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TESTIMONY.

Plaintiff's Witnesses:

Doctor Silvester Prestifilippo,		
Direct		12
Cross		14
John Tricoli,		
Direct		20
Cross		25
Frank Tavaroni,		
Direct		32
Cross		35

Defendants' Witnesses:

Donato Centolanza,		
Direct		38
Cross		39
Raphael Centolanza,		
Direct		40
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Donato R. Rizzolo,		
Direct		45

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Testimony

Plaintiff's Witnesses:	
101	Robert B. Baker, President
102	Direct
103	Cross
John T. Hoff	
104	Direct
105	Cross
Frank T. Brown	
106	Direct
107	Cross
Defendant's Witnesses:	
Donald C. Johnson	
108	Direct
109	Cross
Ralph C. Johnson	
110	Direct
111	Cross
Donald H. Hixson	
112	Direct

Notice of Appeal.

DISTRICT COURT OF THE CITY OF ORANGE.

JOHN TRICOLI,	} Plaintiff,	In Tort.	10
vs.			
DONATO CENTOLANZA and RAF-	} Defendants.	Notice of Appeal.	
FAELE CENTOLANZA,			

To John Tricoli and Gaetano M. Belfatto, attorney for the plaintiff:

Dear Sirs:

TAKE NOTICE that Donato Centolanza and Raffaele Centolanza hereby appeal to the New Jersey Supreme Court from the judgment of the District Court of the City of Orange, rendered in the above stated action on the 12th day of March, 1924.

Dated, March 17, 1924.

(Signed) THOMAS BRUNETTO,
Attorney of Donato Centolanza and
Raffaele Centolanza, Defendants.

A True Copy.
HAROLD J. TRABOLD,
(Seal) Clerk.

40

Clerk's Certificate.

DISTRICT COURT OF THE CITY OF ORANGE.

10

JOHN TRICOLI,
Plaintiff-Appellee,

vs.

DONATO CENTOLANZA and RA-
PHAEL CENTOLANZA,

Defendants-Appellants.

20

I, Harold J. Trabold, Clerk of the District Court of the City of Orange, do hereby certify that attached hereto are true copies of the papers filed in the above entitled cause in the District Court of the City of Orange, and a true transcript of the record and proceedings had therein as it appears on page 24797 on entry docket.

30

Dated, Orange, N. J., April 16, 1924.

HAROLD J. TRABOLD,
Clerk.

40

District Court Summons.

Essex County, ss.:
The State of New Jersey.

To any Constable of said County, or
to the Sergeant-at-Arms of the
District Court of the City of **10**
Orange.

SUMMON

(L. S.) Donato Centolanza and Raffaele Centolanza to appear before the DISTRICT COURT OF THE CITY OF ORANGE, to be held at the CITY HALL, NO. 29 NORTH DAY STREET (third floor) in the said City, on the 16th day of January, 1924, at TEN o'clock in the forenoon to answer unto John Tricoli in an action in Tort to the damage of Plaintiff. **20**

Five hundred Dollars. Hereof fail not.

WITNESS, DANIEL A. DUGAN, Esq.,
Judge of said Court at Orange afore-
said the third day of January in the
year One Thousand Nine Hundred **30**
and Twenty-four.

HAROLD J. TRABOLD,
Clerk.

DISTRICT COURT,

CITY OF ORANGE.

Summons in an action in Tort.

10

JOHN TRICOLI,
Plaintiff,

vs.

DONATO CENTOLANZA and RAF-
FAELE CENTOLANZA,
Defendants.

20

Demand \$500.00 costs.

Summons\$2.50

Listing Fee 1.50

Returnable January 16, 1924.

30

G. M. BELFATTO,
194 Market St.,
Newark, N. J.

40

State of Demand.

ORANGE DISTRICT COURT.

JOHN TRICOLI,	}	In Tort.	10
Plaintiff,			
vs.			
DONATO CENTOLANZA and RAF-	}	State of Demand.	
FAELE CENTOLANZA, Defendants.			

Plaintiff demands of the defendant the sum of \$500 for that whereas on the 26th day of December, 1923, at the Town of Montclair, County of Essex, and the State of New Jersey, the defendants committed an atrocious assault and battery upon the person of the plaintiff in manner following. 20

The defendant Donato Centolanza with force and arms seized the plaintiff by the coat and struck him several blows with his fist, the defendant Raffaele Centolanza struck plaintiff several times with a shovel in different places of plaintiff's body. By reason whereof the plaintiff fell to the ground and while there, the defendant Donato Centolanza kicked him several times and struck him on the left eye while the defendant Raffaele Centolanza struck him several times with a shovel and bit him on the head. By reason whereof, plaintiff was and still is sick, sore, lamed, and disordered and so remains for a long space of time, to wit, from thence hitherto during which 30 40

Counterclaim.

time plaintiff was and still is unable to do any work.

Plaintiff further says that he has spent the sum of \$10 for medicine in endeavoring to cure himself from said injuries.

10 Plaintiff demands as damages the sum of \$500 besides costs of this suit.

G. M. BELFATTO,
Attorney of Plaintiff.

A True Copy.
HAROLD J. TRABOLD,
Clerk.

Counterclaim.

20

ORANGE DISTRICT COURT.

JOHN TRICOLI,
Plaintiff,

vs.

In Tort.

30

DONATO CENTOLANZA and RAF-
FAELE CENTOLANZA,
Defendants.

Counterclaim.

40

Defendants demand as damages against the plaintiff, the sum of \$250.00 each, for that whereas on the 26th day of December, 1923, the plaintiff, in the Town of Montclair, N. J., committed an atrocious assault and battery upon the persons

Counterclaim.

of the defendants by striking, kicking and pushing each of the defendants off the rear stoop in building situated at #35 Washington St., Montclair, N. J., and that by reason of the alleged assault and battery committed upon the persons of the defendants by the plaintiff as aforesaid, the defendants were unable to attend to their regular business, and suffered great pain for a great length of time. 10

Judgment will be claimed by each of the defendants against the plaintiff in the sum of \$250.00.

THOMAS BRUNETTO,
Attorney of Defendants. 20

A True Copy.
HAROLD J. TRABOLD,
Clerk.

30

40

Entry Docket.

No. 24797

ORANGE DISTRICT COURT.

10	JOHN TRICOLI,	} Plaintiff,	In Tort.
	vs.		
	DONATO CENTOLANZA and RAF-	} Action.	Action.
	FAELE CENTOLANZA,	} Defendants.	

20 Summons issued January 3, 1924.
 Returnable January 16, 1924.
 Demand filed January 3, 1924.

G. M. BELFATTO,
Plaintiff's Attorney.

THOMAS BRUNETTO,
Defendants' Attorney.

PLAINTIFF'S COSTS.

30	Summons	\$ 2.50
	Mileage32
	Listing Fee	1.50
	Attorney's Fee	12.00
		\$16.32
	Total Cost	\$16.32

Service accepted and acknowledged this 8th day
of January, 1924.

40 THOMAS BRUNETTO, Atty.

Entry Docket.

February 29, 1924.—Trial had: Herman Winarsky, sworn as stenographer. Dr. Sylvester Filippo, sworn and testified. Continued to March 7, 1924. When trial resumed. Nicholas Romano, sworn as interpreter. John Tricoli, sworn and testified. Anthony Rao, sworn as interpreter. Frank Tavarone, sworn and testified. Plaintiff rests. Motion for non-suit denied. Donato Centolanza, Raffaele Centolanza, Donato R. Rizzolo, sworn and testified. Continued to March 12, 1924. When judgment was rendered for the plaintiff and against the defendant for Two Hundred Forty Dollars damages, and Sixteen Dollars Thirty-two Cents costs. 10

Bond and Notice of Appeal filed March 19, 1924. 20

I, Harold J. Trabold, clerk of the Orange District Court hereby certify the above to be a true and accurate transcript of the Entry Docket of the said Court in so far as it concerns the above entitled cause.

In Witness Whereof, I have hereunto set my hand and the seal of the Court this 11th day of April, 1924. 30

(Seal) HAROLD J. TRABOLD,
Clerk.

Specification of Errors.

NEW JERSEY SUPREME COURT.

10	JOHN TRICOLI, Plaintiff-Appellee, vs. DONATO CENTOLANZA and RA- PHAEL CENTOLANZA, Defendants-Appellants.	} In Tort. On Appeal From Judgment From the Orange Dis- trict Court. Specification of Errors.
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20

The defendants Donato Centolanza and Raphael Centolanza, are dissatisfied in point of law with the determination of the Orange District Court of the City of Orange in the above entitled action for the following reasons:

30 1. That the court erred in denying at the end of the plaintiff's case, a motion made on behalf of the defendants for a non-suit upon the ground that the plaintiff had not established a prima facie case.

2. The court erred in denying defendants a motion at the close of the case for a direction of a verdict in favor of the defendants upon the ground that the evidence showed two separate fights, one, by Raphael and the other by Raphael and Donato Centolanza.

40

Specification of Errors.

3. The court erred in rendering a verdict for the plaintiff in the sum of \$240.00 against both defendants upon the ground that there was no evidence showing the amount of damage caused by each of the defendants.

4. That the court erred in awarding damages 10
in the sum of \$240.00 upon the ground that said damages are excessive.

5. That the court erred in finding in favor of the plaintiff and against the defendants as said determination was contrary to the evidence.

6. That the judgment of the Orange District Court is illegal and not according to law and 20
justice.

Respectfully submitted,

THOMAS BRUNETTO,
Attorney of Defendants-Appellants.

30

40

Dr. Silvester Prestifilippo—Direct Examination.

Q. Do you know John Tricoli? A. Yes, sir.

Q. Did you ever treat him in the month of December last? A. Yes, sir.

Q. What did you treat him for? A. He came in with an ecchymosis of the left eye, laceration of the left upper lip, and multiple contusions and lacerations and superficial bruises of the left arm. 10

Q. Did you examine his whole body? A. Yes, sir.

Q. Did you find anything else? A. Well, a slight contusion of the buttocks and no laceration, and soreness in his legs.

Q. How long according to your judgment would Tricoli remain sick by reason of such injuries?

Mr. Brunetto: Isn't that leading, your Honor, how long he would remain sick as the result of such injuries? That is a conclusion that the man would remain sick. 20

Q. Judging from the character of the wounds, how long would it take to heal? A. Well, I should think a couple of weeks.

Q. Did you think—advise him during this time the plaintiff could do any work? A. Although he was up and around, I didn't think it was advisable for him to work. 30

Q. With reference to the pain, what would you say? Would the injuries cause him any pain? A. I suppose on account of the contusions he had he should have had a lot of pain, some pain anyway.

Q. How long would this pain last? A. Not less than two weeks.

Q. Doctor, could you tell the cause of these injuries, judging from the character? A. Judging 40

Dr. Silvester Prestifilippo—Cross Examination.

from the character, it might have been a fall; it might have been a struggle; but his eye showed that it was a struggle, and the laceration of the lip.

Cross Examination by Mr. Brunetto:

10

Q. How large were these lacerations on the lip, Doctor? A. A trifle not more than a half inch, the upper left lip.

Q. It wouldn't take two weeks to heal? A. Not the healing, not the lip.

Q. That wouldn't prevent him from work, would it? A. Not the lip.

20 Q. How about his eyes; what part of his eyes? A. Just the con and the outside of the right eye was ecchymotic.

Q. Let us have it in plain English. What does that mean? A. That was black and blue, as you call it, black eye.

Q. That wouldn't incapacitate him two weeks from working, would it? A. No, no; that wouldn't incapacitate him from working two weeks.

