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**Notice of Appeal to Supreme Court.**

(Filed August 9, 1929.)

HUDSON COUNTY CIRCUIT COURT.

10

STEPHEN JONES,  
Plaintiff,

*vs.*

U-DRIVE-IT COMPANY, a corpora-  
tion of the State of New Jer-  
sey, and WILLIAM C. OAKLEY,  
Defendants.

Action at Law.  
Notice of Appeal.

20

*To Henry Pass, Esq., Attorney of Plaintiff:*

TAKE NOTICE that defendants U-Drive-It Com-  
pany and William C. Oakley appeal to the New  
Jersey Supreme Court from the whole of the  
judgment entered in this case.

PERKINS & DREWEN,  
Attorneys of Defendants.

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**Grounds of Appeal in Supreme Court.**

(Filed August 25, 1929.)

HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">STEPHEN JONES, Plaintiff,  <i>vs.</i> U-DRIVE-IT COMPANY, a corpora- tion, and WILLIAM C. OAKLEY, Defendants.</p>	}	<p>Action at Law. On Appeal to the New Jersey Supreme Court. Grounds of Appeal.</p>	10
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*To Henry Pass, Esq., Attorney of Plaintiff, or to  
Whom It May Concern:* 20

SIR:

PLEASE TAKE NOTICE that the grounds on which the appeal in the above-entitled cause is taken by the defendants to The New Jersey Supreme Court are as follows, to wit:

1. Because the trial judge erred in sustaining the objection made by counsel for the plaintiff to the question asked of the plaintiff: "Weren't you trying to deceive him then?" 30

2. Because the trial judge erred in permitting the plaintiff, as a witness in his own behalf, over the objection of counsel for the defendants, to be asked and to answer the question: "Did you ever hire cars of this U-Drive-It Company before?"

3. Because the trial judge erred in admitting into evidence as against the defendant U-Drive-It 40

*Grounds of Appeal in Supreme Court.*

Company, over the objection of counsel for the defendants, a paper purporting to be a complaint made in the First Criminal Court of Jersey City against the plaintiff Stephen Jones by the defendant William C. Oakley.

10      4. Because the trial judge erred in denying the motion made by counsel for the defendants at the close of the plaintiff's case for a non-suit as to the defendant U-Drive-It Company.

5. Because the trial judge erred in denying the motion made by counsel for the defendants at the close of the plaintiff's case for a non-suit as to the defendant William C. Oakley.

20      6. Because the trial judge erred in denying the motion made by counsel for the defendants at the close of the whole case for a direction of a verdict in favor of the defendant U-Drive-It Company.

7. Because the trial judge erred in denying the motion made by counsel for the defendants at the close of the whole case for a direction of a verdict in favor of the defendant William C. Oakley.

30

PERKINS & DREWEN,  
Attorneys of Defendants.

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**Opinion of Supreme Court.**

(Filed May 6, 1930.)

NEW JERSEY SUPREME COURT.

No. 53, OCTOBER TERM, 1929.

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 STEPHEN JONES,  
 Plaintiff-Appellee,
*vs.*
 U-DRIVE-IT COMPANY, *et al.*,  
 Defendants-Appellants.
 

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Submitted October Term, 1929; decided May 6,  
 1930.

Appeal from Hudson County Circuit.

Before Chief Justice GUMMERE, and Justices  
 KALISCH and CAMPBELL.

For Appellants, PERKINS & DREWEN.

For Appellee, I, FAERBER GOLDENHORN.

30

PER CURIAM:

This is an action for the purpose of recovering damages for malicious prosecution. Appellee has a verdict and judgment.

It is urged that this judgment should be set aside and reversed upon the grounds, generally speaking, because the Trial Court erred in refusing to non-suit and to direct a verdict in favor of

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*Opinion of Supreme Court.*

10 appellant. After verdict appellant had a rule to show cause why the verdict should not be set aside and urged and argued as grounds therefor that the verdict was against the weight of the evidence and excessive. Upon a hearing under such rule the Trial Court discharged it. Where it is urged under such a rule the verdict is against the weight of the evidence such insistence is tantamount to an admission that there was some evidence, although insufficient, to support the verdict. Under such circumstances a reservation of exceptions to refusal to non-suit or direct a verdict is unavailing as a ground of appeal.

*Catterall vs. Otis Elevator Co.*, 103 N. J. L. 381.

20 The judgment under review is, therefore, affirmed, with costs.

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**Order on Affirmance.**

(Entered in Supreme Court in common form.)

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**Notice and Grounds for Appeal to Court of  
Errors and Appeals.**

(Filed May 20, 1930.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">STEPHEN JONES, Plaintiff-Appellee,  <i>vs.</i>  U-DRIVE-IT COMPANY, a corpora- tion, and WILLIAM C. OAKLEY, Defendants-Appellants.</p>	}	<p>Action at Law. Notice and Grounds of Appeal.</p>	10
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*To Henry Pass, Esq., Attorney of Plaintiff-Appellee:* 20

TAKE NOTICE that the defendants, U-Drive-It Company, a corporation, and WILLIAM C. OAKLEY, appeal to the New Jersey Court of Errors and Appeals from the affirmance, by the Supreme Court, of the judgment entered herein in the Hudson County Circuit Court;

AND TAKE NOTICE that the following are the 30 grounds of appeal:

1. Because the Supreme Court erred in affirming the judgment of the Hudson County Circuit Court.

2. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in sustaining the objection

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*Notice and Grounds for Appeal to Court of  
Errors and Appeals.*

made by counsel for the plaintiff, to the question asked of the plaintiff: "Weren't you trying to deceive him then?"

