested in Mr. Baird and that was a rather unusual statement for me to make, knowing conditions as well as I did. 10

Q. You say that it hadn't come from the State Committee, but you suggested it might have come there from some other source. What sources did you have in mind at that time? A. I didn't have any sources in mind at that time. I haven't the slightest conception of where any money could have been gotten, because if I had known where any money could be gotten I would have gotten it, because we wanted it so badly. 20

Q. The politicians are all in the same boat in that respect? A. Yes, sir.

Q. Can you suggest any source it might have come from? A. I couldn't; no, sir.

Q. If it went into Hudson County, then, it went in irregularly? A. It must have; yes, sir. 30

Q. Who is Mr. Patterson? A. Mr. Patterson was the—I think—the official campaign manager of Senator Baird. I am not sure.

Mr. Carey: We will produce him immediately, if the Court please, so you will know who he is.

Frank F. Patterson—Direct

FRANK F. PATTERSON, a witness in rebuttal, being first duly sworn, testified as follows:

Direct-examination by Mr. Carey:

10 Q. Mr. Patterson, where do you reside? A. Camden.

Q. Camden, New Jersey? A. Yes, sir.

Q. What is your business? A. County Clerk; President of the West Jersey Trust Company; owner of the Post-Telegraph, half owner.

Q. And you have been engaged in business in the city of Camden for a number of years, haven't you? A. Thirty years, perhaps.

Q. Thirty years? A. Thirty-five years.

20 Q. And you know Mr. David Baird, former United States Senator? A. A very intimate friend.

Q. You and he were very intimate friends, weren't you? A. Very.

Q. You had charge of his campaign right through, did you not? A. He appointed me as his campaign manager.

30 Q. Now, in the campaign of 1918, did you receive any money, directly or indirectly, from the Public Service Company for campaign purposes for anybody? A. I did not.

Q. Did you during that campaign give any money of any sort, kind or character, received from anywhere, to Mr. Pierre Garven or anybody representing him? A. I did not see Mr. Pierre Garven during the whole campaign.

Q. Did you have any relations with him at all? A. None whatever.

40 Q. Did you ever tell Mr. Bugbee, or did you ever tell anybody, that you had given five thou-

Motion to Strike Out

sand dollars or thereabouts to Mr. Garven for campaign purposes? A. Never in my life.

Q. Did you ever give Pierre Garven a dollar in your life for campaign purposes? A. I never did in my life, sir.

Q. Now, Mr. Verdon and none of these gentlemen have been to see you, have they, to find out whether you had given any money? A. No, sir. 10

Q. But they did subpoena you here from Camden to bring you here today, didn't they? A. Yes, sir.

Q. And when you got here they didn't even speak to you? A. Nobody spoke to me except to nod to me.

Q. They bowed to you. They issued a subpoena, never told you what they were going to ask you and then closed their case without even consulting with you here along the subject of the allegations they made. A. I guess so. 20

Q. Were you interested in the Edge campaign? A. I was not, sir, only on account of he was our candidate for Senator. Not in a financial sense or personal sense.

Q. You are interested in David Baird's campaign? A. Running his campaign and nothing to do with running the other.

Mr. Bradner: No questions. 30

Mr. Carey: Now, if the Court please, I move to strike out the testimony of those three witnesses, Sinbad, Briggs and the other witness, Mouncey, who said somebody gave one of them two and a half dollars, another five dollars, for election work, and the testimony of Sinbad that somebody got one hundred thirty dollars or thereabouts.

Argument

The Court: Are you through with your case?

Mr. Carey: We will be through.

The Court: I will not strike out that testimony.

Mr. Carey: We would like now to offer in evidence the following quotation from the Jersey Journal of Thursday evening, August 7th, 1919.

10 Mr. Bradner: That is objected to.

Mr. Carey: You agreed these papers should be considered in evidence if we could use them.

Mr. Bradner: I object to your using them, as incompetent and irrelevant.

Mr. Carey: I will offer now in evidence the issue of the Jersey Journal of August 7th, 1919, the following statement made by Mr. Finch:

Mr. Bradner: I object to that.

20 The Court: I do not know what the statement is.

Mr. Bradner: He should have been cross-examined on it.

The Court: What is it.

Mr. Carey: "Mr. Garven also knows the identity of the men high in State councils of the Republican party who discovered the surreptitious contribution of the Public Service Corporation to the Edge campaign fund in 1918 and who, after vainly protesting against it, informed me and other persons of the \$5,000 Hudson allotment of this fund being handed over to Garven and Pussyfoot Johnny Rotherham."

30 The Court: What do you want to introduce it for?

Mr. Carey: I want to show the continued malice of this defendant, even after this suit was commenced and was pending up to this trial. He has been repeating and repeating this libel, repeating it absolutely for the sole purpose of in-

40

Argument

juring the defendant and probably creating public opinion, I don't know. He has been repeating it after we had pointed out to him the untruthfulness of it.