Q. That wouldn't last two weeks, would it? A. It would last two weeks to heal up, a black eye.

30 Q. When was the first time that you saw him? A. On the 27th.

Q. 27th day of December? A. December.

Q. What time of the day? A. I suppose it was in the morning office hour—nine o'clock, nine or ten; I don't recall the time.

Q. How do you fix the 27th? Have you got any record? A. Oh, yes.

40 Q. What is that paper that you are looking at? A. A copy from my original record.

Dr. Silvester Prestifilippo—Cross Examination.

Mr. Brunetto: Well, I object to his reading from that.

The Court: The original record is still in existence?

The Witness: Yes.

The Court: In your possession?

The Witness: In my office. 10

The Court: This is not the original record?

The Witness: No.

Mr. Brunetto: Then I object.

Mr. Belfatto: You can testify without looking at the paper, Doctor?

The Witness: Surely.

Q. What is it in your mind that fixes the 27th of December without looking at your paper? A. Well, I remember it was the day after Christmas time. That is how I recollect the case now. 20

Q. Was he the only patient you had the day after Christmas time? A. As far as the history—I remember now he said the thing happened after Christmas, and he came in to me the next day.

Q. And all this proof of these injuries and so forth you also testified from this memorandum that you have? A. Not from the memorandum. I can recall the case right off the reel now. The man—I have a picture before me now. 30

Q. He was still bleeding when he came to you on the 27th? A. Just after examination the lip opened. Putting my finger on there it just began to bleed again, but no other bleeding from injuries; and the bruises, they were healing, a scab.

Q. That means they are still bleeding now? A. Now? 40

Dr. Silvester Prestifilippo—Cross Examination.

Q. Yes. A. Not now.

Q. You said you put your finger on the lip? A. When I examined him on the 27th.

10 Q. On your direct examination you said that in reply to a question by counsel for the plaintiff whether the man suffered any pain, you said, "Well, he had some pain," or "a whole lot of pain." Which is it? A. He had pain. He couldn't walk. He was limping. And every time I touched his leg it would hurt; he was suffering from pain.

Q. Outside of touching him and it would pain him, there was no other indication of any other injuries on his back, was there? A. There was an ecchymosis on the left buttocks and a little swelling.

20 Q. Do you know what was the cause of that? A. Well, I couldn't say the cause.

Q. It might have been by the man slipping on the sidewalk? A. That is possible; surely that is possible.

Q. And you say this was during the morning hours, morning office hours? A. I couldn't recollect just when it was; but he came on the 27th; it must have been early in the morning.

30 Q. The only thing you are certain of is the day? A. Surely.

Q. Outside of that you are not certain? A. No.

By Mr. Belfatto:

Q. Doctor, did you see the condition of his teeth? A. Yes; I saw—I remember a tooth on the right side was loose, but it wasn't bleeding.

40 Q. It was loose. Would the tooth have at any time in the future any strength or solidity in the

Dr. Silvester Prestifilippo—Cross Examination.

same measure as before? A. If it isn't gone since, I could tell if he will have—

Q. Could you tell if you looked at the patient now? A. Surely. (Witness examines plaintiff's tooth.) It is still loose.

By Mr. Brunetto:

10

Q. You don't know what the cause of that looseness is, do you? A. No.

Q. That might be the cause of a man getting old and the teeth beginning to fall? A. Well, from the history. If you ask the history, you can just tell.

Q. I didn't ask you about the history. That condition that is now may be due to a man's age, and when a man gets old his teeth begin to get loose? A. It may be general, but not local to one side. He may have a loose tooth all right, but if it is due to age he would probably have more than one at the same time.

20

Q. In other words, they would get loose all at one time? A. Most likely.

Q. Would that be the case in every instance? A. No. There are always exceptions to everything.

30

Q. You couldn't say that is the cause— A. I couldn't commit myself.

Q. —to a man getting advanced in years? A. Yes, that is true; I could say that, too.

Q. And at the time you made a memorandum of all this man's injuries, what they consisted of, and so forth? A. Oh, yes.

Q. But you haven't got that with you? A. Well—

40

Dr. Silvester Prestifilippo—Cross Examination.

Q. Yes or no. A. All in my head?

Q. Yes. A. Oh, yes. I could recall every bit of his injuries just now. It is not very long. It is only two months. I probably would omit some, but I probably would remember all the big ones.

10 Q. Why did you leave the tooth out on direct examination when Mr. Belfatto asked you—

Mr. Belfatto: That is objectionable.

Q. —to explain the extent of his injuries? A. That is what I am saying: I may leave some out instead of putting all in. He was pretty well injured then.

20 Q. You say the man would be prevented from working two or three weeks, a couple of weeks; that he suffered pain a couple of weeks? A. A couple of weeks.

Q. The injury to the tooth or the eye would not have prevented him from working? A. No. It was his pain in the legs and back that he complained more than anything else.

Q. What leg was it? A. His left leg and the entire buttocks.

30 Q. The left leg and what? A. The entire back.

Q. That was all black and blue? A. No; certain spots, little swelling.

Q. There was a little swelling? A. Yes.

Q. From natural appearances how long was it, do you suppose, that he had those injuries? A. I beg your pardon.

40 Q. From the appearance of these wounds or injuries, how long prior to the time that you saw them would you say those injuries had been inflicted? A. Well, they showed that they were very

Dr. Silvester Prestifilippo—Cross Examination.

recent injuries—not any later than twenty-four hours.

Q. What is the rule of determining the time that an injury has been inflicted? What would cause you, anyway, to fix the time as twenty-four hours?

A. The discoloration, the amount of tenderness and the swelling; that all gives an idea. 10

Q. You say his lips had been swollen for twenty-four hours? A. Yes, just beginning to swell.

Q. You say he was bleeding twenty-four hours? A. No. At the time I saw it—I said it began to bleed after examination, to show that the scab was not really formed yet. The moment I inserted my finger there it began to bleed again. That is also evidence of recent injuries. 20

Q. On the left leg you say there were some injuries there. What was the trouble on the left leg? A. Just the swelling and the tenderness.

Q. What part of the leg? A. Around the patella ridge.

Q. Where is that? A. On the buttocks, starting from that side, up to the ankle.

(At this point an adjournment was taken to March 7th.) 30

Friday, March 7th, 1924, 10:30 A. M.

(Nicholas Romano, sworn to interpret in the Italian language.)

JOHN TRICOLI, the plaintiff, sworn.

Direct Examination by Mr. Belfatto:

Q. Mr. Tricoli, your business is what? What is your business? A. Mason, bricklayer.

10 Q. Were you doing any work for Donato Centolanza on the 26th day of December last? A. Yes, sir.

Q. Where were you working? A. 190 Bloomfield Avenue.

Q. What kind of work did you do for him? A. Brick, stone work, and plaster.

20 Q. Who else was with you on the morning of December 26th? A. Two more—one was a plasterer and one was a day laborer.

The Court: What are the names?

The Witness: Frank Tavaroni and Gaetano Giuliano.

Q. What kind of work were these two men doing? A. Plastering that day.

Q. Did you see Donato Centolanza that morning? A. Yes.

30 Q. And where did you see him? A. In that building.

Q. Did you talk to him? A. Yes.

Mr. Brunetto: Didn't he say "They struck me"?

The Interpreter: Listen here: I am the interpreter.

40 The Court: Don't get into any argument with counsel or the Court. We want to know just what he says. I will tell you

what your rights are and what counsel's rights are. Counsel understands the language, and if you don't interpret it according to what the witness says he has a right to inform the Court and make an objection.

Q. (Question read.) A. Yes. I spoke to the man and he informed me his brother was around the place bothering. 10

Mr. Brunetto: To that I am inclined to put in an objection.

The Court: Is that a correct interpretation of the answer?

Mr. Brunetto: No, sir. He said Centolanza's brother had been stealing material. 20

(The interpreter was removed and Anthony Rayo was sworn to interpret.)

Q. (Last question read.) A. Yes, sir.

Q. What did he say to you? A. He threatened to kill me because I told his brother, "Why do you take my material?"

Q. What happened after that conversation? A. At one time his brother took the shovel and he hit me alongside of the arm. 30

Q. And what did the other brother do? A. The other brother grabbed ahold of me and we were grasping; one of them was hitting me with the shovel and the other was hitting me with the fists.

Q. Who was hitting you with the fist? A. Donato grande.

Q. Who was hitting you with the shovel? A. The other brother. 40

Q. How many times did Donato strike you with his fist? A. Several punches.

Q. And how many times did Raphael strike you with the shovel? A. More than four, five times.

10 Q. Where were you struck by Donato? A. The first shot I had in my arm right here (indicating), and then right here (indicating), and two I saved with my feet; and the last shot I got in back of the door, and I saved it with my hand.

Q. You say that you fell to the ground? A. Yes, sir.

Q. What caused you to fall to the ground? A. Because they were beating me.

Q. And while you were on the ground was anything done to you?

20

Mr. Brunetto: What is the last he said, Mr. Rayo? Didn't he say, "Dentro a la casa"?

Q. (Question read.) A. Well, we were wrestling. I fell down. One was hitting just like a blacksmith, and the other one was hitting me around there (indicating).

30 Q. Was anything done to you while you were lying on the ground? A. Yes, the two of them.

Q. What was Donato doing to you while you were on the ground? A. One was hitting me on my head and the other one was hitting me with the shovel, and I was protecting myself with my feet.

Q. Who was hitting you on your head? A. Donato.

40 Q. With what? A. With his feet, with his hands.

John Tricoli—Direct Examination.

Q. How long did the fight last while you were on the ground? A. Five or six minutes.

Q. Did you get up, or how did you get up? A. Two or three minutes. While we were fighting two witnesses that I have here in this room came over there and tried to separate us.

Q. How did you get up? A. While I was down, when I seen the shovel, I simply turned over and I got up. 10

Q. Did you notice anything on your body which was abnormal? A. Yes, sir.

Q. Where? What part of your body? A. Over here (indicating), two over here and two here (indicating).

Q. Did you have anything on your face? A. (Witness' answer uninterpreted.) 20

Q. What did you have on your face?

Mr. Brunetto: I think Mr. Rayo ought to give the answer.

The Court: Tell us what he says.

The Interpreter: He says, "The other brother hit me in the face."

The Court: What was the matter with your face? Anything the matter with it? 30

The Witness: I got one fight over here (indicating), this here swelled up, and I got one fight over here (indicating), and the blood was coming up.

Q. Anything else? A. One tooth was struck.

Q. One tooth was struck? A. Yes.

Q. What is the condition of the tooth now? A. My tooth shakes.

Q. What happened to these two defendants 40

John Tricoli—Direct Examination.

after the fight? What became of them? A. After the fight I told them, "He is hitting me; but I am going to make you pay for it," and the other one was hitting me with the shovel while I was saying it.

10 Q. Where did you go afterward? A. I went away and the two of them went to work again.

Q. Did you go to see the doctor? A. Yes, sir.

Q. And what is his name? A. Prestifilippo.

Q. How many times did you see the doctor? A. Five or six times.

Q. Did he prescribe medicines? A. Yes.

Q. For how long were you away and unable to work? A. Two weeks.

20 Q. During this time you say you saw the doctor; is that so?

The Court: He said so.