10 3. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in permitting the plaintiff, as a witness in his own behalf, over the objection of counsel for the defendants, to be asked and to answer the question: "Did you ever hire cars of the U-Drive-It Company before?"

20 4. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in admitting into evidence as against the defendant, U-Drive-It Company, over the objection of counsel for the defendants, a paper purporting to be a complaint made in the First Criminal Court of Jersey City, against the plaintiff, Stephen Jones, by the defendant, William C. Oakley.

30 5. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in denying the motion by counsel for the defendants, at the close of the plaintiff's case, for a non-suit as to the defendant, U-Drive-It Company.

40 6. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in denying the motion by counsel for the defendants, at the close of the plaintiff's case, for a non-suit as to the defendant, William C. Oakley.

*Notice and Grounds for Appeal to Court of  
Errors and Appeals.*

7. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in denying the motion made by counsel for the defendants, at the close of the whole case, for a direction of a verdict in favor of the defendant, U-Drive-It Company. 10

8. Because the Supreme Court erred in not reversing the judgment below for the reason that the trial judge erred in denying the motion made by counsel for the defendants, at the close of the whole case, for a direction of a verdict in favor of the defendant, William C. Oakley.

PERKINS & DREWEN,  
Attorneys of Defendants-Appellants. 20

Dated May 19th, 1930.

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**Amended Complaint.**

(Filed June 22, 1927.)

## HUDSON COUNTY CIRCUIT COURT.

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STEPHEN JONES,  
Plaintiff,*vs.*U-DRIVE-IT-COMPANY, a Corpora-  
tion of the State of New Jer-  
sey, and WILLIAM C. OAKLEY,  
Defendants.Action at Law.  
Amended  
Complaint.

20

The plaintiff, Stephen Jones, residing in the City of Jersey City, County of Hudson, and State of New Jersey, says that:

1. At all times hereinafter mentioned, the defendant, U-Drive-It Company, was a corporation of the State of New Jersey and engaged in the business of hiring out and renting automobiles.

30

2. At all times hereinafter mentioned, the defendant, William C. Oakley, was engaged in the business of hiring out and renting automobiles.

3. On or about November 6, 1926, the plaintiff, Stephen Jones for a lawful consideration paid by him to the said defendants, U-Drive-It Company, and William C. Oakley, their agents and servants, hired and rented an automobile from the said defendants.

40

4. On or about November 8, 1926, said plaintiff was lawfully in possession of said automobile, by virtue of the aforesaid hiring, in, or near Cuba, New York.

*Amended Complaint.*

5. At said time and place, said defendants, the U-Drive-It Company, and William C. Oakley, their agents and servants, did falsely and maliciously and without any probable cause charge the said plaintiff with the theft of the said automobile and did by reason thereof cause the said plaintiff to be wrongfully detained by police officers of said State of New York, and to be wrongfully conveyed in custody along the streets, roads and highways of the State of New York and into the City of Jersey City, County of Hudson and State of New Jersey. 10

6. On or about November 8, 1926, the said U-Drive-It Company and William C. Oakley, their agents and servants, did falsely and maliciously and without reasonable or probable cause charge the said plaintiff with the theft of the aforesaid automobile rented and hired as aforesaid, and by reason thereof the said plaintiff was imprisoned in the Hudson County jail from November 10, 1926, to January 25, 1927. 20

7. On January 25, 1927, the said plaintiff was tried on the said false and malicious charge of stealing the automobile of the said defendants and was found "not guilty".

8. By reason of the above premises, the plaintiff has been greatly hurt and has suffered and undergone great pain and torment, both of body and mind, and his nervous system was severely shocked, and he was prevented from attending to his lawful business and affairs for a long period of time, and lost and was deprived of large sums of money, which he could and otherwise would have earned and lost his position and the esteem and reputation which he had among his friends and business associates and his earning capacity 30 40

*Amended Complaint.*

was greatly reduced and he was exposed and injured in his credit and was forced to expend large sums of money in order to obtain liberation from said imprisonment.

10 9. The plaintiff demands as damages against the defendants, U-Drive-It Company, and William C. Oakley the sum of Twenty-five Thousand (\$25,000.00) Dollars.

HENRY PASS,  
Attorney for Plaintiff.

**Answer to Amended Complaint.**

(Filed June 28, 1927.)

20 HUDSON COUNTY CIRCUIT COURT.

STEPHEN JONES,  
Plaintiff,

*vs.*

U-DRIVE-IT COMPANY, a corporation of the State of New Jersey, *et al.*,

Defendants.

Action at Law.

Answer to  
Amended  
Complaint.

30

The defendant, U-Drive-It Company, one of the defendants in the above suit, says that:

1. It admits the 1st, 2nd and 3rd paragraphs of the amended complaint.

2. It denies the 4th, 5th, 6th, 7th, 8th and 9th paragraphs of the amended complaint.

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PERKINS & DREWEN,  
Attorneys for Defendant, U-Drive-It  
Company.