The Court: The defense here is that it is a privileged communication and lacks malice. Why couldn't they rebut that and now show that there was malice? 10

Mr. Bradner: They can't rebut it by newspaper statement. That would be hearsay. They could recall the person to whom that statement was made.

The Court: Was the witness' attention called to it?

Mr. Bradner: I do not think it was.

Mr. Carey: Yes, sir.

The Court: What is the date of the paper? 20

Mr. Carey: August 7th, 1919, and the testimony is that your man Wallace wrote the article, according to the testimony of Wallace, and your agreement in Court here was that we needn't prove this formally so long as—

Mr. Bradner: I mean if that statement was made to some person.

Mr. Carey: There is a formal statement. I asked about each one of them.

The Court: Who did you ask? 30

Mr. Carey: Mr. Finch.

The Court: I have here a letter of August 1st. What date do you say?

Mr. Carey: August 7th, 1919.

The Court: I do not have that noted.

Mr. Carey: There is one prior to that, August 5th, 1919, both marked in red pencil.

The Court: I have August 2d. 40

Argument

Mr. Carey: August 2d was the first one, I think. August 2d was the date of the publication of the libel.

The Court: I will hear it.

Mr. Bradner: May I state my objection formally to it?

10 The Court: I will hear it and you can have a chance to rebut it, if you can, so no harm will be done.

Mr. Bradner: The evidence might be competent in some aspects of the case. but it is not competent to prove malice. A reiteration of the libel, though in aggravation of damages, does not prove any malice. The malice is implied.

The Court: Malice is implied sometimes.

20 Mr. Bradner: Express malice must be shown in this case. My contention is it is not shown by a newspaper article purporting an interview with the defendant in the case after the suit has been started, unless it contains an admission or statement on his part which in itself would show the bad motive actuating the publication.

The Court: If they believed it to be true when they made the first publication and if there was no malice in it then, why would a second publication, even after the suit is started, show any
30 more malice?

Mr. Carey: Because we called their attention to the fact before that that it was absolutely untrue. We showed them the facts, and there is no excuse for them. They would have to show they had gone to Mr. Patterson and others who knew and gotten the facts at first hand. They could have gone directly to Mr. Patterson at first
40 hand and said, "Was this so?", and if he said "No," that would have ended it. Even after we

Argument

showed them it was a lie and pointed to the fact it was a criminal accusation, even then what do they do? They follow it up on those two dates by saying, "The man who handled the Public Service contribution to the Edge campaign fund was Frank Patterson of Camden. He was instructed to give the Hudson County apportionment to 'Garven and Rotherham.' He followed instructions." Now, that shows that the spirit and intention of these people were to disregard the truth and were, just as Mr. Finch himself said, "Let us go the limit." 10

There is one other thing I want to introduce, the one of August 12th, statement published in the Jersey Journal: "The Jersey Journal and Newark News have hit the nail on the head in their demand that Governor Runyon or some other competent authority institute a sweeping investigation of the Public Service contribution to the Edge campaign fund, \$5,000 of which, I have charged, was handled in this county by the Garven machine." 20

That is on August 12th. Then this other one of August 8th, 1919, Jersey Journal: "Finch was at Sea Girt yesterday. He stated that 'he had the goods on Garven.'" That was on the 8th day of August. 30

The Court: That one I remember distinctly. I can't see any reason why they are not competent evidence in a case of this kind for one cause or another. It might be enhancing damages if they continually persevere in publishing an article which isn't true. Whether it is proper or not, the introducing of that evidence at this time, depends solely upon the discretion of the Court, and the Court thinks it is in the interest of jus- 40

Motion for Non-suit

tice to do it and I think I will receive it, giving you the opportunity to recall any witnesses to rebut it, if you want. I will receive them in evidence. They are in now.

10 Defendant's Counsel pray an exception which is hereby allowed.

Mr. Bradner: If the Court please, I now renew my motion for non-suit, that this publication does not charge any criminal offense. There is no crime and no crime has been specified.

20 The Court: I can decide this now, with the exception of one point, and that I will reserve my decision on. That point is whether this is a crime. I am not sure yet. I find there is no evidence here justifying the accusation. There is testimony by Mr. Patterson who says he did not give the money and Mr. Bugbee who is in charge of the work of the campaign of the Republican party, and he says that he did not give it and that he never made the statement. There is no testimony here at all by any witness that Mr. Garven ever got the money or ever handled it. So the defense of justification falls.

30 Then the statement was made that it was made during a political campaign. Of course, candidates are subject to having their characters canvassed during a campaign, but they ought not to be slandered. In this case, if this statement had been made by the defendant in good faith, of things that he had heard in such a way that he believed them to be true, he would have had a
40 right, in the absence of malice, to give such matters to the public for the public's consideration, for the public's good.

