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New Jersey Supreme Court

Essex County

<p>LILLIAN CLAWANS, <i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p>WILLIAM J. O'CONNOR, HENRY F. BURNS AND HOWARD BIRCH, <i>Defendants.</i></p>	}	<p>TRANSCRIPT OF PLEADINGS FOR TRIAL.</p> <p>Charles C. Giffoniello, <i>Attorney for Plaintiff,</i> 10</p> <p>Jerome T. Congleton, <i>Attorney for Defendants.</i></p>
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Summons issued August 14, 1925.

Plaintiff, residing in the City of Newark, County of Essex and State of New Jersey, says that:

FIRST COUNT 20

1. Before and at the time of the speaking and publishing of the several false, scandalous and defamatory words hereinafter mentioned, plaintiff had been and was an accountant and an attorney-at-law of the State of New Jersey and had always deemed and conducted herself in her professions with great fairness, honesty and integrity, and until the time of the speaking and publishing of the several words, had never been suspected to be guilty of any fraud, theft, dishonesty, but to the contrary always enjoyed the respect, esteem and confidence and a good reputation among all her neighbors, acquaintances, clients and fellow-attorneys in the City of Newark, County of Essex and State of New Jersey. 30

2. On or about March 3, 1924, plaintiff was lawfully riding in a certain Ford Sedan automobile, which was being driven by one, Fred Ellis, a licensed automobile operator, and which automobile was 40

Transcript of Pleadings for Trial

lawfully registered as owned by the Washington Sales Co.

10 3. On said day, the defendant, William J. O'Connor, was and still is a police officer of the Traffic Division of the City of Newark and was stationed on said day at Broad and Fulton Streets in said City of Newark.

4. On said day, said defendant, at Broad and Fulton Streets aforesaid and in the presence of a number of people, spoke the following false, scandalous and defamatory words of and concerning the plaintiff:

20 "Who the hell do you think you are talking to" and continued, "This is a stolen car, and you (meaning plaintiff) stole it. You are under arrest and now come with me to the Second precinct Police Station".

30 5. That said words were false and malicious and were spoken for the purpose of injuring the said plaintiff in her good name, integrity, fame and credit; and said plaintiff has been and is greatly injured in her good name, fame, integrity and credit and brought into public scandal, disgrace and infamy.

SECOND COUNT.

Plaintiff repeats and reiterates the statements set forth in the First Count, the same as if here again repeated.

40 1. On said date defendant, William J. O'Connor, at the Second Precinct of the City of Newark, New

Transcript of Pleadings for Trial

Jersey, spoke of and concerning plaintiff in the following words:

"This Ford Sedan is a stolen car and she (meaning plaintiff) stole the car and we'll send her (meaning plaintiff) down to police headquarters for investigation".

10

That said words were false and malicious and were spoken in the presence of a great number of people and in the presence of a large number of police officers at said Second Police Station, Newark, New Jersey.

2. By reason of the speaking of the said false and malicious words, the reputation and character of this plaintiff has been greatly damaged and injured. She has been caused to suffer scorn and ridicule and has been disgraced before the public and before fellow members of the bar and has become liable to being prosecuted for the crime of larceny.

20

THIRD COUNT.

Plaintiff repeats and reiterates the first and second counts of this complaint.

1. On said date said defendant, William J. O'Connor, unlawfully and without any cause searched the Ford Sedan Automobile which was in control of this plaintiff and therein found a bottle and made the following remarks:

30

"We've got the goods on her (meaning the plaintiff) she has liquor in the car".

That the said words were spoken of and concerning the plaintiff in the presence of a large number of

40

Transcript of Pleadings for Trial

10 people and said words were false, malicious, scandalous and defamatory and has injured the good name, fame, reputation and character of this plaintiff in her capacity as an accountant and an attorney-at-law and as a citizen of the State of New Jersey and has thereby suffered great humiliation, infamy, disgrace and scorn.

FOURTH COUNT.

Plaintiff repeats and reiterates the First, Second and Third Counts of this complaint.

20 1. On said date the defendant, William J. O'Connor, violently and with force and arms, bodily pushed the plaintiff into a patrol wagon at the Second Precinct Station of the City of Newark and also with force and arms, sticks, fists, knives and clubs made an assault upon the plaintiff and kicked her and beat, bruised, wounded and ill treated her, giving and striking the plaintiff many severe and grievous blows in and upon her head, face, skull, eyes, nose, forehead, shoulders and other parts of her body and thereby greatly wounded, cut and injured plaintiff's head, face and eyes. By reason of the said several blows, strokes, cuts, bruises and wounds, plaintiff has suffered and undergone severe pain, anguish and torture, both of mind and body and her health was greatly impaired thereby.

FIFTH COUNT.

Plaintiff repeats and reiterates the First, Second, Third and Fourth Counts of this complaint.

40 1. On the date aforesaid defendant, Henry F. Burns, at the Second Precinct Station, violently kicked and threw down the plaintiff and violently

Transcript of Pleadings for Trial

pushed her in and around and upon the police patrol and with force and arms, sticks, fists, knives and clubs made an assault upon the plaintiff and kicked her and beat, bruised, wounded and ill treated her, giving and striking the plaintiff many severe and grievous blows in and upon her head, face, skull, eyes, nose, forehead shoulders and other parts of her body and thereby greatly wounded, cut and injured plaintiff's head, face and eyes, by reason of the said several blows, strokes, cuts, bruises and wounds, plaintiff has suffered and undergone severe pain, anguish and torture, both of mind and body and her health was impaired thereby.

10

SIXTH COUNT.

Plaintiff repeats and reiterates the first second, third, fourth and fifth counts of this complaint.

20

1. On said date aforesaid defendant, Howard Birch, at the Second Precinct Police Station, violently kicked and threw down the plaintiff and violently pushed her in and around and upon the police patrol wagon and with force and arms, sticks, fists, knives and clubs, made an assault upon the plaintiff and kicked her and beat, bruised, wounded and ill treated her, giving and striking the plaintiff many severe and grievous blows in and upon her head, face, skull, eyes, nose, forehead, shoulders and other parts of her body and thereby greatly wounded, cut and injured plaintiff's head, face and eyes. By reason of the said several blows, strokes, cuts, bruises and wounds, plaintiff has suffered and undergone severe pain, anguish and torture, both of mind and body and her health was impaired thereby.

30

SEVENTH COUNT.

Plaintiff repeats and reiterates the first, second,

40

Transcript of Pleadings for Trial

third, fourth, fifth and sixth counts of this complaint.

10 1. On said date the defendants, William J. O'Connor, Henry F. Burns and Howard Birch, with force and arms arrested the plaintiff, seized and laid hold of the plaintiff and with great force and violence pulled and dragged her about and also then imprisoned the plaintiff and kept and detained her, first at the Second Precinct Police Station in Newark, and then at Police Headquarters in Newark, for a long time and compelled plaintiff to go to court and forcibly conveyed her in custody in and along diverse public streets, to the Second Police Station and Police Headquarters and then imprisoned the plaintiff and kept and detained her without any reason or probably cause whatsoever for a long space and time contrary to law and under a false and reasonable assertion, color and charge, that the plaintiff has committed an offense punishable by law, to wit: that the plaintiff has committed the crime of robbery by stealing a Ford Sedan Automobile and also for violation of the traffic laws of this state.

20 2. Whereby the plaintiff was greatly hurt and suffered great anguish and pain of mind and body and was for some time prevented from attending to her lawful vocation as an accountant and an attorney-at-law and has suffered her reputation and character as an honest American citizen of the State of New Jersey to be questioned and was also subjected and put to diverse expenses to obtain her liberation from said imprisonment and also sustained other wrongs.

30 Plaintiff demands as damages on the first count the sum of ten thousand dollars.

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Transcript of Pleadings for Trial

Plaintiff demands as damages on the second count the sum of ten thousand dollars.

Plaintiff demands as damages on the third count the sum of ten thousand dollars.

Plaintiff demands as damages on the fourth count the sum of ten thousand dollars. 10

Plaintiff demands as damages on the fifth count the sum of ten thousand dollars.

Plaintiff demands as damages on the sixth count the sum of fifteen dollars.

Plaintiff demands as damages on the seventh count the sum of ten thousand dollars.
Filed Aug. 27, 1925.

CHAS. C. GIFFONIELLO, 20
Attorney for Plaintiff.

Defendant, William J. O'Connor, of the City of Newark, answering says that:

1. Defendant has no knowledge or information sufficient to form a belief as to the statements in the first paragraphs of the first count of the complaint. 30
2. He denies the second paragraph of the first count of the complaint.
3. He admits the third paragraph of the first count of the complaint.
4. He denies the fourth paragraph of the first count of the complaint.
5. He denies the fifth paragraph of the first count of the complaint.
6. He interposes the same answers to the second 40

Transcript of Pleadings for Trial

count of the complaint as have been heretofore set up in answer to the first count of the complaint.

7. He denies the first paragraph of the second count of the complaint.

10 8. He denies the second paragraph of the second count of the complaint.

9. He interposes the same answers to the third count of the complaint as have been heretofore set up in answer to the first and second counts of the complaint.

10. He denies the first paragraph of the Third count of the complaint.

20 11. He interposes the same answers to the fourth count of the complaint as have been heretofore set up in answer to the first, second and third counts of the complaint.

12. He denies the first paragraph of the fourth count of the complaint.

13. He interposes the same answers to the fifth count of the complaint as have been heretofore set up in answer to the first, second, third and fourth counts of the complaint.

30 14. He denies the first paragraph of the fifth count of the complaint.

15. He interposes the same answers to the sixth count of the complaint as have been heretofore set up in answer to the first, second, third, fourth and fifth counts of the complaint.

16. He denies the first paragraph of the sixth count of the complaint.

40 17. He interposes the same answers to the seventh count of the complaint as have been heretofore set

Transcript of Pleadings for Trial

up in answer to the first, second, third, fourth, fifth and sixth counts of the complaint.

18. He denies the first paragraph of the seventh count of the complaint.

19. He denies the second paragraph of the seventh count of the complaint. 10

DEFENSE TO THE COMPLAINT.

1. This defendant, William J. O'Connor, on February 13, 1925, obtained a judgment for the sum of one thousand dollars in the New Jersey Supreme Court against the plaintiff for uttering and speaking false, scandalous and defamatory words against this defendant, William J. O'Connor, arising and growing out of the transaction referred to by the plaintiff in her complaint against this defendant, William J. O'Connor, and Henry F. Burns and Howard Birch. 20

2. The subject matter of the complaint against the defendant, William J. O'Connor, is res adjudicata, because on February 13, 1925, this defendant obtained a judgment in the New Jersey Supreme Court against the said plaintiff for the sum of one thousand dollars (\$1000.) as damages for uttering and speaking false, scandalous and defamatory words against this defendant William J. O'Connor on March 3, 1924, being the time set forth by the plaintiff when the said plaintiff complains that the said defendant William J. O'Connor, spoke false, scandalous and defamatory words concerning the said plaintiff. 30

SPECIAL NOTICE.

1. This defendant avers that the matters and things set forth in the complaint do not present 40

Transcript of Pleadings for Trial

a cause of action against the defendant, and the defendant hereby reserves the right to move to strike out the said complaint, either at or before the trial of the above entitled cause.

10 2. Wherefore the defendant demands judgment that the complaint herein be dismissed with the costs and disbursements of this action.

JEROME T. CONGLETON,
Filed Oct. 10, 1925. Attorney of Defendant,
William J. O'Connor.

Defendant, Henry F. Burns, of the City of Newark, answering says that:

20 1. Defendant has no knowledge or information sufficient to form a belief as to the statements in the first paragraph of the first count of the complaint.

2. He denies the second paragraph of the first count of the complaint.

3. He admits the third paragraph of the first count of the complaint.

30 4. He denies the fourth paragraph of the first count of the complaint.

5. He denies the fifth paragraph of the first count of the complaint.

6. He interposes the same answers to the second count of the complaint as have been heretofore set up in answer to the first count of the complaint.

7. He denies the first paragraph of the second count of the complaint.

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Transcript of Pleadings for Trial

8. He denies the second paragraph of the second count of the complaint.

9. He interposes the same answers to the third count of the complaint as have been heretofore set up in answer to the first and second counts of the complaint. 10

10. He denies the first paragraph of the third count of the complaint.

11. He interposes the same answers to the fourth count of the complaint as have been heretofore set up in answer to the first, second and third counts of the complaint.

12. He denies the first paragraph of the fourth count of the complaint.

13. He interposes the same answers to the fifth count of the complaint as have been heretofore set up in answer to the first, second, third and fourth counts of the complaint. 20

14. He denies the first paragraph of the fifth count of the complaint.

15. He interposes the same answers to the sixth count of the complaint as have been heretofore set up in answer to the first, second, third, fourth and fifth counts of the complaint. 30

16. He denies the first paragraph of the sixth count of the complaint.

17. He interposes the same answers to the seventh count of the complaint as have been heretofore set up in answer to the first, second, third, fourth, fifth and sixth counts of the complaint.

18. He denies the first paragraph of the seventh count of the complaint. 40

Transcript of Pleadings for Trial

19. He denies the second paragraph of the seventh count of the complaint.

SPECIAL NOTICE.

10 1. This defendant avers that the matters and things set forth in the complaint do not present a cause of action against the defendant, and the defendant hereby reserves the right to move to strike out the said complaint, either at or before the trial of the above entitled cause.

2. Wherefore the defendant demands judgment that the complaint herein be dismissed with the costs and disbursements of this action.

20 JEROME T. CONGLETON,
Filed Oct 10, 1925. Attorney of Defendant,

Henry F. Burns.

Defendant, Howard Birch, of the City of Newark, answering says that:

30 1. Defendant has no knowledge or information sufficient to form a belief as to the statements in the first paragraph of the first count of the complaint.

2. He denies the second paragraph of the first count of the complaint.

3. He admits the third paragraph of the first count of the complaint.

4. He denies the fourth paragraph of the first count of the complaint.

5. He denies the fifth paragraph of the first count of the complaint.

40 6. He interposes the same answers to the sec-

Transcript of Pleadings for Trial

ond count of the complaint as have been heretofore set up in answer to the first count of the complaint.

7. He denies the first paragraph of the second count of the complaint.

8. He denies the second paragraph of the second count of the complaint. 10

9. He interposes the same answers to the third count of the complaint as have been heretofore set up in answer to the first and second counts of the complaint.

10. He denies the first paragraph of the third count of the complaint.

11. He interposes the same answers to the fourth count of the complaint as have been heretofore set up in answer to the first, second and third counts of the complaint. 20

12. He denies first paragraph of the fourth count of the complaint.

13. He interposes the same answers to the fifth count of the complaint as have been heretofore set up in answer to the first, second, third and fourth counts of the complaint.

14. He denies the first paragraph of the fifth count of the complaint. 30

15. He interposes the same answers to the sixth count of the complaint as have been heretofore set up in answer to the first, second, third, fourth and fifth counts of the complaint.

16. He denies the first paragraph of the sixth count of the complaint.

17. He interposes the same answers to the seventh count of the complaint as have heretofore 40

Transcript of Pleadings for Trial

set up in answer to the first, second, third, fourth, fifth and sixth counts of th complaint.

18. He denies the first paragraph of the seventh count of the complaint.

19. He denies the second paragraph of the seventh count of the complaint.

SPECIAL NOTICE.

1. This defendant avers that the matters and things set forth in the complaint do not present a cause of action against the defendant, and the defendant hereby reserves the right to move to strike out the complaint, either at or before the trial of the above entitled cause.

2. Wherefore the defendant demands judgment that the complaint herein be dismissed with the costs and disbursements of this action.

JEROME T. CONGLETON,
Filed Oct. 10, 1925 Attorney of Defendant,
Howard Birch.

Plaintiff, in reply to the answer filed by William J. O'Connor in the above cause of action, says:

1. Denies every allegation in said answer.

SPECIAL NOTICE.

Plaintiff avers that the matters and things set forth in the special defense of said defendant, William J. O'Connor, do not present any defense to the action of the plaintiff, and are sham and frivolous and irrelevant and plaintiff, therefore, reserves the right to move to strike out said special defense

Transcript of Pleadings for Trial

either at or before the trial of the above entitled cause.

CHARLES C. GIFFONIELLO,
Filed Oct. 16, 1925. Attorney for Plaintiff.

Plaintiff, in reply to the answer of Henry F. Burns, says:

1. Denies every allegation in said answer.

CHARLES C. GIFFONIELLO,
Filed Oct. 16, 1925. Attorney for Plaintiff.

Plaintiff, in reply to the answer of Howard Birch, says:

1. Denies every allegation in said answer.

CHARLES C. GIFFONIELLO,
Filed Oct. 16, 1925. Attorney for Plaintiff.

Postea

NEW JERSEY SUPREME COURT
ESSEX COUNTY,

10	LILLIAN CLAWANS, <i>Plaintiff,</i>	}	Action at Law.
	vs.		
	WILLIAM J. O'CONNOR, HOWARD BIRCH and HENRY F. BURNS, <i>Defendants</i>		

20 This case was tried before Judge Worrall F. Mountain, to whom the same had been duly referred with a jury, at the Essex Circuit, on November 4th and 5th, 1926.

The jury rendered a general verdict against the plaintiff and in favor of the defendants.

WORRAL F. MOUNTAIN,
Circuit Judge.

30

40

Certificate of Clerk

I, Edward J. Kelleher, Clerk of the Supreme Court of the State of New Jersey do certify that the foregoing is a true transcript of the pleadings in the above-stated cause as the same remain on file in my office.

(SEAL)

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-third day of December, A. D. nineteen hundred and twenty-seven.

EDWARD J. KELLEHER,
Clerk.

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Notice of Appeal

NEW JERSEY SUPREME COURT
ESSEX COUNTY,

10

LILLIAN CLAWANS,

Plaintiff,

vs.

WILLIAM J. O'CONNOR,
et als.,

Defendants.

Action at Law.

NOTICE OF
APPEAL.

20

TO WILLIAM GEORGE, Esq., Attorney for Defend-
ants.

TAKE NOTICE, That the plaintiff, Lillian
Clawans, appeals from the whole of the judgment
entered in this cause in behalf of the defendants
and against the plaintiff, in this Court, to the New
Jersey Court of Errors and Appeals.

BENJAMIN M. WEINBERG,
Attorney of Plaintiff.

30

Dated May 14/27.

40

Affidavit

NEW JERSEY SUPREME COURT
ESSEX COUNTY.

10

LILLIAN CLAWANS,

Plaintiff,

vs.

WILLIAM J. O'CONNOR,
et als.,

Defendants.

Action at Law.

AFFIDAVIT.

20

STATE OF NEW JERSEY, }
COUNTY OF ESSEX } ss.

Lillian Eskin, being duly sworn according to law,
on her oath deposes and says:

I reside at No. 131 Brookwood Street, East
Orange, New Jersey.

On May 16th 1927, I personally served William
George, 15 Exchange Place, Jersey City, New Jersey,
a copy of a Notice of Appeal in the above entitled
cause. Mr. William George refused to sign the
acknowledgement of service.

30

Sworn and subscribed to }
before me this 16th day }
of May, 1927. }

Lillian Eskin.

ABE SIROTA,
A Notary Public of N. J.

40

Grounds of Appeal

NEW JERSEY COURT OF ERRORS & APPEALS.

10	LILLIAN CLAWANS, <i>Plaintiff-Appellant,</i> vs. WILLIAM J. O'CONNOR, HOWARD BIRCH and HENRY F. BURNS, <i>Defendants-Appellees.</i>	Action at Law. GROUNDS OF APPEAL.
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20 The Plaintiff-Appellant herewith states her grounds of appeal, upon which she rests her appeal from the whole of the judgment entered in this cause.

1. Because the Court improperly refused to permit the witness, Peter Ruppel, to answer the following question:

30 "Q Were the facts stated in that paper (referring to an affidavit made by the witness) true at that time?"

2. Because the Court improperly refused to permit the said witness, Peter Ruppel, to comply with the request made by plaintiff's attorney, as follows:

40 "Q Look at the affidavit, read it to yourself, and tell the Court and jury whether that refreshes your recollection as to what occurred in and around the Second Precinct Police Station on the night of March 3, 1924."

Grounds of Appeal

3. Because the Court improperly permitted the witness, Fred Ellis, to answer the following question over the objection of plaintiff's attorney, to wit:

"Q What was the conduct of Miss Clawans at the time the officer stopped you and complained about you not having a rear license plate on the car?" 10

4. Because the Court improperly permitted the witness, Fred Ellis, over objection of plaintiff's attorney, to answer the following question:

"Q Isn't it a fact, Fred, after all these interruptions, that after Officer O'Connor had stopped you for driving the automobile without a rear plate, and Miss Clawans had gone 'up in the air,' didn't she also say to O'Connor, 'You ought to be down in Trenton with the rest of the warehouse robbers?'" 20

5. Because the Court improperly permitted the defendant, William J. O'Connor, over the objection of plaintiff's attorney, to answer the following question:

"Q While you were at the Second Precinct, did Miss Clawans say anything about where you were to go besides Trenton, on that particular trip?" 30

6. Because the Court improperly permitted the witness, Christopher Ryan, over the objection of plaintiff's attorney, to answer the following question:

"Q Tell the court and jury and the jury will decide whether it is insulting or not." (re- 40

Grounds of Appeal

ferring to witness' answer to a question just preceding the one objected to).

10 7. Because the Court improperly permitted the witness, Howard Birch, over the objection of the plaintiff's attorney to continue answering questions similar to a question objected to, to wit:

"Q What did she say concerning the conduct of the men present?"

20 8. Because the Court improperly refused to permit the admission in evidence of an affidavit made by Peter Ruppel, dated February 18th, 1925, which affidavit was taken before one Leon Bardfeld, a witness called by the plaintiff.

9. Because the Court improperly permitted the witness, Bella Kast, over the objection of counsel for the plaintiff, to answer the following question:

"Q I ask you to read this paper and see if you can find the word 'thief' anywhere on that paper."

30 Attorney of Plaintiff-Appellant.

40

Grounds of Appeal

STATE OF NEW JERSEY, }
COUNTY OF ESSEX } ss.

Peter Ruppel, being duly sworn according to law, upon his oath, deposes and says:

10 1. That on March 3rd, 1924, between 11:30 and 12:30 at night, I was at the Second Precinct located in the City of Newark, when I was attracted by a lot of excitement. I saw a Ford Car being searched by the Policeman in a khaki uniform whom later, I learned, was O'Connor. I saw him take a bottle out of the car, and mention to another officer, whose name I do not know 'We've got the goods on her. It's liquor.' He then took the bottle inside of the Police Station, and he also stated that 'liquor being in the car, this Miss Clawans can't be much good.' 20

Then I stepped inside of the Station House and wanted to have a complaint made against a passenger that I had in my car, who refused to pay me the taxi bill, and it took me a long time to get any attention from anybody in the station house.

30 The men in the place were laughing and joking and jiggling, and seemed to be under the influence of liquor, and in fact, I smelt liquor in the place. As I left, this O'Connor being outside, was laughing and joking so much that it brought a crowd of people, and it appeared to me that perhaps, he too was under the influence of liquor.

40 When I went out of the Police Station, I also heard that O'Connor say 'It is a stolen car.' This he said to another officer. O'Connor attracted about twenty-five or thirty people outside of the Precinct, by his loud laughing and joking with the other officer. He also spoke very loudly.

Grounds of Appeal

10 Three or four days later, I saw Miss Lillian Clawans on Market Street in the City of Newark, near Halsey Street. I saw a scar on Miss Clawans' nose and it was also swollen. I asked he where this sore came from, and she said, 'That is what the officers did going from Second Precinct to Police Headquarters.'

Sworn to and Subscribed before me this 18th day of February, 1925.

PETER RUPPEL.

LEON M. BARDFELD,

A Notary Public of New Jersey.
My. Comn. Expires Aug. 7, 1927.

20

30

40

Plaintiff's Witness, Lillian Clawans, Direct

NEW JERSEY SUPREME COURT,
ESSEX CIRCUIT.

LILLIAN CLAWANS,

Plaintiff,

vs.

WILLIAM J. O'CONNOR,
HOWARD BIRCH and
HENRY F. BURNS,

Defendants.

Action at Law.

10

Before Hon. Worrall F. Mountain, J., and a jury.

20

For the plaintiff appears Benjamin M. Weinberg.

For the defendants appear Charles M. Myers and William George.

(A Jury is called and sworn.)

Mr. Weinberg opens for the plaintiff.

Mr. Myers opens for the defendants.

30

LILLIAN CLAWANS, plaintiff, sworn in her own behalf.

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A 322 Clinton Avenue, Newark.

Q Keep your voice up a little louder?

A Yes.

Q How old are you?

40

Plaintiff's Witness, Lillian Clawans, Direct

- A Thirty years of age.
- Q Are you single?
- A Yes.
- Q What is your profession or occupation or both?
- A Accountant, attorney, and teacher of calculating machine course.
- 10 Q How long have you been an attorney in this state?
- A It will be three years in January, 1927.
- Q How long have you practiced accountancy?
- A Eleven years.
- Q Do you have your office in Newark?
- A Yes.
- Q Where was your office on the 3rd of March, 1924?
- A 114 Market Street.
- 20 Q Were you out on March 3rd, 1924?
- A Yes.
- Q With whom?
- A With my sister and Freddie Ellis.
- Q Did the three of you start out together?
- A Yes, sir.
- Q From where?
- A From 114 Market Street, the office.
- Q Who is Freddie Ellis?
- A He is a boy employed by the people from whom
- 30 the car was purchased.
- Q What is the name of that firm?
- A Washington Sales and Service Company.
- Q Where did they have their office?
- A 522 Washington Avenue, Belleville.
- Q I understand you had purchased an automobile some time before this trouble?
- A Yes.
- Q Purchased it from the Washington Sales and Service Company?
- 40 A Yes, sir.