Q. How long did it take for the wounds to heal up? A. About twelve days or more.

Q. Were the injuries uncomfortable to your rest that night?

Mr. Brunetto: That is leading.

30 The Court: I sustain the objection.

Q. What was your physical condition with reference to rest after the fight and during the two weeks? A. I couldn't sleep.

Q. For how many nights couldn't you sleep? A. Three weeks, probably more.

40 Q. Now, with reference to the injuries sustained on the rest of your body, did you feel anything out of—

John Tricoli—Cross Examination.

The Court: Wait a minute. Why couldn't you sleep?

The Witness: I had pains all over me.

Q. And for how long did you have those pains?

Mr. Brunetto: Isn't that repetition? 10

The Court: Oh, it is material.

A. Three weeks.

Q. Now, did you pay any money to the doctor?

A. I didn't pay it. But he wants twenty dollars.

Q. How much money did you earn by the week?

A. Twelve dollars a day.

Q. You have been a mason contractor for a number of years, have you not? A. Yes, sir. 20

Q. For how long? A. For ten years.

Cross Examination by Mr. Brunetto:

Q. During that time you didn't get paid by the day; you get paid by the profits you make on the job, don't you, Mr. Tricoli? A. Sometimes I get paid by the day. I was never always a contractor.

The Court: Well, at the time, these two weeks you were out of work, were you a contractor or making money by the day's wages? 30

The Witness: I was working as a contractor.

The Court: How much money do you make a day when you are contractor?

The Witness: Sometimes twenty dollars, sometimes eighteen dollars. 40

Q. Sometimes you lose money on a job, don't you, Mr. Tricoli?

Mr. Belfatto: That is objected to, your Honor.

The Court: I overrule the objection.

10 Mr. Belfatto: Grant me an exception.

A. Sure.

Q. Now, Mr. Tricoli, you say you were unable to work for two weeks? A. Yes, sir.

Q. Now you say the day after this fight you went down to Mr. Rizsolo's place of business in Newark? A. Yes, sir.

20 Q. No trouble going down? You could go down all right? A. Yes.

Q. Now, the afternoon after the fight you went on this job there? A. Yes. I was there a little while; then I went to Newark.

Q. And you say you had a fever?

The Interpreter: He said he had a fever.

Q. Did you have a cold around this time? A. I didn't get no colds this year.

30 Q. You said you had fever. What does that come from? A. I wasn't sick from fever; I was sick from pain.

Q. But you did a little work in the afternoon around this place? A. No, sir.

Q. You went around the job the next morning, didn't you? A. No, sir. I watched a little bit; I just watched, but I didn't start to work.

40 Q. You say you watched. What do you mean by "watched"? Did you watch the men working on the job the following day? A. I had lots of material belonging to me over there.

Q. Didn't you have any men working on this job the following day after the fight? A. No, I didn't have men. The first day I had, the day of the fight; the second day I didn't have any.

Q. Then the following day, as I understand you, you just went on the job to look for your materials? A. Yes, sir.

10

Q. What else did you do the following day besides going on this job and looking over your materials? A. I simply passed by there and looked at the materials. I didn't stop; I went right by.

Q. What did you do that for? Did you take in the show, or what? A. I didn't do anything.

Q. Why didn't you work the following day on this job? A. I couldn't work there; the carpenters had everything upside down.

20

The Court: I don't see of what importance that is to the case. This is an action for personal injuries. I think you are entering into the matter relating to their contract, which is of no importance in this case.

Mr. Brunetto: I have a reason for bringing out this testimony on which I expect to prove certain circumstances about this fight, and for the purpose—

30

The Court: What possible connection would it have if he went on with the contract three or four days after?

Mr. Brunetto: To prove his damages. He said he was unable to work for a certain time.

The Court: I think we are able to understand from the evidence of the other case that he didn't do any work after this assault. I am not interested in it at all.

40

Q. Now, the following day after this fight, did you go out to look over the job?

Mr. Belfatto: I object to that. He has already said that.

The Court: What did he say?

10

A. No, sir.

Q. Now, you again went to the same place—that is, on this job, two days after the fight? A. No, sir.

Q. Do you remember the carpenters that were working on this job? A. The second day, yes, the second day, and I saluted them.

Q. Did you see them also two days after the fight? A. No, sir.

20

Mr. Belfatto: I object to that, your Honor. It is irrelevant and immaterial.

Q. Mr. Tricoli, you walked from your house to this job? A. Oh, yes.

Q. You were able to walk all right? A. Yes, sir.

Q. And the only reason you didn't pick up this job was because the carpenters were doing other work and the job was not ready for you? A. I could have made my workingmen do the work if the carpenters were ready; but the carpenters weren't ready and I couldn't go ahead with the work.

30

Q. As a matter of fact you didn't do any work yourself, did you?

40

Mr. Belfatto: I object to that.

The Court: Overruled. Answer yes or no.

A. Work for payment? No.

Q. Now, Mr. Tricoli, you had two fights on this day with the Centolanza brothers, didn't you?

A. The first time I told him to go away and not to disturb me. 10

Q. You said the first time?

The Court: You tell him to answer this question yes or no. Tell him to answer yes or no and then quit his talking.

Q. (Last question read.) A. I got one stick in my head. 20

Q. One quarrel was with Raphael, wasn't it?

The Court: Yes or no.

A. We didn't have any quarrel simply threatening.

Q. Only threatening? What happened? What was the manner of these threats? Did Centolanza have anything in his hand that he threatened to beat you up, or did you threaten to beat him up? I am talking about Raphael now, the first quarrel you say you had. 30

The Court: He testified only to one quarrel. He has testified to one continuous fight.

Mr. Brunetto: Then I withdraw that question.

The Court: The first part of it is he landed on the ground and the second part 40

of it was he got up and he was hit again. That is all he testified to.

Mr. Brunetto: I understand there were two independent fights.

10 The Court: If there were two independent fights you can bring that in on your defense.

Q. Mr. Tricoli, you say the doctor wants twenty dollars for the service that he has rendered you, and that is Dr. Prestifilippo? A. Yes.

Q. That includes the first time coming to court, doesn't it? A. I don't know anything about that. He wanted twenty dollars before he comes to court.

20 Q. Now, during those two weeks that you say you were unable to work, you were not detained in your house; you were not compelled to stay home during that whole time? A. I went out to take a walk.

Q. You were out the whole day and then you came home at night as usual? A. I was going out looking for a doctor and looking for a lawyer, and that is the reason I was going out.

30 Q. Now, Mr. Tricoli, where were you the first time that you saw Donato Centolanza when this fight started? A. He was over to his house, and his brother come from the back of the house where we were working.

Q. (Last question read.) Please answer that question.

Mr. Belfatto: He has already testified to that fact on cross examination.

40 The Court: I will allow it.

A. In front of the door and I seen the two brothers come there in a hurry about two hundred feet away.

Q. The two of them were running towards you?

A. Yes, sir.

Q. You were standing on the porch, on the rear porch at the time?

10

Mr. Belfatto: Objected to. He has already said so.

The Court: Overruled.

A. First I was inside, and when they were coming I was in front.

Q. You were standing on the porch, were you not? A. Yes, I was on the stoop.

20

Q. And Donato immediately came on the stoop, too, didn't he? A. Yes, first one and then the other.

Q. Donato came first? A. Sure.

Q. And just as soon as Donato got on the stoop you went towards him, did you not? A. No. I was standing still, and the only thing I told him, I says, "Watch your brother. He wants to kill me, and every day he is taking my material."

Q. Didn't you strike him while he was on the porch? A. As soon as I told him that word he took the shovel and he hit me at the elbow.

30

Q. Was it Donato? A. No; it was his brother.

Q. What I am talking about is Donato Centolanza. A. Donato grabbed ahold of me by the head and started hitting me.

Q. Just as Donato came on the porch he came right for you and grabbed you by the neck, is that right? A. Yes; one of the brothers grabbed ahold

40

Frank Tavaroni—Direct Examination.

of me by the head and the other grabbed ahold of the shovel and hit me on the elbow.

Q. I am talking about Donato. (Last question read.) A. Yes, sir.

Q. Did you strike him back?

10 The Court: Tell him yes or no.

A. I couldn't hit him because the other fellow was hitting me with the shovel.

The Court: Strike out the answer. Tell him to answer that question yes or no.

A. Yes.

20 Q. You threw him off the porch, didn't you?
A. No, sir.

FRANK TAVARONI, sworn in plaintiff's behalf, testified through the Italian interpreter as follows:

Direct Examination by Mr. Belfatto:

30 Q. Tavaroni, you were working on this building on the 26th day of December, 1923? A. Yes, sir.

Q. For how long had you been working? A. That is the first time I had got the job; but before I worked all summer.

Q. How many days had you worked at this particular job before the 26th? A. One week.

Q. Did you see Donato and Raphael Centolanza the 26th day of December? A. Yes.

40 Q. Where did you see them? A. On the job.

Frank Tavaroni—Direct Examination.

Q. Did you see John Tricoli, the plaintiff, on the job? A. Yes.

Q. Did you see what happened between Tricoli and the two Centolanzas?

Mr. Brunetto: I object to the form of the question—between the two of them. I think he ought to be restricted to each one. 10

The Court: Did you see what happened? Let him tell what happened. Did you see what happened?

The Witness: Yes, I seen everything.

The Court: What happened?

The Witness: I saw Raphael hit him with the shovel and Donato hit him with his fist. 20

The Court: What did he do? What did Tricoli do?

The Witness: Tricoli was defending himself with his hands; but he didn't hit nobody.

Q. What was Donato doing to Tricoli? A. He was hitting with his fist.

Q. How many times did he hit him with the fist? A. I didn't count. 30

Q. What did Raphael Centolanza do? A. He hit him with the shovel.

Q. How many times did he strike him with the shovel? A. I didn't count them.

Q. For how long did the fight last? A. Five minutes.

Q. While the fight was going on, where was Tricoli standing? A. Tricoli was on the stoop in front of Bloomfield Avenue. 40

Q. Was he on the stoop all the time while the fight was going on? A. Before the fight he was on the stoop. While Tricoli was standing on the stoop, Raphael and Donato come there and he says, "Run away; I am going to kill you, Maestro Juan." He said, "I am going to shoot you."

10 Q. Was Tricoli on the ground at any time? A. No; he was standing up on the stoop.

Q. You were there all the time, were you not? A. I was there all day.

Q. After the fight did you see anything the matter with Tricoli's face? A. He had all his face blackened.

20 Q. Anything else that you noticed on his face? A. He was cleaning his mouth with his handkerchief, and he was bleeding blood.

Q. While he was doing that, where were the two Centolanzas? A. They were there, too.

Q. Doing what? A. They were fighting.

Q. How long did the fight last? A. Well, while they were fighting and beating each other, it lasted fifteen minutes, a quarter of an hour.

Q. After the fight, what became of the two Centolanzas and Tricoli? A. Maestro Juan went away.

30 Q. You mean Tricoli, the plaintiff? A. Tricoli, he went away and he left the workingmen.

Q. What became of the two Centolanzas? A. And Raphael put the man on the job.

Q. Did you do any work the following day yourself? A. Yes, I did.

Q. Was the plaintiff, Tricoli, there the following day? A. No; I didn't see him.

40 Q. Did you see Tricoli at any time after the fight? A. After one week he come over to see me.

Q. What was the condition of his eyes after the fight?

Mr. Brunetto: I object to the form of the question.