**Answer to Amended Complaint.**

(Filed June 28, 1927.)

## HUDSON COUNTY CIRCUIT COURT.

<p style="text-align: center;">STEPHEN JONES, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">U-DRIVE-IT COMPANY, a corpora- tion of the State of New Jer- sey, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	}	<p>10</p> <p>Action at Law. Answer to Amended Complaint.</p>
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The defendant, William C. Oakley, residing in Jersey City, New Jersey, says that:

1. He admits allegations in paragraph 1 of the amended complaint.

2. He denies allegations of paragraphs 2, 3 and 4 of the amended complaint.

3. He denies that he acted as agent of the U-Drive-It Company as alleged in paragraph 3.

4. He denies that he maliciously and falsely and with no probable cause caused the plaintiff to be detained in this as alleged in paragraph 5. 30

5. He denies the allegations in paragraphs 6, 7, 8 and 9.

PERKINS & DREWEN,  
Attorneys for Defendant, William C.  
Oakley.

**Testimony.**

HUDSON COUNTY CIRCUIT COURT.

10	STEPHEN Q. JONES  <i>vs.</i>  U-DRIVE-IT COMPANY, a corporation of the State of New Jersey, and WILLIAM C. OAKLEY.	Before Hon. Frank L. Cleary, J., and a Jury.
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Jersey City, N. J.,  
December 6, 1928.

Appearances:

20           HENRY PASS, Esq., I. FAERBER GOLDENHORN,  
                   Esq., of Counsel, for the Plaintiff.

                  PERKINS & DREWEN, Esqs., for the Defendants,  
                   by RANDOLPH C. PERKINS, Esq.

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A jury was duly empanelled; being found satisfactory, they were sworn.  
 Counsel opened to the jury.

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STEPHEN QUINCY JONES, sworn for the plaintiff.

*Direct examination by Mr. Pass:*

Q. Mr. Jones, in 1926, where did you live? A. 153 Pavonia Avenue, Jersey City.

Q. How long had you lived in Jersey City? A. All my life; I was born and raised here.

40   Q. Where were you born? A. Henderson Street.

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. You have lived in Jersey City since that time? A. Yes, sir.

Q. How old are you now? A. I am 25 now.

Q. How old were you in November, 1926? A. 23.

Q. Now, Mr. Jones, in 1926, what was your business? A. Well, I was in the automobile game— 10

Mr. Perkins: Automobile game?

The Witness: Automobile mechanic.

Q. What do you mean "automobile game"? A. What we call that; automobiles, trucks, and tractors.

Q. You mean you were a mechanic? A. Mechanic. 20

Q. Did you have occasion in 1926 to hire automobiles of the U Drive It Company, 77 Sip Avenue, Jersey City? A. Yes, sir.

Q. When did you first hire a car from that Company? A. It was early in the summer, when they opened up.

Q. The early summer of what year? A. Of 1926.

Q. Between the early summer of 1926 and November 6th, 1926, how many times have you hired a car from this Company? 30

Mr. Perkins: I object to that as immaterial to this suit, for malicious prosecution, arising out of a certain situation in November, 1926, whether this man had been hiring cars of the U Drive It Company; highly immaterial.

The Court: I think that is so. I sustain the objection.

(Argued and question withdrawn.) 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. On November 6th, 1926, did you have occasion to hire an automobile from the U Drive It Company in Jersey City? A. Yes, sir.

Q. At what time did you go to the U Drive It Company to hire the automobile? A. You mean November 6th?

10 Q. November 6th? A. I was there 2 p. m.

Q. From whom did you ask to borrow this car? A. I asked one of the employes first and he said "Wait until Mr. Oakley comes in". I waited for him, and he came in from the back of the garage. He was there doing something; then he came in and spoke to me about it.

Q. Did you know Mr. Oakley? A. I knew him since I met him on Journal Square there in the business.

20 Q. How long was that before? A. That was from the summer time.

Q. Did you tell Mr. Oakley what you wanted? A. I told him that quite often; that I am going to hire the car to go to Erie, Pennsylvania, and, well could he arrange the price for me less than what it will cost me to go and he says he will let me know.

Q. When was this, the same afternoon? A. No, that wasn't then; it was when I went there one time.

30

Mr. Perkins: I ask that that be stricken from the record. It had evidently nothing to do with the hiring at all.

Q. I asked on November 6th did you have a conversation; I am dealing with the date when you took the car?

40

Mr. Perkins: I don't object to the question. I object to the answer.

*Stephen Quincy Jones, for Plaintiff—Direct.*

The Court: Your answer must be confined to the date in question, the date included in the question.

Mr. Perkins: I ask that the answer be stricken out.

The Court: Strike it out.

The Witness: I am just saying when I hired the car out. 10

Q. Now, Mr. Jones, on November 6th, when you hired this car, from whom did you hire this car?  
A. From Mr. Oakley himself.

Q. Did you tell Mr. Oakley what you wanted the car for? A. So I told him I wanted to make that trip to Erie, Pennsylvania.

Q. Is that all you told him? A. He said it will be the same rate as usual and from Saturday 6 p. m. night, to 6 a. m. Monday morning, will be 20 cents an hour. 20

Mr. Perkins: Twenty cents an hour?