Court's Decision

I have his testimony. It is this: That he told Mr. Wallace "Go the limit;" that his purpose was evidently to hurt Mr. Garven in his private character or to defeat Mr. Garven. For what purpose? There is no evidence here that he did this for the public's good, but the evidence is that he did it for his own good, in order that he might be elected. I think this Court would be perfectly justified in holding that that ought not to be done. I do not understand that the privilege that is given to canvassing of character of public officials is given under the law for the sole purpose of electing the man uttering them to a public office. If it is, I am willing to have the Supreme Court, Court of Errors, pass upon my view of that proposition. I cannot understand that a privileged communication should extend to that extent.

I find further from the evidence, that it was not, and this justifies the Court in concluding that it was not, the fact that it was stated "Go the limit," that he wanted to defeat him.

Furthermore, I think I can infer malice. The defendant made no effort to find out the truth of what he claims Mr. Bugbee said. He didn't inquire of Mr. Patterson at all. He didn't inquire at all in any place or try to get any information on this subject. Wouldn't good faith require that? I think so.

Therefore, I would find that the words were slanderous unless I should find that they did not charge a crime, and my judgment would be for the plaintiff unless I find that this is not a crime. That is the only thing I am not certain about.

(Argument by counsel.)

Certificate

The Court: I wish you would write down what you want me to read over and if you will get it to me tomorrow I will decide this case within a week.

10 Adjourned.

Certificate

(Filed October 28, 1919.)

DISTRICT COURT OF THE CITY OF BAY-
ONNE

20	PIERRE P. GARVEN, vs. CHARLES V. FINCH, Plaintiff, Defendant.	}	On Appeal to Supreme Court.
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30 I hereby certify that the foregoing transcript of proceedings and testimony taken, on the trial of said cause, as the state of the case to be used on the hearing of the appeal taken by the defendant.

WITNESS my hand this third day of September, 1919.

PETER STILLWELL,
Judge of the District Court
of the City of Bayonne.

40

NEW JERSEY
Court of Errors and Appeals.

PIERRE P. GARVEN,
Plaintiff-Respondent,

vs.

CHARLES V. FINCH,
Defendant-Appellant.

*On Appeal
From Su-
preme Court
Affirming
Judgment of
District Court*

BRIEF FOR RESPONDENT

The defendant admittedly caused to be published in the Jersey Journal, a newspaper of wide circulation in Hudson County, where both plaintiff and defendant live, an article containing the following statement, which plaintiff charged is libellous:

“I refer to Mr. Garven’s having accepted in 1918, \$5,000 of Public Service money, which was Hudson County’s contribution to Edge’s Senatorial campaign fund.”

The plaintiff alleged that the defendant thereby charged him with the commission of a crime. There is no dispute as to the meaning of the words used. The “Public Service” referred to is the Public Service Corporation, a public utility corporation of the State of New Jersey, and the “Edge Senatorial campaign fund” had reference to the campaign of Walter E. Edge for election to the United States Senate.

POINT I.

The appellant insists that the Trial Court erred in admitting in evidence, a part only and not the whole of the newspaper article containing the alleged libel. The defamatory statement was contained in a very long article of several columns which ranged over everything from the beginning of time to the present, and the plaintiff offered in evidence only such part of it as related to the alleged libel. The defendant contended that the whole article should go in, and objected to the introduction by the plaintiff of only the part relied upon by the plaintiff. The Court ruled that the defendant could put it all in if the defendant desired (P. 14). It will be noted that the defendant never availed himself of this ruling.

The plaintiff was not obliged to offer in evidence any more of the publication than was necessary to substantiate his complaint.

Lester v. Piedmont Life Ins. Co. 55 Ga. 475.

Raphael V. Hartman, 87 Ill. App. 634.

Vol. 10—2nd Dec. Dig., P. 835.

Wigmore—Evidence (1904). See 2102.

POINT II.

The appellant also insists that the Trial Court erred in receiving in evidence the newspaper article published by the defendant after the alleged libel. Such proof was admissible on the question of malice.

25 Cyc. 496.

Evening Journal vs. McDermott—44 N. J. L. 430.

It was admissible also on the question of good faith and honest belief.

POINTS III, IV AND V.

Unless a publication charging the commission of a crime is justified by proof of its truth or by the privileged occasion of its publication, the law conclusively presumes malice.

King vs. Patterson—49 N. J. L., 417.

The burden of proving that the occasion of publication was privileged was on the defendant. The Trial Court therefore, properly refused to non-suit the plaintiff.

Furthermore, even if the existence of malice on the part of the defendant was essential to the plaintiff's case, the Court afterward found malice to exist in fact and proof of such fact at any stage of the trial would cure the deficiency, if any existed, in plaintiff's case.

Bostwick vs. Willett—72 N. J. L. 21.