Mr. Belfatto: I will withdraw the question. That is all. Take the witness.

10

Cross Examination by Mr. Brunetto:

Q. You saw the whole of this fight, didn't you, Mr. Tavaroni? A. Yes.

Q. From the beginning until Centolanza went away and Tricoli went away? A. Yes; from the first part to the last.

Q. And you are sure that while Donato and Raphael were running towards the house Donato said, "Run away, Maestro Juan; I am going to shoot you"? A. Yes, that is what he said. They started to run there, and the first words he said, "Run away, I am going to kill you."

20

Mr. Belfatto: Didn't he say "shoot"?

The Witness: That is what he said, "I am going to shoot you."

Q. You didn't see a gun in the hands of either of the Centolanzas, did you? 30

Mr. Belfatto: That is not cross examination. The gun is not in question at all.

The Court: He can cross examine; he can find out.

A. No, they didn't have any.

Q. Who got on the porch first—that is, between the two Centolanza brothers? A. Donato got up first and Raphael hit him with the shovel. 40

Q. When Donato says to Tricoli, "Run away, Maestro Juan," what did Mr. Tricoli do—"Run away, Maestro Juan; I am going to shoot you"—what did Mr. Tricoli do? A. Maestro Juan didn't say nothing. He simply says, "Why do I have to run away; I didn't do no harm to anybody."

10 Q. Then Donato jumped on the porch and began to strike Tricoli, is that right? A. When he got on the stoop he started to fight, and the other one lifted the shovel, and he got on the stoop, and I got on the stoop and got in between them.

Q. And you separated them? A. I started to separate them, and I called the other help, and they said they were going to kill Maestro Juan—"Help him."

20 Q. This was all going on on the porch? A. Yes. And after they were wrestling, and they pulled him inside, and Raphael went in the rear and got inside with the shovel.

Q. This fight, now, where Raphael hit Mr. Tricoli, happened inside of the building, then, didn't it? A. It was inside and outside both. When they went inside the hall door wouldn't leave them in the cellar and I pushed the door and they dropped in the cellar.

30 Q. What happened? A. And then after that Donato was hitting Maestro Juan, and Raphael was running after me with the shovel and he wants to beat me up for separating them.

Q. And this all took place down in the cellar? A. I fell in the cellar, and he fired me the shovel.

The Court: This is irrelevant.

40

Plaintiff Rests.

Mr. Brunetto: Your Honor, at this time I would like to make a motion for a non-suit in view of all the evidence which has been furnished by the plaintiff. The evidence is so conflicting as to what actually happened. Of course, the Court must judge the evidence furnished by the plaintiff as to whether he has established a prima facie case. 10

Your Honor has heard the testimony of the plaintiff and then this witness whom they produce, and in his own words he says he saw the whole thing from the beginning to the end and your Honor remembers the plaintiff's testimony. He says the thing happened down in the yard that is where they beat him up; and then they produce this other witness and he contradicts him. He says the thing happened on the porch, and they were dragged inside and they all rolled down the cellar. And your Honor will take into consideration the testimony, that I imagine is in your mind, that he says he was hindered from completing his contract. That is his own story. You can see how much truthfulness there is. 20 30

The Court: I deny the motion.

Mr. Brunetto: I pray an exception.

DONATO CENTOLANZA, defendant, sworn in his own behalf.

Direct Examination by Mr. Brunetto:

Q. Mr. Centolanza, do you know Mr. Tricoli?

10 A. Sure.

Q. Do you remember the 26th day of December, 1923? A. Yes.

Q. He is a contractor? A. Yes.

Q. He was doing the mason work? A. Yes.

Q. And all the mason work on this building of yours? A. Yes.

Q. This was a building that originally was on Bloomfield Avenue and moved across the lot? A.

20 The same lot, 190 Bloomfield Avenue.

Q. But it is the same lot that runs all the way from Bloomfield Avenue to Washington Street, Montclair? A. Yes.

Q. Now, Mr. Centolanza, will you tell us what happened on this 26th day of December, 1923?

Mr. Belfatto: I object to the form.

Q. (Question read) between yourself and Tri-
 30 coli? A. I live at 173 Bloomfield Avenue, across the street from this place—190, across the street. I was inside the store, my store. I was working about twenty-five feet from my store, and could see across the street from my place. I see there is trouble. I say, "What is the trouble?" I go see myself. I went to the house. The stoop is no finished only have a board on stoop for people coming into the house. I find my brother was on
 40 the ground, working on the yard, and this gentleman act like crazy. I said, "What's the matter,

Juan?" He said, "You, too, son of a gun," he say. He pushed me down on the floor. It was slippery, too; it was freeze. I said, "What's the matter, Maestro Juan? I thought you were a nice man." He said—(Witness speaks Italian). I said, "My God." He pushed me down. I was on the level floor. And then he hit me and I hit him. 10

The Court: You had a fight?

The Witness: We had a fight, both.

Mr. Belfatto: That is all you know?

The Witness: That is all I know.

Q. Did you say to Maestro Juan as you were going to the rear of the building that you would shoot him, for him to run away, like Mr. Tavaroni said? A. No, no. 20

Cross Examination by Mr. Belfatto:

Q. A week ago to-day you testified in a case that you didn't do anything to Tricoli; is that so?

Mr. Brunetto: I object to that. In the testimony of last week he was asked if he hindered or hampered this plaintiff from completing this job, and he says no, and that was the purpose of my question. 30

The Court: I don't know if he actually testified to that; or not; but he can testify to that. I will overrule the objection.

Mr. Brunetto: I pray an exception to your Honor's ruling.

Q. Didn't you say a week ago in this Court here that you hadn't any quarrel at all with Tricoli, the plaintiff in this case? A. I don't remember. 40

Raphael Centolanza—Direct Examination.

RAPHAEL CENTOLANZA, sworn for the defense.

Direct Examination by Mr. Brunetto through Italian Interpreter:

- 10 Q. Mr. Raphael Centolanza, you are the brother of Donato Centolanza? A. Yes.
- Q. Do you know John Tricoli, the plaintiff in this suit? A. Yes.
- Q. And on the 26th day of December, 1923, you were employed by your brother on this property 190 Bloomfield Avenue, Montclair? A. Yes.
- Q. What was the nature of your work? A. Laborer.
- 20 Q. What were you doing on this day? A. I was working in the yard.
- Q. Did you see Mr. Tricoli on this day? A. Yes, in the morning.
- Q. Did you have any words with him? A. I was working shoveling ashes. The wheelbarrow and the shovel belong to him. And while I was shoveling he come there. He says, "Hey, what are you doing? That ashes belong to me." I said, "All right," and I let it alone.
- 30 Q. And then what happened? A. While I go in the house to get the shovel he grabbed ahold of me by the neck and he said, "You dirty little robber," he said, "come here," and I ran away from him, and while I ran away I jumped off the stoop and he jumped after me, and he fell down.
- Q. And then he fell off the stoop? A. And he fell off the stoop.
- Q. When you jumped off the stoop and Mr. Tri-
- 40 colli jumped off the stoop, then what happened;

Raphael Centolanza—Direct Examination.

what took place? A. He was picking up sticks, iron pipes, and throwing them after me, and when he jumped he went down.

Q. Then what happened? A. Then what happened? —after everything was settled I started to work again.

Q. When did your brother come, Donato? When did your brother come? A. About half an hour afterwards, and I was working. 10

Q. Where was Tricoli at the time? A. He was in the house. After he went in the house, why, he was cleaning himself with a handkerchief; I don't know what he was doing; I was working.

Q. Did you see your brother go on the stoop? A. About a half hour.

Q. There were two fights altogether that morning? 20

Mr. Belfatto: I object to that, your Honor. There is nothing to that effect in evidence that there were two fights.

The Court: No, I haven't heard anything. There might have been several sections to the one fight that is all. It was pretty continuous. They moved from one point to another, as fighters usually do. 30

Q. Raphael, when the plaintiff, Mr. Tricoli, chased after you was your brother in the yard? A. No, sir, he wasn't there.

Q. Your brother came there and he started to go up on the porch; then he saw Mr. Tricoli?

Mr. Belfatto: That is objected to. There is no evidence that he went on the porch, the brother. 40

Raphael Centolanza—Direct Examination.

The Court: I will allow it. Go ahead.
Complete the question.

Q. (Question read.) A. I didn't see my brother.
I was working. We had already the fight.

10

The Court: In justice to Mr. Belfatto, I really ought not allow that question. This is your witness. You are not cross examining; this is direct examination. Mr. Belfatto very generously is keeping quiet and letting it in. There is no use putting that in this witness' mouth.

20

Mr. Brunetto: The only thing, your Honor, we are dealing with the witness through the interpreter. That is a different proposition.

The Court: I think he has told all he knows about it.

Q. Mr. Centolanza, after you went back to work, and you say about a half hour afterwards your brother came, did you see your brother go away?

30

Mr. Belfatto: I object to that. He has testified that he didn't see his brother.

The Court: I will overrule the objection.

A. When my brother come there (interpreter speaks in third person) they were fighting amongst themselves, the three of them.

40

Mr. Belfatto: That is objectionable. I move to strike out because the question is to the effect that he was seeing his brother go to him.

The Court: Give me the whole answer.

The Interpreter: He says his brother was there; the three of them were fighting amongst them. I don't know which three he has reference to.

A. (Continuing) And they were beating my brother. When my brother come there he fight. I was working; but I didn't fight with anybody. 10

The Court: I will overrule the objection.

Q. When you say the three of them were fighting with your brother, whom do you mean by the the three? A. The three of them were fighting, and he said, "Are you against me, too?" 20

Q. Who said that? A. I was listening. I heard; I didn't know who it was.

Mr. Belfatto: I move that be stricken out.

The Court: He says he doesn't know.

Q. Did you see anything happen on the rear porch between Tricoli and your brother? A. No; my brother wasn't there. 30

Mr. Belfatto: I move to strike it out.

The Court: He answered the question. Strike out the rest.

Q. You have seen your brother and Tricoli, though, after, didn't you?

Mr. Belfatto: That is objected to. That is more than leading. 40

The Court: I sustain the objection.

Raphael Centolanza—Cross Examination.

Q. Mr. Tricoli says that you and your brother got him in the yard and beat him up; your brother kicked him, punched him, and you hit him with the shovel in the yard; is that so? A. No, sir.

10 The Court: Did you hit Tricoli with the shovel?

 The Witness: No. I was looking for a shovel; but I didn't hit him.

Cross Examination by Mr. Belfatto:

Q. Centolanza, you went on the job on the 26th of December, 1923, did you not? Yes or no. A. Yes.

20 Q. And your brother was there when you went there? A. No, sir.

 Q. Then your brother came after? Yes or no. A. He always came there.

 Q. Did you see your brother on the job there? A. When I was there, no.

 Q. When did you see him at any time on the job that morning? A. No.

30 Mr. Brunetto: I don't think the witness understood that question.

 Q. (Question read.) A. I seen him between nine and ten.

 The Court: Where did you see him?

 The Witness: On the job.