Plaintiff's Witness, Lillian Clawans, Direct

- Q It was a Ford Sedan?
- A Yes.
- Q Had that car ever been transferred to you? That is, up to the time of this trouble?
- A No, sir.
- Q It had been paid for by you, I understand?
- A Yes. 10
- Q This boy, Freddie Ellis brought the car to your office at the request of your telephone call?
- A Yes.
- Q What time did you leave your office?
- A 9:15.
- Q After leaving—
- Q (By Mr. Myers.) Day or evening?
- A In the evening, 9:15 P. M.
- Q (By Mr. Weinberg.) Where did you go after leaving your office? 20
- A I went to 38 Tillinghast street and from there to the Riviera and Robert Treat, and along Broad street straight over to 792½ Ridge street.
- Q Ridge street?
- A Yes.
- Q After you left Ridge Street where did you go?
- A I didn't get to Ridge street, I was on my way.
- Q Your sister and yourself were seated in what part of the car?
- A In the rear. 30
- Q Was it an open or closed car?
- A Closed.
- Q Closed?
- A Yes.
- Q Ellis sat in the front?
- A Yes.
- Q What, if anything happened that evening while you were on your way to Ridge street?
- A Officer O'Connor came to the car and questioned the boy. 40

Plaintiff's Witness, Lillian Clawans, Direct

Q Where was the car at the time when the officer came to the car?

A It was on Fulton street a few feet below Broad.

Q Turned into Fulton street?

A Yes.

10

Q How did it get into Fulton street?

A I was about to get out of the car to make a telephone call to 792½ Ridge street, because it was late, it was after eleven.

Q What happened after you stopped your car on Fulton street?

A He asked Freddie Ellis—

Q When you say "he", give the name.

A The officer asked Freddie Ellis what he is doing, operating a car with one plate on and Freddie for the moment was speechless and he made every effort to talk, and at the same time the officer, I guess, asked him if he had his registration card and the officer said in a very gruff and discourteous manner—

20

MR. MYERS. I object to that and ask that it be stricken out.

THE COURT. Strike it out.

Q Was it loudly or quietly?

30

A In a very loud manner, "What are you doing with one plate on the car", and he was about to explain to the officer, and the officer immediately said, directed him to go to the Second Precinct and I said to the officer, "Why, I know there were two plates on, let us go back and see if we cannot locate it at the Robert Treat Hotel" and he said, "With a dirty kid in the car and a Ford car you were stopping at the Robert Treat Hotel?" I said, "We had luncheon there, and left a few minutes ago", and he said, "Who the hell is talking to you?" And directed

40

Plaintiff's Witness, Lillian Clawans, Direct

Freddie Ellis to open up the car, and insisted that he go to the Second Precinct and he sat in the front of the car.

Q Did he say anything at that time about the car itself?

A Yes, at that time when I said I am the owner, he directed me to go to the Second Precinct. He said, "It is a stolen car, and you stole the car".

10

Q What did you say to him?

A I said nothing further to him after he directed Freddie to go to the Second Precinct.

Q Had you given him your name up to that time?

A No, sir.

Q When he directed Freddie to go to the Second Precinct were you in the car?

20

A Yes, sir, I was.

Q Who went to the Second Precinct?

A The officer, Freddie Ellis, my sister and myself.

Q How did the officer get there?

A He went in the car, he directed Freddie to open the car and he sat in the front of the car.

Q He sat in the front of the car alongside of the boy?

A Yes.

Q The Second Precinct is where?

30

A I believe it is Seventh avenue.

Q Seventh and Summer avenues?

A I guess so.

Q What happened when you got to the Second Precinct Station?

A The officer, he opened the door of the car and Freddie Ellis and the officer walked out first and my sister and I followed and went into the Second Precinct, and he said to the lieutenant at the desk, I believe his name was Lieutenant Ryan who is in

40

Plaintiff's Witness, Lillian Clawans, Direct

court now, "I want to lodge a complaint against this boy", and said that an investigation should be made.

Q Who said that?

A O'Connor.

Q What sort of an investigation did he mention?

10 A Later on as we got into the conversation he wanted to hold the boy and I didn't want the boy staying over night in jail and I said I would take the entire responsibility.

Q To whom did you say that?

A To the lieutenant at the desk.

Q What did O'Connor say, if anything, after that?

A He said, "She has too much to say anyway", he said, "It is a stolen car and you stole the car".

20 Q He said that in the station house?

A To us at the station house.

Q Then, what is the next thing that occurred there?

A He ordered the patrol and said that he was going to investigate this matter and before I knew it I was thrown in the patrol wagon by Officer O'Connor and completed by the other two officers that were in the patrol wagon.

Q What other two officers?

30 A Birch and Burns.

Q The two other defendants in this case?

A Yes.

Q In what manner did you enter the patrol wagon or were you put into it?

A Officer O'Connor grabbed me against my wishes. I said I would go down in a cab and would not go down in the patrol wagon if he wanted to make any investigation and it was so sudden, he grabbed ahold of me with his full force, and the

40

Plaintiff's Witness, Lillian Clawans, Direct

palm of his hand against my nose and he threw me into the patrol wagon.

Q What, if anything, did the other two officers do?

A I was all full of blood and I wanted to get nearer so I wouldn't get full, and he wouldn't let me get near the two officers inside.

10

Q What did he do?

A They were afraid I would disappear, they were afraid I suppose that I would disappear.

Q Do not tell us what you suppose, tell us what actually happened.

A They threw me in the back of the patrol wagon.

Q In what manner, you say they threw you, what did they do?

A With all their strength, it was done so sudden, with all their force.

20

Q What did they do, pick you up and drop you down?

A They picked me up and slammed me against the side of the patrol wagon.

Q Who did that?

A The two officers completed the job, that were inside, but originally Mr. O'Connor.

Q What you mean to say is that they all took part in doing that?

30

A The three of them.

Q Were you resisting them or fighting them back?

A I was too weak, I couldn't resist them at all.

Q Did you or didn't you?

A Well, no, I did not resist them.

Q Did you say anything to them when they ordered you to be taken to police headquarters? Did they say why they were going to take you from the second precinct police station to headquarters?

40

Plaintiff's Witness, Lillian Clawans, Direct

- A No, I understood when I got down there, when I was told what the charges were against me.
- Q I don't mean after you got down there.
- A The investigation?
- Q Up to the time when you were taken up to the patrol wagon had any complaint been lodged against you?
- 10 A Not at the Second Precinct.
- Q At any time that you were informed of was any complaint made against you by anybody?
- A At police headquarters.
- Q When was that?
- A The same morning, it was getting towards morning.
- Q Who made the complaint?
- A The officer at the desk said he got word from the Second Precinct to detain me until I put up collateral security in this matter.
- 20 Q Was O'Connor there at that time?
- A No, he came in later.
- Q After O'Connor came into headquarters was anything said by him?
- A No, only he was looking around.
- Q He did nothing but look around?
- A Yes.
- Q You did not see the written complaint, did you?
- 30 A No.
- Q When did you next appear in this matter and where?
- A In the Traffic Court.
- Q When was that?
- A The following Thursday, that would be the 6th.
- Q Before Judge Boettner?
- A Yes.
- 40 Q Was any complaint read to you?

Plaintiff's Witness, Lillian Clawans, Direct

- A Yes.
- Q Did you have an attorney representing you?
- A Yes.
- Q Who?
- A Mr. Bernhard.
- Q Was that at night time?
- A Yes, sir.
- 10 Q I believe there was a fine imposed against you?
- A \$5, two charges against me.
- Q What were they?
- A For operating a car with one plate and for failure to properly register.
- Q You were not operating the car, you say?
- A No.
- Q You hadn't the car in your possession?
- A No.
- 20 Q What about this injury to your face? Was there any mark or sign of injury to your nose after the accident?
- A My nose was swollen and there was a mark on the left-hand side of my nose.
- Q Was that condition present before this trouble?
- A No, sir.
- Q How long did it remain that way?
- A For two weeks.
- Q Did this treatment up there have any other effect on you physically?
- 30 A I have been a nervous wreck since this thing happened.
- Q You have been doing your work?
- A Not as diligently as I formerly did.
- Q You run a school, I understand?
- A Yes.
- Q How many pupils did you have at that time?
- A From five to eighteen.
- Q Did you continue on with your instruction of
- 40

Plaintiff's Witness, Lillian Clawans, Direct

that school right after the accident, or right after this occurrence?

A No, I was too upset, I had the girls in my office, who worked for me, take care of things for me.

10 Q How long was it before you went back to your regular lecture course?

A Off and on about eight or nine weeks.

Q Did you have to pay for help while you were away?

A Yes.

Q To whom and how much?

A I paid Mabel Fraser for working for me eight weeks \$144, I paid her, and Marie Drumm, \$120.00.

Q What was this for?

A For services rendered at my office.

20 Q Did you have any such help before that?

A I had help, but not as many.

Q What additional expense were you put to by reason of your inability to take care of the work?

A I haven't been able to work as diligently and my earnings are not as great as they have been.

Q I am referring to these two items you gave me.

A I had to put on more than two to take my place; I couldn't tell you offhand.

30 Q Do you mean those two were additional?

A Additional and Marie Miller, I had her four weeks.

Q What sort of an instruction were you giving?

A Calculating and computing cost accounts, computing inventories and invoices and striking balances.

Q You are an accountant for different firms in Newark, are you?

A Yes.

40 Q How many?

Plaintiff's Witness, Lillian Clawans, Direct

A They vary from thirty, forty to fifty.

Q In Newark?

A In Newark and the suburbs.

Q Where do you do your work for these different firms?

A For Hahne & Company sometimes on the premises and sometimes in the office. Goerke & Company in the office; the Public Service I do on the premises, it varies. Pennsylvania I do on the premises. Standard Oil Company I do sometimes in the office and sometimes on their premises. 10

Q Were you prevented from doing your regular work, that is, going upon the premises by reason of your condition?

A Yes, I haven't gone to any one of those concerns.

Q For how long? 20

A Hahne & Company I didn't go there from March 3rd, 1924, because that was the last time I worked on the premises up until the latter part of January, 1924, the latter part of June, 1924.

Q And as Mr. Myers stated in his opening there has been an action brought against you by Officer O'Connor in the Circuit Court, I believe?

A Supreme Court.

Q And that was a judgment rendered against you in favor of Mr. O'Connor for \$1000 which was paid by you, is that right? 30

A Yes.

Q That was on his charge that you had called him something that night?

A Yes.

Q It was stated by Mr. Myers that you had not brought your action or done anything in this matter until about sixteen months after this occurrence. Had you taken any steps in your action against Mr. O'Connor? 40

Plaintiff's Witness, Lillian Clawans, Direct

A Yes, on March 7th, 1924, I retained Colonel Vickers to bring suit; I am sure he will bear me out on that.

Q That was four days after this occurrence?

A Yes, on Friday.

10 Q So far as the allegations in the complaint as read to the Jury by Mr. Myers, did you have anything to do with the preparation of that complaint?

A Partly, not all.

Q The charges entered in that complaint were prepared by whom?

A Mr. Giffoniello.

Q This gentleman on my right, who was then your attorney?

A Yes.

20 Q You are still a member of the Bar?

A Yes.

Q You still live in Newark?

A Yes.

Q Did you hear anything about liquor, that liquor occurrence?

A Yes.

Q Tell the court and jury about that.

30 A While I was at police headquarters waiting for my sister and Freddie Ellis, Freddie Ellis and my sister both were on the wire using the telephone wire at the second precinct, they told me the officers had gone through my car.

MR. MYERS. I object.

Q Not unless the officer was there. Was he there when they told you that?

A He came in just as the conversation was going on at police headquarters.

Q Did he say anything in your hearing?

40 THE COURT. You mean O'Connor?

Plaintiff's Witness, Lillian Clawans, Direct

MR. WEINBERG. Yes.

Q Did you hear O'Connor say anything about liquor?

A

Q (By the Court.) You mean O'Connor?

A Yes.

10 Q By Mr. Weinberg.) Did you hear O'Connor say anything about liquor?

A No, only what he testified to here in court.

Q What did you hear him testify to in court? What did he say about liquor?

A He said he searched the car and found a bottle in the shape of "Old Smuggler" and he said probably there was liquor in the bottle.

Q Then, what did he say when he found what it was afterwards?

A Yes.

Q What did he say?

A He said it was body polish.

CROSS EXAMINATION by Mr. Myers.

Q When did he say he discovered the bottle contained body polish?

A In court.

Q That was the same time he had searched the automobile and said he thought there was liquor?

A No, when he testified in court; I was there when they searched the car.

Q What did he say in court?

A I can't remember the exact words, but the substance is he said he had searched the car and that he found a bottle that was in the shape of "Old Smuggler" and that he did say there was probably liquor in the bottle and later discovered that it was body polish.

Q That was all in the same sentence?

40

Plaintiff's Witness, Lillian Clawans, Cross

A I don't know whether he said it in the same sentence.

Q You said you heard it in court?

A I said the sum and substance was.

10

Q The sum and substance was that he found a bottle that contained an "Old Smuggler" label on it and that when he examined it he found body polish, that is what he testified to?

A That is what he said in court, but he didn't say it that way.

Q He never said there was liquor in it?

A Yes, he did.

Q Did he say there was liquor in it or body polish?

20

A His own testimony was that probably there was liquor in the bottle, but I know he didn't say that.

Q You also know he did say that when he opened it he found body polish?

A He testified to that in court.

Q When were you admitted as an attorney?

A January 3rd or 4th, 1924.

Q That will be three years this January?

A Yes.

Q Have you ever practiced as an attorney since you were admitted?

30

A I have been practicing rather in an offhanded way for a year or a year and a half, not seriously.

Q Which year and a half, the last year and a half?

A The past year and a half.

Q So, you hadn't any clients or any law office in March, 1924, had you?

A Yes, I had, I have tried two cases before this thing happened.

40

Q Between March 1924 and the following year

Plaintiff's Witness, Lillian Clawans, Cross

you were prevented from trying cases by reason of this occurrence?

A By reason of my physical condition.

Q Was your physical condition as the result of this occurrence?

A Yes.

Q You have never been very stout, have you? 10

A Yes, I weighed as much as 138 pounds.

Q How much do you weigh now?

A I think 92.

A As little as that?

A Yes.

Q You have known me a good many years, haven't you?

A Since I entered politics I think I know you four years.

Q Isn't it nearer seven or eight? 20

A No.

Q Isn't it a fact that you are of the same general appearance now as you were four or five years ago?

A No, sir.

Q You say you did work for Hahne & Company prior to March 3rd, 1924?

A Yes, and on March 3rd.

Q You were working for them on that day?

A Yes.

Q What were you doing, income tax work? 30

A No, slow selling stock sheets.

Q How often were you in the habit of being at their store?

A Well, from a day to a day and a half on the slow selling stock sheets.

Q On what?

A On their slow selling stock sheets.

Q How often did you have to go their on their slow selling stock sheets?

A The first of the month. 40

Plaintiff's Witness, Lillian Clawans, Cross

Q Did you work there in April?

A No.

Q The reason you did not work in April was because of your condition?

A Yes.

10

Q You did not work then in May?

A No.

Q When did you start back to work there?

A June, 1924.

Q It was a period of three months you missed three days and a half, three times one and a half days in April and May?

A Yes.

Q You worked a day and a half at the beginning of each month?

A Yes.

20

Q You missed three days?

A And the monthly inventories that came in the office I was unable to do.

Q How many employees did you have in your accounting office on March 3rd, 1924?

A As high as, well, it varies from eighteen to twenty.

Q On the 3rd of March, the day you were at Hahne & Company, how many employees were actually in your employ?

30

A About eighteen.

Q On the 4th of March, how many did you have?

A Twenty.

Q Did you go to the office on the 4th of March, 1924?

A My office?

Q Yes.

A Yes.

Q What day of the week was the 3rd of March?

A Monday.

40

Plaintiff's Witness, Lillian Clawans, Cross

Q So, on the Tuesday morning after this occurrence you went to your office?

A Yes.

Q You did not stay there all that day?

A I was a wreck.

Q How long did you stay there that day?

A Off and on about an hour and then I came back that night. 10

Q Did you have anything of that kind the day of the 4th of March?

A If I have inventories or cost accounting, I do.

Q Is it your habit to spend all day in your office?

A Yes, I had inventories in the Hahne & Company inventory sheets done.

Q You had been there on the day before?

A Yes.

Q What were all the other girls in your office doing? 20

A What do you mean?

Q On the 4th of March while you were there in the office what were they working on?

A They were put on the work.

Q Was that on Hahne & Company's work?

A Yes.

Q Were all the eighteen to twenty girls on Hahne & Company's work? 30

A We had three or four concern's work in the office.

Q How many other business houses were you working for on the 3rd or 4th of March?

A I know it was the United States system, I know it was Hahne & Company, Goerke & Company, and I think some were in from Edisons, although I am not sure.

Q Did the two extra girls on the 4th of March work on the 3rd of March? 40

Plaintiff's Witness, Lillian Clawans, Cross

A Yes, because the firm kept calling for their inventories.

Q What time did they go to work on the 4th of March?

A Some started at ten and some at eleven.

10 Q I mean the two additional girls you say you had on the 4th of March?

A Between ten and eleven that morning.

Q When were they employed?

A Between ten and eleven that morning.

Q Who employed them?

A I did.

Q You were able to run the business that morning?

A No, I was a wreck; I had other girls who knew something about the work.

20 Q What time did this occurrence take place on March 3rd?

A Between 10:30 and 11:30 at night.

Q You had been to the Riviera and the Robert Treat?

A Before this thing happened.

Q You were on your way up to where?

A 792½ Ridge street.

Q Was that where you lived?

30 A No, I was to get one of the girls to report to the Pennsylvania Railroad.

Q Did that girl report?

A No, I didn't go.

Q Did you see her the next morning?

A No, I didn't see her at all.

Q How did you get in touch with the two girls the next morning?

A I had Miss Weiss call up and communicate with them.

40 Q You would not have needed those two girls if this thing had not happened?

Plaintiff's Witness, Lillian Clawans, Cross

A No, because I liked to do the checking myself.

Q What did the other eight girls do?

A They do the originating and I do the checking.

Q At half-past eleven at night you were going up to a young lady's house on Ridge street to tell her to come to work the next morning? 10

A I started earlier than that.

Q How did you know she was there?

A She was to report to night school class, but she didn't show up, and it was 9:15 so I got a call from my mother and sister that we had moved that day, and I thought before I made the trip I would make a stop at my home.

Q Where were you living then?

A 32 Rutgers street, for twenty-one years.

Q Why did you delay so long between nine o'clock and half-past eleven if you wanted to get that young lady? 20

A I knew we had moved, but I wanted to know where I was going to sleep that night.

Q Where did you expect you were going to move that night?

A I didn't know whether my mother had gotten my new beds in because she sold all her furniture.

Q To where did she move?

A 38 Tillinghast street. 30

Q That is in the Clinton Hill section?

A Yes, away up.

Q You left your school a little after nine.

A That is when I closed the school.

Q You went to the Riviera?

A No, to Tillinghast street.

Q Then, you found that was the place you were going to sleep?

A I wanted to find out whether or not there were any beds there for us to sleep. 40

Plaintiff's Witness, Lillian Clawans, Cross

Q Did you find out there were any?

A I found there were none.

Q Where was it, when you were at Tillinghast street you found you would have to spend the night?

A When I came there my brother and sister told me that my mother had reserved a room for me at the Hotel Riviera.

Q What time did you register there?

A I was up at the house about a half hour, it must have been about a quarter after ten.

Q Then you went to the Robert Treat to get something to eat?

A Yes, I was starved.

Q You hadn't had any dinner?

A I had had a very late dinner; I had gone out around half-past four to have something to eat and I was starved at that time.

Q Didn't the Riviera have a restaurant at that time?

A I didn't go in the Riviera's restaurant.

Q Do you know that the Riviera had a restaurant at that time?

A I presume all hotels have a restaurant.

Q If you were so starved why didn't you have your lunch or whatever you wanted to eat at the hotel at which you registered and where you expected to stay for the night?

MR. WEINBERG. I object.

THE COURT. Sustain the objection..

Q Anyway you did not eat at the Riviera and you did eat at the Robert Treat?

A In the grill room, downstairs in the large room.

Q You left there at a quarter past eleven?

A Yes.

Plaintiff's Witness, Lillian Clawans, Cross

Q Intending to go to Ridge street to get this girl?

A Yes.

Q Why did you say you turned into Fulton street?

A We would have stopped on Broad street in front of the drug store only—

Q You were going to telephone?

A Yes.

Q To whom?

A I knew I could not get her because I knew she did not have a 'phone, but the nearest 'phone at 792½ Ridge street.

Q Why didn't you telephone from the Robert Treat?

MR. WEINBERG. I object as immaterial.

THE COURT. Sustain the objection.

Q You say your sister was with you that night?

A Yes.

Q Is she here?

A I know she came on to Newark.

Q Has she been in court today?

A No, she had been earlier in the week.

Q The sister that was with you that night is now in Newark, isn't she?

A I believe she is in Newark.

Q Where has she been living?

A My sister?

Q Yes.

A In Washington, D. C.

Q She came up purposely for this trial this week?

A Surely.

Q Where is she stopping now?

A 14—do you mean now?

Q Yes.

Plaintiff's Witness, Lillian Clawans, Cross

- A In Washington or Newark?
 Q In Newark?
 A When she comes on she stays at home.
 Q You said she was here today. Did she spend last night at your mother's home on Tillinghast street?
 10 A No.
 Q When was the last time you saw your sister?
 A The last time I saw her was two weeks ago.
 Q Didn't you say she was in Newark this week?
 A Yes.
 Q Where did she stop?
 A She comes home and goes right back; usually she comes in the morning.
 Q You mean she commuted from Washington?
 A No, she comes in on a midnight train and gets here in the morning and pulls out as soon as she can after that.
 20 Q What day was it she pulled in on a midnight train this week?
 A She stopped in Hazleton, Pennsylvania for Mr. Steets of the Martha Washington Candy.
 Q She has been in Newark this week?
 A On Monday.
 Q You expect her to be here for this trial??
 A Yes.
 30 Q She is under your control and will be here to help you out?
 A To testify as to what she knows.
 Q I take it for granted she will try to help you out?
 A Yes.
 Q When did your nose start to bleed?
 A The moment I was thrown in the patrol wagon.
 Q It did not bleed in the police station?
 40 A It bled down at the police station.

Plaintiff's Witness, Lillian Clawans, Cross

- Q Why was it you called Mr. O'Connor, a burglar, a thief, and a crook?
 A I never called him that.
 Q The jury found you did, didn't it?
 MR. WEINBERG. That is not an issue here. That has not been pleaded. 10
 (Argument.)
 MR. MYERS. I will not press it.
 Q You said this thing happened on the 3rd of March?
 A Yes.
 Q You consulted Colonel Vickers on the 7th of March?
 A Yes.
 Q He waited sixteen months before bringing suit? 20
 A No, his reason for not bringing suit was it would never get in the trial term.
 Q So because it would not get in the trial term, 1924, he waited until August, 1925; you waited until the next term, 1925, before you employed Mr. Giffoniello?
 A No, right along I have been asking Colonel Vickers and Mr. Giffoniello; they were busy on other matters. 30
 Q Notwithstanding your persuasion Colonel Vickers did not bring suit and it took Mr. Giffoniello seventeen months before he started, isn't that so?
 A No, it is not so.
 Q It is a fact this suit was not started until August, 1925?
 A The officer knew about this suit the very next day after it happened.
 Q About which suit? 40

Plaintiff's Witness, Lillian Clawans, Cross

- A About my suit against him.
 Q How do you know he knew it?
 A He had Mr. Carrigan and several lieutenants coming to my office seeking information.
 Q How did he know about a suit which had not been started?
 10 A He heard from the lieutenant what was going on in my office.
 Q The lieutenant was spying on you?
 A He had lieutenants in my office.
 Q What were they women?
 A No, men; his associates.
 Q You mean they came into your office?
 A Yes.
 Q You do not mean they were acting as spies?
 A They came into my office to get information.
 20 Q What information did they seek as to when you were to bring suit?
 A They were questioning my witnesses and doing everything they could.
 Q What witnesses were in your office that knew anything about this case?
 A Angelo DeRoe, William DeRoe, all been questioned by Mr. Carrigan.
 Q Are they your witnesses in this case?
 A Yes.
 30 Q Were they subpoenaed?
 A All except William DeRosa.
 Q How many witnesses have you subpoenaed to be in court today?
 A I have a list there.
 Q Angelo DeRoe?
 A Peter Ruppel was another.
 Q Were they present on the corner of Broad and Fulton street?
 A No.
 40 Q They were present at the police station?

Plaintiff's Witness, Lillian Clawans, Cross

- A They were present at the second precinct.
 Q Your only explanation of the fact that Colonel Vickers did not bring suit and Mr. Giffoniello did not bring suit is that they were both too busy?
 A No, that is not my explanation.
 Q What is your explanation?
 A I know I have been after them and I only 10 know they were served in August.
 Q Seventeen months after the thing happened?
 A I don't remember the axact time.
 Q At the Traffic Court you had Mr. John A. Bernhard?
 A That's right.
 Q Former Assistant Prosecutor of this county?
 A That's right.
 Q He represented you before Judge Boettner?
 A Yes. 20
 Q And he pleaded your case, didn't he?
 A He pleaded my case for me, but he was not asked to enter a plea of guilty for me.
 Q I do not mean that he entered a plea, but he defended you in the Traffic Court, didn't he?
 A Yes.
 Q You had witnesses called, didn't you?
 A No, sir.
 Q So you were there without any witnesses?
 A No, I had witnesses there. 30
 Q Why didn't you call witnesses in the Traffic Court?
 A The thing was done so hastily I didn't know what it was all about.
 Q So you did not get justice in the Traffic Court?
 MR. WEINBERG. I object.
 THE COURT. Sustain the objection. 40

Plaintiff's Witness, Lillian Clawans, Cross

Q Notwithstanding the fact that you had Mr. Bernhard, the well-known lawyer, in court you were fined \$5 and paid the fine?

MR. WEINBERG. I object to "Notwithstanding you had Mr. Bernhard".

10 THE COURT. Sustain the objection.

Q You were fined \$5, weren't you?

A Yes.

Q You paid it?

A Yes.

Q That was in the evening?