The defendant endeavored to sustain the burden cast upon him of proving the privileged occasion and nature of the publication by showing that both he and the plaintiff were candidates for public office—the office of State Committeeman—and that he had been informed by one Newton A. K. Bugbee, chairman of the Republican State Committee, that the plaintiff had received the money in question; that he (the defendant) believed Mr. Bugbee's statement to be true; that a Mr. Anderson has asked him (p. 34) "Charlie, how is it that you are in the committee and Bob is in the committee with you and Joe Hurdle got money from the prosecutors to work on November?"; that there was an article in the Jersey Journal on No-

vember 21st about this (?) and that his purpose in making the publication was (p. 34, L. 12) "because Garven was running for State Committeeman opposing to me and he had attacked me and I thought it was about time for me to come out and defend myself."

The defendant went further and endeavored to show by the testimony of Alfred N. Barber, Secretary of the Public Utility Commission, that the Public Service Railway had been granted an increase in fares on September 25th, (p. 114), which was about the time of the alleged payment of \$5,000 to the plaintiff, and that various persons in Hudson County had received money for working at the polls from men associated with the plaintiff. This testimony was obviously offered in an attempt to show that the Public Service Railway had made a contribution to Mr. Edge's campaign fund, for which it had in turn been allowed to raise its rates, and that this fund had been used by the plaintiff to further Mr. Edge's campaign in Hudson County. It does not appear anywhere, however, that these matters were known to the defendant at the time that he made the statement complained of and that they contributed to the honest belief upon which he relies to exculpate himself from the consequences of his libellous utterances, nor did the defendant connect the plaintiff with any of these expenditures, although he undertook to do so. (P. 142, L. 27).

The plaintiff, Mr. Bugbee, and Mr. Patterson, all denied that any money had been paid by the Public Service Corporation to the plaintiff and Mr. Bugbee further denied that he had ever made the statement testified to by the defendant. The Court therefore properly found that there was no

proof whatever that the plaintiff ever received the money as charged by the defendant, thereby eliminating any question of justification.

As to the defense of privilege, the Trial Court properly found that the defendant did not act in good faith but was actuated by a malicious motive. The Trial Court was justified in so finding from the fact that the defendant had hired a newspaper writer to write up the plaintiff, and had instructed the newspaper writer to "*go the limit*" (p. 40 L. 31) evidencing a reckless disregard for the truth or the consequences of digressions therefrom; from the fact that he had subscribed his name and accepted responsibility for the authorship of statements containing words of whose meaning he had not the slightest conception; from the fact that the defendant was himself a candidate, and was being opposed by the plaintiff, and that he was not concerned at all for the public good, but rather sought to bring about the plaintiff's defeat to insure his own election; from the further fact that the plaintiff made not the slightest effort to ascertain the truth of the statement he alleged was made to him by Mr. Bugbee, but gave it out broadcast to the world. And although the Trial Court does not expressly so find, it had a right to accept the testimony of Mr. Bugbee, and to find that he never made the statement alleged by the defendant to have been made and to disbelieve the defendant entirely. Of course, if the Trial Court did so, then what remains of the defense of good faith, if there is anything of it left disappears in thin air, and that the Trial Court did so conclude is not at all to be doubted when attention is directed to the fact that in several subsequent publications uttered by the defen-

dant on the same subject, he never again said that Garven had received the money, but in one statement published on August 7th (page 160), he refers to the \$5,000 "Hudson allotment of this fund being handed over to *Garven and Pussyfoot Johnny Rotherham*," and in another publication made on August 12th, he refers to an "Investigation of the Public Service contribution to the Edge campaign fund, \$5,000 of which *I have charged was handled in this County by the Garven Machine*." Now, if Mr. Bugbee had told the defendant that Garven had received the money, the defendant would not have been likely to shift his ground so readily and so often, and it leads to the conclusion that the defendant's whole story was a fabrication and that the Court did not believe it at all. Such a conclusion by the Court would destroy the last semblance of defendant's pretended good faith. In any event, not even a candidate for public office can be falsely charged with the commission of a crime.

17 Ruling Case Law, Pages 304, 355.

POINT VI.

Section 38 of the Corrupt Practices Act, provides that "No corporation carrying on the business of.....railroad, street railway,gas, electric light, heat, power,company.....shall pay or contribute any money or thing of value in order to aid or promote the nomination or election of any person....."

Section 47 provides that "Any persons,.....who shall violate any of the provisions of this Act.....shall be guilty of a misdemeanor."

There can be no doubt that if the Public Service Corporation contributed \$5,000 to further the candidacy of Mr. Edge, it would have been guilty of a crime.

The defendant argues that it is not a crime for a person to *receive* a contribution from a public utility corporation, consequently the statement that the plaintiff accepted \$5,000 from the Public Service Corporation did not charge the plaintiff with the commission of a crime.

Two answers can be made to this contention:

Firstly—It is a crime for any person to violate any of the provisions of the Corrupt Practices Act. By that Act it is declared to be unlawful for a public utility corporation to give any money for political purposes. But the act of giving could never be consummated without a taker, and the taker is violating the law against giving, just as much as the giver is. The two acts must concur, and it is their concurrence which consummates the crime. At any rate, the taker would be an aider and abettor, and as an accessory in a misdemeanor would be guilty as a principal.