40 Q. And you saw Tricoli, the plaintiff, did you not? A. Tricoli I seen first. We had the fight before.

By the Court:

Q. Did you see your brother in a fight with Tricoli? A. A fight with Tricoli?

Q. Didn't you see your brother in any fight at all with Tricoli? A. No.

Q. Didn't have anything to do with it? A. No. 10

Q. Your brother testified that he did have a fight with Tricoli? A. He fight half an hour after I had the fight.

Q. Did you see that? A. Then I seen them altogether. I says, "What's the matter?" I seen them altogether.

DONATO R. RIZZOLO, sworn for the defense. 20

Direct Examination by Mr. Brunetto:

Q. Mr. Rizzolo, you remember this 26th day of December, 1923? A. Yes.

Q. Do you remember the occasion when Tricoli said he had some trouble on this Centolanza job?

Mr. Belfatto: That is objected to. 30
The Court: I will allow it.

Q. Do you remember that? A. I didn't see anything the matter.

The Court: Do you remember the occasion referred to?

The Witness: Yes, sir.

Q. Did you have any conversation with Tricoli? 40
A. Yes, sir.

Q. And where? A. In my house.

Q. What did Tricoli tell you?

Mr. Belfatto: When? I object to that.
When? What date?

The Witness: On the 26th of December.

10

Q. Last year? A. Last year.

Q. What did Tricoli say to you? A. He came over to the house asking for a certificate, and I said to him—

Q. (Interrupting) Certificate for what? A. Certificate for the work done—that is, second payment.

Q. On this Centolanza job? A. Yes, sir.

20

Q. And then what else did he tell you? A. I told him that I had to go see the job first before I could do that.

By the Court:

Q. What time of the day was that? A. It was in the afternoon.

Q. Did Tricoli have any marks on him indicating that he had a fight? A. He had a black eye.

30

Q. Did he have anything else? Anything on his face? A. I didn't notice anything else.

Q. Did you notice his lip cut? A. No, sir.

Defendants Rest.

40

Mr. Brunetto: At this time I desire to make a motion for a direction of the verdict for both defendants in view of the testi-

mony of the plaintiff and in view of the testimony of the defendants. The testimony of the plaintiff is conflicting. The testimony of both defendants prove two separate fights—one by Raphael and the other Donato. Donato was frank about it. He says he went there and he started to say something to him, “and tried to push me out. We grappled, and the two of us were thrown off that way.” There is the testimony of his brother. Of course, your Honor takes into consideration when you use an interpreter, like every other nationality, different people from different parts of the country talk different dialects, and, of course, there is considerable difficulty—particularly I find it in the Italian language, considerable difficulty between interpreters and witnesses understanding each other. Of course, under the circumstances. this is no reflection on Mr. Rayo or anybody. The interpreters try to do the best they can. Of course, the Court has to take those things into consideration.

10

20

The Court: You are moving for a direction of the verdict?

30

Mr. Brunetto: Yes, on the testimony.

The Court: I will deny that. Does counsel want to sum up?

Mr. Brunetto: I would like to have a little time on that.

(At this point an adjournment was taken to Wednesday, March 12th, 1924, at thirty o'clock in the forenoon.)

40

Wednesday, March 12th, 1924 10:30 A. M.

(Counsel sum up.)

10 The Court: During the course of the trial at no time was a motion addressed to the Court to separate this action so far as the defendants are concerned. It cannot be done now that the case is closed and you have reached the summing up. There can be nothing done on that matter.

20 After carefully considering all the evidence in the case for the plaintiff and the defendants, I find as a fact, first, that the assault was committed by the defendants on the plaintiff; secondly, that the plaintiff suffered damage by reason of the assault.

I will dismiss the counterclaim as not having been sustained and render a verdict for the plaintiff for two hundred and forty dollars.

Mr. Brunetto: I pray an exception to your Honor's ruling.

30

40

Judge's Certificate.

ORANGE DISTRICT COURT.

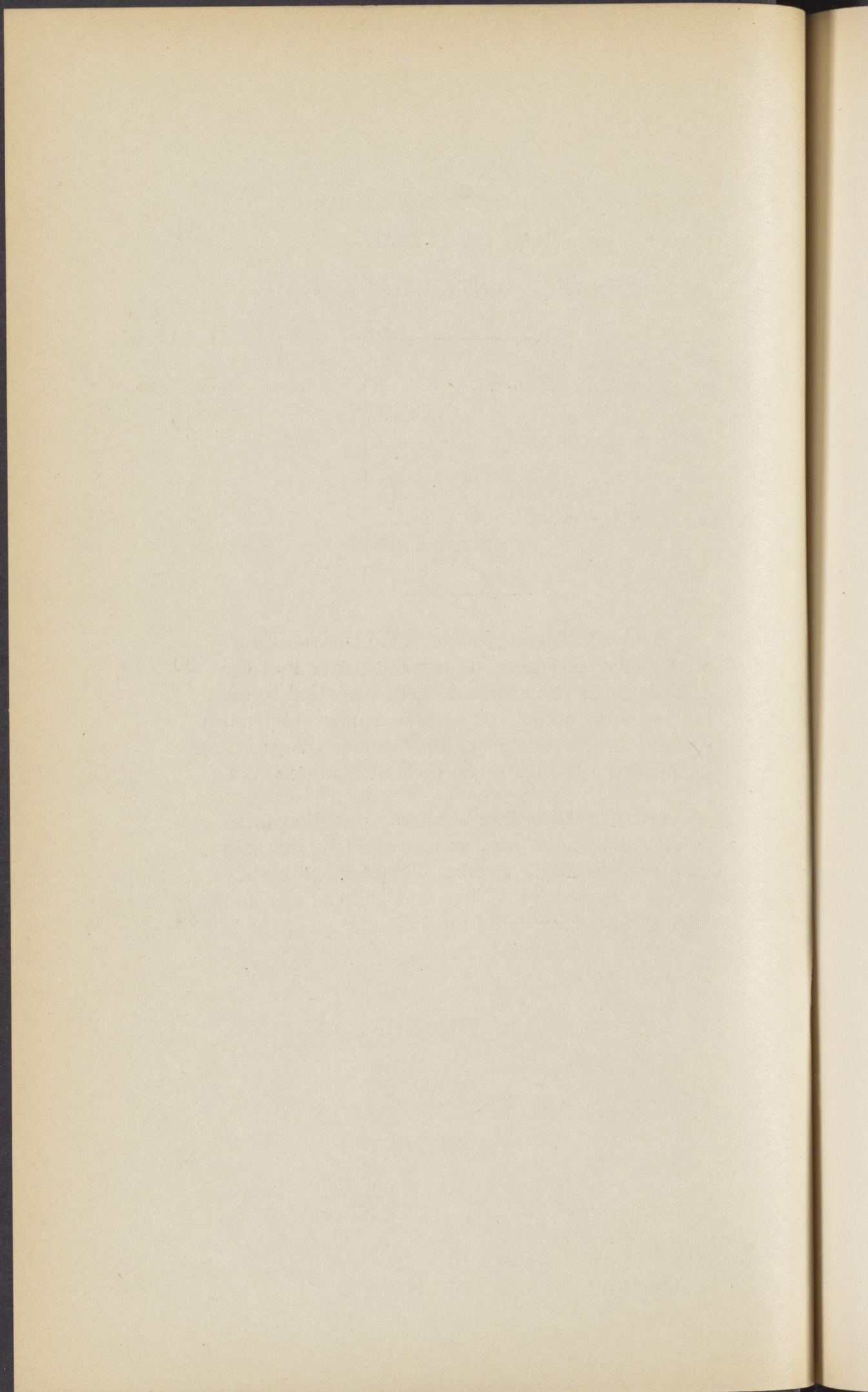
JOHN TRICOLI,	}	10
Plaintiff,		
against		
DONATO CENTOLANZA and RA-	}	20
PHAEL CENTOLANZA, Defendants.		

I, Daniel A. Dugan, Judge of the District Court of the City of Orange, do hereby certify that the defendants in the aforesaid action applied to me for the appointment of a stenographer to transcribe the proceedings at the trial of the aforesaid cause and take down the testimony therein.

I certify that Herman Winarsky was designated as stenographer to act as aforesaid in the said case, and was duly sworn. I do further certify that this transcript of the said proceedings and said testimony made by the said stenographer is a correct state of the case upon appeal in the aforesaid action.

DANIEL A. DUGAN,
Judge.

Dated, March 25, 1924.



Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">JOHN TRICOLI, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">DONATO CENTOLANZA and RAF- FAELE CENTOLANZA, <i>Defendants-Appellants.</i></p>	<p>On Appeal From Orange District Court —Notice and Grounds of Appeal.</p>	<p>10</p>
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To GAETANO BELFATTO, Attorney for plaintiff-appellee.

Sir:

PLEASE TAKE NOTICE, that the above defendants-appellants appeal to the New Jersey Court of Errors and Appeals from the judgment of the Supreme Court, affirming the judgment of the District Court of the City of Orange, upon the following ground:

Because the Supreme Court erred in affirming instead of reversing and setting aside the judgment of the District Court of the City of Orange, which was under review in this proceeding.

Dated, December 8, 1924.

THOS. BRUNETTO,
Attorney for Defendants-Appellants.

I conceive there is good cause for appeal in the above entitled cause.

THOS. BRUNETTO,
of Counsel with Defendants-Appellants.

20

30

40

Affidavit of Service.

NEW JERSEY SUPREME COURT.

10	JOHN TRICOLI, <i>Plaintiff-Appellee,</i> vs. DONATO CENTOLANZA and RAF- FAELE CENTOLANZA, <i>Defendants-Appellants.</i>	} On Appeal } From Orange } District Court } —Affidavit } of Service.
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State of New Jersey, }
 County of Essex, } ss.:

20 FRANK BRUNETTO, JR., being duly sworn accord-
 ing to law upon his oath, deposes and says:

I am a clerk in the office of Thomas Brunetto,
 attorney for defendants-appellants in the above
 entitled cause.

30 That on the 8th day of December, 1924, I served
 personally upon Gaetano Belfatto, attorney for
 plaintiff-appellee in the above entitled cause, a
 copy of a notice and grounds of appeal by deliv-
 ering to the said Gaetano Belfatto, a copy of said
 notice, at his office 194 Market St., Newark, N. J.

FRANK BRUNETTO, JR.

Subscribed and sworn to before me
 this 12th day of December, 1924.

LOUIS MIRAGLIA,
 an Attorney at Law
 of New Jersey.

40

Opinion.

NEW JERSEY SUPREME COURT,

MAY TERM—1924.

JOHN TRICOLI, <i>Plaintiff-Appellee,</i> vs. DONATO CENTALANZA and RAF- FAELE CENTALANZA, <i>Defendants-Appellants.</i>	}	On Appeal from Orange District Court.	10
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Submitted May Term, 1924.

Decided May Term, 1924.

20

THOMAS BRUNETTO, For Appellants.

G. M. BELFATTO, For Appellee.

Argued Before TRENCHARD, MINTURN and LLOYD,
J.J.The opinion of the Court was delivered by
MINTURN, J.:

“Run away Maestro Juan I am going to kill
you.”

30

Such was the ferocious threat that disturbed
the atmosphere not of prehistoric Mexico, where
upon desolate plains the savage coyote still bays
at the moon—nor yet of classic Verona, where
dramatic memories of the houses of Montague
and Capulet still linger to entrance the romantic
wayfarer, but from the undiluted atmosphere of
Bloomfield Avenue, where it winds its attractive

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Opinion.

course through the prim rococo shades of modern Montclair, which upon the day succeeding Christmas in 1923 sat like Roma immortalis upon its seven hills, and from its throne of beauty contemplated with serene satisfaction, the peace and tranquillity of the modern world.