The Witness: That is by the hour and mileage; it is hour and mileage he has got on the contract itself. It is 20 cents a mile, then you pay additional to it, 20 cents an hour after 6 p. m. Saturday evening until Monday a. m. You pay twenty cents an hour extra for standing or running time. 30

Q. Do you mean by that, Mr. Jones, that in addition to the rate per mile, you pay 20 cents an hour extra? A. Yes, an hour extra.

Q. For as many hours as you had the car? A. That would be between that time; between Saturday and Monday.

Q. Now, when did you actually take the car out of the U Drive It Company? A. 2 p. m.; I took it out 2 p. m. on that Saturday. 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. 2 p. m. when? A. On Saturday, that Saturday that I took it out there.

Q. In order to get the car, what did you do? A. I have to sign a contract and leave a deposit there; so I left \$25 deposit there with that. That is for making that trip.

10 Q. You say you left a deposit? A. I left a deposit of \$25 on account of making that trip.

Q. Were you given the owner's license with the car?

Mr. Perkins: I object to the form of the question as entirely leading.

The Court: Sustained.

20 Q. What else took place before you got this car? A. What else took place?

Q. Before you were given the car? A. That is all, I was given the owner's license for the car.

Q. You were given the owner's license for the car? A. Yes, sir.

Q. Who gave you that? A. Mr. Oakley gave me the license. I had to produce the chauffeur's license; he took down my serial number and my name and address.

30 Q. After you took this car out of the garage of the U Drive It Company, where did you go?

A. I went down to the house to pick up a radio I was going to deliver to my sister.

Q. Where did you pick up this radio? A. 153 Pavonia Avenue.

Q. Where did your sister live? A. Erie, Pa.

Q. Did you take anything else with you? A. I took my tools in case of a break-down with the car.

40 Q. Do you know, Mr. Jones, of your own knowledge, how far Erie, Pa., is from Jersey City? A. It runs around 400 miles from here, by the way I went.

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. After you left Jersey City, how did you go to Erie, Pennsylvania? A. I traveled the State Highway route, New York State, was Route 17.

Q. When did you leave Jersey City? A. I left Jersey City about six o'clock that evening.

Q. When did you arrive at Erie, Pa.? A. Sunday noon. 10

Q. How many hours did it take you to get from Jersey City to Erie, Pa.? A. I didn't keep track of it, but I remember leaving Jersey City at 6 P. M. and arrived at Erie at noon.

Q. When you arrived at Erie, where did you go? A. I went straight up to my sister's house.

Q. Now, at Erie, at your sister's house, what did you do? A. Well, she wasn't home at the present, but my brother-in-law was there, and I went over and inquired about my sister. They told me she will be in before eight o'clock that evening and I took the radio and I left it home and I set it up there, and there was something wrong, so I went in where some people had a radio where they had an aerial, and I hooked up the radio with their aerial, and I found it would not work right, so I brought it back. 20

Q. On your way out to Erie, did you have any trouble with the automobile? A. I had plenty of trouble going to Erie. I had three tires was bad. I had a flat, the first, just outside of Port Jervis, that is about forty miles from here, this side of Port Jervis, New York. 30

Q. Did you have any other trouble on your way up? A. That is all the trouble I had going, was flat tires.

Q. What else did you do when you were at Erie, Pa., Mr. Jones? A. I rested up there a little and had another tire fixed there. 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. When did you expect to leave Erie, Pennsylvania, to get back?

Mr. Perkins: I object to that as an expectation purely, and not the subject of the testimony in this case.

10

Q. When did you have to bring the car back?

A. I never signed that contract when to bring it back; all I put on there was 2 p. m.

Q. You didn't sign this contract when you were going to bring this car back?

Mr. Perkins: I object to that; the contract will speak for itself. Not the best evidence as to what was in the paper. If you want to have the contract, I will let you have it.

20

A. They told me to sign the date. I said I didn't know when it will be I will come in. I remember I put 2 p. m. opposite to what day and date.

The Court: 2 p. m. just any day?

The Witness: Yes, sir; on account of the long trip, in case of the car breaking down, I had put down 2 p. m.

30

Q. Did you advise Mr. Oakley? A. When I was in Erie, Pennsylvania, I called him up. I told him I had trouble with the car and that will delay me later than what I expect to be in.

Q. Who did you call up? A. I called Mr. Oakley up on the telephone.

Q. Did you recognize Mr. Oakley's voice? A. I could not recognize it on the 'phone, because I am not much on guessing voices.

40

Mr. Perkins: I move that that be stricken out.

*Stephen Quincy Jones, for Plaintiff—Direct.*

The Witness: Well, I spoke to him. I asked him and he answered——

Mr. Perkins: I object to that, inasmuch as he said he didn't recognize the voice of the person with whom he spoke.

The Court: Yes, strike it out.

10

Q. Did you ask for Mr. Oakley? A. I called for Mr. Oakley. The operator on the Erie Exchange told me "Just a minute". Then when she got Mr. Oakley——

Mr. Perkins: I object to what the operator on the Erie Exchange said.

Q. When you were connected with Jersey City, did you ask for Mr. Oakley? A. The girl asked me in Erie——

20

Q. When you had the Jersey City number on the line, did you ask for Mr. Oakley? A. I asked before I rung them to get Mr. Oakley on the wire.