Secondly—The giving and taking of the money would constitute a conspiracy to violate the election laws, which is a crime. The "Crimes Act" provides that "Any two or more persons who shall combine, unite, etc.....to commit any act for the prevention or obstruction of justice or the due administration of the laws shall..... be deemed guilty of a conspiracy and be liable to the same penalty as persons convicted of a misdemeanor." The punishment for a misdemeanor may be imprisonment at hard labor for a term not exceeding three years.

The plaintiff is charged with having accepted \$5,000 as a political campaign contribution from the Public Service Corporation. Obviously, assuming the money was given, the Public Service Corporation must have given it, and the plaintiff must have received it with the understanding that it would be used for campaign purposes, which is expressly declared to be unlawful. Such an understanding would constitute the "combination" or "agreement" contemplated by the statutory definition of conspiracy. The giving of the money would constitute the overt act necessary to complete the crime. Can there be any doubt that if this money had actually been given by the Public Service Corporation for Mr. Edge's Senatorial campaign fund and accepted by the plaintiff for that purpose, that the giver and receiver would have been guilty of a criminal conspiracy to pervert and obstruct the administration of the election laws? Not the slightest.

State vs. Reiners—80 N. J. L. 196.

State vs. Mosbell—53 N. J. L. 498.

State vs. Nugent—87 Atl. 123.

That being so, then to charge the plaintiff with having accepted such money, charged him with being guilty of the crime of conspiracy—a crime punishable by imprisonment at hard labor.

The defendant insists that the plaintiff should have been non-suited as there was no allegation or proof of special damage, and the defamatory words were not libellous per se, as they did not charge the plaintiff with the commission of a crime involving moral turpitude. The case of

McCuen vs. Ludlam—17 N. J. Law, 12,

was relied upon as authority for this contention. While that case dealt with spoken words, it however, lays down a rule which condemns the defendant for it is there stated (p. 17) "In case the charge, if true, will subject the party charged to any indictment for a crime involving moral turpitude, or subject him to infamous punishment, then the words will be in themselves actionable." Imprisonment at hard labor is infamous punishment involving moral turpitude. In such cases malice is presumed as a matter of law.

The rule governing written words is laid down in King vs. Patterson—N. J. L. 417, and is generally stated in Volume 17, Ruling Case Law, p. 265 as follows:

"Any printed or written statement which falsely and maliciously charges another with the commission of a crime is libellous per se."

To quote the opinion of the Supreme Court:

"The sixth and last point is that the libel did not charge any criminal offense. It seems to us that it reasonably amounted to a charge of participation in a conspiracy to defeat an election, which would certainly be criminal in character; but if we are in error in this view, the adequate answer is that a libel, to be actionable per se, need not charge a crime, but it is sufficient if it tend to bring the party accused into public contempt, odium or ridicule. 25

Cyc. 250. Ib 253. A charge of political corruption is libellous per se. Ib 262. This is elementary law.”

The judgment of the Court below should be affirmed.