A Yes.

Q Between the Monday night at half-past eleven when this incident happened and the Thursday, you spent the time in your office, didn't you?

20 A No, I was in and out, I wasn't able to do anything.

Q What doctor did you have?

A I called Dr. Bassin and I couldn't get him and I called him from police headquarters that very night my nose was in that condition and I called him the next morning and they told me he was busy at the Beth Israel Hospital.

Q You went to the Riviera that night?

30 A Yes.

Q And the morning when you got up you went to your office?

A In the morning I went to my office, yes.

Q What other doctor did you call?

A That is the only doctor I ever called.

Q So, no doctor ever saw you?

A No, but lots of people saw me.

Q No doctor ever saw you?

A No.

40 Q Notwithstanding you claim now that ever

Plaintiff's Witness, Lillian Clawans, Cross

since that day you have been a nervous wreck, and you have never consulted a physician?

A That's right.

Q That is right, isn't it?

A Yes.

Q How many pupils did you have in your school in March, 1924? 10

A They varied from 5 to 18.

Q How many did you have the following week?

A I don't know, I say they varied.

Q You did not have any less, did you?

A They were not getting attention and the class dwindled down shamefully.

Q Were you the only person who was doing the teaching or lecturing?

A No, but my supervisors did not take the interest I did. 20

Q These three young ladies you referred to were they employed in your business or school?

A In my business and school.

Q So, they worked not only in your office as accountants and bookkeepers, but also lectured?

A They did not lecture, they trained the girls how to operate the machine.

Q Did you ever have six girls working for you before?

A Yes. 30

Q Have they worked for you since?

A No, not since. I did not need their services any more.

Q Why didn't you need their services?

A Because I had secured them positions, I couldn't afford to pay them what they asked for.

Q Your school is still running?

A Yes.

Q And you are still averaging from five to eight pupils? 40

Plaintiff's Witness, Lillian Clawans, Cross

A No, I have not given my

Q I am not asking you that. I am asking you what number of pupils you average in your school? Are there less than five?

A Yes, sometimes since this thing happened.

10 Q That is simply because someone did not show up for an evening?

A No, I have had girls drop out considerably since this thing happened.

Q What is the lowest number of pupils you have had since this thing happened?

A Five.

Q That is true since March, 1924?

A No, I have had less since then.

Q I just asked you and you said five. What is the lowest number you had since March, 1924?

20 A One, two and three.

Q How often have you had one, two or three pupils?

A All during the month from March until June, 1925.

Q All during those months and still you were there every night?

A No, I wasn't, I would report there, but would not stay all night.

Q Why didn't you stay?

30 A Because I was in no condition to go on with my work.

Q That condition that existed on the 4th of March exists today?

A It has been praying on my nerves since this happened.

Q What has been praying on your nerves, the fact you had a lawsuit on your hands?

A No, the treatment accorded me and the fact there was an article in the paper and everyone was calling on the 'phone.

40

Plaintiff's Witness, Lillian Clawans, Cross

Q Since March, 1924, Hahne & Company has taken business away from you?

A No.

Q The Standard Oil Company has taken business away from you?

A Yes.

Q When did they take it away from you? 10

A I got three days work up until last August.

Q How often did you work for the Standard Oil Company?

A I averaged about six months off and on.

Q I mean did you work a total of six months all told or did you work continuously by the month?

A I would say probably for three solid months.

Q That was their own work?

A Yes.

Q To which you devoted your time? 20

A Yes.

Q Where was that work done, in your office or at their company?

A Some in my office and some on the premises.

Q You have the faculty of being in two places at the same time, have you?

MR. WEINBERG. I object.

THE COURT. Sustain the objection.

Q Did the Public Service stop giving you any business? 30

A I haven't received any business from them since.

Q You haven't sought any?

A I have been there.

Q How often did you do work for the Public Service prior to March, 1924?

A Twice a year.

Q How long did that work last? 40

Plaintiff's Witness, Lillian Clawans, Cross

- A About six weeks.
- Q Did you devote all your time to that?
- A Yes.
- Q So you devoted all your time to the Public Service work and the Standard Oil Company work and to Hahne & Company and Goerke & Company.
- 10 A And to the Pennsylvania Railroad.
- Q When was the last time you worked for the Standard Oil Company?
- A In August, 1926. From March 3rd, 1924, up until August, 1926 this year I haven't done anything but three days work.
- Q That article in the paper did not prevent them from giving you business in August, 1926, did it?
- A I don't know.
- 20 Q Didn't you just say that the article in the paper prevented these people from giving you business?
- A I said the concerns did not call me up and communicate with me.
- Q Mr. O'Connor did not put it in the paper, did he?
- A Oh, yes, he did.
- Q He did?
- A He certainly did.
- 30 Q It was a matter of police record at the second precinct?
- A I guess it was a matter of police record through Mr. O'Connor or police headquarters.
- Q Because you had violated a traffic law?
- A I didn't violate a traffic law.
- Q The car in which you were driving was a driven in violation of the traffic law, wasn't it?

MR. WEINBERG. I object.

THE COURT. Sustain the objection.

- 40 Q You said Mr. O'Connor when he first saw the

Plaintiff's Witness, Lillian Clawans, Cross

car at Broad and Fulton said, "What do you mean by having only one plate on your car"? That is what he said, wasn't it?

A I wouldn't say those are the exact words, but about; not to me, to the boy.

Q He did not address you at all?

A He was talking to the boy.

Q Then, he asked the boy for his registration card.

A I guess so.

Q Then, you made some remark, didn't you?

A Oh, no.

Q What did you say?

A He said—when he said we have one plate on the car, I said, "Officer, let us go back to the Robert Treat Hotel, we had two plates on a short while ago", and he said, "With a dirty kid in the car?"

Q He said what?

A "With a dirty kid in the car", meaning Freddie Ellis; he was in his working clothes on that night.

Q He did not want to go back to the Robert Treat with a dirty kid in the car?

A It is my inference that he could not believe we stopped at the Robert Treat to have something to eat because there was a dirty kid in the car.

Q He did not think you would go to the Robert Treat with a young man who had dirty clothes on?

A Absolutely.

Q There wasn't anything so terrible about that, was there?

MR. WEINBERG. I object. That is for the jury.

THE COURT. Sustain the objection.

Q You said, "I am the owner of the car", didn't you?

40

Plaintiff's Witness, Lillian Clawans, Cross

A At that time?

Q Yes.

A When he ordered the youngster to go to the second precinct and he said that he was going to investigate this because there was one plate on the car, he said, "Who the hell is talking to you?" After I told him I was the owner of the car.

10 Q You had not yet received a bill of sale for the car, had you?

A No.

Q When was it prior to that night you had paid for the car?

A In January, 1924.

Q For nearly two months you were riding around in a car you had bought and paid for for which you had received no bill of sale?

20 A No, sir, only once prior to that in the meantime.

Q Where was the car during the meantime?

A In the custody of the dealers.

Q Why did you get the bill of sale?

A In the first place there were some parts to be put on the car, the car was not complete.

Q You were riding in a car that was incomplete?

A I don't know whether it was incomplete or not.

30 Q Then, the officer got in the car and sat in the front?

A That's right.

Q Was there any conversation on the way to the precinct?

A None at all.

Q When the car stopped in front of the second precinct did the officer get out and open the door where you were sitting?

40 A No, he did not, he opened the door where he was sitting.

Plaintiff's Witness, Lillian Clawans, Cross

Q Didn't you say, "The officer opened the door and my sister and I followed him in"?

A That's right.

Q He did not throw you into the police station?

A Not at the second precinct.

Q He did not even have ahold of you when you went into the police station? 10

A No.

Q He walked into the police station and permitted you and your sister to follow him?

A He directed us to follow him.

Q When you got in he said he wanted to lodge a complaint against the boy?

A That's right.

Q He didn't say he was going to make a complaint against you? 20

A No.

Q He had never intimated that he was going to make a complaint against you, had he?

A Yes.

Q When?

A When I was going into the patrol wagon.

Q O'Connor said what?

A I don't know his exact words.

Q What was it O'Connor said when you were thrown into the patrol wagon?

A He said it wasn't what I wanted, it was what he wanted. I said I would go down in a cab. 30

Q You said he made a complaint against you. What complaint up to that time officially was made against you?

A By the time I got down to police headquarters I learned through the detective at the desk what I was being detained for.

Q Then, the complaint was driving without plates?

A There was complaint down there. 40

Plaintiff's Witness, Lillian Clawans, Cross

Q What was that?

A For having the car operated without having one plate on.

Q On your direct examination didn't you say the officer made two complaints against you at police headquarters?

10 A No, I did not.

Q Which officer was it that pushed his hand up against your face so violently?

A Mr. O'Connor.

Q That was the way he got you in the patrol wagon?

A No, it was done so hurriedly, he got ahold of my arm and the palm of his hand was crushed against my nose.

Q What did he do to your sister?

20 A He threw off her hat I know, I don't know what else he did it was done so hurriedly.

Q How did you get out of the second precinct police station, were you thrown out of there?

A I was thrown in the patrol wagon; it was done so hurriedly.

Q Your memory is very good as to everything; you surely can remember after you left the desk in the second precinct police station how you got out of the station and your steps to the patrol wagon?

30 A I do remember Mr. O'Connor getting ahold of me by my arm and the palm of his hand alongside of my nose and crushing me into the patrol wagon outside and he threw me into the patrol wagon.

Q So, all the way from the desk in the police station out to the patrol wagon on the street he had ahold of your arm and his hand was up against your face?

A I didn't get that.

40 Q All the way from the desk in the second

Plaintiff's Witness, Lillian Clawans, Cross

precinct police station and down the street where the wagon was he had ahold of your arm and his hand was pushed up against your nose?

A No, not until the patrol was there.

Q How did you get down to the patrol wagon from the desk in the station? You walked down, didn't you? 10

A I certainly did not.

Q How did you get down?

A He threw me in.

Q Things are getting worse, now, aren't they?

MR. WEINBERG. I object.

THE COURT. Sustain the objection.

Q On your direct examination you said that you were not thrown until you were thrown into the patrol wagon. 20

A I believe when the patrol wagon came; I don't know whether the patrol wagon was out there or not, I didn't look to see, I suddenly, in a hurried manner was grabbed by this officer, who grabbed ahold of my arm and the palm of his hand was alongside of my nose and he crushed it and threw me into the patrol wagon.

Q And that was after you got out in the street?

A Absolutely not.

Q Was it in the police station he grabbed ahold of you and put his hand up against your face? 30

A Just a second before he threw me into the patrol wagon.

Q You must have been on the street when that was done?

A I don't know where it occurred.

Q You know it takes more than a second to walk from the office in the second precinct police station to the sidewalk. 40

Plaintiff's Witness, Lillian Clawans, Cross

A I wouldn't have walked to the sidewalk if I had known there was a patrol wagon outside.

Q You know it takes more than a second to go from the desk in the police station to the street, don't you know that?

10 A As I said, it was done so hurriedly and I was taken away so quickly I couldn't tell you now, I was baffled for the moment.

Q Isn't it a fact that you left the second precinct police station in the same gentle manner to the patrol wagon as you left your machine when you came into the police station?

A I should say not.

Q Tell us how you got out of the second precinct police station to the steps of the patrol wagon?

20 A I couldn't tell you it was done too quickly and I was thrown into the patrol wagon.

Q You say Mr. O'Connor picked you up bodily and carried you out and threw you into the patrol wagon?

A He grabbed ahold of me by my arm.

Q When was the first time he grabbed ahold of you by your arm?

A Just, I suppose, a few seconds before I was sent to police headquarters.

30 Q Just a second before you got in the patrol wagon?

A Oh, no.

Q How many seconds?

A I couldn't tell you that, I know very little about the second precinct.

Q Isn't it a fact that Lieutenant Ryan suggested to you, after you told him that you were a lawyer, that you put up a deposit with him for your appearance in the Traffic Court?

40 A He said that at first, but not when the patrol wagon was ordered.

Plaintiff's Witness, Lillian Clawans, Cross

Q Didn't you say, "I want to go to headquarters?"

A Absolutely not.

Q You did not want to go to police headquarters?

A I wanted to be released that night.

10 Q Why didn't you put up the bail that he asked you to put up that night?

A I would have put up the bail, and I would have been just as fair if they were fair with me, but when they said it was a stolen car and they were going to make an investigation—

Q Did Lieutenant Ryan say you stole the car?

A He said to hold her for further investigation.

Q Did Lieutenant Ryan say that you stole the car?

20 A I wouldn't say he said those exact words, but he sided in with the officer.

Q Lieutenant Ryan said at the same time to you, "Miss Clawans, if you will put up a deposit to cover your appearance in Traffic Court you can go home now," or words to that effect?

A He said nothing of the sort.

MR. MYERS. Mr. George suggests that by reason of my unfamiliarity with what happened up there that the court allow him to continue cross examination.

30 THE COURT. Is there any objection.

MR. WEINBERG. No, unless we have to retrace all the testimony. Mr. Myers has had this witness an hour.

THE COURT. There seems to be no objection. You may proceed.

40 Q (By Mr. George.) In the previous trial in which you were being sued by Mr. O'Connor for having slandered him, you did not testify that it was

Plaintiff's Witness, Lillian Clawans, Cross

O'Connor who pushed you or put his hand to your face, did you?

A I wasn't asked those questions; I was not proving my case.

Q You were defending the case against you, weren't you, with the assistance of able counsel?

10

MR. WEINBERG. I object to that question.

THE COURT. Sustain the objection.

Q You were defending this suit which O'Connor instituted against you for having slandered him, weren't you?

MR. WEINBERG. I object.

THE COURT. I will admit it.

20

Q (Question read.)

A Yes.

Q And in the defense of that suit against you you testified to all that transpired in the police station and at headquarters, didn't you?

A No, I did not.

Q Did you leave something out?

A A great deal.

Q You testified to the misconduct of all the police officers in the police station on that occasion to the extent of having assaulted you also, didn't you, at the trial?

30

A I didn't say that at all.

Q Didn't you testify that Officer Burns assaulted you?

A Yes.

Q Didn't you testify that he caused your nose to bleed?

A I said Officer O'Connor. I don't remember exactly the exact words I used, but I do remember that three officers assaulted me.

40

Plaintiff's Witness, Lillian Clawans, Cross

Q Have you forgotten that you testified at that trial that Mr. Burns treated you roughly and threw you into the patrol wagon?

A It was not Officer Burns, it was Officer O'Connor who threw me into the patrol wagon.

Q You say now that Officer Burns did not touch you?

10

A He did in the patrol wagon.

Q You do not recall having said that Officer O'Connor assaulted you in the previous trial in which he sued you for damages?

A I don't remember whether or not that was the question.

Q Didn't you also testify at the trial of O'Connor against you that the reason you were asked or urged to go into the patrol wagon, was because you were asked to furnish bail and it was then you offered your business card and you said, "I am a lady lawyer, I don't need to give bail," isn't that what you testified to?

20

A I certainly did not.

Q Didn't you say then that when you suggested that you were a lady lawyer that all the officers in the police station, to use your own language, "Razzed" you?

A I never said I told them up there at the second precinct that I was a lady lawyer, I told you in the previous trial that I had said that at police headquarters to Lieutenant Owen.

30

Q You did tell someone that you were a lady lawyer and for that reason you were not obliged to conform to the duty that every citizen would be obliged to conform to and that is, furnish bail?

A I did not.

Q In that trial you did not file a counter-claim for damages against Officer O'Connor?

A No, sir.

40

Plaintiff's Witness, Lillian Clawans, Cross

Q You knew about as much, as you allege was done to you in police headquarters, as you know now?

A I know everything I want to know now.

Q What is that?

10 MR. GEORGE. I ask that the answer be stricken out as not responsive.

THE COURT. Strike it out.

Q Didn't you know at the time you were in this court in defense of a suit for slander instituted by O'Connor against you, everything that transpired in the police station and in police headquarters?

A No, Colonel Vickers did not ask me those questions. He said he would save them for my case.

20 Q Didn't you realize as a lawyer yourself that it would be incumbent upon you, if you had any claim for damages against O'Connor that that was the time to urge your damages?

MR. WEINBERG. I object.

THE COURT. I will admit it.

Q Didn't you know that?

A No, Colonel Vickers—

30 MR. GEORGE. I ask that that be stricken out as not responsive.

THE COURT. Strike it out.

A What was the question?

Q In that previous suit the jury returned a verdict of \$1000 damages.

A Yes.

MR. WEINBERG. That has been asked before.

40

Plaintiff's Witness, Peter Ruppel, Direct

Q The judgment was paid after an appeal was taken by you to the Court of Errors and Appeals?

A That's right.

PETER RUPPEL sworn in behalf of the plaintiff.

DIRECT EXAMINATION by Mr. Weinberg.

10

Q Where do you live?

A 211 Seventh street, Harrison.

Q Where were you living in March, 1924?

A 27 Green street, Newark.

Q What was your occupation on that day?

A Chauffeur.

Q For whom?

A For whom?

Q Yes.

A Yellow Cab Company.

20

Q Were you living in Newark at that time?

A Yes, sir.

Q Were you in the second precinct police station on the night of March 3rd, 1924?

A I was.

Q What time did you get there?

A Why, I just don't remember the time.

Q About?

A I know it was after the time the shows went out.

30

Q Now, while you were at the police station did you hear or see anything that involved Miss Clawans?

A Why, I just cannot remember what was said at the police station.

Q Do you remember seeing anything take place there?

A Yes, there was a little excitement, but it wasn't—I wasn't concerned in it.

Q I didn't ask you if you were concerned in any-

40

Plaintiff's Witness, Peter Ruppel, Direct

thing, I am asking you if you saw anything take place?

A Yes, I saw a little excitement.

Q What did you see?

A Not very much. I was in there with the party myself and I was thinking more—

10 Q Is that the only answer you can make to my question? What did you see take place there?

A Why, a little confusion there.

Q What was the confusion?

A Well, it has been so long I don't remember what happened. This happened over two years ago.

Q You do not remember seeing anything occur there?

A A little, not much.

Q What did you see occur there?

20 A In what respect?

Q In any respect?

A Well, there was someone getting arrested, that I know, because I was there getting someone arrested, too.

Q What did you see in respect to Miss Clawans and her car, if anything?

A Well, there was a car outside; I don't know who owned the car.

Q Did you see anybody go through it?

30 A I just can't remember whether anybody went through it or not.

Q Do you know Officer O'Connor?

A I know him to see, but not—I never knew him. I just learned his name at the trial.

Q Did you see Officer O'Connor on the night of March 3rd?

A At the station house I did.

Q Did you see him do anything or say anything? Did you see Miss Clawans there?

40 A Yes, I saw Miss Clawans there.

Plaintiff's Witness, Peter Ruppel, Direct

Q What did you hear said?

A I didn't hear her say anything; I was interested—

Q Did you hear O'Connor say anything about a car?

A There was a car outside. I was worried more about the party I had there at the time. 10

Q Have you been speaking to any of the police officers today?

A No, sir.

Q At noontime?

A Why, there was a party spoke to me. I asked him if he was up here, so I asked him if he was on the same case I was on; I didn't even know the gentleman's name.

Q Were you talking to any of the officers about your intention to testify today? 20

A No, sir.

Q You recall having made an affidavit in this case, don't you, on the 18th day of February, 1925?

A I might have, but I don't remember what was in it.

Q You do not?

A No, sir.

Q Do you remember that you spoke to me less than a week ago about this case?

A Yes. 30

MR. GEORGE. I object to this on the ground that it is an attempt to impeach his own witness.

THE COURT. I will admit it.

Q Do you remember telling me something about what occurred in the police station in which Officer O'Connor was involved?

A What was that?

Q Do you remember telling me less than a week 40

Plaintiff's Witness, Peter Ruppel, Direct

ago what occurred in the second precinct police station in which Officer O'Connor was involved?

A I don't remember what I said.

Q You do not remember what you said to me a week ago?

A No, sir.

10

Q Why have you forgotten everything?

MR. GEORGE. I object to that.

THE COURT. Sustain the objection.

Q You say you have not spoken to anybody from the police department since you spoke to me a week ago?

A Outside of one gentleman.

Q I assume the officer was a gentleman, but it was an officer, wasn't it?

20

MR. GEORGE. I object.

THE COURT. Sustain the objection.

Q Was this the police officer?

A Why, yes, it was, but I don't know his name.

Q Where did you speak to him?

A Why, out on High street.

Q When?

A Why, it was around two o'clock.

30

Q Today?

A Yes, sir.

Q You have been subpoenaed to come here today, were you not?

A Why, there wasn't a subpoena left at my house.

Q When did you get it?

MR. GEORGE. I object.

THE COURT. Sustain the objection.

40

Q How long did you remain in the police station?

Plaintiff's Witness, Peter Ruppel, Direct

A Until my party was questioned and slated.

Q How long was that?

A I just can't remember.

Q Did you see Miss Clawans go out?

A Why, yes, I seen her go out.

Q Did you stay there until after she left?

A Yes, sir.

10

Q Did you see where she went to?

A No, sir.

Q Did you see the patrol wagon?

A No, I was inside. I had a man there for a taxi bill.

Q During the time you were there you did not hear Miss Clawans say anything?

A No, sir.

Q And you did not hear any officer say anything?

20

A No, sir.

Q Where do you live?

A 211 Seventh street, Harrison.

CROSS EXAMINATION by Mr. George.

Q Did you see Officer O'Connor assault this young lady?

A No, sir.

Q Were you asked to say so today?

A Why, I received a letter—

30

Q Answer the question yes or no.

A Yes.

Q By whom were you asked to so testify?

A Miss Clawans.

Q So, you were asked by Miss Clawans to testify that you saw Officer O'Connor assault her at the police station, weren't you?

A Yes, sir.

Q As a matter of fact, Miss Clawans gave you a statement prepared by herself?

40

Plaintiff's Witness, Peter Ruppel, Cross

A Yes, sir.

Q Containing a number of questions and answers which you were asked by her to testify to before this court and jury isn't that so?

A Yes, sir.

10

Q Were the statements contained in this paper submitted by her to you the statements which she asked you to testify to, were they true?

A No, sir.

MR. GEORGE. I ask to have this paper marked for identification.

(Same is marked D1 for identification.)

Q How long ago did you talk to Miss Clawans concerning giving testimony in this court?

A Miss Clawans was in the house this morning.

20

Q Prior to that?

A Prior to that it was last Monday I believe it was, or Tuesday.

Q Was it then you received a paper from her?

A Yes, sir. Monday.

Q What did she ask you to do, read over the questions?

A Yes, sir.

Q And commit them to memory so that you would know what to testify to?

30

A Yes, sir.

Q You knew the statement would not be true?

A Yes, sir.

Q Yet, she asked you to so testify?

A Yes, sir.

REDIRECT EXAMINATION by Mr. Weinberg.

Q When did you give that statement?

A I didn't give counsel that statement.

Q Do you know how he got it?

40

A No, sir.

Plaintiff's Witness, Peter Ruppel, Redirect

Q Whom did you give it to?

A I left town the other night and it was left with another party.

Q When did Miss Clawans hand you the paper which has just been marked for identification D1?

A Monday or Tuesday.

Q What did you do with it?

10

A I had it in my pocket.

Q How did it get out of your pocket?

A I don't know that, I lost a lot of things out of my pocket through carelessness.

Q You think you lost this statement and you think someone connected with the defense found it and gave it to Mr. George?

A It might have been that way.

Q Come now, whom did you give the paper to?

A Whom did I give the paper to?

20

Q Yes.

A I didn't give it to nobody particular.

Q Particular or otherwise, whom did you hand it to?

A The paper must have been found; I don't know how it was found.

Q Did you lose it?

A Certainly.

Q When did you miss it?

A I just missed it this morning.

30

Q You just missed it this morning and you had it last Monday?

A Yes, sir.

Q Where were you this morning when you missed it?

A At my house.

Q Had anyone connected with the defense been to your house?

A No, sir.

Q Where did you last see the paper?

40

Plaintiff's Witness, Peter Ruppel, Redirect

A I seen it this morning about four o'clock when I got through working.

Q Where was it?

A In my pocket.

Q Which pocket?

A Inside pocket.

10 Q Where was the pocket, in your coat?

A Yes.

Q The coat was on you?

A Yes, sir.

Q You were where in the house?

A At our garage.

Q When did you look for the paper again?

A This morning when I got up.

Q Where were you, in your own house?

A Yes, sir.

20 Q And you did not find the paper?

A No, sir.

Q You were surprised to know that Mr. George had it now?

A Yes, sir.

Q Your house was not burglarized last night nor this morning?

A I don't think so; it was never burglarized before.

Q Don't you know that?

30 A No, sir. We have no locks on the doors.

Q You are quite sure that the last time you saw this paper was at four o'clock this morning and it was in your inside coat pocket?

A Yes, sir.

Q The next time you saw it was a few minutes ago when Mr. George handed it to you?

A Yes, sir.

Q How it got into his possession or anyone else's possession you do not know?

40 A No, sir.

Plaintiff's Witness, Peter Ruppel, Redirect

Q You want us to accept that?

MR. GEORGE. I object to the question as improper.

THE COURT. Sustain the objection.

Q That is the only statement with respect to it? 10

A Yes.

MR. GEORGE. I object.

THE COURT. I will admit that question.

Q Now, identify the paper signed by you.

A That is my signature (indicating).

Q That is your signature?

A Yes, sir.

Q You were sworn by a notary public on the day mentioned there? 20

A I don't remember being sworn by a notary public.

Q Were the facts stated in that paper true at the time?

MR. GEORGE. I object as improper re-direct examination.

THE COURT. Sustain the objection.

(Argument.)

MR. WEINBERG. I offer in evidence the statement on the ground it tends to carry out my statement to the court of surprise of the testimony of this witness, and to contradict the statements in that paper which he says are incorrect. 30

THE COURT. We do not know what statements are in the paper as yet.

MR. WEINBERG. That has been offered for 40

Plaintiff's Witness, Peter Ruppel, Redirect

identification. Then, if the court will permit me to reserve the right to offer it after the paper goes in. The court may say I should offer it now and I do not want to be foreclosed.