Mr. Perkins: I ask that that be stricken out, "they said they got Mr. Oakley on the wire"; it is quite apparent he didn't know whether they did.

The Court: It may be stricken out, that part.

30

Q. When you were connected with the number that you called, did you ask for Mr. Oakley? A. I asked for Mr. Oakley.

Q. Who did you get on the wire? A. I said, "Hello, this the U Drive it Company?" "Yes, sir", they said. I said, "This is Stephen Jones with the Chrysler." I told them the car number. I said, "Mr. Oakley there? I want to speak to him personally." He said, "That is who is speaking."

40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. And he said, "This is Mr. Oakley"? A. "This is him speaking", himself.

Q. What did you say? A. I told him I am breaking down with the car on the road and am having a lot of trouble with flat tires.

10 Q. Did you tell him when you were leaving for Jersey City? A. I told him I am pulling out at midnight.

Q. Now, Mr. Jones, when did you leave Erie, Pennsylvania? A. I left on Sunday midnight for Jersey City.

Mr. Perkins: I object to his saying he left for Jersey City. He left Erie. I submit the rest should be stricken out.

The Court: The time he left Erie.

20 Q. Now, after you left Erie, Pa., where were you bound for?

Mr. Perkins: That is purely a conclusion, where was he bound for? He was bound for the jail in Friendship.

The Court: Sustained.

30 Q. After you left Erie, Pa., tell us where you went? A. After I left Erie, Pa., I left for New York City.

Mr. Perkins: I object.

Q. Where you went; tell us the towns you went through?

Mr. Perkins: I object and ask to have that stricken out. He insists he left for New York City now.

The Court: It may be stricken out.

40 The Witness: I left the house. I got on the State highway. I don't know what

*Stephen Quincy Jones, for Plaintiff—Direct.*

number it was, but it was on the highway I traveled. I traveled on the same highway. I had a breakdown of the car at Westfield, New York, because the gas line broke. I lost gas all the way between Erie, Pa., and Westfield, N. Y., and I fixed the gas line there. I was laid up there till 6 or 7 a. m. in the morning, to wait for gas. 10

Q. What time in the morning was it your car broke down? A. Well, the car broke down around 3 o'clock in the morning.

Q. Where did it break down? A. Broke down crossing on the hill to Westfield.

Q. How far is Westfield, if you know, from Erie, Pa.? A. It is about a 35 mile run.

Q. What direction is Westfield, N. Y., from Erie, Pa.? A. I don't know what the direction is, because I didn't study which is north and south over there. 20

Q. Do you know if Westfield is north or south? A. I was headed east; that is right.

Q. How long were you detained in Westfield, N. Y.? A. Until about 6 or 7 o'clock in the morning.

Q. Then what happened? A. I have to get gas over there and I said "good-by" to the cop in that town. I found gas escaping in the car and he directed us to the first gas station, that was a big service station; we filled up and left that town, towards Cuba, N. Y., where we were picked up. 30

Q. What do you mean by being picked up? A. When we left Westfield, on our road into New York State, on State route 17, going back, we were stopped by State troopers in Cuba, N. Y., for inspection to see if there is any stolen cars on the highway. I had to produce the license, and 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

I produced the license and they told me it was phoney, the license——

Mr. Perkins: I object to what the police in New York told him at that time and ask that it be stricken out.

10 The Court: That may be stricken out.

Q. You say that you were picked up where? A. In Cuba, N. Y.

Q. What did you do when you were apprehended by the State troopers? A. Well, I had to produce the license, to show——

Q. What license? A. The owner's license of the car.

20 Q. The ones that were given to you when you hired the car? A. That were given to me when I hired the car.

Q. Did you know of your own knowledge at that time that this license was produced, if the numbers on this license corresponded with the motor numbers? A. I never looked at the motor number on the car, but what corresponded was the plates, the car plates corresponded with the car, were the same numbers.

Q. You did not look at the motor number? A. No, I didn't look at that time.

30 Q. At this time? A. I didn't look then.

Q. Then what did you do after you were apprehended by the State troopers? A. I asked them if I can go and wire to Mr. Oakley.

Q. What did you do, not what you said; what did you do? A. I had to drive up to the county jail.

Q. And after that, what did you do? A. I asked for permission——

40 Mr. Perkins: I object to what he asked about.

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. What did you do, Mr. Jones? A. When I was stopped?

Q. Yes, what did you do? A. I stopped the car on the highway there and showed them the owner's license.

Q. And then after that? A. Well, he said, "You got a phoney license. Where are you from?" I told him where I am from and I showed him my driver's license. He looked at it and he gave it back to me. He said, "This don't look so good to me. This is a stolen car". I said, "Why, I don't know if it is, because I hired it from Jersey City", I explained to him. 10

Mr. Perkins: I object to this conversation between this man and the policeman, which has no bearing on this case nor on the defendants' liability. 20

The Court: Sustained.

Q. Now, after you were arrested by the State troopers, what did you do with reference to this car? A. I wired to Mr. Oakley.

Q. What did you wire to Mr. Oakley? A. I told him about the troopers and what happened to me with the car and his license.

Q. Did you receive an answer? A. I didn't receive no answer. 30

Q. Where were you taken from there? A. I was taken from there into—I know it was Allegheny County, but the name of the town I don't know. That was the county jail.