Respectfully submitted,

A. A. MELNIKER,
Attorney and of Counsel for Respondent.

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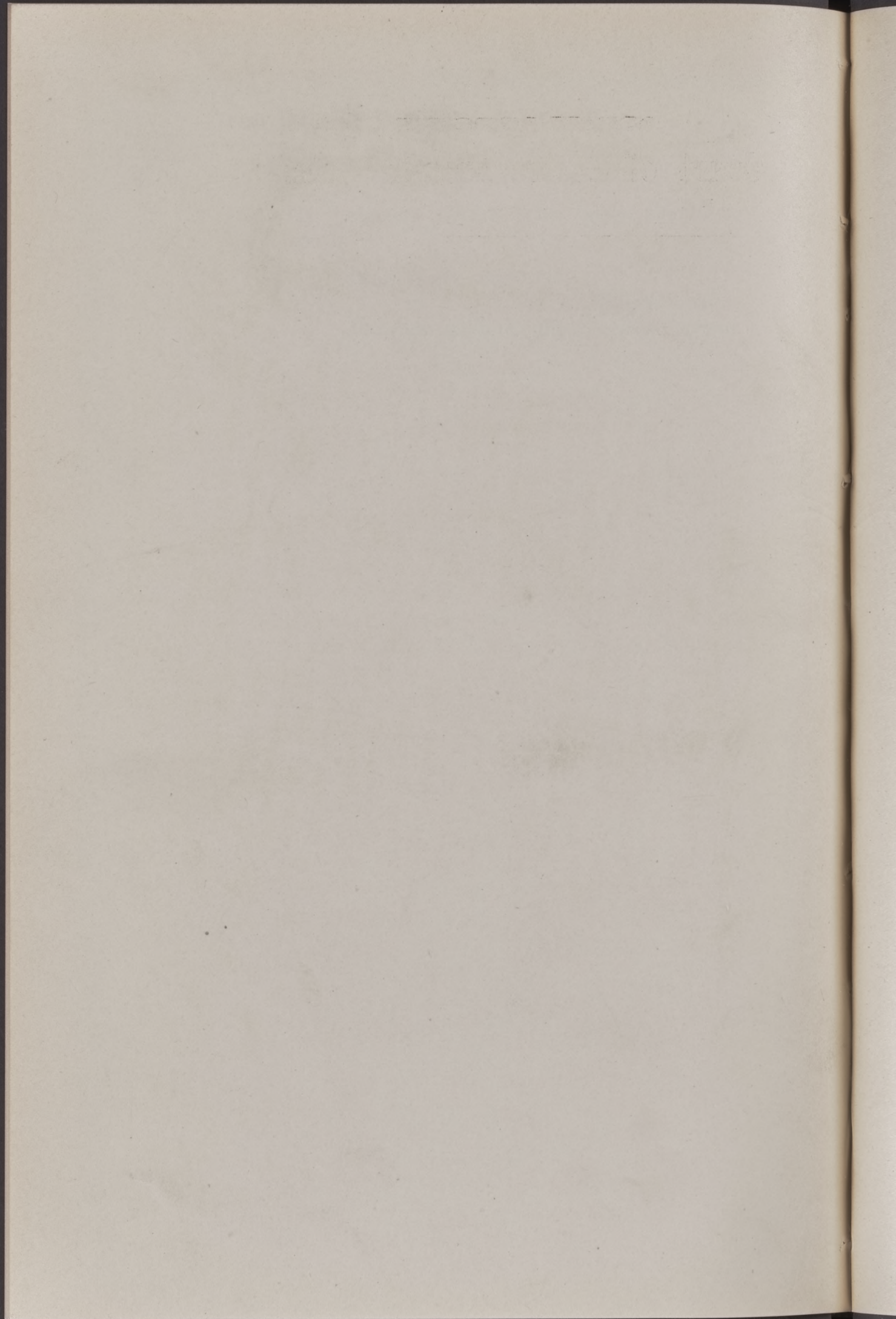
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New Jersey Court of Errors and Appeals

~~New Jersey Supreme Court~~

PIERRE P. GARVEN,

Plaintiff-Respondent,

vs.

CHARLES P. FINCH,

Defendant-Appellant.

*Appeal from
District Court
of Bayonne.*

BRIEF FOR APPELLANT.

Abstract of the Case.

The plaintiff sued in Bayonne District Court, and alleged in his complaint that he is Prosecutor of the Pleas in the County of Hudson, and that the defendant on August 2, 1919, caused to be published in the Jersey Journal, a newspaper published and circulating in the County of Hudson, a statement concerning the plaintiff, in words and substance as follows: "I refer to Mr. Garven's having accepted in 1918 \$5,000 of Public Service money, which was the Hudson County allotment of the Public Service contribution to Edge's senatorial campaign fund."

The plaintiff further charges that the statement was false and was made maliciously, and that the defendant meant to charge and did charge that the plaintiff had committed a crime.

The defense was privileged communication. At the trial, the Judge of the District Court apparently got the impression that the defendant would set up a justification, but the defendant distinctly stated through his counsel that he would not justify (pp. 8 and 9, *et seq.*).

The case was tried without a jury, although the plaintiff had applied for a jury, and withdrew his application without the knowledge of the defendant, who had relied upon the call made by the plaintiff, and did not ask for a jury himself.

The Court found (p. 164) as follows:

1. That there was no evidence justifying the accusation, and that, therefore, the defense of justification falls.
2. That the statement was not made by the defendant in good faith.

3. That because the defendant made no effort to find out the truth, malice could be inferred.

4. That the meaning attributed to the words by the plaintiff, that is, that they charged a criminal offense should be sustained.

Judgment was accordingly given for the plaintiff for \$200.00 damages, the full amount claimed.

Specification of Errors.

1. The admission in evidence of a part of the publication in the Jersey Journal of August 2, 1919.

2. The admission in evidence of the newspaper article of August 12, 1919, published after the action had been brought.

3. The finding by the Court, without any evidence to sustain the same, that the publication was not made in good faith.

4. The ruling by the Court, that the defendant had made the defense of justification, and had failed to sustain the same.

5. The finding of the Court that malice could be inferred from defendant's failure to make an effort to find out the truth of what Mr. Bugbee had told him.

6. The determination that the publication was defamatory, because it charged the plaintiff with the commission of a crime.

7. The denial of the motion to non-suit.

BRIEF OF ARGUMENT.

POINT I.

The plaintiff, at p. 13, offered in evidence that much of the newspaper marked Ex. P. 1 for identification, which contains the words set out in the complaint, and also the same part of the written statement signed by the defendant. Objection was made to the limitation of the offer, on the ground that the statements ought to go in in their entirety, that there may be something qualifying or explanatory in the rest of the statement. The Court ruled that the plaintiff could limit the offer to the part of the statement, and that the defendant could put the rest in evidence if he wished to. This ruling, it is deemed, is clearly erroneous.