10 THE COURT. I do not want to mislead you. If you are attempting to introduce this paper to contradict this other paper, of course, it is not competent. What other reason have you for desiring to introduce it?

MR. WEINBERG. I offer it for the purpose of showing that this witness knows nothing about what happened up there and the other statement that he knew they were untrue. If he knows what is not true he certainly must know what was true.

20 THE COURT. What is the date of the affidavit?

MR. WEINBERG. February 18, 1925.

30 MR. GEORGE. It cannot serve any purpose whatever, notwithstanding the plea of surprise. Under the authority of the Supreme Court this man as his own witness would be a justification of his plea of surprise, but if he proceeds thereafter to try and show this man is not telling the truth then under the authority of law he neutralizes everything the witness says, and your Honor would be obliged to strike all his testimony from the record.

MR. WEINBERG: That is the purpose.

MR. GEORGE. Then there is no objection to that. Then I will make the witness my own.

MR. WEINBERG. If that is agreeable between us.

40

Plaintiff's Witness, Peter Ruppel, Redirect

THE COURT. Then, you move to strike this testimony all out; I mean will such motion be made.

MR. GEORGE. I will not be a party to that part.

MR. WEINBERG. If counsel is satisfied I am satisfied. 10

MR. GEORGE. We are not agreeing to anything. If counsel wants to have the jury to set the time on it, it is up to him.

MR. WEINBERG. Then I press the question I asked.

(Argument.)

20 THE COURT. If the affidavit is offered I would like the witness questioned to find out if he has had an opportunity to refresh his recollection.

Q (By the Court.) Is that your signature?

A. Yes, sir.

Q (By Mr. Weinberg.) Look at the affidavit, read it to yourself and tell the court and jury whether that refreshes your recollection as to what occurred in and around the second precinct police station on the night of March 3rd, 1924. 20

30 MR. GEORGE. I object to that question on the ground that it is improper redirect examination. The question now contemplates an inquiry as to whether or not the affidavit refreshed his recollection as to what transpired in the police station and headquarters, rather than as to what his explanation is as contained in the affidavit. The testimony so far as this witness is concerned as to what transpired in

40

Plaintiff's Witness, Peter Ruppel, Redirect

the police station has been gone into quite exhaustively.

THE COURT. I do not think it is proper redirect.

Sustain the objection.

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

Exception noted as ground of appeal.

Q Have you any recollection—if I may be permitted to repeat the question—as to what occurred in the police station on the night of March 3, 1924?

A No, sir.

Q Then, how do you know that the statements on the yellow sheets which were handed to you by Mr. George are incorrect?

20 MR. GEORGE. He has not testified substantially to that. The question was did Miss Clawans submit a statement to him.

THE COURT. I will admit the question.

Q If you have no recollection as to what occurred in the police station on March 3rd, how can you say that the statements upon the paper referred to are false?

A I didn't see the statements that are on that paper.

30 Q What do you mean, you did not read the paper?

A I read the paper, but I did not hear the things done.

Q Did you hear any of it?

A It has been so long ago.

Q You do not remember what you did hear on March 3, 1924?

A No, sir.

Q And you do not remember what you saw on March 3rd, 1924?

40 A No.

Plaintiff's Witness, Fred Ellis, Direct

FRED ELLIS, sworn in behalf of the plaintiff.

DIRECT EXAMINATION by Mr. Weinberg.

Q How old are you?

A Twenty.

Q Where do you live?

A 37 New street, Belleville.

10

Q How long have you lived there?

A The last two months.

Q Where were you living in March, 1924?

A 40 New street, Belleville.

Q What was your occupation at that time?

A Working in the garage at the Washington Sales & Service Company in Belleville.

Q What was your occupation there?

A Everything.

Q Including driving?

20

A Yes, sir.

Q How long were you working there before March 3rd, 1924?

A I should judge about a year.

ADJURNED to Friday, November 5, 1926,
at ten o'clock, A. M.

30

40

Plaintiff's Witness, Fred Ellis, Direct

SECOND DAY

Friday, November 5, 1926.

Continued pursuant to adjournment.
Present, counsel as before stated.

10

FRED ELLIS resumes the stand.

DIRECT EXAMINATION (continued) by Mr. Weinberg.

Q In March, 1924, were you a licensed auto driver?

A Yes, sir.

Q On the 3rd of March, 1924, did you have occasion to pick up Miss Clawans, the plaintiff in this case, at any point in this city?

20

A Yes, sir.

Q Where did you meet her?

A At her office.

Q Where was that?

A In the Proctor Building.

Q By whose orders did you go there?

A She telephoned up to the store, to the showroom.

Q Did you receive a telephone call?

A No, it was given to me.

30

Q Someone in your place received a telephone call and gave you the order to go for her?

A Yes.

Q Did you take the car out of the warerooms?

A Yes.

Q Before taking the car out of the warerooms did you look at it?

A Yes.

Q Did you have your lights burning?

A Yes, sir.

40

Q Which lights?

Plaintiff's Witness, Fred Ellis, Direct

A Front and rear, both.

Q How do you know your rear lights were burning?

A I looked at them before I went out.

Q When you saw your rear lights were burning, did you notice whether you had a rear and front plate?

10

A I put them on just before I pulled out of the garage.

Q Did you have rear and front plates on your automobile when you left the garage?

A Yes, sir.

Q What time was that?

A I judge around quarter to nine.

Q You went to her office in the Proctor Building?

A Yes, sir.

20

Q Did you have to wait for her?

A I waited from fifteen to twenty minutes.

Q Then you left there. Who was in the automobile at that time?

A Miss Clawans and her sister.

Q Was Miss Clawans sister there at the time when you got there?

A Yes, sir.

Q Or did you have to wait for her?

A She was there.

30

Q After leaving the Proctor Building where did you drive Miss Clawans?

A Up through the Clinton Hill section somewhere, I forget the name of the street.

Q I didn't quite hear you.

A I drove her up to the Clinton Hill section somewhere. I don't remember the name of the street.

Q Did you make a stop there?

A Yes, sir.

Q What sort of a place was it where you stopped?

40

Plaintiff's Witness, Fred Ellis, Direct

- A A two-family apartment, I think it was.
 Q An apartment house?
 A Yes, sir.
 Q How long did you wait there?
 A A few minutes.
 10 Q Did Miss Clawans get out?
 A Yes, sir.
 Q After you left the apartment house where did you go?
 A Down to the Riviera Hotel.
 Q Did Miss Clawans get out there, or both the girls?
 A Both of them.
 Q How long were they gone?
 A About ten or fifteen minutes.
 20 Q Then when they got back in the automobile where did they go?
 A The Robert Treat Hotel.
 Q Did you go there, too?
 A I waited outside.
 Q How long were they in the Robert Treat Hotel?
 A I judge about the same length of time.
 Q About what?
 A Ten to fifteen minutes.
 30 Q Then, after they left the Robert Treat Hotel where did they go?
 A I think we were going to the Hotel Tremont on Fulton street, I don't know for sure.
 Q You said you were going there?
 A Yes, sir.
 Q You did not get there?
 A No, sir.
 Q Something happened shortly after you left the Robert Treat?
 A Yes, sir.
 40 Q Tell us what did happen?

Plaintiff's Witness, Fred Ellis, Direct

- A I was pulling in Fulton street and I was coming to a stop and Officer O'Connor walked up to us and asked me about the one plate missing on the car, and I didn't believe it at first and I got out and looked, so, I looked at it and found one plate was off, and he asked me for my driver's license, and I showed it to him. 10
 Q Did he ask you where you worked?
 A What did you say?
 Q Did he ask you where you worked?
 A Yes, sir.
 Q Did he take your name and address?
 A No, not just then.
 Q Well, what else, if anything, happened?
 A I just cannot remember what was said now.
 Q You cannot remember?
 A I just can't remember what was said. 20
 Q You don't remember what was said by either one?
 A No, not very good.
 Q What happened then, after that little occurrence on Broad street?
 A Well, there were a few words said and he asked me to drive up to the second precinct.
 Q Did he get in the car?
 A Yes, sir.
 30 Q What part of the car did he sit in?
 A The front.
 Q Two girls were in there?
 A Yes, sir.
 Q Then, you went to the second precinct?
 A Yes, sir.
 Q You got out?
 A Yes, sir.
 Q The officer and the two girls got out?
 A Yes, sir.
 40 Q Where did you go?

Plaintiff's Witness, Fred Ellis, Direct

- A Into the second precinct station house.
 Q What happened in the station house?
 A Officer O'Connor wanted to place a charge against me for driving with one plate and Miss Clawans said she would take all the blame, so they pushed the charge against her.
 10 Q She said they should put the charge against her?
 A Yes, and she would take all the blame.
 Q Whom did she say that to?
 A The officer at the desk, I think.
 Q What did anybody else say there at that time?
 A I just can't remember that either.
 Q Do you remember what Officer O'Connor said about the car?
 A There was something passed about how did
 20 they know whether it was a stolen car or not.
 Q Who passed that remark?
 A I just couldn't say who passed it.
 Q Weren't you looking at the man who said it?
 A No.
 Q Was it an officer?
 A That's all that was in there, was officers.
 Q What is it?
 A That's all who were in there, was officers.
 30 Q So it must have been an officer who said that?
 A Yes, sir.
 Q You do not know who it was?
 A No, sir.
 Q Did you know at the time?
 A No, sir.
 Q Where were you standing at that time?
 A Right against the railing they have there.
 Q How far away was the man who made that
 40 remark from you?

Plaintiff's Witness, Fred Ellis, Direct

- A I just couldn't tell you.
 Q Why not? About how far away from you was the man who said something about a stolen car?
 MR. GEORGE. I object unless some identity is shown. 10
 THE COURT. Sustain the objection.
 Plaintiff's counsel prays an exception to this ruling of the court.
 Exception noted as ground appeal.
 MR. WEINBERG. This is for the purpose of identifying the man.
 THE COURT. Read that question, please. (Question read.) 20
 MR. GEORGE. I object on the ground that it does not make any difference how near or how far he was away from him. The fact the boy testified that he does not know who the man is, cannot bring that person up further to him by examination and thus prove identification of the man. Not knowing who it was, he certainly cannot bind these defendants.
 (Argument.)
 THE COURT. I will admit that question and you may have an exception. 30
 Defendant's counsel prays an exception to this ruling of the court.
 Exception noted as ground of appeal.
 Q How near to you was the officer when he made that remark?
 A I just couldn't say because I don't know who the officer was.
 Q I am not asking you that. I am asking you 40

Plaintiff's Witness, Fred Ellis, Direct

where he was in relation to you; was he next to you, twenty feet away, or where was the officer who made that remark? You did not notice, did you?

A No, I did not.

10 Q You weren't interested enough to notice that?

MR. GEORGE. I object.

MR. WEINBERG. Withdraw the question.

Q What happened? If you do not remember what was said what did you see done there?

A That I can't remember either.

Q Do you remember what happened to you?

20 MR. GEORGE. I object as incompetent, irrelevant and immaterial; he is not the plaintiff here.

THE COURT. Sustain the objection.

Q Did you leave the police station before Miss Clawans?

A Yes, sir.

Q And where did you go?

A I went back up to Belleville to get another set of plates.

30 Q So, when you left there Miss Clawans was still in the station house?

A Yes, sir.

Q Up to the time you left you do not remember what was said or what happened there?

A No, sir.

*Plaintiff's Witness, Fred Ellis, Cross**CROSS EXAMINATION by Mr. George.*

Q You were a witness for Miss Clawans at the previous trial before his Honor Judge Dungan, in February, 1925?

A Yes, sir.

Q You were in court the three days during which 10 that case was being tried?

A Yes, sir.

Q You were here yesterday, too, weren't you?

A Yes.

Q You hear something said by Miss Clawans about having suffered an assault at the hands of one of the defendants as the result of which she had a bloody nose. Did you hear her testify to that yesterday?

A Yes, sir. 20

Q Did you pick up Miss Clawans in response to the telephone call at the Proctor Theatre Building where she had her office?

A Yes, sir.

Q On the night of this controversy did she have a conversation with you or you with her concerning a bloody nose.?

MR. WEINBERG. I object as not cross examination.

30 MR. GEORGE. I will withdraw the question, but I ask leave of the court to recall Miss Clawans for the purpose of asking another question, as I came in an hour and ten minutes after the case started.

THE COURT. For what purpose do you want to call Miss Clawans?

MR. GEORGE. For contradiction of testimony ,to lay a foundation. 40

Plaintiff's Witness, Fred Ellis, Cross

THE COURT. You do not have to, she is the plaintiff in this case.

MR. GEORGE. I want to lay a foundation to call this witness as my own.

(Argument.)

10 Q At the time you were stopped by the police officer was Officer O'Connor abusive?

A No, sir.

Q Was he calm?

A Very calm.

Q Was there anybody in that party abusive or excited?

MR. WEINBERG. I object.

MR. GEORGE. Withdraw the question.

20 Q What was the conduct of Miss Clawans at the time the officer stopped you and complained about your not having a rear license plate on the car?

MR. WEINBERG. I object to the question. The only thing of interest here is the conduct of the defendant. This witness said that nothing hapened up there that he can remember.

THE COURT. I will admit the question.

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

30 Q (Question read.)

A I wouldn't say for sure, I think she got "Up in the air" over it.

MR. WEINBERG. I ask that that be stricken out.

MR. GEORGE. I will consent, if there is any doubt in counsel's mind as to what "Up in the air" means. I will consent to it being stricken out.

40

Plaintiff's Witness, Fred Ellis, Cross

Q Just tell us what you mean by the conduct you just tried to ascribe on the part of Miss Clawans. Just what did she do or how did she act?

A I can't explain it the way—that is the only way I can bring it out.

Q What is the only way?

A She "got up in the air" about being stopped. 10

Q You mean she was calm or went up in an areoplane, or what?

MR. WEINBERG. I object as "Up in the air" is a conclusion and means nothing.

(Argument.)

Q What do you mean by "Up in the air"?

A She was not calm at all.

Q She was not calm. Was she excited?

A Rather. 20

Q Talked fast?

A Yes, sir.

Q And loud?

A Yes, sir, loud.

Q What did she say about the conduct of the officer?

MR. WEINBERG. I make the same objection and pray for an exception.

THE COURT. At that time?

30 Q At the time of the original apprehension when she was stopped, what did Miss Clawans say to or about the officer; I am not speaking of O'Connor now.

A She said something about she owned the car.

Q She also told him that he ought to be down in State's Prison?

MR. WEINBERG. I object.

THE COURT. Wait until the question is 40

Plaintiff's Witness, Fred Ellis, Cross

concluded in the first place. The stenographer cannot take down two conversations at one time.

Q Didn't you testify at the previous trial?

10 MR. WEINBERG. Pardon me, but as far as counsel has gone doesn't it indicate now that that question is going to be improper, taking into consideration so much of the question as counsel has already placed before the jury?

THE COURT. I cannot tell, Mr. Weinberg, I am not a mind reader.

Q Isn't it a fact, Fred, after all these interruptions that after Officer O'Connor had stopped you for driving the automobile without a rear plate and Miss Clawans had gone "up in the air", didn't she also say to O'Connor, "You ought to be down in Trenton with the rest of the warehouse robbers"?

MR. WEINBERG. I object as not cross examination and wholly immaterial.

Q Didn't she say that to Mr. O'Connor?

A On the way up to the police station.

Q Did she say that to Officer O'Connor while she was on the way to the police station and still "Up in the air"?

30 A Yes, sir.

Q And while she was still talking loudly to Officer O'Connor?

A Yes, sir.

Q It was on the way to the police station that she said O'Connor ought to be in Trenton with the rest of the warehouse robbers?

A Yes, sir.

Q Did O'Connor say anything in response to that very pleasant remark?

40 A He didn't say anything all the way up.

*Plaintiff's Witness, Fred Ellis, Redirect**REDIRECT EXAMINATION by Mr. Weinberg.*

Q You were asked whether you did not testify in behalf of Miss Clawans in the action brought against her by Officer O'Connor and you said "Yes"?

A Yes, sir.

Q You had previously though given your testimony for the plaintiff O'Connor in that case, hadn't you?

MR. GEORGE. I object to the question as improper redirect and on the further ground this witness is the plaintiff's and not ours.

MR. WEINBERG. You opened the door to to it.

THE COURT. Sustain the objection, because I do not think it is material; I do not thing it makes any difference.

Q Have you been speaking to anybody connected with the defense?

MR. GEORGE. I object as immaterial, irrelevant and highly incompetent inasmuch as this witness is a witness for the plaintiff.
(Argument.)

MR. GEORGE. I will withdraw the objection if it will save time.

Q Have you discussed this matter with anybody connected with the defense?

A No, sir.

Q At no time?

A At no time.

Q Not before the O'Connor trial either?

A No, sir.

Q Are you sure about that?

A Positive.

Q You have been subpoenaed by the O'Connor

40

Plaintiff' Witness, Fred Ellis, Recross

people and told them that Miss Clawans had also subpoenaed you, did you?

A At the last case?

Q You told that to somebody for the defense?

A Yes, sir.

10 Q That she said if you did not come to court she would send a patrol wagon after you, is that right?

A Yes, sir.

RECROSS EXAMINATION by Mr. George.

Q Yesterday, after leaving the Court House you did come up to me and ask me if it would not be possible for you to ask for your day's pay in court, because you had just gotten married?

A Yes, sir.

20 Q Was there anything else you said to me?

A No, sir.

Q I suggested that you see Miss Clawans?

A Yes, sir.

Q Did you say anything else?

A No.

REDIRECT EXAMINATION by Mr. Weinberg.

30 Q Why didn't you tell me when I asked you if you spoke to anybody for the defense that you said what Mr. George said you told him?

A It just slipped my mind.

DELIA JACOBY, sworn in behalf of the plaintiff.

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A 45 Rose street.

Q Where did you live on the 3rd of March, 1924?

A The same place.

40

Q What was your occupation on that day?

Plaintiffs' Witness, Delia Jacoby, Direct

A I am cleaning offices in the Proctor Building.

Q You clean offices in the Proctor Building?

A Yes, sir.

Q Do you know Miss Clawans?

A Yes, by cleaning her office.

Q Did you see her on the night of March 3rd, 1924?

10

A Yes, sir.

Q Did you see her leaving the office that night?

A Yes, sir.

Q What would you say was her appearance when she left that night?

A She was all right when I saw her going out.

Q What time was it that she went out?

A About nine o'clock.

Q Whom did she go out with?

A This young man, this young boy, and her sister Ethel.

20

Q When did you next see her?

A Tuesday night.

Q What was her condition when you saw her Tuesday night?

A I saw her sitting on a chair there when I went to clean the office and she was in a very nervous condition, crying.

Q Did you notice her appearance?

A I noticed her nose was all red and she had a handkerchief there with blood on, on her desk, that's all I seen.

30

Q Did you see her there during the day on Tuesday?

A I am not there during the day.

Q What are your hours?

A From half-past five until nine o'clock.

Q Did you see her on Wednesday?

A No.

Q Did you see her on Thursday?

40

Plaintiffs' Witness, Delia Jacoby, Cross

- A No, that's all I had seen her.
 Q You only saw her Tuesday night?
 A Yes, sir.
 Q Did you quit working after that?
 A No, I was working there nights.
 Q Did you ever see her after that time?
 10 A Thursday evening, as I was cleaning her office.
 Q How was she then?
 A Very nervous and sick and complaining of a headache.
 Q Was her condition then any different from what it was on Monday and before Monday?
 A No, she looked just the same.
 Q As when?
 A Sitting on the chair, nervous.
 20 Q Before Monday was she nervous as she was when you saw her after Monday?
 A No, sir.
 Q Was her nose red before Monday?
 A Before Monday I saw her.
 Q What question are you answering, whether you noticed her? I said was her nose red before Monday?
 A No.
 Q Do you still work in the Proctor Building?
 30 A Yes, sir.
 Q Are her offices still there?
 A No, she isn't living there, she moved out last April.

CROSS EXAMINATION by Mr. George.

- Q This period that you have been speaking about as to when you saw Miss Clawans in the place with the red nose that was in the winter time, wasn't it?
 40 A In March, yes.

Plaintiff's Witness, Helen Clawans, Direct

- Q On several occasions after that period that you started to tell us about you saw the red nose?
 A I saw her nose was red, yes.
 Q It was pretty cold, and that may have been caused by tight shoes or indigestion or a cold, so far as you know?
 10 A I don't know anything about that.
 Q You know that you can get a red nose from indigestion?
 A I didn't get in no conversation with Miss Clawans to ask her where she got her red nose from; she was sick and sat in a chair.
 Q She did not tell you how she got her red nose?
 A No, I didn't get in a conversation with her; I am attending to my work, and I only saw her sitting on a chair.
 20 Q You were not in court, in the Supreme Court a year or so ago when we were trying the other case?
 A No, sir, this is the first time I was ever here.
 HELEN CLAWANS, sworn in behalf of plaintiff.
DIRECT EXAMINATION by Mr. Weinberg.
 Q You are a sister of Lillian Clawans, the plaintiff in this case?
 A I am.
 30 Q What is your place of residence and occupation?
 A I am living at 322 Clinton avenue and work for the United States Government.
 Q (By Mr. George.) I cannot hear you.
 A I live at 322 Clinton avenue and work for the United States Government in Trenton, New Jersey.
 Q (By Mr. Weinberg.) Do you stay in Trenton?
 A No, I commute.
 Q You commute?
 40

Plaintiff's Witness, Helen Clawans, Direct

- A Yes, sir.
- Q You are not the sister who was out with Lillian on the night of this trouble, are you?
- A No, I am not.
- Q When before this trouble did you see Lillian?
- A I saw her in between 9:30 and 10 P. M. on
10 March 3rd.
- Q Where?
- A At our house, 38 Tillinghast street.
- Q You just had moved that day?
- A We had just moved that day, yes, sir.
- Q She came to the house with whom?
- A With my other sister and Freddie Ellis.
- Q That was your sister Helen and Freddie Ellis?
- A Sister Ethel and Freddie Ellis.
- Q That was about half-past nine or ten o'clock?
- A Half-past nine.
- 20 Q Did you see her that night?
- A Yes, sir, I did.
- Q Did you notice what her condition was?
- A I did.
- Q Was was it?
- A She was in a very jolly mood and kidding and we talked about moving, and my mother told her she had better—
- 30 MR. GEORGE. I object to the conversation.
- Q She did not stay there that night?
Objected to.
- Q What was her physical condition so far as you observed it at that time?
- A Well, just like always is.
- Q When did you see her after that?
- A I saw her the next night; that was on Tuesday night.
- Q Where did you see her?
- A In her office.
- 40

Plaintiff's Witness, Helen Clawans, Direct

- Q On Market street?
- A On Market street, yes, sir.
- Q What time the next day?
- A I should say about six o'clock, or seven, or something like that.
- Q What was her condition then?
- A Her nose was all swollen and red, and she
10 was in a terribly upset condition.
- Q How long did that condition last as far as you observed it?
- A As far as her upset condition, it is up to the present day.
- Q What part of that condition is up to the present day?
- A Well, she is terribly nervous now, and she is subject to fainting spells and her health in general has been terribly run down.
- 20 Q Was she that way before that Monday?
- A No, she was not.
- Q How long did this swollen nose last?
- A It lasted all week.
- Q All week?
- A All week.
- Q Your sister Ethel was home that night, wasn't she?
- A Yes, she was at the house that night.
- Q She is the girl who works in Washington?
- A Yes, sir.
- 30 Q Do you know whether she came to the city this morning?
- A She was expected in the city this morning.
- Q Have you seen her?
- A No.
- Q She is not here as far as you know?
- A As far as I know.
- 40

Plaintiff's Witness, Helen Clawans, Cross

CROSS EXAMINATION by Mr. George.

Q Mr. Weinberg called out the name of Ethel Clawans and you responded. Are you Ethel?

A No, I am not.

10 Q Why did you respond when the name Ethel was called?

A I didn't hear the name of Ethel.

Q What did you hear, just "Clawans"?

A I heard the name of Clawans.

Q How did you know that Mr. Weinberg did not mean your sister Lillian?

A Some one in back there said, "You were called."

Q I beg your pardon?

A Someone in back of me said that I was called.

20 Q That is your explanation, is it?

A Yes, sir.

Q By the way, this is your first appearance in either this or the other case?

A Yes, sir.

Q You never went before Chief Long or Deputy Chief McRell or before the Supreme Court on those three days in which we tried the case in which Officer O'Connor was the plaintiff against your sister, you never made an appearance?

30 MR. WEINBERG. I object as immaterial.

THE COURT. Sustain the objection.

Q Your sister was at the office the day of this occurrence, wasn't she?

A Yes, sir.

Q The office was open, wasn't it?

A That evening, yes.

Q She had been there that day, hadn't she?

A I went down to Trenton in the morning; I

40

Plaintiff's Witness, Lillian Clawans, Cross

don't know whether she had been there that day or not.

PLAINTIFF RESTS.

MR. GEORGE. I ask permission to recall Miss Lillian Clawans for further cross examination on one or two questions. 10

MR. WEINBERG. No objection.

LILLIAN CLAWANS, plaintiff, recalled.

CROSS EXAMINATION by Mr. George.

Q Did your nose bleed before you met Mr. O'Connor for the first time, on that memorable

Q Are you sure about that?

A Doubly sure.

Q Doubly sure? 20

A Yes.

Q Is Ethel here this morning?

A I don't see her today. I got a letter from her last night; I have it here.

Q That she would be here?

A That she is ill and would make every effort to be here.

Q She was not at the last trial, either, was she?

MR. WEINBERG. I object as immaterial and irrelevant. 30

THE COURT. Sustain the objection.

Q She knew your case was on for trial?

MR. WEINBERG. I object.

Q Wait a minute.

THE COURT. Please wait until the question is finished before you make an objection.

MR. GEORGE. That is all. 40

Plaintiff Rests

PLAINTIFF RESTS

MR. GEORGE. I respectfully move for a nonsuit:

10 First, in behalf of the defendant William J. O'Connor on the ground as noticed in the answer set up by us in behalf of O'Connor, the plaintiff was apprised of the fact that before or at the trial we would move for the dismissal of the complaint upon the ground that the allegations set forth in the complaint as to O'Connor was res adjudicata.