Q. How long did you stay there? A. I think I stayed there forty-eight hours in there; about forty-eight hours before they got notice, before the troopers got any word from Mr. Oakley about the car. 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Mr. Perkins: I object to "before the troopers got word". He has no authority or license in law to testify to what the State troopers got.

10 The Court: The question is: how long did you stay in there?

The Witness: Forty-eight hours.

Q. And from there, where did you go? A. They took us into Canisteo, N. Y.

Q. Where were you taken in Canisteo, N. Y.? A. I was put in jail there.

Q. How long were you in jail in Canisteo, N. Y.? A. I was there until Mr. Oakley arrived.

20 Q. In all this time that you were first apprehended, to the time you were in Canisteo, N. Y., did you have the custody of this automobile, this Chrysler car? A. But I have never used it.

Q. Did you drive it from place to place? A. All I drove was from that county jail into the State troopers' jail, from the Allegheny County jail to the jail in Canisteo.

Q. Do you know what happened to the car there while you were in jail? A. Well, I know the troopers used the car.

30 Q. Did you use the car? A. No, I could not use it; I was in jail.

Mr. Perkins: How can he testify that the troopers used it?

The Court: That may be stricken out, the part that the troopers used it.

Q. When you were brought to Canisteo, N. Y., was the Chrysler car brought to Canisteo also? A. Yes, sir.

40 Q. Who brought the car? A. I drove the car myself.

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. You say that Mr. Oakley came up to Canisteco? A. He came on the train.

Q. With whom did he come? A. He came with Mr. O'Neill.

Q. Do you know what day this was? A. This was the day before Armistice Day, on the 10th.

Q. On the 10th of what month? A. November. 10

Q. Where did you first see Mr. Oakley on November 10th? A. I seen him in jail.

Q. Will you tell the Court and jury just what happened when Mr. Oakley came into the jail and you first saw him? A. I came up to him. I wanted to straighten out, you see, what happened, and he says—

Mr. Perkins: I object unless it appears whether this occurred before or after the filing of the complaint, because if it is alleged that there is malice, and it is intended to prove malice and these things happened afterwards, I think it is doubtful whether it would be evidential. 20

The Court: Where was the complaint sworn to?

Mr. Pass: Jersey City.

The Court: Where did this conversation take place?

Mr. Pass: Canisteco, N. Y., in jail. 30

The Court: It was before the making of the complaint, wasn't it?

Mr. Perkins: No. There was a mistake in the opening. The complaint was made before the policeman and Mr. Oakley left Jersey City.

The Court: Well, the conversation between the defendant, Oakley, and this man.

Q. Just tell the Court and jury the conversation that took place when Mr. Oakley came into 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

the jail where you were confined in Canisteo, N. Y.? A. Well, when he came in there, I said: "What is all this trouble going on?" He says: "Get away from me." I walked back about five or ten feet away from him. I says: "Well, what do you want me to do, pay for the car? I will  
 10 pay the bill I owe you." He said: "You little son of a bitch, I am going to ride you from this day." I said: "If you want, I will pay for it." He says, "Where are you going to get the money from?" I said: "Why, I have got the money right now. I can pay you as far as I went, as far as Canisteo, N. Y." I was willing to pay him.

Mr. Perkins: I object to the statement, he was willing to pay him. You never did  
 20 pay him, did you?

The Witness: He refused it. I said: "If we arrive in New York City." He said: "I don't want your damn money." I said: "What are you going to do?" He said: "I am going to ride you arse in." I said: "I will pay as far as Jersey City." He said: "Where are you getting the money?" He refused the money. I said: "I will pay you now." I started to put  
 30 my hand in my pocket. I said: "I will pay you as far as I went." He said: "I don't want your God damned money. You can keep it. I don't want a red cent from you." When he said that, I could not do nothing. So we went out in a restaurant; so they brought the car up. He looked it over, looked at the car and found it in A-1 condition. I said: "There is the car." He looked at it. It is in A-1 condition; there  
 40 was nothing wrong with it. So we ate there

*Stephen Quincy Jones, for Plaintiff—Direct.*

and we pulled out somewhere around noon-time from there.

(Recess to 10 A. M., December 7, 1928.)

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10 A. M., December 7, 1928.

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STEPHEN QUINCY JONES, resumed the stand.

*Direct examination by Mr. Goldenhorn:*

Q. Before you left Canisteo, you say you saw Mr. Oakley, the Manager? A. Yes, sir.

Q. What did he say to you? A. You mean in Canisteo, N. Y., in the jail?

Q. With respect to any conversation, or talk that you had with him? A. I wanted to speak with him about the bill on the car, to pay him, and he refused it. He said, "You little son of a bitch——"

20

Mr. Perkins: That has been all gone into.

Q. Did he say anything to you about any talk you had over the telephone? A. He said, "You called me up yesterday". I said, "Yes".

Q. What else was said? A. Well, that is all was said in there and then we went to eat.

30

Q. Did you tell what you said to him over the telephone? A. No, I didn't tell him in Canisteo.

Q. You told that before—yesterday? (Not answered.)

Mr. Goldenhorn: With your Honor's permission I want to show a map of the State of New York.