Greenleaf says, Vol. 2, p. 423:

"The defendant is entitled to have the whole of the alleged libel read and the whole conversation stated, in

order that the true sense and meaning may appear; and if the libel is contained in a letter or a newspaper, the whole writing or paper is admissible in evidence."

In *Cook v. Hughes, Ryan & Moody*, 112 (Eng. Com. Law Rep. 21, 713), it was held that in an action for libel the defendant has a right to have the whole of the publication read, from which the passages charged are extracts.

The subject is discussed by Professor Wigmore in Section 2102, Wigmore on Evidence.

In this State, in the case of *Benton v. State*, 59 Law 30 Vr. 551, Ct. of Er., Hendrickson, J., says at p. 555:

"It would seem proper in determining whether a publication is libellous *per se*, that the headlines of the article should be considered, and it has been so held."

Citing *Landon v. Watkins*, 63 N. W. Rep. 615.

In *Washington Post Co. v. Chaloner*, U. S. Sup. Ct., Oct. Term 1918, Advance Opinions No. 16, p. 565, it is said:

"A publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So the whole item, including display lines, should be read and construed together, and its meaning and signification thus determined."

It may be conceded that as a general rule the question is one addressed to the discretion of the Court, and no substantial harm is done when the defendant has an opportunity to read the whole publication without being required to put it in evidence.

In this case, the Court should have required the plaintiff to put the whole article in evidence, and to read such parts as he relied upon, and then the defendant could have read the rest of the article without subjecting himself to the consequences of putting it in evidence. He possibly by putting the article in evidence and reiterating the publication in that way might have made himself liable for increased damages, and the evidence could have been considered as bearing on the question of malice.

Ruskin v. Armm, 82 Law 53 Vr. 72.

POINT II.

The Court permitted the plaintiff to read in evidence extracts from publication made on August 7 and August 12, pp. 160, 163. Substantially, the same objection was made, that the whole article should be put in evidence. Counsel did say at the trial, that the subsequent publication would only be competent evidence in aggravation of damages, and probably was wrong in taking that position.

In *Ruskin v. Armm*, the subsequent publication did bear on the question of malice, but even in that aspect of the case the whole publication should have been put in evidence, so that it could have been read.

POINTS III, IV & V.

The Court ruled that the defendant had not acted in good faith, and had acted maliciously, and had not sustained the defense of justification.

These rulings are covered by the specification of errors, and may be considered together.

The evidence shows that the plaintiff and the defendant were both candidates for the office of membership of the State Committee, and they were both of the same political party. The defendant very frankly stated on his direct examination, p. 34:

“Q At the time you gave this publication to the Jersey Journal, what was your belief as to the truth of the statements? A I believed it was true. Q What was your purpose in making the publication? A Why, my purpose was because Garven was running for State Committeeman opposing to me, and he had attacked me, and I thought it was about time for me to come out and defend myself.”

It was proved by the overwhelming weight of evidence, that in November, 1918, Mr. Bugbee, who was then Chairman of the State Republican Committee, had said to the defendant and Mr. Verdon and Mr. Smith, who had gone to Trenton to ask him whether any money had been put in Hudson County by the State Committee, that no money had been put there by the State Committee, and that there was money put in there by Frank Patterson, who got \$5,000 of Public Service money as the allotment to Governor Edge's candidacy for Hudson County, and gave it to Garven.

The defendant is corroborated in his testimony as to that statement made by Mr. Bugbee by the witnesses William Verdon and Samuel W. Smith. The cross examination of the defendant and these two witnesses was very searching and long drawn out; but it is respectfully contended that there is nothing in the cross examination which in any way tends to show that the statement was not made by Mr. Bugbee. Mr. Bugbee admits that the three men were at his office, and came there to see him for the very purpose of finding out whether any money had been sent into Hudson County.

It seems that the defendant made a statement in writing to a newspaper reporter; this statement was prepared by the reporter, who possibly used language, as the cross examination of the defendant shows which the defendant did not completely understand, and, of course, if he didn't understand the meaning of the words used, it could hardly be contended that he used them with any meaning.

The cross examination of the defendant is a persuasive illustration of the necessity for requiring that the whole publication should be put in evidence. When this statement was made out by the reporter, the defendant told him to go the limit, as the Court has stated in disposing of the case. That is the only evidence upon which the Court relies apparently as tending to show lack of good faith.

It is true that the parties were opposed candidates. The defendant had an interest, and it was his duty to publish what he believed to be the truth concerning the receipt by that part of the political party, called the Garven organization, of money from Public Service, because whether that acceptance of the money was criminal or not, it was something that tended to show that Public Service had, or might have control over the candidates of that organization. When the defendant said to the reporter: "Go the limit," he did not mean to go beyond what it was his legal right to publish. His duty to the public was to make known the facts, and it would seem that in addition to his duty to the public, he had a personal interest, which gave him the right more particularly to divulge the facts as he believed them.