MR. GEORGE. So, therefore. I ask for a (Argument.)

20 MR. GEORGE. So, therefore, I ask for a nonsuit so far as the defendant William J. O'Connor is concerned on the ground of res adjudicata and for the purposes of the record I ask for a nonsuit in behalf of the other defendants on the ground that the facts set forth by the plaintiff do not make out a cause of action as to them.

(Argument.)

30 THE COURT. As far as the plaintiff's claim against O'Connor is concerned I will overrule your motion. I will say, however, that I agree with you. In fact, it is my opinion that if this action was intended to be commenced against the defendant O'Connor it should have been put in the form of a counter-claim in the previous action. The situation that developed is exactly as counsel described; this case was tried and I presume all of the details of it were exhaustively brought to light before that jury. We are practically going into the same thing
40 over again, only the defendant in the last case

Defendants' Witness, C. C. Giffoniello, Direct

is the plaintiff in this case. It is very much like one man saying to another, "You are a robber", and the second one says, "You are a robber," and the first one bringing an action and after the disposition of that action the second one brings an action, so that the court and jury have two actions to try instead of one, but I do not know just how legally I can give you relief. 10

MR. GEORGE. May I ask that your Honor reserve your decision on the matter until the close of the entire case in order that I may then renew my motion if I have introduced evidence which will be conclusive as to the facts adjudicated in that case as well as in this case?

THE COURT. I suppose that will be in the form of a motion for the direction of a verdict? 20

MR. GEORGE. Yes. I will not press my motion at this time and I ask leave to make a motion for the direction of a verdict?

CHARLES C. GIFFONIELLO sworn in behalf of the defendants.

DIRECT EXAMINATION by Mr. George.

Q You are a member of the Bar of this State, aren't you? 30

A I am.

Q And attorney of record for Miss Clawans?

A Until shortly.

Q Aren't you attorney of record now?

A No, Mr. Weinberg has been substituted.

Q Has there been a substitution of attorneys?

A Yes, sir.

Q When?

A I don't recall; a short time ago. 40

Defendant's Witness, Charles C. Giffoniello, Direct

Q Don't you know when he was substituted?

A There was a substitution and it was filed, but I don't recall the date.

Q Can you tell from your files when it was?

A No, I cannot; I haven't my files.

10 Q If you were substituted and got out of the case what were you doing here yesterday?

MR. WEINBERG. I object as immaterial and impolite.

MR. GEORGE. Withdraw the question.

Q You were attorney for Miss Clawans in the prosecution of her appeal before the Court of Errors and Appeals?

A I was.

20 MR. WEINBERG. I object as incompetent, irrelevant, and immaterial.

THE COURT. I will admit it.

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

Exception noted as ground of appeal.

30 Q The book which now rests before you and which was in the possession of the substituted attorney, Mr. Weinberg, was a book prepared by you, wasn't it, as the state of the case to be filed with the Court of Errors and Appeals as required by law, isn't that so?

A Yes, sir.

Q That contains a true and complete record of the proceedings, doesn't it?

A As I was able to gather, yes, sir.

Q It was upon this state of the case that you and I both argued the case before the Court of Errors and Appeals?

A Yes, sir.

40 MR. GEORGE. I offer in evidence the state

Defendant's Witness, Charles C. Giffoniello, Direct

of the case in the action of William J. O'Connor vs. Lillian Clawans.

MR. WEINBERG. I object. I do not know what the theory of that is. If there is any particular part of the testimony in that book which is sought to be used to contradict any witness it should be used as the testimony of such witness, but how can you put in the state of the case of another case in this action? What is the purpose of getting in a lot of testimony taken at another trial? 10

THE COURT. That is one of the evil results of bringing this kind of an action we have indicated.

(Argument.)

20 THE COURT. Sustain the objection.

MR. GEORGE. The record is offered for the purpose of contradicting Miss Clawans testimony, in other words, if we can show that in a previous proceedings she testified under oath contrary to the manner in which she testified here, when her own counsel says that is a true record of her testimony—

30 THE COURT. You are not only introducing her testimony but all the other testimony.

MR. GEORGE. I ask the court to take into consideration only her testimony and the other witnesses testimony which we have attacked.

MR. WEINBERG. I object to that.

40 THE COURT. I would be inclined, if there was contradictory testimony in that record of Miss Clawans to get you to read that to the jury, it has been indicated by the testimony of

Defendant's Witness, Fred Ellis, Direct

her previous counsel that that is a true copy of the testimony given at the trial, but I do not think we ought to admit the whole record.

10 I will deny the offer of the whole record, and secondly I will say the last request you made is a proper one; that is, rather than putting in the whole record, if you want to read in that part of her testimony taken at the last trial which contradicts her statement made on the witness stand in this case I think you have a right to do it.

MR. WEINBERG. I have no objection to that at all.

FRED ELLIS recalled in behalf of the defendants.

20 *DIRECT EXAMINATION by Mr. George.*

Q At the time you received the telephone call from Miss Clawans to pick her up at her office, did you talk with her?

A Yes, sir.

Q Or, rather, when you came over to her office, you saw her there, didn't you?

A Yes, sir.

Q What was her condition at that time?

A Very nervous.

30 Q Was that before you met Officer O'Connor?

A Before we left the office.

Q That was before Officer O'Connor stopped you and Miss Clawans on Fulton street?

A Yes.

Q She was very nervous?

A Yes, sir.

Q Did you notice anything unusual about her nose?

40 A She was telling me she lost a check book with all the stubs in for last year's checks, or something.

Defendant's Witness, Fred Ellis, Cross

Q She lost what?

A She lost a check book with all the stubs for last year's checks and she wouldn't be able to keep track of things by the checks that went out, and she had a nose bleed over it.

Q Did you see her handkerchief?

A Yes, sir. 10

Q What was its condition?

A All red.

Q Indicating to you there was blood on it?

A Yes, sir.

Q That was before you left the place?

A Yes, sir.

CROSS EXAMINATION by Mr. Weinberg.

Q You remember, Freddie, do you, just what the conversation was before you went out on this ride, 20 do you remember her conversation and remember what she said?

A Only about the check book, having lost it.

Q You do not remember anything else that was said after you got in trouble on Broad street or Ful-ton street, do you?

A No, sir.

Q Is there any reason why you remember this particular thing over the other occurrence

A No particular reason. 30

Q Did you testify in the previous trial that she told you she had a nose bleed? You were examined on that subject by Mr. George. Did you say anything at that time that she said she had a nose bleed?

MR. GEORGE. I object as long as counsel wishes to be technical, I believe the form of the question is improper and the exact question should be asked. 40

Defendant's Witness, Fred Ellis, Redirect

MR. WEINBERG. Withdraw the question. I will ask this.

Q Just state again to the jury what Miss Clawans said with respect to the blood on her nose?

A That she lost her check book with the stubs in and she would not be able to keep track of the checks that went out.

Q Did you see her nose bleedin?

Q Did you see her nose bleeding?
me about it.

Q Did she tell you her nose was bleeding because she lost the checks book?

A Yes, sir, she said she was excited over it.

Q That what made her nose bleed, the loss of her check book?

A Yes, sir.

Q That's what made her nose bleed?

A Yes, sir.

Q You did not see her nose bleed?

A No.

REDIRECT EXAMINATION by Mr. George.

Q. You have no interest in this case, one way or the other, have you?

A No, sir.

30 WILLIAM J. O'CONNOR, one of the defendants, sworn in his own behalf.

DIRECT EXAMINATION by Mr. George.

Q You are the officer in question, aren't you?

A I am.

Q You were doing traffic duty on the night of March 4th, 1924?

A I was.

40 Q Noticing the absence of the tail light on the automobile you blew your whistle and stopped the

Defendant's Witness, William J. O'Connor, Direct

car and went over and had a conversation with the driver?

A The rear license plate, not the tail light.

Q You were in uniform at the time?

A Yes, sir, I was.

Q This was in the performance of your duty?

A I was.

Q You went over to the car and talked with Ellis?

A I did.

Q And called his attention to the absence of the license plate?

A Yes, sir.

Q What happened?

A I inquired for his driver's and owner's license, and I was interrupted by the young lady.

Q Who was that young lady who interrupted you?

A Miss Lillian Clawans. She said, "How dare you stop us?" I looked at her and inquired of the chauffeur to produce his owner's and driver's license, and again she said, "I am a lady lawyer, you have no business stopping me, you crook, burglar and warehouse robber. You ought to be in Trenton with the rest of the thieves." I turned to her and said, "It has nothing to do with you," and she kept up her insinuations and I ordered the chauffeur to go to the second precinct.

Q Did you get in the car?

A I did.

Q Her sister Ethel was in the car?

A Yes, sir.

Q Did they have anything to say?

A That's all, the two of them abused me all the way up to the second precinct.

Q While you were at the second precinct did Miss

Defendant's Witness, William J. O'Connor, Direct

Clawans say anything about where you were to go besides Trenton, on that particular trip?

MR. WEINBERG. I object on the ground it is wholly immaterial.

THE COURT. I will admit it.

10 A She insisted on going to headquarters and I told her I was attached to the second precinct and the violation was committed in that precinct and she had to go to the second precinct.

Q You were doing the arresting and not she? It was you who determined where she would go?

A I did.

Q In the performance of your duty?

A I did.

20 Q When you got to the station house who was at the desk?

A Lieutenant Ryan.

Q He is in court now?

A He is.

Q It was then about what time?

A 11:50.

Q Is that when you have a shift, that is a lot of cops come in off duty, and others go out at that time?

A Yes, many go out at 11:45.

30 Q Some were in the house and ready to go out, and others were on reserve duty?

A Yes sir.

Q There were quite a number there at the time?

A Yes, sir.

Q Officer Birch was there at the time?

A He was. About ten or twelve were there.

Q You came in with this young lady?

A I came in with Fred Ellis and she walked in behind me with her sister.

Q Who was your prisoner?

40 A Fred Ellis.

Defendant's Witness, William J. O'Connor, Direct

Q Did Miss Clawans say anything about it?

A She insisted on being slated on the complaint on account of being the owner of the car.

Q Did she assume full responsibility?

A She did.

Q Didn't she say, "I assume full responsibility?"

A She did.

Q Did Lieutenant Ryan proceed to take a record of the arrest?

A He did.

Q Then, what transpired?

A On saying that she was the owner of the car we inquired for her bill of sale and owner's license. I had noticed before leaving there that the car contained one dealer's plate.

Q Did Freddie Ellis have the owner's license?

A No.

Q Did he have the driver's license?

A Yes.

Q Did Miss Clawans have them?

A Neither.

Q What happened in the police station?

A Upon her insisting upon being slated Lieutenant Ryan slated her.

Q You mean he made a record on the blotter about the circumstances of the arrest?

A Yes, and on inquiring for her name and address she proceeded to present card and laid it on the desk and Lieutenant Ryan inquired for her own address, and she said, "It's none of your business," and Lieutenant Ryan slated her on her address.

Q What else transpired?

A She kept up her abuse, saying that I was drunk and I would be dropped.

Q What else did she say?

A She turned around and said, "You are all drunk."

Defendant's Witness, William J. O'Connor, Direct

Q Did she say anything about having you examined by a doctor?

A Yes.

Q Who to?

A To the Lieutenant and loud enough for all of us to hear.

10 Q As a matter of fact everything she said was loud?

A Yes, quite loud.

Q She was not calm?

A No.

Q After she suggested that you were all drunk, did she say anything about your municipal duties?

A Yes, she said I was exceeding my municipal duties.

Q That brought out a laugh, didn't it?

20 A It did.

Q The boys in the station house had a laugh on that when she suggested that she did not know your municipal duties?

A Yes, sir.

Q Go on. What happened after the men in the house laughed when Miss Clawans made some statement about municipal duties?

A Then she laughed herself, and said, "You fellows are all drunk," and she ran to the telephone; for what reason, I don't know.

30 Q Was there any conversation about a physical examination as to whether the men in the house were drunk?

A Yes, she told the Lieutenant we should be examined by the doctor.

Q What did he say?

A He didn't think so; I really don't know what he said.

Q Were you drunk?

40 A No.

Defendant's Witness, William J. O'Connor, Direct

Q Do you drink?

A No, sir.

Q After you left the police station with her she was ordered by Lieutenant Ryan to go to headquarters?

A Yes. I did not accompany her to headquarters. 10

Q Did you accompany her out of the police station?

A I did not, I never left the police room.

Q Did you push her hat down?

A No.

Q Or push her on the nose?

A No.

Q Causing her nose to bleed?

A No.

Q Did you say that the car was stolen and she stole it? 20

A No, I said it is probably a stolen car, with no identification of it.

Q Did you accuse her of it?

A No, sir.

Q Did you abuse her in any way?

A I never spoke to her.

Q When is the last you saw of her?

A When she left the police station.

Q To go to police headquarters? 30

A Yes, sir.

Q That is the last you saw of her that night?

A No, about an hour later I went down to police headquarters to be looked over, as she said I was drunk.

Q You appeared before one your superiors?

A Lieutenant Owens.

Q You responded to her complaint she lodged against you with Chief Long

A Chief McRell. 40

Defendant's Witness, William J. O'Connor, Direct

Q As a matter of fact, you and the other officers all appeared before the Chief and you were all exonerated?

A Yes, sir.

MR. WEINBERG. I object

10 THE COURT. The question has been answered.

A We were.

Q Prior to the institution of this suit was there ever a criminal complaint lodged against you?

A No, sir.

MR. WEINBERG. I object.

Q By Miss Clawans upon her charge you assaulted her?

20 A No.

Q Did you appear before Judge Boettner?

A Yes, sir, on the complaint I had lodged against her.

Q That was for not having proper registration?

A Being the owner of said automobile and not having it registered.

Q She was represented by former Assistant Prosecutor John A. Bernhard?

A Yes sir.

30 Q And pleaded guilty and was fined \$5 on the complaint for which you first intercepted her; that is, not having proper registration?

MR. WEINBERG. I object.

THE COURT. Sustain the objection.

CROSS EXAMINATION by Mr. Weinberg.

40 Q This slanderous language, this lady used towards you, you have told us about on the night in question, brought no reply from you at all?

Defendant's Witness, William J. O'Connor, Cross

A Positively not.

Q This language, whatever it was, was used on the way to the second precinct police station?

A On the way and also there.

Q It was used also in the police station?

A Yes, sir.

Q Was the allegation as to the burglars and crooks made with respect to you or with respect to other officers in the precinct? 10

A Me, on the way to the precinct.

Q In the station house?

A Lord knows who.

Q In the station house how did you know it was meant for you?

A I surmised, being a police officer.

Q You surmised the language she spoke about "crooks" was for you? 20

A On account of me making the arrest.

Q None of the other officers took it up as being meant for them?

A Not that I know of?

Q How many officers were in the assembly room at the time of this occurrence?

A About ten or fifteen.

Q So, whatever she said to you was heard by all these people in the place?

A It was. 30

Q In the second precinct that night do you recall these questions being put to you by Colonel Vickers, who represented Miss Clawans and your answers, page 24, line 18. "Did you say to this lady that this was a stolen car—?"

A I did not.

Q Wait a moment. This is what your answer was, not the question. "Nothing of the kind?" Your answer: "No, sir, I said probably it is a stolen car." That is what you say, "No, sir?" 40

Defendant's Witness, William J. O'Connor, Cross

- A I said to the Lieutenant, yes.
 Q To the lady?
 A No, not to the lady.
 Q The question directde to you, "Did you say to this lady this was a stolen car?" And you said, "I did not," and then the question is followed by "Nothing of the kind?" and you say, "No, sir. I said probably it is a stolen car." Then, the next question, "You mean you told this young lady who said she would take full responsibility for this that this probably was a stolen car. You told the young lady that?" And you said, "I did, at the precinct, yes sir." That is true, isn't it?
 A Yes sir.
 Q That at the precinct you told this young lady who took the full responsibility for this affair that this was probably a stolen car. That is correct?
 A It is.
 Q Now, tell us what was the understanding concerning a certain bottle of whiskey, or what was that with respect to whiskey in that car?
 A Why, after the car was in our custody we went out to examine the car and we found a bottle under the front seat.
 Q Who is "we?"
 A Officer Burns and myself and, grabbing up the bottle, I said, "Probably this is liquor."
 Q Whom did you say that to?
 A To Burns. Burns took it under the light and looked at it and says, "No, it's body polish," so we put it back in the car.
 Q Who said it looked like a bottle of "Old Smug-gler" whiskey.
 A The bottle resembled a bottle of "Old Smug-gler" at the time.
 Q Who said that?
 A I said that.

Defendant's Witness, William J. O'Connor, Cross

- Q Who to?
 A Burns.
 Q Who was around there when you said it to Burns?
 A Officer Burns and myself.
 Q Wasn't there quite a big crowd around?
 A No, sir.
 Q This station house is on Seventh avenue?
 A And on Summer avenue.
 Q Was Ruppel there, the man who was in court?
 A I couldn't say at that time, but I afterwards found out he was.
 Q Was a man by the name of D'Orio there?
 A No.
 Q You do not know him?
 A No.
 Q There were a number of hangers-on there?
 A There was no one there I could see.
 Q No one there except the officers?
 A No.
 Q Is that right?
 A Yes.
 Q You said it was probably a bottle of booze?
 A To Burns, yes.
 Q Did you afterwards go inside and say, "Now, we have the goods on her, we have her with the booze?"
 A No, sir.
 Q Did you hear anybody say that?
 A No, sir.
 Q So, that is all there was to the booze?
 A That's it.
 Q What did you do with the bottle of polish?
 A We put it back where we found it.
 Q Then you came back into the station house?
 A We did.
 Q Miss Clawans and her sister were there?

Defendant's Witness, William J. O'Connor, Cross

- A I believe she was.
 Q You had her address, her name on a card?
 A The Lieutenant had that.
 Q Did you see it?
 A No, I didn't see it.
 Q How did you know what it was she gave him
 10 there?
 A He made inquiry for her home address; I
 figured it was her business card.
 Q On Broad street did you ask her who she was?
 A No.
 Q She told you she was a lady lawyer?
 A She did.
 Q You did not ask her her name and address?
 A No.
 Q Isn't that the usual thing for you to do for a
 20 traffic violation in the city, ask them for the name
 and address of the person and give them a summons
 and let them go on their business?
 MR. GEORGE. I object.
 THE COURT. Sustain the objection.
 Q You found this automobile had a license on,
 didn't you?
 A One front plate.
 Q You found a plate on the front?
 30 A Yes, the front plate.
 Q That gave you the number of the car, the reg-
 istration number, didn't it?
 A It did, yes, but dealer's plates are used by
 anybody on any make of car.
 Q That is true with respect to one or two plates;
 they might be someone else's plates front and rear,
 of course. When you said there was a rear license
 plate missing was anything said to you by Miss
 Clawans about wanting to go back towards the Rob-
 40 ert Treat to see where it was?

Defendant's Witness, William J. O'Connor, Cross

- A No.
 Q Was anything said by the young lady with re-
 spect to their having dined at the Robert Treat?
 A No, sir.
 Q Isn't it true that you replied, "What with a
 dirty kid you were at the Robert Treat?"
 A Positively not. 10
 Q Positively not?
 A Positively not.
 Q You said, "With that dirty kid?" Is that
 right?
 A No, sir.
 MR. GEORGE. I object to the question as
 immaterial.
 THE COURT. It has been answered.
 Q After you got into the automobile you had
 someone under arrest, didn't you. 20
 A I did.
 Q You ordered him to drive with the young
 ladies to the police station?
 A Second precinct.
 Q When you got there what did you say in the
 presence of the officers to the Lieutenant?
 A I said this young man is driving an automo-
 bile with but one license plate, and as I have testi-
 fied, Miss Lillian Clawans insisted to the Lieutenant
 that she would take the full responsibility on her
 being the owner of the car. 30
 Q You did not accuse Freddie Ellis of having a
 stolen car in his possession?
 A I accused nobody.
 Q You did not accuse him?
 A Of what?
 Q Of having a stolen car, as you say?
 A No.
 Q You did say to the young lady, as I read to 40

Defendant's Witness, Christopher Ryan, Direct

A I could not.

Q Did you?

A No.

CHRISTOPHER RYAN, sworn in behalf of the defendants.

10 *DIRECT EXAMINATION by Mr. George.*

Q You were on desk duty on the night of March 4th, 1924, at the second precinct, weren't you?

A I was.

Q In charge of the second precinct police station?

A I was.

Q About 11:40 or :50 Officer O'Connor came in with Miss Clawans and the boy Ellis?

A It was about 11:30.

20 Q There was quite a number of men in the house at that time, wasn't there?

A There was about ten or twelve.

Q Tell the court and jury, as briefly as you can, what transpired there in your presence and in the presence of Miss Clawans?

A Miss Clawans came and she came up to the desk and I wanted to know what she was in the second precinct for.

Q Wanted to know why?

30 A I wanted to know what she was in the second precinct for. That is the way she was questioned. I asked her, "What brought you here?" And she said, "A police officer." I said, "Where is he?" She said, "Outside." After the officer came in I asked him what the trouble was and he said this machine had only one plate on the front and none on the rear, and I asked him who ran the machine. I asked the boy, "Do you own this machine?" He said "No." I said, "Who does?" He said, "This lady" (indicating). Then this lady said, "I am the
40 owner of the machine and assume all responsibility

Defendant's Witness, Christopher Ryan, Direct

for the machine being driven on the street." I said, "Is this boy running the machine under your orders?" "Yes, she said, "Under my orders." I asked her who she was and she handed me a business card where she had her office at 116 Market street. I asked the chauffeur if he had a chauffeur's license and he presented the chauffeur's license, but there was no owner's license, nor anything to identify the machine, so, Miss Clawans was recorded for allowing a machine to be operated while not properly registered, and young Ellis got a summons for operating a machine which was not registered right, and I spoke to Miss Clawans and tried to be reasonable with her, but you couldn't be reasonable with her.

Q What do you mean by that?

A She was excited and tried to calm her down. 20

Q Did she talk much?

A She was quite excited.

Q Did she talk much?

A Yes, sir, she had all to say.

Q In a loud tone or how?

A Yes, in a loud tone.

Q Sufficiently for all the ten or twelve men in the house to hear?

A Yes, sir.

Q Were they present at the time? 30

A Some of them were in the officers' room, and the biggest part of them were in the assembly room, but a few men were in the officers' room that had business there.

Q What did she say about the conduct of the officers?

A Well, she made some insulting remarks about O'Connor and the men in general.

Q Tell the court and jury and the jury will decide whether it is insulting or not. 40

Defendant's Witness, Christopher Ryan, Direct

MR. WEINBERG. I object to the question on the same ground that I objected to Mr. O'Connor's testimony as wholly irrelevant and incompetent and immaterial, and having no bearing on this case at all.

10 THE COURT. I will admit it.

A She accused them of being drunk and wanted to get a physician to have them examined. She made the request and made some remark about thieves and burglars and some of them ought to be in State's Prison.

Q To whom did she refer?

A I couldn't exactly say whom she referred to, because I really did not pay any attention to what she was saying.

20 Q Was O'Connor there at the time?

A Yes, sir.

Q Burns?

A Yes, sir.

Q Birch?

A Yes, sir.

Q Who else?

A I couldn't name them all right off.

30 Q After she suggested they were all drunk and ought to be examined by a physician, what did you do or say?

A I didn't say anything. I didn't base any remarks on what she said.

Q Was she mistreated by anyone in the first precinct?

MR. WEINBERG. I object to that.

Q Did anybody slap her in the mouth?

A No, never.

Q Or push her nose?

40 A No.

Defendant's Witness, Christopher Ryan, Direct

Q Or knock her hat off?

A No.

Q Or in any other manner mistreat her?

A No one at all. She was right there at the desk and whatever questions was asked her, it was me asking her the questions.

Q Did anybody accuse her of being drunk? 10

A I didn't hear it.

Q Did anyone accuse her of having a stolen automobile?

A I didn't hear it.

Q Did she tell you who she was and what she was?

A I told her if she hadn't an owner's license we would have to hold and send her case to the traffic court, and she asked on what conditions I had to hold her, and I said, "Under the Motor Vehicle Law 20 you are supposed to have two plates, and if you assume ownership you are responsible for having it on the street and with that I asked her for her name and she gave me her business card, and I told her she would have to put up \$25 for her appearance in the traffic court.

Q Is that in line with your duty?

A Yes, sir.

Q Go on.

A I told her she would have to put up \$25 de- 30 posit for her appearance in the traffic court Thursday morning and she refused to put up a deposit and I said, "If you don't put a deposit up the next thing to do is to take you to headquarters," and she said, "That's where I wanted to go all the time."

Q Is that in line with your duty to send them to headquarters?

A emales.

Q The reason for that is you have no provisions for female persons at the second precinct? 40

Defendant's Witness, Christopher Ryan, Direct

MR. WEINBERG. I object to that.

Q Go on.

A So I told her if a deposit was not put up for her appearance in court she would have to go to police headquarters. She said, "That's where I wanted to go all the time."

10 Q So, for the first time in the entire proceeding she was getting what she wanted?

A Yes, I told the two reserve men to get the patrol wagon and take her to police headquarters.

Q Who were the reserve men?

A Officers Birch and Burns.

Q Did you see Birch and Burns assault this woman?

A No.

Q Did you see anyone assault her?

20 A No.

Q That was the last you saw of her after she left there?

A That was the last I saw of her, yes.

Q Did she tell you she was a lawyer?

A Yes.

Q When did she tell you that?

A When I wanted to make a record of her having a car on the street without being properly registered. I asked her what her name was and she handed me her card and I asked her name and address and she said, "Whatever's on that card, that's all you get."

30 Q She would not give you any further information?

A No.

CROSS EXAMINATION by Mr. Weinberg.

Q You had her card which had her name and stated she was a lawyer?

40 A Yes, sir.

Defendant's Witness, Christopher Ryan, Cross

Q And gave her address in the City of Newark?

A The Market street address.