10

The Maestro, however, with true chivalric disdain, refused to retreat, but determined at all hazards like Horatius to hold the bridge, or rather the stoop upon which he stood. Like a true Roman inoculated with the maximum percentage of American patriotism, he turned defiantly to the oncoming house of Centalanza, and proclaimed in the bellicose language of the day, "You too son of a gun."

20

In the days of the Montague and Capulet aristocratic rapiers and swords defended the honor of their respective houses but in this way of popular progress the Maestro and the Centalanza sought only the plebian defense of fist and a shovel. As a result of a triangular contest, the physician testified that the Maestro was battered "from head to buttocks," a distribution of punishment it may be observed which while it may not be entirely aesthetic in its selection of a locuum tenens, was to say the least equitably administered and distributed. Indeed, so much was the Maestro battered that his daily toil lost him for twelve days, and the Trial Court estimated that this loss, together with his pain and suffering, and the aggravation of the trespass entitled him to receive from the house of Centalanza \$240.

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The latter, however, has appealed and alleges that the Maestro proved no substantial cause of action against them. But the learned Trial Court

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Opinion.

upon this contested state of facts, concluded, and we think properly that there was an issue of fact thus presented, since the suit was for assault and battery in the nature of trespass vi et armis. But the defendants, Centalanza, insist that two distinct encounters took place, one by both defendants and the other by one only, and they ask how can such a physical contre temps be admeasured so as to impose upon each member of the house of Centalanza his fair share of compensation for his physical contribution to the melee? The inquiry possesses its latent difficulties, but since it is an admitted rule of law that the Court will not distribute the damages between tortfeasors, upon any theory of equitable admeasurement, the house of Centalanza obviously must bear the entire loss without seeking a partition thereof. *Ex turpi causa oritur non actio.* Mitchell vs. Trubitt, 8 T. R., 69, 8 R. C. L., 667, and cases.

Indeed it would prove to be a rare feat of judicial acumen were the Court to attempt to give due credit to Donato Centalanza for the prowess he displayed in his fistic endeavors; and to assess to Raffale Centalanza his mead of financial contribution for the dexterity with which he wielded his handy implement of excavation. It is doubtful even in these days of the mystic prize ring, whether such a metaphysical test may be included among the accredited mental accomplishment of a quasi militant judiciary, which while it occasionally indulges in a caustic punch, still strenuously endeavours to maintain the proverbial respectability, and regal poise of its ancestral prototype. In such a situation we are not inclined to impose this extraordinary and novel field of jurisdiction

Opinion.

upon our inferior courts. The occurrence of trespass vi et armis, confers upon the Trial Court, the right to assess exemplary damages as smart money, and this the Trial Court properly did under the circumstances of the case.

- 10 Hoboken Printing Co. vs. Kahn, 59 L.,
 218;
 Trainor vs. Wulff, 58 L., 381;
 17 C. J., 977, and cases.

- It is contended, however, that the actual damage sustained by the Maestro was inconsequential, and that the rule *De minimus non curat lex* applies. It must be obvious, however, that damage which to the attending physician seemed to penetrate the Maestro "from head to buttocks" may seem trivial to us as noncombatants, but to the Maestro it manifestly seemed otherwise, and doubtless punctured his corpus, as well as his sensibilities. Indeed, he well might declare in the language of the gallant Mercutio of Verona, concerning the extent of his wound, "It is not as wide as a church door or as deep as a well, but 'twill serve."
- 20
- 30 The judgment will be affirmed.

Affirmance.

NEW JERSEY SUPREME COURT,

FEBRUARY TERM—1924.

JOHN TRICOLI, <i>Plaintiff-Appellee,</i>	}	In Tort.	10
vs. DONATO CENTOLANZA & RAFFAELE CENTOLANZA, <i>Defendants-Appellants.</i>		On Appeal from Orange District Court.	
		Affirmance.	

This cause coming on to be heard at the February Term, one thousand nine hundred and twenty-four, and being argued by Thomas Brunetto, Esq., of counsel for the defendants-appellants and G. M. Belfatto, Esq., of counsel for the plaintiff-appellee, and the Court having taken time to consider the same, and being of the opinion that the judgment of the Orange District Court should be affirmed, 20

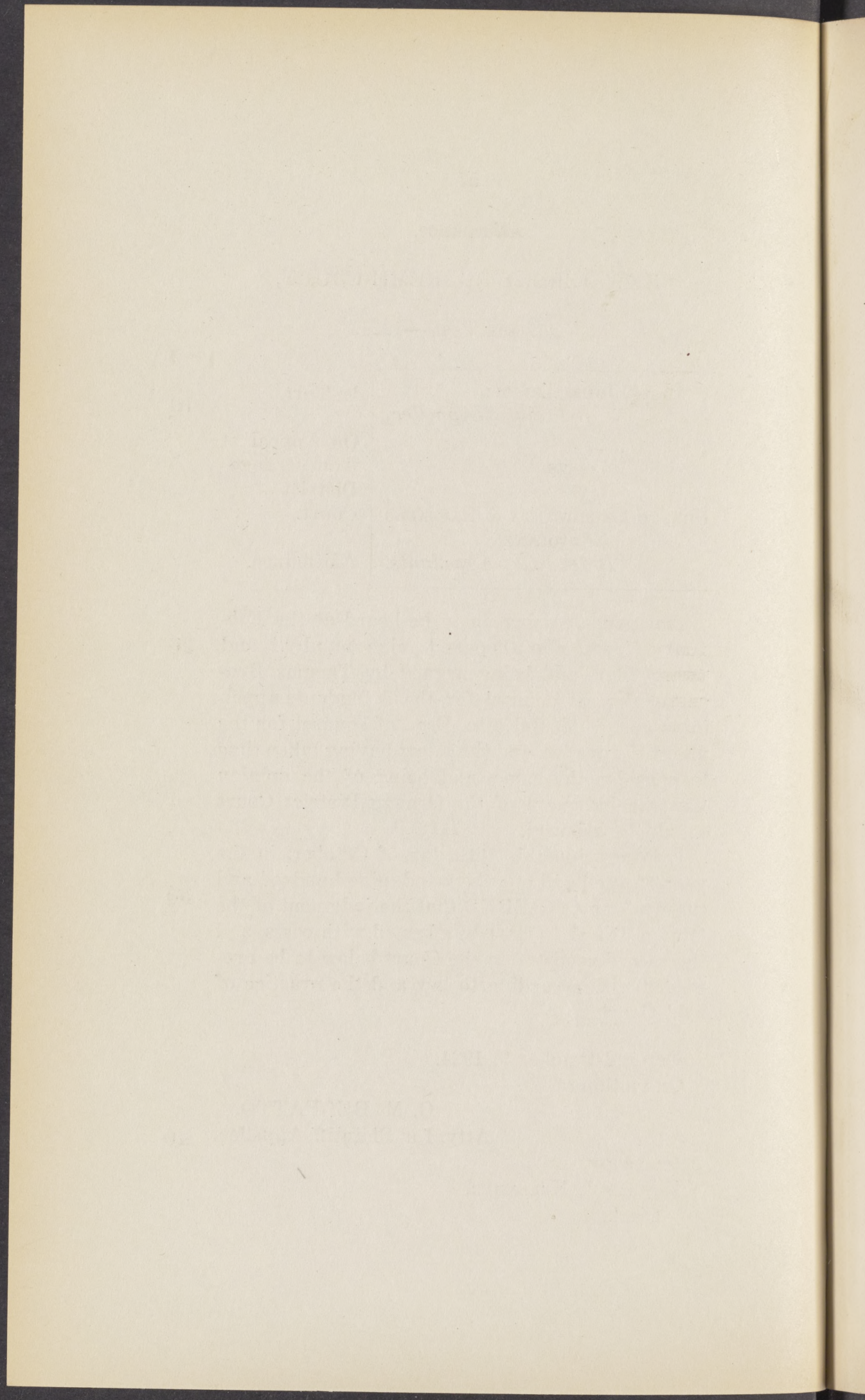
It is now, on this 10th day of October, in the year of our Lord one thousand nine hundred and twenty-four, ORDERED that the judgment of the Orange District Court be affirmed with costs, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court. 30