The Court also held that the defense of justification had not been made out, as it has been heretofore stated but no such defense had been attempted to be made.

Counsel contended at the trial, that the defendant had the legal right to show the truth without justifying the publication. That position is sustained by the cases in this State.

Merrey v. Guardian Pub. Co., 79 Law 177, aff. 181 Law 632.

Bingham v. Schindel, 92 Law 502.

There was abundant evidence that money had been used in Hudson County, and as it did not come from the Verdon organization it must have come from the Garven organization. The Court fell into the error of assuming that because the defendant had failed to sustain a defense of justification, that therefore, malice could be inferred. That, we think, was prejudicial error. There was no legal evidence in the case from which malice could be inferred. The defense of privilege raised the issues of good faith and malice, and it is contended that the defendant was injured by the rulings of the Trial Court, in the admission of evidence as above stated, and in the assumption, that the defendant was attempting to justify, and in the inference of malice when there was an entire absence of any evidence of actual malice.

Both of these parties were candidates for public office. The District Court has in effect held that the defendant's motive was to injure the plaintiff personally, although the defendant on his cross examination, pp. 64, 65, 66 and 67, testified that he had no personal feeling whatever against Garven, and did not intend to injure him personally, but did want to prevent his election.

We contend that the publication was one that the defendant had the legal right to make, and that under the evidence he made it in good faith and without malice, and we rely upon the case of *State v. Fish*, 102 At. Rep. 378, Ct. of Er. Also *Baker v. Warner*, 231 U. S. 588, 58 Law Ed. 384.

POINT VI.

The publication did not charge the commission of a criminal offense.

The plaintiff had the legal right to aver that the words set forth were used in that sense.

Bingham v. Schindel, *supra*;

Curley v. Feeney, 62 N. J. L. 70.

Hand v. Winton, 38 N. J. L., 9 Vr. 122.

The plaintiff having elected to attribute a certain defamatory meaning to the words, is bound by that election, and the burden is upon him to satisfy the Court that the words do charge the commission of a crime.

This is not a question of fact. The Election Act, P. L. 1918, p. 523, section 34, p. 552, and section 38, p. 553, is applicable.

Section 34 provides:

“No person shall make any payment of his own money, or of the money of any other person, in connection with any nomination or election, in any other name than that of the person who really supplies such money, nor shall any person knowingly receive such money or thing of value, and enter it into his accounts or deposit it in any bank or trust company, in any other name than the name of the person who really supplies the same.”

Section 38 provides:

“No corporation carrying on the business of a bank, etc., and having the right to condemn land, or to exercise franchises in public ways granted by the State, county, city or town, etc., shall pay or contribute any money or thing of value, in order to aid or promote the nomination or election of any person, or in order to aid or promote the interests, success, or defeat of any political party.”

There is nothing in the statute making it an offense to accept the contribution from the corporation, and it is not charged that the plaintiff received the money in any other name than that of the person who really supplied it, or that he entered it in his accounts, or deposited it in any bank or trust company in any other name.

The statute does not prohibit the acceptance of money from a corporation. It prohibits the corporation from making the contribution.

There can be no crime without a criminal intent, and the statute does not extend to the acceptance of money; and insofar as the statute is concerned, there is no question of intent. The statute merely prohibits the contribution.

In 1839 it was held in this State in *McEuen* ads. *Ludlam*, 17 N. J. L. 12, in an action for slander in which the words were: “He has broken open my letters in the Post Office,” and the innuendo was that the plaintiff had been and was guilty of breaking open sealed letters addressed to the defendant, which came to the hands of the plaintiff as Postmaster. The questions raised were, whether the words imported any crime, and if they

do import an offense against the Act of Congress, are they on that account slanderous and actionable. The Court held, that words to be actionable, must either have produced a temporal loss to the plaintiff by reason of special damage sustained by reason of their having been spoken, or they must convey a charge of some act criminal in itself and indictable as such, and subject the party to an infamous punishment, or they must impute some indictable offense involving moral turpitude.

If the words set out in the plaintiff's complaint had been spoken and not written or printed, it is quite clear that they would not be actionable within the ruling in *McEuen* ads. *Ludlam*, in the absence of special damage. The plaintiff has elected to attribute a meaning, and the meaning selected by him brings his action within the *Ludlam* case, and, therefore, he has failed to show that the words charge an act criminal in itself and indictable as such, or an offense involving moral turpitude.

It is submitted that the determination of the Court in this respect was erroneous, and the motion to non-suit should have been granted. At the conclusion of the trial, the Court permitted the motion to non-suit to be renewed, and the Court should then have either granted the motion to non-suit, or should have entered judgment in favor of the defendant.

Respectfully submitted,

ANTHONY R. FINELLI,
FRANK E. BRADNER,

Of Counsel with Appellant.