Q Did you attempt to confirm the fact by anybody you knew as to whether she was a resident of Newark and a member of the legal profession?

MR. GEORGE. I object to the question as immaterial. 10

THE COURT. Sustain the objection.

Q You made no attempt to determine whether the facts on the cards were true?

MR. GEORGE. I make the same objection.

THE COURT. Sustain the objection.

Plaintiff's counsel prays an exception to this ruling of the court. 20

Exception noted as ground of appeal.

Q After you got the card did you then slate her?

A Before.

Q You slated her before?

A Which card do you mean?

Q Her business card, that is the only card she had.

A I asked her for her name and she handed me her business card.

Q I am speaking of the business card. Was it after you received the business card you slated her? 30

A Yes, I was preparing to slate her.

Q Will you answer the question?

A I would like to qualify it a little bit.

Q You were preparing to slate her, record her?

A Yes.

Q When she handed you the card?

A When I asked her her name she handed me the business card. 40

Defendant's Witness, Christopher Ryan, Cross

Q Then, it was after that you asked her for the deposit?

A After I had the record made I told her she would have to put up a deposit for her appearance in the Traffic Court.

10 Q Which was after that you ordered the van?

A When she refused to put a deposit up.

Q Did you hear anything said about her getting down in another automobile

A No.

Q Did you accuse her of being drunk?

A No.

Q Didn't you tell Freddie Ellis she was drunk?

A I said nothing to him but what I had reason to say.

Q What?

20 A Only what was in the line of my business, that's all I said.

Q There was a great deal of boisterousness going on there?

A No.

Q A lot of loud guffawing and laughing there?

A No.

Q It was all quiet?

A Only the noise Miss Clawans was making herself.

30 Q Everything was quiet among the officers there?

A Yes.

Q And the only noise in that police station was on the part of this young woman

A That is true.

Q Did you see her go away in the van?

A I saw her part of the way, not all the way.

Q Did you see anybody assist her into the van?

A No.

40

Defendant's Witness, Christopher Ryan, Cross

Q You did not just allow her to walk out of the police station?

A She went out with the two officers, Birch and Burns.

Q Is O'Connor still connected there?

A He is in the traffic division.

Q He is on duty in your district? 10

A Occasionally.

Q He was at that time?

A That night, yes.

Q You are still in the second precinct?

A Yes.

Q Whom did you succeed?

MR. GEORGE. What difference does that make? I object.

THE COURT. Sustain the objection. 20

Q Are you the regular desk officer?

A Yes.

Q You were on that night?

A Yes.

Q When the officer came in, meaning now Officer O'Connor with Freddie Ellis and the two girls, who else was in the station room proper. I do not mean in the assembly room, but in the room where you sit?

A Well, I can't really call them by name, or tell you how many were there, honestly. 30

Q Did you know anything about the liquor incident?

A No, I did not.

MR. GEORGE. Objected to.

Q Did you hear anything said there by Officer O'Connor who testified he didn't say anything?

A He didn't say anything. 40

Defendant's iWitness, Christopher Ryan, Redirect

Q Did you hear him say anything about finding liquor in the car and that they have it on her now?

A I heard nothing at all of that.

REDIRECT EXAMINATION by Mr. George.

10 Q Going along in the testimony of Miss Clawans when she said they were all drunk in there, were they drunk?

A No.

Q Were you drunk?

A No.

RE CROSS EXAMINATION by Mr. Weinberg.

Q You say she asked that the officers be examined by a doctor?

A Yes.

20 Q Did you send for a doctor?

A No, sir.

REDIRECT EXAMINATION by Mr. George.

Q Why not?

MR. WEINBERG. I object to the question as to whether he did or did not.

THE COURT. I will admit it.

A Well, I used my own judgment in the case.

30 Q You were satisfied they were not?

MR. WEINBERG. I object as leading.

MR. GEORGE. Let me finish. If it is leading will withdrawn the question.

THE COURT. Ask the question first.

Q Lieutenant, the reason you did not call a physician was because you knew they were not drunk?

MR. WEINBERG. I object as leading.

40 THE COURT. Sustain the objection.

Defendant's iWitness, Christopher Ryan, Redirect

Q Why didn't you call a physician?

A It was not necessary.

Q What do you mean by that?

A There was nobody drunk.

RE CROSS EXAMINATION by Mr. Weinberg. L

Q Would you admit it if they were? 10

A I don't believe I would.

REDIRECT EXAMINATION by Mr. George.

Q If she asked you the question if the officers were drunk, would you admit it?

A No.

Q What do you mean by that?

A (Laughter.)

CHRISTOPHER RYAN recalled in behalf of the defendants. 20

DIRECT EXAMINATION by Mr. George.

Q You called my attention to some of your testimony and asked me to recall you?

A Yes.

Q What for?

A I misunderstood counsel in the last question put to me.

Q What did you understand him to say?

A I understood him to say would I permit it at the station house if any of the men were drunk? 30

Q If you would permit what?

A He put the question to me that if the men were drunk would I permit it, which I thought he said permit, not admit it.

Q If they were drunk would you admit it?

A Yes.

40

Defendant's Witness, Howard Birch, Direct

CROSS EXAMINATION by Mr. Weinberg.

Q You did not misunderstand your counsel, you understood Mr. George now when he used my exact language, didn't you? You understood him when he said to you you would admit it if it was true, and you said yes?

10

A I would like to have the question repeated to me.

HOWARD BIRCH, one of the defendants, sworn in his own behalf.

DIRECT EXAMINATION by Mr. George.

Q You cannot face the other way.

A I cannot hear so very good on the left side.

Q Speak up loudly. You were in the police station on the night of this occurrence?

20

A Yes.

Q You saw Miss Clawans?

A Yes.

Q And Fred Ellis?

A Yes.

Q And Miss Clawan's sister, Ethel Clawans?

A Yes?

Q You saw Officer O'Connor?

A Yes.

Q What were you doing in the station house that night?

30

A On reserve that evening.

Q There were several other officers there at that time?

A Yes.

Q Were you drunk?

A No, sir, never drink.

Q Was anyone else present drunk?

A No, sir.

40

Defendant's Witness, Howard Birch, Direct

Q Did you hear a conversation between this lady and Lieutenant Ryan?

A Yes.

Q What did she say concerning the conduct of the men present?

A She said they were all drunk.

MR. WEINBERG. I object to that question. I cannot go into that issue in this case to prove whether they were drunk or whether they were not drunk. We have made no such allegations in our complaint.

10

THE COURT. I will admit it.

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

Exception noted as ground of appeal.

Q Go ahead. What did she say?

20

A She said the men were all drunk and they were not fit to do police duty.

Q She said the men were all drunk and were not fit to do police duty?

A Yes, sir.

Q Anything else?

A Yes, she acted in any way but the manner of a lady in all her actions.

MR. WEINBERG. I object and ask that that be stricken out.

30

MR. GEORGE. I will consent to that being stricken out.

Q Tell us how she acted. Did she talk quietly or loudly?

A No, she was very abusive.

Q Did she talk calmly or loudly?

A Calmly.

Q She was calm or excited?

40

Defendant's Witness, Howard Birch, Cross

A She appeared to be very excited.
 Q Did she say anything about municipal duties?
 A Yes. I didn't quite hear what it was, something to O'Connor.

Q Did either you or Burns or anyone else from the police station lay hands on Miss Clawans?

10 A No, sir.

Q Did you or anyone else in your presense lay hands on Miss Clawans either in the police station or on the way to the patrol wagon or anywhere else?

A No, sir.

CROSS EXAMINATION by Mr. Weinberg.

Q Was she crying, when she went in the van, I mean?

A No, sir.

20 Q Was she hysterical?

A Well, she appeared to be excited; yes, I wouldn't say she was hysterical.

Q She was not crying?

A No, sir.

Q Very calm?

A Well, as I said before, she appeared to be excited.

Q In what way did she show her excitement?

A She appeared to be flighty like.

30 Q How did you get the impression that she was flighty like?

A By her conversation and talking.

Q What was her conversation?

A She called us all warehouse thieves and burglars and said we ought to be down in Trenton with the rest of the gang and she said she would see that it appeared in the paper the next night, which it did.

40 Q She said you were all warehouse crooks and burglars?

Defendant's Witness, Howard Birch, Cross

A That is what she said.

Q Did you bring suit against her for saying that?

A No.

Q How many went down in the patrol wagon?

A Officer Burns and I.

Q Who were the prisoners, just the one prisoner?

A Her sister and the taxi driver followed the wagon all the way down to police headquarters. 10

Q Did she want to go down in a taxicab with her sister?

A She had called a taxi; her sister, rather, had called a taxi and she asked if she could go down in a taxi, but Lieutenant Ryan said no, it was against the orders of the Police Department.

Q Ryan said she could not go down in a taxi, she would have to go down in a van?

A Yes. 20

Q So the two of you went down in the van with her?

A Yes.

Q Were two men designated to take this prisoner down?

A Yes, there are always two men assigned to the wagon.

Q Who designated the two?

A Lieutenant Ryan.

Q Where was she at the time you came into the room? 30

A She was standing at the desk.

Q You had been in the assembly room playing cards?

A I was standing in the doorway while the conversation went on.

Q Then, when you came out did you tap her on the shoulder and say, "Come on," or something of that sort?

A I told her to follow me and I walked out to the 40

Defendant's Witness, Howard Birch, Cross

door and she went behind me and Officer Burns on behind her, and I opened the door and she walked out to the street and I followed her, and she sat in the wagon on the right-hand side and I sat alongside of her and Officer Burns sat opposite me, and in that way we proceeded down to headquarters.

10 Q Did you see her nose bleeding at that time?

A No, sir, I did not see her nose bleeding at that time; it was not.

Q Did you shove her up against the side of the patrol wagon?

A No, sir.

Q Did she sit on the seat?

A Yes, sir, the same as she got in.

Q Where was she sitting?

A On the right-hand side of me half way up in
20 front.

Q Where were the two officers?

A I sat on the side of her, a few feet away from her and Officer Burns sat in the rear on the left-hand side.

Q Did you see O'Connor when you left the station?

A O'Connor was at the desk when we were taking her out.

Q He was standing at the desk when you left the
30 station?

A Yes, sir.

Q You did not see anybody lay hands on her at all?

A Positively not.

Q You did not, and Birch did not touch her?

A No.

Q Although she was hysterical and flightly, quite a little, she went in quietly herself?

A Yes.
40

Defendant's Witness, Howard Birch, Redirect

Q You heard her say she wanted to go down in a taxi and would not go down in a van?

A Yes.

Q After she said that did someone take a hold of her?

A No, sir.

Q Did she back up against the wall when she
10 said, "I won't go down in the van?"

A No, sir, she went willingly.

Q Although she said she would not go down in the van, that she wanted to go down in a taxi, she went willingly of her own accord?

A Yes.

REDIRECT EXAMINATION by Mr. George.

Q Do you provide taxi cabs for prisoners?
20

MR. WEINBERG. I object.

MR. GEORGE. Will you please wait a minute.

A No, sir.

Q Do you provide taxi cabs for prisoners who prefer not to ride in the patrol wagon?

A No, sir.

RECROSS EXAMINATION by Mr. Weinberg.

Q Have you ever permitted persons to ride in taxies or in their own cars to the station house?
30

A To the station house, yes; as a matter of fact at times we do.

Q You very frequently give people summons and permit them to go on their way.

A It all depends what the case is.

REDIRECT EXAMINATION by Mr. George.

Q You do not do that in case where the offenders become abusive and accuse police officers of being drunk and robbers and warehouse thieves?
40

Defendant's Witness, Henry F. Burns, Direct

A No, sir.

MR. WEINBERG. I object as leading.

MR. GEORGE. I will consent that it be withdrawn.

10 HENRY F. BURNS one of the defendants, sworn in his own behalf.

DIRECT EXAMINATION by Mr. George.

Q You were in the police station on the night of March 3rd, 1924?

A Yes, sir.

Q When Miss Clawans was brought in by Officer O'Connor?

A Yes, sir.

20 Q Did you accompany Miss Clawans to police headquarters after she had been booked at the second precinct?

A Yes, sir.

Q Did you shove her face or her nose or push her in anyway?

A No, sir.

Q Did you accuse her of having liquor in her car?

A No, sir.

Q Did you assault her in any way?

30 A No, sir.

Q Did anybody else in your presence assault her?

A Nobody put their hands on her.

Q Did you knock her hat off?

A No, sir.

Q Did anybody knock her hat off in your presence?

A No, sir.

Q Were you drunk?

40 A No, sir.

Defendant's Witness, Henry F. Burns, Cross

Q Was anybody else in the station house drunk on that night?

A No.

Q Was there?

A No, sir.

Q Do not shake your head. Speak up so the stenographer can get it on the records. Did you 10 hear Miss Clawans accuse all those present of being drunk?

A Yes.

Q And of being a lot of warehouse robbers and ought to be in prison with the rest of the warehouse thieves?

A Yes, sir.

CROSS EXAMINATION by Mr. Weinberg.

Q You recall being at police headquarters that 20 night, do you not?

A Yes, sir.

Q You recall Officer Owen being there?

A Yes.

Q You recall the fact that Miss Clawans accused you in front of Officer Owen of having assaulted her, do you not?

A Yes.

Q You know Miss Clawans asked for your name, do you not? 30

A Yes.

Q You know you refused to give your name, don't you?

A No, sir.

Q Until Officer Owen ordered you to do it?

A No, sir.

Q Didn't Lieutenant Owen say to you "She is an attorney and is entitled to have your name?"

A Yes.

Q Then it was you gave your name? 40

Defendants' Witness, Joseph V. Brady, Direct

A Yes.

JOSEPH V. BRADY sworn in behalf of the defendants.

DIRECT EXAMINATION by Mr. George.

10 Q You are also a member of the second precinct police station of the Newark Police Department, and was on the 3rd of March, 1924?

A Yes, sir.

Q And you were present in the station house on the night that Miss Clawans was brought in?

A Not present when she was brought in.

Q You weren't in the station house that night?

A Not when they were brought in, I came in when the excitement was going on at the desk.

Q What excitement?

20 A Miss Clawans, Officer O'Connor and two young ladies and a young man at the desk, after I reported for midnight patrol and stopped at the desk to see what all the commotion was about.

Q What was it about?

A It was something about driving an automobile without the license plates on.

Q Who did all the talking?

30 A Officer O'Connor made the charge and Miss Clawans, I found out her name afterwards, she did all the talking and said that O'Connor was not right in the performance of his duty.

Q She was talking loud or soft?

A Excitedly.

Q There were a number of men in the station house at that time?

A Yes.

Q Did you hear Miss Clawans say anything about the conduct of the men in the station house?

40 A She made an assertion—it was at the time of the warehouse trouble—she made an assertion and

Defendants' Witness, Joseph V. Brady, Direct

said all of us ought to be down there with the rest of the burglars and warehouse thieves.

Q Of course, you disagreed with that?

A Positively.

Q Did she say anything about the members present?

A She accused us all of being drunk and not fit 110 for doing police duty.

Q Were you drunk?

A No, sir.

Q Do you drink?

A No, sir.

Q Did you see anybody assault Miss Clawans?

A No.

Q Or lay hands on her or abuse her in anyway?

A No, sir.

Q Were you present when Birch and Burns were 120 going out with Miss Clawans on the way to police headquarters?

A Down at the precinct?

Q Yes.

A In the officers room, yes.

Q Did you see Birch or Burns place their hands upon Miss Clawans or anybody else?

A No, sir.

Q Or push or assault her in any other way?

A No, sir. 130

CROSS EXAMINATION by Mr. Weinberg.

Q This statement that someone was a crook and a burgler and ought to be in Treton, who was that made to, all of you?

A She made the assertion, I don't know whom she meant by it.

Q You heard the assertion but didn't know what she meant by it.

A I didn't know who she meant by it. 140

Defendants' Witness, Joseph V. Brady, Cross

Q She did not say that to any one particular officer?

A No, not that I know of.

Q You did not take it up as being intended for you?

A She was talking when I came in.

10 Q The talk you heard as you came in, you did not take it as being intended for you?

A I didn't figure I was in the argument at all.

Q Then, you did not hear her say that, did you?

A I heard her say it.

Q Whom was she talking to?

A She said it at the desk.

Q To Lieutenant Ryan?

A She made the assertion while standing at the desk; to whom directly, I don't know.

20 Q She mentioned no name?

A No.

Q You had not been in the room all the time then?

A No, sir.

Q Where were you, in the assembly room?

A I was on my way to work, travellin on trolley cars; I was reporting for midnight patrol.

Q When you came in the affair was nearly all over?

30 A I wouldn't say that. Miss Clawans objected to being slated.

Q You heard her tell the Lieutenant she was a lawyer?

A I heard her tell Lieutenant Ryan she was a lawyer. When the Lieutenant asked her for her name she said, "There is my name. I am a Newark lady lawyer."

Q And she handed him a card?

A Yes, sir.

40 Q What else did she say?

Defendants' Witness, Joseph V. Brady, Cross

A She made the assertion that she would not give her name, that was good enough for him, that she wanted to go to headquarters and Lieutenant Ryan informed her it was not customary to send prisoners, I mean from the second precinct to headquarters, that she would be sent there if she did not pay a deposit after being slated. 10

Q Is that all that occurred there now while you were there?

A That's all.

Q You did not see Miss Clawans go out to the wagon with the officers?

A Go out to the wagon from the precinct or from the desk to the door?

Q From the desk to the door and from the door to the wagon?

A I seen her go from the desk to the door. 20

You did not see her go from the door to the wagon?

Q You do not know what, if anything, happened outside?

A No, sir.

SAMUEL B. FINKELSTEIN sworn in behalf of the defendants.

DIRECT EXAMINATION by Mr. George. 30

Q What is your position?

A Clerk of the Police Department.

Q Of the City of Newark?

A Of the City of Newark.

Q You were such in the month of March, 1924?

A Yes, sir.

Q In addition to that you are a member of the Bar of the State of New Jersey?

A Yes, sir.

Q I show you a paper and ask you if this bears your signature? 40

Defendants' Witness, Samuel B. Finkelstein, Direct

A Yes, sir, that is my signature (indicating).

Q Do you know whose signature is to the right of yours?

A Lillian Clawans.

Q Were you present when it was signed?

A It was sworn to and signed in my presence.

10 Q This is a statement made by her as to the second precinct occurrence at police headquarters in which complaint she made against Officer O'Connor?

A Yes, sir.

Q It was filed with you and sworn to you before you?

A Yes, sir.

Q Signed by her?

A Yes, sir.

20 MR. GEORGE. I offer the statement in evidence.

MR. WEINBERG. No objection.

(Statement is marked Ex. D2.)

Q On the basis of that statement Officer O'Connor was sued?

MR. WEINBERG. I object.

30 *CROSS EXAMINATION by Mr. Weinberg.*

Q Was the information on that statement elicited by you by means of questions and answers?

A No, sir.

Q She just told her story?

A Yes.

Q Did you take it down in shorthand?

A No, it was taken on the typewriter as she spoke.

40 Q Then, you either wrote very rapidly or she spoke very slowly?

Defendants' Witness, Samuel B. Finkelstein, Cross

MR. GEORGE. I object.

(Argument.)

THE COURT. I will admit it.

Q Did she talk rapidly or slowly as you put this down? 10

A She talked so I could take it down on the typewriter.

Q Was that slowly?

A About medium.

Q And calmly?

A Yes, very calmly.

Q Quietly?

A Yes.

Q Did you ask any questions with respect to her statement at all? 20

A Except when I was through with the statement I asked her to write it, which she did.

Q That was the next morning?

A No, it was immediately after it was completed.

Q The same night?

A Yes, sir.

REDIRECT EXAMINATION by Mr. George.

Q Did she appear to be in a highly nervous state at that time? 30

A She appeared a little excited.

Q Was she in a highly nervous state?

A Not at that time.

Q Was she coherent?

A Yes.

At one o'clock P.M. the court takes a recess for one hour.

Defendant's Witness, William J. O'Connor, Direct

AFTER RECESS.

WILLIAM J. O'CONNOR, one of the defendants, recalled.

DIRECT EXAMINATION by Mr. George.

10 Q Yesterday afternoon there was received and marked for identification D1 a yellow paper about which the witness for the plaintiff Ruppel testified. Tell the court and jury where you got this paper.

A I got that yesterday morning from Mr. Ruppel himself in front of the Court House at 9:45.

Q You heard him testify of how he lost possession of the paper?

A I did.

20 Q So far as you are concerned you are telling the court and jury how you got it.

A Yes, sir.

Q You actually received it from Mr. Ruppel?

A From Mr. Ruppel himself.

Q How did you come to get it?

30 A Monday night as I was reporting off for duty he was down at the precinct at five minutes to seven, and as I was proceeding to cross the street he called to me and said, "Bill, I want to see you a minute." I crossed the street and he said, "You don't know me?" I said, "No. He said, "I was a witness against you for Miss Clawans". I said, "What has that to do with me"? And I started away and he said, "Wait a minute—

MR. WEINBERG. I object to the conversation between Ruppel and this officer.

CROSS EXAMINATION WAIVED.

40 MR. GEORGE. In pursuance of my obligation my clients I communicated with Lieutenant VanOrt, who was in charge of the desk at the

Defendant's Witness, William J. O'Connor, Direct

second precinct and was advised that the officer who drove the patrol wagon that night was operated on at the hospital this morning for acute appendicitis. With that statement the defendants rest, excepting I now respectfully move for the direction of a verdict in behalf of Officer O'Connor. 10

MR. WEINBERG. Is that yellow slip—do you assume it is in evidence, or not?

MR. GEORGE. I will offer it in evidence if there is any misunderstanding about it.

(D1 for identification is marked Ex. D1.)

DEFENDANT RESTS.

LILLIAN CLAWANS, plaintiff, recalled in rebuttal. 20

DIRECT EXAMINATION by Mr. Weinberg.

Q In regard to that yellow paper, Exhibit D1 I will ask you if you prepared that?

A I did not prepare it, Mr. Ruppel told me what he was going to say.

MR. GEORGE. What was the answer?

Q Make your answer responsive. Your answer to my question was that you did not prepare it. I mean the physical preparation. Who wrote that? 30

A I typewrote that on the paper.

Q (By Mr. George.) You typewrote it?

A Yes.

MR. GEORGE. May I ask that the witness be directed to speak up so it may be heard what she is saying.

THE COURT. Talk a little louder, Miss Clawans. 40

Plaintiff's Witness, Lillian Clawans, Direct

WITNESS. Yes, your Honor.

Q (By Mr. Weinberg.) Talk so every one else can hear and I can hear. You made that typewritten sheet yourself?

A I typewrote it.

10 Q From where did you get the information?

A From Mr. Ruppel.

Q That was put on that paper?

A From Mr. Ruppel himself.

Q When?

A Friday afternoon in my office in the presence of four girls.

Q In the preparation of that yellow sheet did you use an affidavit made by Mr. Ruppel?

20 MR. GEORGE. I object as immaterial to the use of an affidavit.

THE COURT. Sustain the objection.

Q You made it then from facts he gave you?

A What he told me.

CROSS EXAMINATION by Mr. George.

Q You did not prepare a typewritten statement as to any of the other witnesses that were called by you in your behalf, did you?

30 A Mr. Ruppel—

Q Answer yes or no.

A I wasn't asked.

Q I say you did not prepare a typewritten statement of the facts for any of the other witnesses called by you in your behalf? Yes or no.

A No, I did not.

Q Why not?

A They did not ask me for it.

40 Q Did Mr. Ruppel ask you for a typewritten statement?

Plaintiff's Witness, Lillian Clawans, Cross

A He certainly did.

Q Of what?

A He told me these facts and I typewrote them as he related them.

Q Why did you think that necessary?

A He asked me for it.

Q For a typewritten statement? 010

A So he would not forget when he gets into court.

Q If he knew the facts so well that he could tell you about them a few days ago why was it necessary that you write them down on your typewriter?

A He asked me to typewrite them.

Q I heard you say that, but I am asking you now if he knew the facts so well after more than two years, as to be able to tell you all about them, why did you deem it necessary only a few days before this trial to reduce those facts given by you to him on the typewriter? 020

A As he described the incidents that is the way I typewrote it.

Q Why did you do it?

A He asked me for it.

Q He asked you for a typewritten statement?

A No, he asked me to typewrite it for him in the presence of four girls more. 030

Q You called those four girls around you to act as witnesses?

A I certainly did not.

Q What are their names?

A Bella Kast, Veronica Dillon, Mildred Kowall and Margaret Meyers.

Q They had nothing to do with this case, did they?

A No.

Q They merely happened to be in the school at the time? 040

Plaintiff's Witness, Lillian Clawans, Cross

A And they heard the details.

Q Yes or no, isn't that so?

A They heard the details.

Q From you?

A Yes.

Q Why was it necessary that you have these
10 girls, who had no connection or interest in your
case, to surround you for the purpose of listening
to what this man was saying to you?

MR. WEINBERG. I object. There is no
evidence as to that.

A I did not surround the girls when I made this
statement.

Q You permitted them to remain close enough
to you and Ruppel while he was giving these im-
portant details about a case in which they had no
20 interest?

MR. WEINBERG. I object.

THE COURT. I will admit it.

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

Exception noted as ground of appeal.

Q Isn't that a fact?

A No, that is not a fact.

Q Why didn't you tell them to go on and mind
30 their own business?

MR. WEINBERG. I object as wholly imma-
terial and irrelevant.

THE COURT. Sustain the objection.

Q Did you ask them to leave your presence?

A No, they were at their desk. My typewriter
was located between two girls and Mr. Ruppel was
alongside of me and he related what transpired, and
40 as he related it I typewrote it for him.

Plaintiff's Witness, Lillian Clawans, Cross

Q You remember his testimony at the trial a
year or so ago?

A Yes.

Q What he told you there, all that was testified
to at the previous trial?

MR. WEINBERG. I object. 10

A He did not.

Q Just what do you mean, he did not tell enough?

MR. WEINBERG. Do not answer that
question. There is an objection, until the court
rules.

Q Do you mean he gave you more information
than what he had testified to at the last trial?