Mr. Perkins: All motorists use this map and I am willing to have it go in, but I

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*Stephen Quincy Jones, for Plaintiff—Direct.*

would like to get the distance to Erie. I would like to get on the record the distance to Erie; the witness said 400 miles.

Mr. Goldenhorn: About four hundred miles.

10 Mr. Perkins: Then I will not object to using this map.

Accepted and marked as Plaintiff's Exhibit P-1 of this date.

Q. I show you a map, Exhibit P-1, and I ask you to tell us what route you took in going from Erie to Canisteo, that is, the last place you stopped at? A. Yes, sir.

Q. What number is the route? A. State Highway 17 all the way from New York State.

20 Q. How is that shown on the map, in what way, by what kind of color marks? A. Runs under the red and blue part.

Q. I wasn't here yesterday, so I don't know whether you were asked about where you were taken to after you were arrested. Where were you taken? A. Well, the first time when we were picked up, that was back further, further west.

Q. Where? A. In Cuba, N. Y.

30 Q. Then you were taken where? A. No, we were taken to Friendship County jail.

Q. Where did you go from Friendship? A. We were brought into Canisteo, N. Y.

Q. From there, where were you taken? A. That is the last place we were before Mr. Oakley arrived with Mr. O'Neill.

Q. From there where were you taken? A. Back to Jersey City.

Q. Where to? A. Oakland Avenue Police station.

40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. Where did you go from there? A. I had a hearing in the morning and I went to the County jail for the Grand Jury.

Q. Were you bailed out? A. I was bailed out next day.

Q. In what sum were you held in bail? A. \$1,000. 10

Q. Did you get a bondsman to bail you out? A. Yes, sir.

Q. Did you pay the bondsman any money?

Mr. Perkins: I object; this is unimportant so far as this case is concerned.

Mr. Goldenhorn: I think it is very material as to the amount of damage.

The Court: I think the expenses he might be put to towards defending himself is, but whether what he paid the bondsman is,— 20

Mr. Goldenhorn: I think it is an element of damage. I most respectfully press it.

(Argued, and objection withdrawn.)

Q. How much did you pay? A. I paid \$100.

Q. Did you have a lawyer there? A. I have had.

Q. Did you have a lawyer in the police Court?

A. No, not in the police Court.

Q. Were you subsequently indicted? A. Yes, sir. 30

Q. Were you tried? A. I was tried.

Q. Before what Judge in the Court House here were you tried? A. Once by Judge Kinkaid, and tried by Judge O'Regan.

Q. Did you have a lawyer represent you? A. Yes, sir.

Q. Who was it? A. Mr. Henry Pass.

Q. Did you pay him any money? A. Yes, sir.

Q. How much? A. I paid him \$200. 40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. What was the result of that trial; you were acquitted, weren't you? A. Yes, sir.

Q. Did you have any outlay, or any other expenses in being freed of this indictment? A. Well, I had another lawyer before I got Mr. Henry Pass, Mr. Ben Robins.

10 Q. What did you have to pay him? A. He was to try the case; he took \$25 and never showed up again.

Q. What case was this, the criminal case? A. On the criminal case.

Q. When did you have Robins appear for you, before what Judge? A. In the County Jail.

Q. When you were in the County Jail, was that before you were brought before Judge Kinkaid? A. Yes, sir.

20 Q. What did you pay him? A. \$25.

Q. How much were you earning a week when you were in Jersey City before and at about the time you were arrested? A. I was making \$52 a week.

Q. Did you lose any of your week's wages because of your being locked up? A. I lost from the time of being arrested till the time I got out and then some.

30 Q. How long was that? A. That was from November till January 29th that I was in jail.

Q. November what? A. I don't know what day we arrived, because it is so many years ago, but we were picked up on the 6th, that was on Monday, on Armistice Day.

Q. Wasn't it the 11th, Armistice Day? A. Yes, sir.

Q. So you lost your wages from Armistice Day, November 11th, until what time in January?

40

Mr. Perkins: I object as leading and a repetition by counsel of what the testimony was.

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. Just tell us in your own way, Mr. Witness, from which day to which day you lost your wages?

A. Was from November 12th till January 29th, that I have lost all that time by being in jail. I was out about three days from the County Jail on bond.

Q. So that you were in jail how many days altogether? A. I don't remember. I was bailed out on the 12th, and then I was out three days, and the day before pay day I was brought back again, and I stayed until January 29th or 25th, when the Court reached my case.

10

Q. When you were tried? A. When I was tried, yes, sir.

Q. When you went on this trip to Erie, Pa., as you stated yesterday in my absence, what clothes, if any, did you take with you? A. I took one dirty suit that I wore on my person, and a dirty shirt. I carried a clean suit and a clean shirt, and had to change clothes when I arrived there on Sunday.

20

Q. Is that all you took with you? A. That is all I took.

Q. Where were you living at the time you went to Erie, Pa.? A. 153 Pavonia Avenue.

Q. In Jersey City? A. Yes, sir.

Q. How long had you lived there? A. Well, I lived there over a year.

30

Q. What was your employment; what were you working at? A. As automobile mechanic.

Q. How long had you been in that business? A. I am over ten years in that business.

Q. How long have you been in business, or had you been in business in Jersey City? A. Since I got out of school I have been working around garages.