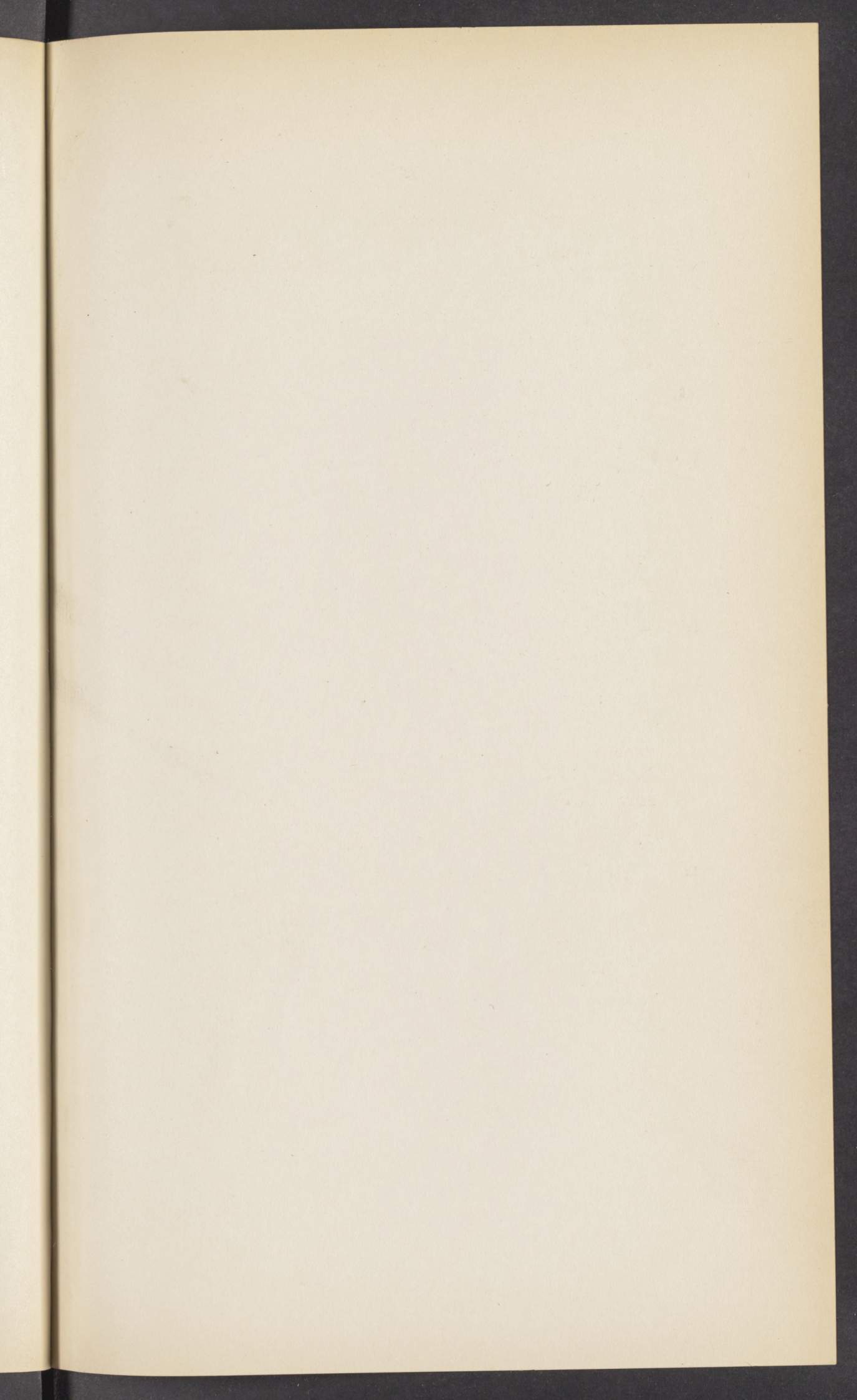
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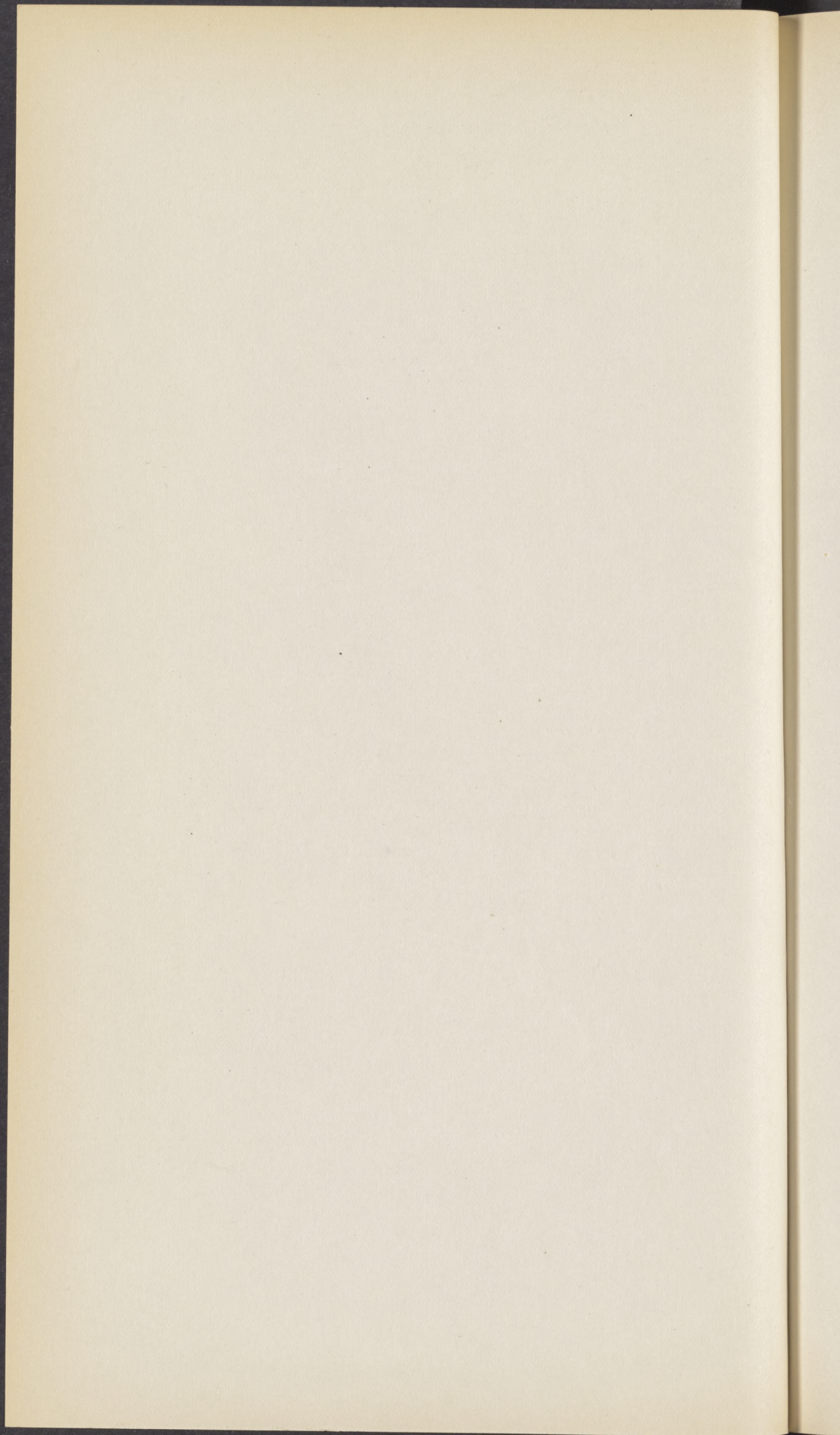
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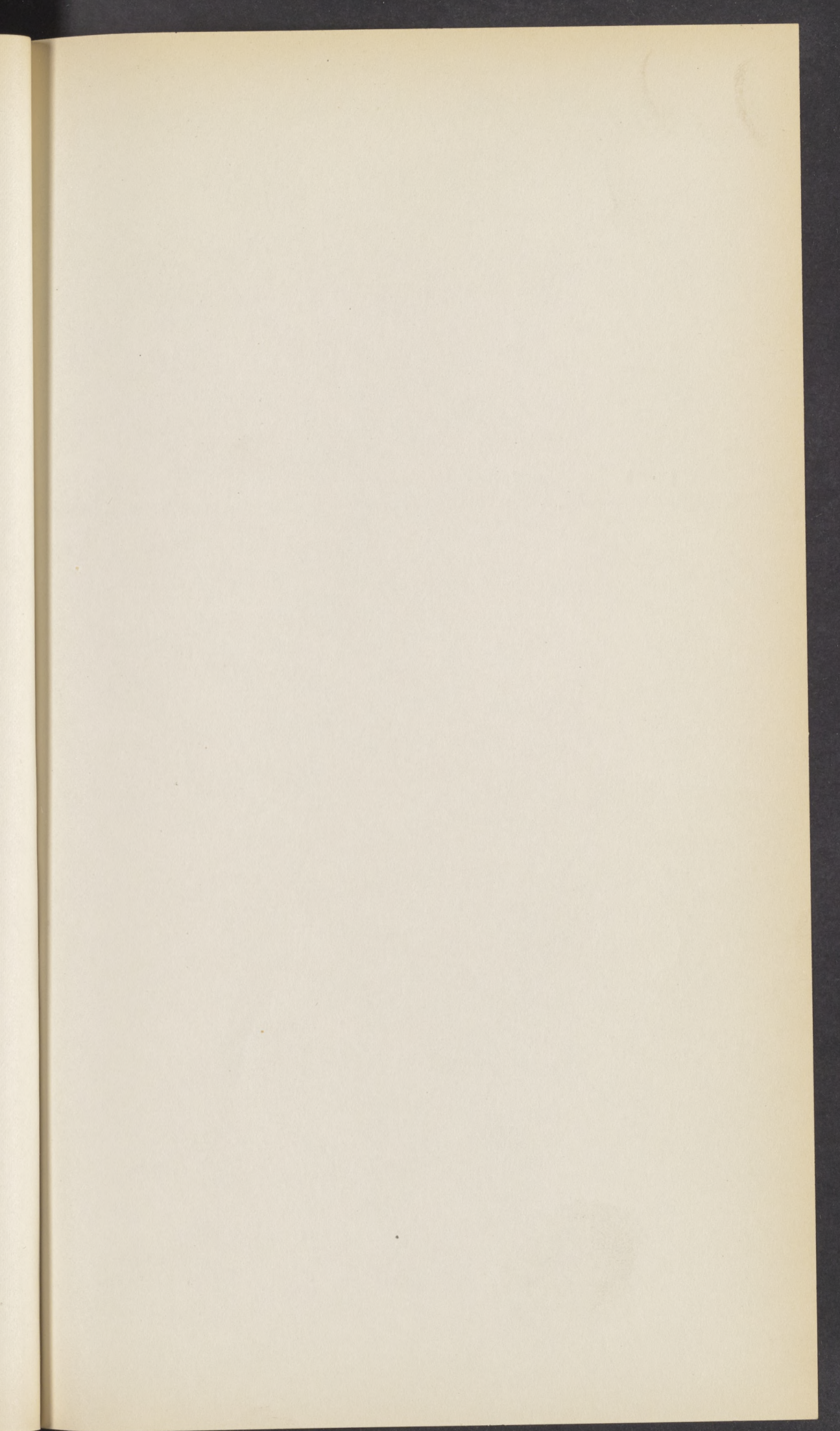
G. M. BELFATTO,
Atty. for Plaintiff-Appellee. 40

A true copy,
EDWARD J. KELLEHER,
Clerk.









Court of Errors and Appeals OF NEW JERSEY

JOHN TRICOLI,

Plaintiff-Appellee,

vs.

DONATO CENTOLANZA & RAF-

FAELE CENTOLANZA,

Defendants-Appellants.

In Tort

APPELLEE'S BRIEF.

Facts.

This action was brought to recover damages because of an atrocious assault and battery committed by the defendants upon the plaintiff on December 26, 1923, at Montclair, New Jersey. This case was tried in the Orange District Court of Essex County.

Plaintiff testified that on December 26, 1923, while working at the building #190 Bloomfield avenue, the defendant Raffaele struck him four times with a shovel and the defendant Donato grabbed hold of him and struck him several times with his fist (p. 21, ll. 20-30; p. 22, ll. 30-40). One of his teeth became and still is loose (p. 23, ll. 30-40). He was attended by a physician for several weeks; during which time he was sick and unable to work (p. 24, ll. 1-20). The wounds received by him healed within twelve days. Plaintiff could not sleep for three weeks and suffered pains (p. 24, ll. 30-40). The doctor's charge for his services is \$20. Plaintiff's earnings before the assault was \$12 per day (p. 25, ll. 1-20).

F. Tavarone, a witness for plaintiff, testified that on December 26, 1923, the defendant Raffaele

hit plaintiff with the shovel and Donato hit him with his fist (pp. 20-40; p. 35, ll. 30-40). Both defendants said to plaintiff who was on the stoop, "Run away, for we are going to kill you." Then and there they struck plaintiff causing his face to become black and blue and his mouth to bleed (p. 34, ll. 1-20; p. 35, ll. 10-20). While Donato was hitting plaintiff, his brother Raffaele ran after the witness because the latter had tried to separate them. The witness fell in the cellar and Raffaele threw the shovel at him (p. 36, ll. 30-40).

Dr. Prestofilippo testified that on December 27, 1923, plaintiff called at his office with an echymosis on the left eye, laceration of the upper lip, and a multitude of contusions and lacerations and superficial bruises of the left arm, and soreness of his legs. That it would take two weeks for the wounds to heal, during which time plaintiff could do no work (pp. 13 and 19). He also had a loose tooth. The wounds were the result of a struggle (p. 17, ll. 1-10).

Defendant moved for a non-suit; the motion was denied (p. 37).

Defendant Donato Centolanza testified that on the 26th day of December, 1923, at #190 Bloomfield avenue, plaintiff acted as if crazy; that he said to plaintiff, "What is the matter"; that plaintiff answered, "You son of a gun" and pushed the defendant to the ground.

Defendant Raffaele Centolanza testified that plaintiff ran after him and fell from the stoop (p. 41, ll. 1-20). His brother Donato was on the job between 9 and 10 A. M. (pp. 30-40) and both fought with the plaintiff (p. 45, ll. 1-20).