MR. WEINBERG. I object as not cross
examination of the rebuttal. 20

THE COURT. Sustain the objection.

Q Did this man Ruppel when he came down to
your place say, "The car was searched." He said,
"Miss Clawans said she had liquor in the car." "No,
no, nothing about referring to Miss Clawans, be-
cause Miss Clawans came out of that car and saw
the manner in which she was handled,' and soon.
Did he say that to you?

A In the exact words. 30

Q In the exact words, you remember that?

A Absolutely, in the presence of these girls also.

Q So what I have just related to you are the
exact words he used?

A Almost verbatim.

Q Is it verbatim, or not?

A Of course, he talked faster than I could type-
write.

Q He talked sufficiently slow for you to get down
what he said? 40

Plaintiff's Witness, Lillian Clawans, Cross

A He said more than what is down there.

Q Why didn't you get it all down?

A I missed him.

Q Why didn't you ask him to go slower?

A I didn't think it was necessary.

Q If you did not think it was necessary to get
10 down all this information this man gave, which
appeared very material, which is important, because
in it you are the plaintiff, why did you take any
of it?

A I took it as good as I could, under the circum-
stances; I am not a typist.

Q You undertook to take his statement?

A No, I did not. He said he wanted to have it
typewritten. I even asked him to sit down and
write it; he could remember it better if he wrote
it in his own hand.
20

Q Why didn't you, or through your attorney,
direct his attention yesterday when you called him
as a witness and he being under oath, why didn't
you call his attention to the fact that he had pre-
viously made a statement which now makes this
present statement perjury?

MR. WEINBERG. I object to the question
as argumentative and wholly immaterial.

30 THE COURT. Sustain the objection.

Q Didn't you know that he was not telling the
truth when he testified yesterday after having told
you what he knew about the case?

A I knew he was not telling the truth last night.

Q Why didn't you bring that his attention, the
fact that he had come to your place and given you
information concerning his knowledge of what
transpired?

40 MR. WEINBERG. I object as immaterial.

Plaintiff's Witness, Lillian Clawans, Cross

THE COURT. Sustain the objection.

Q You knew that he had given you this infor-
mation in your office when he gave you informa-
tion concerning a greater knowledge of a transac-
tion than what he testified to a couple of years ago?

A He said to me, and he told also to Colonel
Vickers, the very day the case was tried, he said,
"Colonel Vickers, I know lots more." "Well," he
said, "That is not Miss Clawans' case."
10

Q What isn't Miss Clawans' case?

A That is to say we were not proving our case.

Q What were you referring to, "not proving
your case?"

A I wasn't proving my case and it wasn't neces-
sary. In fact, it had nothing to do with it.

Q You called him as a witness, didn't you?
20

A Yes, sir.

Q Wasn't it to prove your case?

A No, sir.

Q What was it to prove that you called him for?

A Whether or not he heard me call these officers
these slanderous names?

A Weren't you interested to find out whether he
saw the officer who caused your nose to bleed?

A Yes, I was.

Q That was part of your case, wasn't it?
30

A I don't think so.

Q Then, when you called him and attempted to
obtain information from him for the benefit of the
jury as to the misconduct of these officers, and
knowing you did not need him for that purpose, why
didn't you try to find it out?

A Colonel Vickers had all that information; he
had it all down.

Q You are a lawyer?

A I was a lawyer at that time, but not seriously
practicing at that time and I am not now.
40

Plaintiff's Witness, Leon Bardfeld, Direct

Q You gave this paper back to Ruppel, didn't you, after you typewrote it?

A He waited for it and took it and went off with it, and he did more than that.

Q Did you keep a copy?

A No, I did not.

10

LEON BARDFELD sworn in behalf of the plaintiff, in rebuttal.

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A Vineland, New Jersey.

Q What is your occupation?

A I am an attorney.

Q How long have you been an attorney?

A Year ago last May I was sworn in.

20

Q In February, 1925, were you a notary public?

A I was.

Q And as notary public do you recall on the 18th day of February, 1925, one Peter Ruppel appearing before you and signing and swearing to an affidavit?

A In the City of Newark, yes.

Q Where in the City of Newark?

A In the office of Miss Clawans.

30

Q Did you personally make an affidavit which embodied certain facts told you by Mr. Ruppel?

A I did, I typewrote it myself.

Q You reduced it immediately to typewriting?

A Yes, sir.

Q Do you recall what Mr. Ruppel told you at that time, or do you not?

A I cannot recall exactly; this was long ago.

Q From your recollection, or would it refresh your recollection if you saw the affidavit which you personally reduced to writing?

40

A It would.

Plaintiff's Witness, Leon Bardfeld, Direct

Q I show you a paper and I ask you whether your signature appears thereon as notary public?

A That is my signature (indicating).

Q Did you swear Peter Ruppel to the facts contained in that affidavit?

A Yes, sir, I did.

Q Did you make the contents of that paper in any wise known to Mr. Ruppel? 10

A Before I swore him I read the affidavit to him first. He spoke to me, and as he was speaking to me I was typing it, and after I was through typing it I read the entire thing to Mr. Ruppel, after which I asked him to raise his right hand and I asked him whether he swore to the truth of the contents thereof to the best of his knowledge and ability, and he said he did and I affixed my name and notary seal, after he signed it. 20

Q If you cannot remember what he said, look at it, read it to yourself, and refresh your recollection, if you can, and tell us what he told you?

MR. GEORGE. I object to the reading of the contents of any of that affidavit as highly improper. The witness was in court and within the jurisdiction of the court, and was called by Mr. Weinberg and was examined and cross examined by the other side, that is Mr. Ruppel, and anything— 30

THE COURT. Ruppel was your witness. What are you attempting to show?

MR. WEINBERG. They have put in evidence a statement, that is their evidence, the yellow sheet which it was said was furnished by Miss Clawans to Ruppel and he said the facts on that paper were not known to him. In view of the fact this man is now an admitted perjurer in the presence of your Honor and the 40

Plaintiff's Witness, Leon Bardfeld, Direct

10 jury I ask that this witness be now permitted to show that Miss Clawans, in making up this paper, embodied certain facts that she received by information from Mr. Ruppel. Although he is a witness called by the plaintiff, I think this court should take some action to punish him for the wilfull, malicious and weak falsehood which he committed in this court in this trial under oath when he, among other things, said he never spoke to anyone for the defendant, that he did not know what happened to that paper, that it disappeared from his pocket in a mysterious manner.

20 THE COURT. He testified that the facts on that yellow paper were false. Is it your idea that this witness will testify to something to show they are not false?

MR. GEORGE. I object, because he is still his own witness, and if he attempts to plead surprise, the answer to that is that no cases were cited yesterday, and that other testimony would be admissible.

(Argument.)

30 MR. WEINBERG. I am perfectly willing at this time to take such action as is agreeable to Mr. George and myself that the only way I can put myself in a position where the court would be instructed to permit the jury to disregard the testimony of this man Ruppel, would be by saying that he made statements which would entitle trial counsel to plead surprise. If Mr. George will admit now counsel has a good foundation for admitting surprise, then we can terminate this controversy by having this testimony all go out.

40

Plaintiff's Witness, Bella Kast, Direct

MR. GEORGE. We can terminate this by saying that Ruppel is a perjurer and that as far as his testimony is concerned no further consideration can be given it.

THE COURT. Then, you move to have his testimony stricken out. 10

MR. GEORGE. No.

THE COURT. Then, I do not know what you are talking about.

(Argument.)

MR. WEINBERG. The last question is objected to on the record and it is overruled and I pray an exception.

Exception noted as ground of appeal. 20

MR. WEINBERG. I offer that affidavit in evidence of Mr. Ruppel, dated February 18, 1925, taken before Louis Bardfeld.

MR. GEORGE. Objected to.

THE COURT. Sustain the objection.

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

Exception noted as ground of appeal.

BELLA KAST sworn in behalf of the plaintiffs, in rebuttal. 30

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A On Clinton place, 253 Clinton place, Newark, New Jersey.

Q Are you a pupil of Miss Clawans?

A Yes, sir.

Q In her comptometer course of instruction? 40

Plaintiff's Witness, Bella Kast, Direct

- A Yes.
- Q Were you in court yesterday?
- A No, sir.
- Q When were you first in court?
- A This is my first appearance.
- Q Were you in Miss Clawans' office last Friday
10 when a man by the name of Peter Ruppel was there?
- A Yes, sir.
- Q Did you hear him talking to Miss Clawans?
- A Well, I heard him talking, but I was busy,
and I didn't hear the exact words.
- Q Did you see what Miss Clawans was doing
while he was talking?
- A Yes, sir, she was typing everything he was
saying.
- Q Do you know what she was typing?
- 20 A She was typing on a yellow sheet of paper.
- Q So far as you know is it the yellow sheet that
looks like Exhibit D1?
- A Yes, sir, that is the only kind of yellow sheet
that we have.
- Q You did not read the paper after it was over?
- A Naturally; when he said something about
patrol wagon I looked up because it attracted my at-
tention and he was speaking loudly.
- Q What did you hear him say?
- 30 A I heard him say, "Saw some officers take Miss
Clawans and fairly throw her into the patrol wagon."
- Q Did you hear anything else?
- A I heard him say something about calling
names, like thieves and other words.
- Q Did you speak to him yourself?
- A No, I did not.
- Q Did you talk with Miss Clawans about this
matter afterward?
- A No, I did not.
- 40

Plaintiff's Witness, Bella Kast, Cross

CROSS EXAMINATION by Mr. George.

- Q How many times did this man use the word,
"Thief;" two or three?
- A I didn't notice because I wasn't listening.
- Q You heard the word "Thief," you told the
court and jury? 10
- A I heard him say it once, and I went to work
again.
- Q Just what was said as near as you can re-
member?
- A All I heard him say he saw the officers take
Miss Clawans and fairly throw her into the patrol
wagon.
- Q And also called her a thief?
- A Yes.
- Q I ask you to read this paper and see if you can
find the word "thief" anywhere on that paper. 20

MR. WEINBERG. I object as immaterial.
She is merely saying what she heard him say.
(Argument.)

THE COURT. I will admit it.
Plaintiff's counsel prays an exception to this
ruling of the court.

- Exception noted as ground of appeal.
- Q Read it and see if you can find the word
"thief?" 30
- A No, I do not find it.

MARGARET MEYERS sworn in behalf of the
plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Weinberg.

- Q Where do you live?
- A 565 Seventeenth street.
- Q Were you also a pupil of Miss Clawans?
- A Yes, sir. 40

Plaintiff's Witness, Margaret Meyers, Direct

Q Were you in her office last Friday when Peter Ruppel was there?

A I was.

Q Did you hear Peter Ruppel talk to Miss Clawans?

A I did.

10 Q Did you see what she was doing?

A Well, he was talking, yes; she was typing.

Q On what?

A A yellow sheet of paper, just what he was talking to her about.

Q Did you hear Ruppel say anything to her?

A Yes, sir, I did.

Q Do you remember any of the things you heard him say?

A Yes, I did.

20 Q Tell us, please.

A He said that the officers treated her rough and threw her into the patrol wagon and that she had a stolen car, and that they said she had liquor in her car.

Q Those are the things he said to her?

A Yes, sir.

MR. GEORGE. The days of chivalry are not past, and I will not cross examine you.

30 MILDRED KOWALL sworn in behalf of plaintiff in rebuttal.

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A 654 South Twelfth street.

Q Are you also a pupil of Miss Clawans?

A Yes, sir.

Q Were you in her office last Friday when Mr. Ruppel was there?

A Yes, sir.

40

Plaintiff's Witness, Mildred Kowall, Direct

Q Did you hear Mr. Ruppel talking to Miss Clawans?

A I did.

Q Did you observe what Miss Clawans was doing about the time he was talking?

A She was typing while Mr. Ruppel was dic- 10
tating to her.

Q Did you hear anything Mr. Ruppel said to her?

A I did.

Q Tell us the things you recall hearing him say to her.

A I heard Mr. Ruppel say, "They threw Miss Clawans into the patrol wagon pretty roughly," and then I heard him say, "They found a bottle in the car and they thought it was liquor, but they found it was polish." 20

Q Anything else you recall?

A No.

Q What were you doing at the time?

A I was working.

CROSS EXAMINATION by Mr. George.

Q You were not paying attention to your work, were you?

A Well, the thing that struck me was the "patrol wagon." 30

VERONICA DILLON sworn in behalf of the plaintiff, in rebuttal.

DIRECT EXAMINATION by Mr. Weinberg.

Q Where do you live?

A 522 Vernon road, Elizabeth, New Jersey.

Q What is your occupation?

A I am learning to be a comptometer operator.

Q Are you taking instructions on the comptometer from Miss Clawans? 40

Plaintiff's Witness, Veronica Dillon, Direct

- A Yes, sir.
 Q You are at present one of her pupils then?
 A Yes, sir.
 Q On Friday of last week were you in her office when Mr. Ruppel was there?
 10 A Yes, sir.
 Q Did you hear Mr. Ruppel talking to her?
 A Yes, sir.
 Q Did you see what Miss Clawans was doing while he was talking?
 A Yes, sir.
 Q What was she doing?
 A Typing.
 Q Did you hear anything said by Mr. Ruppel?
 A Yes, sir, I did. He said the officers treated Miss Clawans very roughly and fairly threw her into the patrol wagon.
 20 Q Did you hear anything else he said?
 A No, sir, that's the only thing that attracted my attention.
 Q You were also attracted by the idea of the patrol wagon, right?
 A Yes, sir.
 Q Were you working at the time?
 A Yes, sir.

CROSS EXAMINATION by Mr. George.

- 30 Q You did not know it was Mr. Ruppel who was in the place that evening?
 A I looked over, I knew it was a man talking and I looked over, and then it was Mr. Ruppel talking.
 Q How did you know it was Mr. Ruppel talking from Mr. Brown or Mr. Smith?
 A Why?
 Q You were told, weren't you?
 40 A No.

Plaintiff's Witness, Veronica Dillon, Cross

- Q How did you know if you were not told?
 A One day Peter Ruppel came in.
 Q Again?
 A No, it was long before this.
 Q This happened twice to your knowledge?
 A He was there one day with a slip to show Miss Clawans, and Miss Clawans, was not there, 10 and he told me to tell her that Peter Ruppel called.
 Q What was on the other slip?
 A I think there was something about Mr. O'Connor.

PLAINTIFF RESTS.

MR. GEORGE. I respectively ask for the direction of a verdict as to Mr. O'Connor upon what I believe to be a well established principle of law with respect to the facts adjudicated between the same parties and the similar facts. 20 The case of McGarvey vs. Young, reported in Vol. 4 of N. J. Adv. Reports No. 43 on p. 1562. (Argument.)

THE COURT. The court will deny your motion. I will say that I deny it reluctantly because I feel that to grant it my reason would have to be founded on some statutory ground. I think even in common law the right of set off really is based upon a statute. Our discussion has been invoked upon the necessity of the plaintiff in this action having filed a counter claim in the former action. There isn't any question in my mind that she could not do it because she could, and then the question arises now, is she estopped from proceeding in this matter. I do not know of any statutory enactment which forbids it and I think it would be a healthy thing if we did have such an enact- 40

Plaintiff's Witness, Veronica Dillon, Cross

ment because this sort of litigation is rather perplexing.

You may have an exception to my ruling.

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

10

Exception noted as ground of appeal.

DEFENDANTS REST.

Mr. George sums up for the defendants.

Mr. Weinberg sums up for the plaintiff.

20

30

40

Charge

The court charges the jury as follows:

MOUNTAIN, J.

There is one plaintiff in this case and three defendants, and when you return to the court room you will indicate by your verdict the disposition of this case and the claim of the plaintiff against each of these defendants. You will dispose of the allegations of the plaintiff as to her right to recover as against each of these three defendants.

10

This action is brought against them on the broad grounds of slander, false arrest and imprisonment and assault and battery; the three defendants are police officers of this city.

Slander, false arrest and assault and battery and torts of that nature are never presumed, they must be proved, and the question before you is whether or not these defendants or some of them are guilty of what Miss Clawans alleges happened on the 3rd day of March, 1924. She says that on that night she was driving in a Ford car which she had purchased, but to which she had not taken title. The law of this state provides that when a person buys an automobile it must be accompanied not only with the original manufacturer's bill of sale, but with other assignments, if any. She says she had not taken title and that the title, as I understand it, was still in the Ford people, but she summoned a young man to come to the Proctor Building to take her to a certain destination, and he arrived driving this car. In the course of their progress from one place to another that evening they arrived at Fulton street in this city and were there stopped by Officer O'Connor, one of the defendants, because one of the

20

30

40

Charge

license plates was missing from the car. The officer saw it, and then Miss Clawans says that after the car had come to rest, the officer said, "What are you doing operating a car with one plate?" He wished to examine the registration card and asked for the license of the driver and not finding any registration card and finding a missing plate, he took these people to the second precinct station house. She says that when she arrived at the second precinct she was taken to the desk and had a conversation with the Lieutenant behind the desk, and then it was decided to take her to police headquarters, she testified, and she said that O'Connor grabbed her and held her, pushed the palm of his hand against her nose and that she was thrown into the patrol wagon by O'Connor, and that this maneuver was completed by Officers Birch and Burns, the two other defendants.

She further alleges as a ground to recover on a count alleging slander that O'Connor said, "We have got the goods on her; she has got liquor in the car." I do not recollect that her testimony was quite as strong as that, or in fact was in accordance with the count set forth in the complaint; however, if I am wrong you are the judges of the facts. I did understand her to say that a bottle was found by O'Connor in the shape of "Old Smuggler" and he said it was probably liquor and then found it was body polish.

Before passing to the defendants' story, by way of defense, I wish to call your attention to precisely what the plaintiff has to prove. In accordance with the procedure in this state, she filed a written complaint and that complaint when filed in court set fourth what the defendant had to meet and nothing else. It would, of course, be very wrong to bring

Charge

a man into court without having him apprised in advance of what he was supposed to contest. Turning to the complain she alleges that William J. O'Connor made certain scandalous statements. So far as the statements are concerned, the issue is whether he made the statements or any of them or whether he did not. She says that he did and he says that he did not.

This is the first statement she alleges he made, "Who the hell do you think you are talking to; this is a stolen car and you," meaning the plaintiff, "stole it. You are now under arrest and will come with me to the second precinct police station." The second scandalous statement alleged to have been made is as follows, "This Ford is a stolen car and she," meaning the plaintiff, "stole the car and we will send her down to police headquarters for investigation." The third, concerning the liquor, I have read to you.

Now, approaching these first three counts, did he say that or didn't he say those things and were the statements made slanderous? Before defining the law as to slander suppose we pass along to the other count in this complaint against these defendants. She accuses Henry F. Burns and Howard Birch of assault and battery, and she accuses all three men of false imprisonment. Bearing in mind that that is what she rests her case upon, let us turn to the defense.

These three men are in court and have answered her charges before you, giving their testimony, and among the witnesses called by the defendants was Freddie Ellis, who was driving the car that night for Miss Clawans. He said he had, as I recall his testimony, gone up to her office after he was summoned and that she told him she had lost a check

Charge

book with all her checks and that she had a nose bleed over it, and he said that he saw that her handkerchief was bloody. The only importance of that testimony you may find was because she later testified, or perhaps you may find by inference from her testimony, that any sanguinary condition of her nose could not be attributed to the loss of a check book, but to the palm of the hand of O'Connor. O'Connor said that after he had taken her to the second precinct, where inquiry was made by Lieutenant Ryan, who was at the desk, as to a bill of sale, and inquiry was made as to the ownership of the car, and she said she would assume full responsibility. O'Connor said that he did not touch her, either taking her into the station house or out of the station house. He said he did discover this whiskey and told Burns, when there was no one else present, that this was probably whiskey and it resembled Old Smuggler and then he found out it was body polish. He said he did not even see her get into the patrol wagon.

Lieutenant Ryan, who was at the desk, said that she told him she would assume responsibility for this car being on the street and that she owned it, but that nothing was produced to identify the car. As I understood him he said no registration was produced, the car had this one plate and that he told her he was going to send her to the traffic court, and suggested that she put up \$25 which she refused to do, and he told her then he would have to send her to headquarters. The patrol wagon was called, and as I understand her story it was while she was being put into the patrol wagon, or after she had been dismissed by Lieutenant Ryan, that the assault and battery and false imprisonment was supposed to have taken place. In connection with false imprisonment it is hardly necessary for me to

Charge

tell you that one cannot be falsely imprisoned if one assents to it. Mr. Birch said that neither he nor Burns had laid hands on Miss Clawans, and I think Mr. Burns made a similar statement.

The burden of proof in this case is upon the plaintiff to prove by the greater weight of the evidence that the defendants committed the various torts. First, as to the slander. The definition of slander is that it is oral defamation published without just cause or excuse. We hold in this state that words falsely spoken of a person which impute to the party the commission of some criminal offense involving moral turpitude, for which the party, if the charges be true, may be indicted and punished, constitutes slander per se. And defamatory words spoken falsely of a person which prejudices such party in her profession or trade, constitutes slander per se. Slander per se, as the term is used in the law, means that malice is presumed and the law presumes damages.

Assault and battery is not necessary to define to you.

False imprisonment is the act of imposing an unlawful restraint on a person's freedom of locomotion.

Now, if you please, let us step aside from this picture for a moment and change our perspective. Each municipality has its police force for the purpose of carrying out the laws of the state where the force is engaged. A policeman cannot exceed certain rights given to him by law. A policeman is at times in a rather difficult position; he is an officer of the law placed in his position to see that the law is obeyed. There are times when he cannot hesitate or quibble.

Charge

When a person commits a wrong, and we will take specifically this case, when a person disobeys the traffic regulations and is arrested, the officer who sees the infraction of the law obviously has the duty of taking that person to the nearest precinct; there isn't any question about that. When
 10 the officer of the law arrives at a precinct he usually finds his superior officer behind the desk, or his representative, and there an explanation is made to the man behind the desk for the reason of the production of the person in the police station. I find that as I follow this case that that is what happened that night so far as the production of Miss Clawans was concerned.

20 She says that when she was taken from the police station to police headquarters she was falsely arrested, as I understand her story, and was assaulted by the two officers.

They denied that; they say they did not assault her and one of them, in fact, says he did not see her go out of the police station, as I recall his testimony.

30 She alleges that they did commit these torts. Then, as a result of this evening we learn here, and it has been mentioned by counsel with freedom and admitted by the plaintiff that O'Connor brought action against her, I think as I recall the statement, for slander and recovered before a jury in this county, \$1,000. The case was appealed and affirmed, we were told, and the money was paid. Now, we have this action on our hands, the defendant in what might be termed a counter-suit.

40 If the plaintiff is entitled to recover in this action there are certain elements of damages which you may consider. She can recover no damages which were not the natural and probable consequence of the defendants' acts, or the acts of one of them. In

Charge

connection with slander, if you find that she was not slandered as she said, then of course that disposes of it. If you find she was slandered in the terms of the slander as I have read it to you from her complaint, you can consider the character of the language, the manner of its publication and the injury to her feelings and humiliation or mental suffering or shame which followed as a natural consequence of the slander. 10

If you find that the defendants, or one of them, falsely imprisoned her, she can recover damages which you assess as the natural and probable consequence of the false imprisonment. It is denied by the defendants that she was falsely imprisoned. The defendants point out that this young man, Ellis, was apprehended because he was driving the car and that it was not until they reached the station house that she assumed the responsibility herself, and upon this assumption Lieutenant Ryan demanded this \$25 as a pledge for her appearance, and as I recall it, when she was not able to pay it or did not wish to pay it, she was sent to police headquarters. 20

Of course, if she assumed responsibility and Lieutenant Ryan, after this presumption of responsibility, rightfully held her under the Traffic Act, you will probably find there was no false imprisonment about that because anyone who is driving without license plates, in violation of the Motor Vehicle Law, may be properly stopped and apprehended in the obvious discharge of an officer's duty. 30

Now, as to the assault and battery. If she was assaulted by these men she can recover for the pain and suffering which she has had and the effect of it upon her health as to degree and probable duration. She says that O'Connor injured her nose, 40

Charge

10 and that she has been a nervous wreck ever since. I think she told us also that she was consulting a physician, and she not only blames O'Connor, but also Birch and Burns for the assault and you will have to dispose of their cases also in connection with his under that count. She can recover for any bodily injury that she has sustained, if you find for the plaintiff under that count, and if you find that any action of the defendant's or one of them, amounted to a wrongful act done intentionally without just cause or provocation, you will probably find such an act was done maliciously, and you can then assess damages if you find any ground to make such assessments. If on the other hand, after you have retired to the jury room, in view of all the testimony, you should find that the three defendants are guiltless of the tort charges and that there was no slander, 20 no false imprisonment, and that there was no assault and battery, and you consider, as I stated at the beginning of the charge, the rights of the plaintiff against each defendant separately, and if after such consideration you find they were all three blameless, then your judgment would be for the defendants.

(The jury retires.)

30 MR. WEINBERG. I respectfully pray an exception to that part of your Honor's charge where your Honor said to the jury that if she, meaning the plaintiff, assumed responsibility for the automobile, then Lieutenant Ryan was justified—I think, I am not sure of the language—in holding her as he did. The objection being that Lieutenant Ryan's conduct in no way modified O'Connor's conduct if he was wrong in the first instance.

0 Exception noted as ground of appeal.

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10 MAY.T.1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

LILLIAN CLAWANS,

*Plaintiff-Appellant,**vs.*

WILLIAM J. O'CONNOR, HOWARD

BIRCH and HENRY F. BURNS,

*Defendants-Appellees.**Action
at Law.**On Appeal
from
Supreme
Court.***BRIEF ON BEHALF OF
PLAINTIFF-APPELLANT.****Preliminary Statement.**

The plaintiff, who is an attorney at law of this State, as well also a public accountant, filed her complaint in the New Jersey Supreme Court against the above-named defendants, all of whom are police officers of the City of Newark, New Jersey, alleging that the first-named defendant, William J. O'Connor, made certain slanderous statements against her and also committed an assault and battery upon her, on March 3, 1924. She also alleged in her said complaint, that on said day, the other two defendants, Howard Birch and Henry F. Burns, committed assault and battery upon her.

Defendant O'Connor, filed an answer in which he denied the specific allegations of the plaintiff, and by way of further defense, set up that on February 13, 1925, which was subsequent to the alleged occurrences mentioned by the plaintiff, he, the said defendant, in the role of plaintiff, had obtained a judgment against the said plaintiff, then the defendant, for damages for the uttering and speaking of slanderous words

against him, and that the matters and things set forth by the plaintiff in her complaint, were *res adjudicata*. The other defendants simply denied plaintiff's allegations.

The case was tried before a jury and verdicts were rendered in favor of all of the defendants against the said plaintiff.

Statement of Facts.

On March 3, 1924, the plaintiff, while riding in an automobile which she claimed to own, but which was not at the time, registered in her name, was stopped on Broad street, in the City of Newark, New Jersey, by the defendant, Officer O'Connor. The automobile was being driven by one Fred Ellis, a licensed driver, who was charged by the officer, with driving the car with but one registration plate thereon.

In a colloquy which ensued between the plaintiff and the officer, he, according to the testimony of the plaintiff, said to her:

"It is a stolen car and you stole the car"
(l. 10, p. 21).

After some further talk, the officer got into the car, in which, besides the plaintiff and Fred Ellis, a sister of the plaintiff was riding, and they were all taken to the Second Precinct Station. Plaintiff further testified that when they got to the station, the defendant O'Connor again said, in the presence of the lieutenant and other officers,

"It is a stolen car and you stole the car"
(l. 18, p. 30).

She also said that he said that he had searched the car and found therein, a bottle "which probably contained liquor" (p. 37); that a patrol

wagon was ordered and before she knew it, she was

"thrown in the patrol wagon by Officer O'Connor, and completed by the other two officers that were in the patrol wagon."

The other two officers she said, were the defendants Birch and Burns; that O'Connor grabbed her and pressed the palm of his hand against her nose, throwing her at the same time into the patrol wagon. She further testified that she was "full of blood" notwithstanding which, the said defendants picked her up and in her language,

"slammed me against the side of the patrol wagon,"

and that she was not resisting them in any way at the time (pp. 30 and 31).

There was other testimony, but so much as is above set forth, is deemed sufficient for an understanding of plaintiff's grounds of appeal.

ARGUMENT ON PLAINTIFF'S GROUNDS OF APPEAL.

POINT 1.

The first and second grounds of appeal are directed to the Court's refusal to permit a witness, one Peter Ruppel, to answer a certain question and to refresh his recollection from an affidavit which had previously been signed by him.

To understand the force of the exception, the situation surrounding the matter must be somewhat fully stated. The witness Peter Ruppel, when called by the plaintiff, denied remembering or recollecting anything whatsoever of the occurrences in question. Upon cross examination, he

stated that he had been asked by the plaintiff to testify that he had seen O'Connor assault her, and when asked further whether the plaintiff had not given him a statement which she had prepared, and about which she asked him to testify, he said he had been given such statement, and that the statements contained in that paper, were not true.

It appears that the paper was marked by the defendants for identification (bot. p. 69; top p. 70).

This witness was then, on re-direct examination, asked to identify a certain affidavit to which he swore on February 18, 1925. This he did. He was then asked:

“Were the facts stated in that paper true at that time?”

This question was overruled by the Court (pp. 73 and 74, First Ground of Appeal), as was also the next request of plaintiff's attorney, to wit:

“Q Look at the affidavit, read it to yourself and tell the Court and jury whether that refreshes your recollection as to what occurred in and around the Second Precinct Station on the night of March 3, 1924” (pp. 75 and 76).

The Court refused to permit the witness to comply with plaintiff's request, and exception was duly taken to the ruling of the Court, by plaintiff's attorney (Second Ground of Appeal).

The matter, which was sought to be placed before the jury, was most important, in view of the fact that the plaintiff was left in the unpleasant situation of having attempted to cause the witness Ruppel to testify to facts not within his knowledge.

The objection, by defendants' counsel, to the witness' complying with the request to refresh his recollection from his own affidavit, was put on the ground that it was not a matter for re-direct testimony, and the Court so held (top p. 76). The question obviously could not have been asked on direct examination, at which time, the witness in question stated, simply, that he saw nothing and heard nothing of what occurred. It was only after the defendants' counsel obtained from the witness a statement that the plaintiff was trying to put words in his mouth, that he was asked by plaintiff's attorney to look at an affidavit which he admitted making after the occurrence, and to tell the Court and jury if it refreshed his recollection. That affidavit has been printed and is found on page 23 of the printed State of the Case.

It is respectfully insisted that the atmosphere thus created, unless clarified by showing the honesty of plaintiff's position, was most prejudicial to the plaintiff, and undoubtedly created a suspicion in the minds of the jury as to her honesty, which could not thereafter, be eradicated.

POINT 2.

The next argument will be directed to the third, fourth, sixth and seventh grounds of appeal, which deal with questions asked of various witnesses on cross examination, the answers to which were allowed by the Court over plaintiff's objections, to wit:

Third Ground of Appeal.

“Q What was the conduct of Miss Clawans at the time the officer stopped you and complained about your not having your rear license?”

to which, the witness Fred Ellis, answered:

"She got up in the air over it" (pp. 86 and 87).

Fourth Ground of Appeal.

After other questions were asked, in order to determine her attitude at the time, the next question, which is found on page 88, was asked, to wit:

"Q Isn't it a fact, Fred, after all these interruptions, that after Officer O'Connor had stopped you for driving the automobile without a rear plate, and Miss Clawans had gone 'up in the air,' didn't she also say to O'Connor, 'you ought to be down in Trenton with the rest of the warehouse robbers?'"

to which the witness answered that plaintiff had so stated.

Sixth Ground of Appeal.

Of the same character, was the question asked of one Christopher Ryan, an officer, who was not a defendant, but was called as a witness by the defendants, as follows:

"Q Tell the Court and jury, and the jury will decide whether it is insulting or not,"

referring to witness' answer to a question just preceding the one objected to.

On page 119, it appears that this witness had testified that plaintiff, while at the station house, was excited and talked in a tone loud enough for the men in the station house to hear; that she had made insulting remarks about O'Connor and the men in general.

The question above set forth, was then asked, which the witness answered over plaintiff's objection, as follows:

"She accused them of being drunk and wanted to get a physician to have them ex-

amined. She made the request and some remark about thieves and burglars and some of them ought to be in State's prison."

Following the answer quoted, witness said he could not say to whom the plaintiff referred.

It is difficult to perceive what materiality there was in plaintiff's having made derogatory remarks—if she did—at wholesale, concerning unidentified persons. It surely could not affect the plaintiff's right of action against a particular defendant, by showing that she had made slanderous or improper remarks concerning other persons. The whole purpose of the defendant was to seek shelter behind the alleged remarks of the plaintiff, *which were not an issue in the case*, and which, undoubtedly—as had the previous questions—the result of prejudicing the plaintiff in her action against the officers, who were made defendants.

Seventh Ground of Appeal.

Another question of similar nature was that asked Officer Birch, to wit:

"What did she say concerning the conduct of the men present?" (p. 129).

to which he answered:

"She said they were all drunk."

After the admission of this witness' testimony over the plaintiff's objection and exception, this witness proceeded to further enlarge his testimony by saying that she accused "all of the men" as being drunk and not fit to do police duty.

Plaintiff urges herein, that the questions above mentioned, were wholly improper and that it was immaterial and irrelevant to the then inquiry as to what the plaintiff had said to or about the defendants, *and particularly what she said about others who were not defendants.*

From the preliminary statement herein, it appears that the defense of O'Connor was not a justification nor provocation, but a simple denial that the alleged slanderous words were uttered by him. The questions and answers, therefore, tended to raise an entirely foreign issue.

It is stated by the compilers of *Corpus Juris*, Vol. 36, page 1236, par. 199, that:

"One defamatory charge cannot be set off against another independent one, and it is not justification or defense that plaintiff had previously defamed defendant or a third person. Plainly, subsequent defamation by plaintiff is no justification."

And again the same compilers, in Vol. 37, at page 48, in par. 394, say:

"In an action for libel, defendant cannot set up as a proper counter-claim, slanderous words uttered by plaintiff before and after the alleged libel, at least where there is no connection with the libel, and the slanders, and where the libel was not provoked by the slanderous utterances of plaintiff."

As above pointed out, the defendant stood upon a denial of the alleged slanderous language used by him, and it was, therefore, an attempt to justify without any plea or answer in support thereof, the conduct of the defendant. If it should be argued that that was not the purpose of the elicited information, then it is most strongly urged, that such testimony had but one purpose in view, viz: that of prejudicing the plaintiff by showing that she was a person of violent temper, unmindful of the proprieties and contentious to the extent of disentiing her to a fair consideration of her case by a jury.

In the early case of *Cook v. Barkley*, reported in 2 N. J. L. 169 (my edition, page 123), the plaintiff brought an action against the defendant,

charging him with having made certain slanderous statements, which reflected upon his morals. Defendant pleaded the general issue, not guilty, to all the counts. With this plea he gave notice that at the trial, he would give in evidence that it was *reported* to him that the plaintiff had been guilty of the charges contained in his declaration.

The defendant, at the trial, offered to prove that certain persons had declared to him that the plaintiff was guilty as charged. This evidence was refused by the trial court. Plaintiff recovered a verdict, from which defendant appealed to the Supreme Court. Because of the unskillfulness with which defendant's answer was drawn, it was conceded before the Supreme Court, that the defendant would stand simply upon his plea of "not guilty."

After a careful consideration by the Supreme Court, of the question involved, the judgment was reversed, by the votes of Justices Rossell and Pennington against Chief Justice Kirkpatrick, who voted to affirm.

The learned Chief Justice held that the trial court was right in rejecting the proffered testimony, saying:

"In one view of the subject, this may appear to be a rigid rule, that he who repeats shall be subject to the same damages as he who invents and propagates a malicious slander. Yet when it is considered that the action is not for the punishment of the slanderer, but for the remuneration of the injured, I think it will change its aspect. If A utters to the world a slander which deprives me of my good name and reputation, does it at all make up my loss to tell me he had the story from others? I think not. Be the reason of the rule, however, as it may, as far as I have had opportunity to trace the course of decisions upon the question,

they seem to me uniformly to have recognized this principle *that on not guilty, in actions for words, common fame cannot be given in evidence*. I believe there is wisdom in the rule; and if it were otherwise, I cannot change it."

Justice Rossell, in voting to reverse, held that the proferred testimony should have been admitted for the purpose of lessening the degree of malice supposed to have actuated the defendant in the propagation of it,

"but which do not amount to a complete justification—and cannot, therefore, be plead in bar."

It is here observed that in the case mentioned, the defendant, while not justifying the slander, attempted to show—for the purpose of mitigating damages only—that he was led into making the slanderous remarks by having received the story from others.

That is a far cry from the attempt of the defendant O'Connor, in the case *sub judice*, who did not attempt either to justify—which he could not do under the plea of general issue—the alleged slanderous remarks, or attempt to mitigate the damages by showing that what he said was the result of what others had told him on the subject.

Justice Pennington, in dealing with the same question, agreed with Justice Rossell that the trial court erred in not admitting the proferred testimony, saying:

"The *quo animo* with which the words spoken was the point in issue, as malice constitutes the gist of the action. It appears to me, that the testimony was proper, to shew with what temper of mind, the defendant spoke the words: whether from a malicious design to injure the plaintiff, or from a

laudable motive to preserve the purity of character so essentially requisite in a person exercising the functions of the plaintiff, or from mere inadvertency; or even if it should appear to the jury, that the defendant had pursued the enquiry with so much zeal as to indicate an evil intent, yet if it should appear that he did not give rise to the slander, but only repeated what he heard from others, giving credit to it as coming from the plaintiff's own family, and the more especially if it should be found that this was done in the course of prosecuting the plaintiff before the sessions or Presbytery, it certainly might and ought to go in mitigation of damages."

As pointed out in the Cook case, the question at issue was, whether the defendant, having admitted making the slanderous remarks, could under the general issue, give testimony in mitigation of damages which showed that what he said was not the result of a bad heart, or as we call it, malice, but was in discharge of what he considered his duty to his church and was founded upon information which he believed was true.

No such admission, motive or intent on the part of the defendant in the case under consideration, appears, and it is again respectfully insisted, that the only purpose in introducing the testimony about which complaint is herein made, was that of diverting the jury's mind and prejudicing the plaintiff's case by showing that she made remarks of a derogatory nature against the defendant. Had the defendant O'Connor, filed a plea of justification in the cause, or had he attempted to prove, under the general issue—in mitigation of damages—that what he said, he believed to be true because of credible information coming to him, there could be no question as to the propriety of ad-

mitting such testimony, but he *denied* having made any of the alleged slanderous remarks and produced witnesses and introduced testimony to prove—not the truth of his remarks, nor his belief in the truth as in the Cook case—but to prove, rather, that *he* was the slandered person. However, should it be successfully shown that the defendant, under whatsoever rules of evidence there may be on the subject, had the right of introducing derogatory remarks made by the plaintiff to or about him which were not in anywise connected with the issue in question, and which did not have any bearing upon his alleged slander, it must be clear that any testimony which showed or tended to show that the plaintiff herself was guilty of slanderous remarks, made to or about persons *other than the defendants*, was wholly immaterial and incompetent and worked the utmost prejudice against the plaintiff.

It is, therefore, respectfully submitted that the judgment entered upon the verdict of the jury, should be set aside and a new trial granted.

All other exceptions not herein argued, are hereby waived.

Respectfully submitted,

BENJAMIN M. WEINBERG,
Attorney for and of Counsel
with Plaintiff-Appellant.

10 MAY. 1. 1928

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BRIEF ON BEHALF OF DEFENDANT-APPELLEES.

On February 13, 1925, William J. O'Connor one of the defendants in this case, obtained a judgment for the sum of one thousand dollars (\$1,000.00) against the plaintiff in this case for uttering false, scandalous and defamatory words against him. This judgment was affirmed by this court, and the plaintiff paid the defendant, William J. O'Connor, the amount of the judgment. On August 14, 1925, this plaintiff instituted a suit against the defendant, William J. O'Connor, and two other policemen, charging the defendant with speaking false, scandalous and defamatory words against her, and also charging him and the two other defendants with assault and battery. The case was tried before Hon. Worrall F. Mountain and a jury, and a verdict was rendered in favor of all of the defendants.

Statement of Facts.

Plaintiff testified that on March 3, 1924, some time after 9:15 o'clock in the evening, she was on Fulton street near Broad, in an automobile driven by a man by the name of Ellis. She was stopped by the defendant, O'Connor, who was

a traffic officer stationed at that place. The car was operated with one license plate. She testified that the defendant, O'Connor, said "It is a stolen car, and you stole the car" (State of Case, p. 29, l. 11). The defendant, O'Connor testified that he saw no rear license plate on the automobile and went over to the car and talked to the driver, calling his attention to the absence of the license plate, and asked for the driver's and owner's license. The plaintiff said to him, "I am a lady lawyer, you have no business stopping me, you crook, burglar, and warehouse robber. You ought to be in Trenton with the rest of the thieves" (State of Case, p. 105, ll. 25-30). Then he turned to her and said "It has nothing to do with you," and ordered the chauffeur to go to the Second Precinct, and he got in the car with the plaintiff and her sister Ethel (State of Case, p. 105). He denied the testimony of the plaintiff, in which she alleged that he said "It is a stolen car and you stole the car," and said in answer to the question, "Q Did you say the car was stolen and she stole it? A No, I said it is probably a stolen car, with no identification on it" (State of Case, p. 109, ll. 20-23) (p. 111, ll. 34-40).

Counsel in his brief calls attention to testimony of the plaintiff (p. 30) in which he says that the defendant O'Connor, grabbed her and pressed the palm of his hand against her nose, and threw her into the patrol wagon and that she was full of blood.

Plaintiff's own witness, Ellis, testified (p. 102) that when he came over to her office to pick her up in the early part of the evening, she was very nervous and that was before they met Officer O'Connor. When recalled on behalf of the defendant, he said she told him that she had lost

her check-book and "she had a nose bleed over it"; that he saw her handkerchief and that it was "all red," and that he heard and saw this before the plaintiff left her place of business and before she met the defendant O'Connor (p. 103).

Defendant O'Connor denied that he took her to headquarters; he denied that he pushed her hat down, or pushed her on the nose or caused her nose to bleed, and that he did not accuse her of having a stolen car, and said "I never spoke to her" (p. 109).

Christopher Ryan, who was on desk duty at the Second Precinct Police Station at the time, testified that about 11:40 P. M., the plaintiff came into the station, and the witness asked her what brought her there, and she said "a police officer," and then after the officer came in, Ryan asked him what the trouble was, and he said this machine had only one plate on the front and none on the rear; and the witness asked the boy if he owned the machine and he said no, and indicated that the plaintiff owned it; that she was very much excited and he tried to calm her down, and she talked in a loud tone (pp. 118-119). He further testified that no one slapped her in the mouth or pushed her on the nose or knocked her hat off, and that he did not hear anyone accuse her of being drunk or of having a stolen automobile (pp. 120-121).

He is corroborated in this statement by defendant Birch, who with Officer Burns went in the patrol wagon with the plaintiff to Police Headquarters. He testified that he did not see her nose bleeding; that he did not shove her against the side of the patrol wagon and did not see anybody lay hands on her at all; that neither he nor Birch touched her (p. 132).

Defendant Burns also testified that he accompanied plaintiff to Police Headquarters; that he did not shove her face or her nose or touch her in any way; that he did not accuse her of having liquor; did not assault her and did not knock her hat off (p. 134).

Brady, another witness for the defendants, testified that he was a member of the Newark Police Department and was in the Second Precinct Police Station on March 3, 1924; that he saw the plaintiff, Officer O'Connor, two young ladies and a young man at the desk and heard a commotion; that the plaintiff did all of the talking "excitedly" (p. 136); that he saw no one assault the plaintiff or lay hands on her or abuse her in any way (p. 137).

The plaintiff testified that on the night in question her sister Ethel was with her, and that she and her sister were taken to the Police Station by defendant O'Connor. This sister was not called as a witness.

Answer to Point 1 in plaintiff's brief.

The plaintiff has filed nine grounds of appeal relating only to the admission of evidence, the first two grounds relating to the questions asked by the attorney of the plaintiff of Peter Ruppel, a witness for the plaintiff. The question in ground No. 1 was asked on re-direct examination, and the Court sustained the objection that it was improper re-direct examination. The question asked of the plaintiff's witness on his direct examination was:

"Q You recall having made an affidavit in this case, don't you, on the 18th day of February, 1925? A I might have, but I don't remember what was in it.

Q You do not? A No, sir" (p. 67, ll. 22-28).

No further question was asked on the direct examination with reference to the affidavit, and not until the witness had been cross examined, did the plaintiff's attorney seek to question him as to the contents of the affidavit. Then he asked the question which the Court refused to permit the witness to answer, namely, "Were the facts stated in that paper true at that time?"

Having gone into this matter on direct examination, as shown by the questions cited above, plaintiff should not be permitted to repeat and enlarge the same ground of questioning on the re-direct examination. Although counsel for the plaintiff claims that the affidavit referred to above was important "in view of the fact that the plaintiff was left in the unpleasant situation of having attempted to cause the witness, Ruppel, to testify to facts not within his knowledge," there is nothing in the testimony which suggests the interpretation that plaintiff's attorney desires to give to the situation.

It has been held by this court, in *Mingoes v. Central Railroad of New Jersey*, 89 N. J. L., p. 226 (1916), in an opinion delivered by Mr. Justice Garrison, that it was not error to overrule a hypothetical question put by plaintiff below to a medical witness concerning the mental condition of the defendant's locomotive engineer.

"This testimony was offered upon rebuttal; it had reference to the accident set forth in the complaint, and it was therefore the duty of the plaintiff to offer it on his main case. The overruling of such testimony is a matter of discretion."

and further

“The fact that the question tended to contradict the defendant’s witnesses upon immaterial points did not remove it from the class of discretionary rulings.”

Answer to Point 2 in plaintiff’s brief.

The other questions concerning the conduct of the plaintiff and the statements made by her at the police station are objected to by the plaintiff’s counsel under Point 2 on the ground that they were immaterial and irrelevant. It is submitted that the evidence given in response to these questions is admissible for the following reasons.

FIRST: It impeaches the veracity of the evidence of the plaintiff in her denial of the testimony that she had called the defendant, O’Connor, a “burglar, a thief and a crook” (p. 47, l. 1).

SECOND: It is a part of the *res gestae*. Comments made by the plaintiff at the time of the alleged assault and slander, concerning the conduct and character of the defendant O’Connor, are material. They were not introduced as justification for the alleged assault by the defendants. It is submitted that it was proper for the jury to be informed of all of the actions leading up to the incident.

Mr. Justice Trenchard, in *State v. McCormack*, 93 N. J. L., p. 287 (1919), said:

“What was said by the defendant at the time of the assault, or immediately prior thereto, was a part of the *res gestae* and admissible in evidence.”

THIRD: It is further submitted that even if statements by the plaintiff are not admissible as

a part of *res gestae* they are admissible for the purpose of mitigating damages.

This has been settled in *La Porte v. Leonard*, 88 N. J. L., p. 663 (1916), where this court, speaking through Mr. Justice Minturn, held that it was error to refuse to charge that the utterances of the defendant were provoked by the previous charges and accusations made by the plaintiff attacking the defendant and that the jury might consider that in mitigation of damages. The Court said:

“The refusal to charge this request, obviously eliminated from the case all consideration by the jury of the question of provocation to which we have adverted, and which was properly a subject for their consideration as a basis for mitigation of damages.”

It is true that the remarks of the plaintiff concerning the defendant and other police officers were not an issue in the case for the purpose of justifying the alleged slander or assault, but it is submitted that the defendant should be permitted to show by the language the plaintiff used the type of person she was so that the jury might consider, in estimating the damages, whether she should receive the damages that one might be entitled to if she had conducted herself in a more ladylike manner. In *Sayre v. Sayre*, (25 N. J. L., p. 235) (1855), in an action for slander, the Supreme Court held that while the plaintiff was not put upon proof of his good character or of its precise value, the defendant was entitled to show

“that the plaintiff’s character is not good, that his reputation has sustained but little injury, and that, consequently, he is entitled to but small damages by way of reparation. If, in estimating damages, there be any distinction between the best and the worst character, the jury ought to be furnished

with the means of making a proper estimate. To exclude the evidence is either to affirm that in the admeasurement of damages in actions of slander, there is no distinction between the most exalted character and the most debased, or, admitting the distinction, to maintain that the jury must form their estimate of character without evidence."

It is not insisted in this case that the character of the plaintiff was not good, but the jury was entitled to consider whether the language used by the plaintiff was such as would indicate that she was not damaged to the extent that a person might have been who was not accustomed to use and who did not use the language imputed to the plaintiff. This is further illustrated by the case of *Vunck v. Hill*, (3 N. J. L., p. 165), which was also an action for slander, and under the view expressed in that case the statements made by the plaintiff to the defendant were properly received in evidence because the Court said:

"Damage is a subject of sound discretion in the jury; to enable them to exercise that discretion with correctness, they ought to have before them all the attending circumstances; it certainly would make a difference with a discreet jury, whether the words were spoken in public assembly, or in a private room, in the presence of one or two persons; or whether done of deliberate malice, or drawn from the defendant in the violence of passion, excited by abuse and ill treatment by the plaintiff at the time."

The italics are ours.

FOURTH: It appears in evidence in this case that the plaintiff was sued by the defendant O'Connor for slander and was awarded a judgment of One Thousand (\$1,000) Dollars, which was appealed to and affirmed by this court. (The case does not seem to be reported.) If the plain-

tiff in this case felt that she had a claim for damages against the defendant, O'Connor, it was her duty to have filed a counter-claim in his suit against her. If she had done so, the jury would then have had an opportunity to have heard not only the evidence as to the statements made by the plaintiff to the defendant, O'Connor, which were the basis of the judgment obtained by him against her, but also the statements which are the basis of this suit by the plaintiff against the defendant, O'Connor.

As was said by Judge Mountain in answer to a motion for non-suit on the ground that the matter was *res adjudicata* so far as the defendant, O'Connor, was concerned (State of Case, p. 98).

"As far as the plaintiff's claim against O'Connor is concerned I will overrule your motion. I will say, however, that I agree with you. In fact, it is my opinion that if this action was intended to be commenced against the defendant O'Connor it should have been put in the form of a counter-claim in the previous action. The situation that developed is exactly as counsel described; this case was tried and I presume all of the details of it were exhaustively brought to light before that jury. We are practically going into the same thing over again, only the defendant in the last case is the plaintiff in this case. It is very much like one man saying to another, 'You are a robber,' and the second one says, 'You are a robber,' and the first one bringing an action and after the disposition of that action the second one brings an action, so that the court and jury have two actions to try instead of one, but I do not know just how legally I can give you relief."

Regardless of the question whether it was proper or improper to have permitted the evidence as to the remarks alleged to have been

made by the plaintiff, the fact is that there was no proof other than her own statement as to the alleged slanderous words of the defendant, O'Connor, or the alleged assault. Her own witnesses failed to corroborate her in any respect, and the denial of O'Connor was corroborated by several witnesses for the defendant. The only person who testified as to the alleged slander by O'Connor and the alleged assault by O'Connor and the two other defendants was the plaintiff herself. She produced as her witness Fred Ellis, who drove the car, but he was unable to corroborate her as to the alleged slanderous words. On the contrary, the denial of O'Connor as to the slander and the denial of O'Connor, Burns and Birch as to the assault and battery, was corroborated by Christopher Ryan, the officer in charge at the desk in the Second Precinct Police Station, Birch, Burns and Joseph V. Brady.

In view of all of the circumstances it is respectfully submitted that the plaintiff had a fair opportunity to present her whole case to the jury, and the jury's verdict should not be disturbed.

Respectfully submitted,

JEROME T. CONGLETON,
CHARLES M. MYERS,

Attorneys for and of Counsel with Defendants.

FREDERICK H. GROEL,
On Brief.