Donato Rizzolo, a witness for the defendant, testified that on the afternoon of December 26, 1923, he saw plaintiff with a black eye (p. 46, ll. 20-30).

Defendant rested and asked the Court for a direction of the verdict which was denied (p. 47).

The Court found as a fact that an assault was committed by the defendants on the plaintiff; that the plaintiff suffered damages by reason thereof; and rendered judgment in favor of plaintiff and against the defendant in the sum of \$240.

LAW.

It is respectfully submitted that in an action for assault and battery found on malice, punitive damages may be recovered. *Blackmore v. Ellis*, 70 L. 624; *Dick v. Smith*, 95 L. 388.

Loss of capacity to attend to business are elements of damages, 4 Vr. 433.

There being no error the judgment of the ~~Dis-~~^{Supreme}~~trict~~ Court should be affirmed.

Respectfully submitted,

G. M. BELFATTO,
Attorney for Plaintiff-Appellee.

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New Jersey Court of Errors and Appeals

JOHN TRICOLI, <i>Plaintiff-Appellee,</i> vs. DONATO CENTOLANZA and RAFFAELE CENTOLANZA, <i>Defendants-Appellants.</i>	}	In Tort. On Appeal From a Judgment of the Supreme Court Affirming Judgment of the District Court.	20
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BRIEF OF DEFENDANTS-APPELLANTS.

This is an appeal by Donato Centolanza and Raffaele Centolanza from a judgment of the Supreme Court, affirming a judgment of the District Court of the City of Orange, for the plaintiff, wherein John Tricoli was plaintiff, and defendants-appellants were defendants, the judgment being for \$240.00 damages and \$16.32 costs. 30

The suit was instituted in the District Court of the City of Orange, against both defendants, alleging that on the 26th day of December, 1923, he was assaulted by both defendants, and he thereby claimed as damages the sum of \$500.00.

At the trial in the District Court, the plaintiff claimed he was assaulted by the defendants while he was performing a contract for the alteration 40

of a building located at 190 Bloomfield Ave., Montclair, N. J., and owned by one of the defendants.

The case was tried by the Court without a jury and a verdict was rendered in favor of the plaintiff in the sum of \$240.00 damages and \$16.32 costs.

10 It is contended by the defendants-appellants herein that the Supreme Court erred in affirming the said judgment of the District Court, whereas, it should have reversed same.

The following are the reasons why the Supreme Court should have reversed said judgment of the District Court.

POINT ONE.

20

1. That the Court erred in denying at the end of the plaintiff's case, a motion made on behalf of the defendants for a non-suit upon the ground that the plaintiff had not established a prima facie case.

2. The evidence produced by the plaintiff in support of his claim was conflicting.

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3. The plaintiff testified, state of the case, page 31, lines 10 to 24, that the assault was committed by the defendants on the porch and in the yard, and he there gave the details of said assault.

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4. In support of his case he produced a witness, Frank Tavaroni, state of the case, page 32, and on direct examination he stated how one of the defendants was striking the said Tricoli with his fist and kicking him, while the other struck him a number of blows with the shovel.

5. On page 33, state of the case, line 40, he testified as follows:

Q. While the fight was going on, where was Tricoli standing? A. Tricoli was on the stoop in front of Bloomfield Avenue.

Q. Was he on the stoop all the time while the fight was going on? A. Before the fight he was on the stoop. While Tricoli was standing on the stoop, Raphael and Donato come there and he says, "Run away; I am going to kill you, Maestro Juan." He said, "I am going to shoot you." 10

Q. Was Tricoli on the ground at any time? A. No; he was standing on the stoop.

Q. You were there all the time, were you not? A. I was there all day. 20

6. On cross examination he testified as follows, state of the case, page 35, that he saw the whole fight from beginning to end.

7. On page 36 he testified as follows:

Q. Then Donato jumped on the porch and began to strike Tricoli, is that right? A. When he got on the stoop he started to fight, and the other one lifted the shovel, and he got on the stoop, and I got on the stoop and got in between them. 30

Q. And you separated them? A. I started to separate them, and I called the other help, and they said they were going to kill Maestro Juan—"Help him."

Q. This was all going on on the porch? A. Yes. And after they were wrestling, and they 40

pulled him inside, and Raphael went in the rear and got inside with the shovel.

10 Q. This fight, now, where Raphael hit Mr. Tricoli, happened inside of the building, then, didn't it? A. It was inside and outside both. When they went inside, the hall door wouldn't leave them in the cellar and I pushed the door and they dropped in the cellar.

Q. What happened? A. And then after that Donato was hitting Maestro Juan and Raphael was running after me with the shovel, and he wants to beat me up for separating them.

20 Q. And this all took place down in the cellar? A. I fell in the cellar, and he fired me the shovel.

Therefore, the testimony submitted by the plaintiff is not of a convincing character as required by law, and the Court erred in not granting appellants' motion for a non-suit.

POINT TWO.

30 1. The Court erred in denying defendants' motion at the close of the case for a direction of a verdict in favor of the defendants upon the ground that the evidence showed two separate fights, one by Raphael and the other by Raphael and Donato Centolanza.

2. The defendants' stories are as follows, state of the case, page 38, where defendant Donato testified as follows:

40 That he is the owner of property 190 Bloomfield Avenue, Montclair, N. J., where the plaintiff-appellee was working.

3. He then testified as follows:

Q. (Question read) between yourself and Tricoli? A. I live at 173 Bloomfield Avenue across the street from this place, 190, across the street. I was inside the store, my store. I was working about twenty-five feet from my store, and could see across the street from my place. I see there is trouble. I say, "What is the trouble?" I go see myself. I went to the house. The stoop is no finished only have a board on stoop for people coming into the house. I find my brother was on the ground, working on the yard, and this gentleman act like crazy. I said, "What's the matter, Juan?" He said, "You, too, son of a gun," he say. He pushed me down on the floor. It was slippery, too; it was freeze. I said, "What's the matter, Maestro Juan? I thought you were a nice man." He said (witness speaks Italian). I said, "My God." He pushed me down. I was on the level floor. And then he hit me and I hit him.

4. The defendant Raphael, state of the case, page 40, testified as follows:

That he was employed by his brother to labor around premises 190 Bloomfield Avenue, Montclair, N. J., and that in the morning while he was shoveling ashes, the plaintiff-appellee went to him and told him the ashes belonged to him, and he then left them alone.

5. He then testified as follows:

Q. And then what happened? A. While I go in the house to get the shovel he grabbed

ahold of me by the neck and he said, "You dirty little robber," he said, "come here," and I ran away from him, and while I ran away I jumped off the stoop and he jumped after me, and he fell down.

Q. And then he fell off the stoop? A. And he fell off the stoop.

10

6. Again on page 41, state of the case, he testified that at the time of the first quarrel with the plaintiff, he was alone.

7. On page 43, state of the case, he testified that when his brother returned, the plaintiff and witness' brother and another person were fighting.

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8. On page 43, state of the case, he states how the plaintiff and some one else was striking defendant's brother Donato, and on page 45, state of the case, he states that Tricoli, plaintiff herein, had a fight with Donato Centolanza, one-half hour after he had had a fight with the defendant.

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9. This testimony is not denied by the plaintiff-appellee. He does not deny that he grappled with defendant Raphael Centolanza and fell off the porch.

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10. Therefore, the Court erred in granting a general judgment against both defendants for \$240.00, *whereas, one of the defendants was not there, nor did he assist or in any way have anything to do with the fist fight.* Therefore, the Court erred in granting a judgment for the plaintiff and against both defendants.

The Supreme Court in its opinion in affirming the judgment of the District Court, state of the case, page 55, does not decide the issue raised by defendants-appellants.

The case of Mitchell vs. Tarbutt, cited by the Supreme Court is not a case in point for the reason that in that case it was a suit brought against the masters for the neglect of its servant, and, of course, it is elementary law that the damages between joint tort feasons cannot be partitioned, but it is respectfully submitted that this is not the point in this case. The point here is that there are two separate assaults upon the plaintiff, in one of them, which took place early in the morning, the plaintiff Raffaele Centolanza, was the only one who assaulted the plaintiff, and the defendant Donato Centolanza did not take part in that assault of upon plaintiff, nor is it alleged by the plaintiff that in the first assault the defendant Raffaele Centolanza had been urged or had been assisted, or that the defendant Donato Centolanza had anything to do with assaulting the plaintiff; therefore, if the said defendant did not assault plaintiff, nor the other defendant Raffaele Centolanza was his agent, or he instigated or assisted, the said defendant Raffaele Centolanza in assaulting the plaintiff, can he be punished for an assault committed by him (Raffaele Centolanza) upon the said plaintiff.

If that is the case, then upon what theory can the defendant appellant, Donato Centolanza, be held liable in damages to the plaintiff for all injuries sustained by the said plaintiff, when he was assaulted by a different person (in this case, the other defendant), and the burden of proof is upon the plaintiff, that where he is assaulted on

two distinct occasions on the same day, first by "A" and then about one-half hour afterwards, he is again assaulted by "A" and "B," then it is contended on behalf of the defendant-appellant, Donato Centolanza, that the burden of proof is upon the plaintiff to show that all the injuries received by him and for which he instituted an action to recover damages, and whereas, in this case he claims damages for being unable to attend to his business, and that he demands a judgment against "A" and "B" for said injuries, then it is up to him to prove that all of said injuries were inflicted upon him in the assault where A. & B. were both participants.

20

POINT THREE.

1. The Court erred in rendering a verdict for the plaintiff in the sum of \$240.00, against both defendants upon the ground that there was no evidence showing the amount of damage caused by each of the defendants.

2. The above point is discussed in point two.

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POINT FOUR.

1. That the Court erred in awarding damages in the sum of \$240.00 upon the ground that said damages are excessive.

The Court awarded damages to the plaintiff in the sum of \$240.00, although there was no evidence that plaintiff lost that amount of money, outside of the \$20.00 for the doctor's bill, he had suffered any monetary loss by reason of the al-

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leged assault having been committed upon him.

Therefore, the only damages that plaintiff was entitled would be nominal damages.

POINT FIVE.

1. That the Court erred in finding in favor of the plaintiff and against the defendants as said determination was contrary to the evidence. 10

2. The Court erred in granting said judgment for the reason that the evidence submitted by the plaintiff was conflicting and not of a convincing nature.

Then again on page it is respectfully submitted the judgment of the Supreme Court affirming the judgment of the District Court of the City of Orange, is erroneous and contrary to law, and that it should be set aside, or at the most against both defendants-appellants, the judgment should be for nominal damage. 20

THOS. BRUNETTO,
Attorney for and of Counsel
with Defendants-Appellants.

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...of which party has been committed upon him
...the only damage that should be
...would be actual damages.

JOHN WILSON

10 1. That the Court erred in finding in favor of
the plaintiff and awarding the defendant as with
determination was contrary to the evidence.

2. The Court erred in granting said judgment
for the reason that the evidence established by the
plaintiff was sufficient and not of a convincing
nature.

3. The Court erred in its judgment and
award of damages. The award of damages is
not the judgment of the District Court of the City
of Chicago, and is contrary to law and
that it should have rendered the judgment should
be for actual damages.

THOMAS BIRNBECK

Attorney for and of Counsel
with Defendant's Appellate

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