Q. When did you get out of school? A. When I was fourteen.

40

*Stephen Quincy Jones, for Plaintiff—Direct.*

Q. How old are you now? A. 25.

Q. Don't answer this question until the Court has passed upon it. When you were arrested, did articles appear in the newspaper with respect to the fact that you had been arrested and charged with the crime of larceny?

10

Mr. Perkins: Of course this question asks for an answer which may be wholly incompetent; did he see newspaper articles, did articles appear in the newspaper. He isn't competent to testify to that.

Mr. Goldenhorn: I withdraw it.

Q. How long after you got out of the jail and after you were acquitted in the Court House was it before you got employment? A. I got employment in March.

20

Q. Of the following year do you mean? A. The same year.

Q. Well, you said you were put in jail in November and you got out in what month? A. January.

Q. And you didn't find employment until March? A. That is right. The only place I could get a job was the Public Service Transportation of New Jersey.

30

Q. Are you working there now? A. I am living at present in Detroit, Michigan.

Q. Are you a married man? A. No, sir.

Q. How old did you say you were? A. 25.

Q. When you came from jail, did you go to Mr. McNaughton to seek employment? A. Yes, sir.

Q. Did you get it? A. No, sir.

Q. Who is Mr. McNaughton? A. He is the head man of the auto shows in Hudson County, the President of the McNaughton Nash Sales Corporation, Jersey City.

40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Where is their place of business? A. On the Boulevard, between Harrison Avenue and Communipaw Avenue.

Q. Did he say to you when you came there for employment that he could not employ you because you were a thief, or words to that effect?

10

Mr. Perkins: He can answer that; I don't object to that.

Q. What did he say? A. He said "I can't give you a job now, because everybody in the shop knows about you. I could not put you on now, not at present." I went out and tried to get a job somewheres else. I could not get it there.

Q. Where? A. Hudson County Buick.

Q. Where is that? A. They are in Union City, on the Boulevard.

20

Q. When you went there, what did they say? A. Well, the super over there offered me a job. When he learned the name, well, he said "Well, you see, we ain't doing much now", but he needed a man.

Mr. Perkins: I object to that.

Mr. Goldenhorn: I think the last should be stricken out.

30

*Cross-examination by Mr. Perkins:*

Q. Mr. Jones, where were you born? A. Jersey City.

Q. Where? A. Henderson Street.

Q. On what date? A. August 2, 1903.

Q. What was your father's name? A. Anthony.

Q. Anthony what? A. Jones.

Q. Your name is Stephen Quincy Jones? A. Yes, sir.

40

*Stephen Quincy Jones, for Plaintiff—Re-direct.*

Q. Did you ever go by any other name than Jones? A. No, sir.

Q. With whom were you living at 153 Pavonia Avenue, Jersey City, in November, 1926? A. Mr. Bazinski.

10 Q. Where does Mr. Bazinski live now? A. I don't know.

Q. When did you last see Mr. Bazinski? A. The last I have seen him was last year, 1927.

Q. Where was he living then? A. He was still living there—no, he was not, he was living on 3rd Street.

Q. When did he live at 153 Pavonia Avenue? A. He lived at the present when I was there with him, in 1926.

20 Q. When did you last live with Mr. Bazinski at 153 Pavonia Avenue? A. That was till November 6th.

Q. So that you quit living at 153 Pavonia Avenue on November 6th, 1926, didn't you? A. No, sir.

Q. Didn't you just tell us that was the last you did live there? A. Well, that is the last, I said, till——

*Re-direct examination by Mr. Goldenhorn:*

30 Q. The last till what? A. Because when I got out of jail, they wanted me to pay for my clothes lying there during that time.

Mr. Perkins: I object to what they wanted to do; that has nothing to do with this case.

Mr. Goldenhorn: I think the witness should be permitted to finish his answer.

The Court: The witness answered the question as to when he lived there; whether

*Stephen Quincy Jones, for Plaintiff—Cross.*

he means longer than that, than he actually said, that is for him to say.

Mr. Goldenhorn: I will bring that out; go ahead.

*Cross-examination by Mr. Perkins (Resumed):*

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Q. When, in the year 1926 did you last sleep at 153 Pavonia Avenue?

Mr. Goldenhorn: I object to that on the ground it is immaterial, irrelevant and incompetent, when he last slept there, to these issues.

(Argued and objection withdrawn.)

Q. Tell the jury, please? A. I slept there till November 6th, and then——

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Q. 1926; that is the last you slept there?

Mr. Goldenhorn: I think the witness should be permitted to finish his answer. We are entitled to the whole truth.

Mr. Perkins: He can explain that on re-direct.

Q. Was that before or after you hired this motor car? A. That was before.

Q. Now, what time in the morning of November 6th did you leave 153 Pavonia Avenue? A. I was home all morning.

30

Q. What time in the afternoon did you leave? A. At 1.30.

Q. When you left, what did you take from 153 Pavonia Avenue, by way of baggage? A. I didn't take no baggage.

Q. What did you take by way of tools? A. I didn't take no tools.

40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. When you came to the U Drive It Company, did you have a package with you? A. No, sir.

Q. Did you have any tools with you? A. No, sir.

Q. When did you put your baggage in the motor car that you hired? A. After I hired the car.

10 Q. When did you put your tools in the motor car? A. After I hired the car.

Q. Where was the baggage from the time you hired the motor car till the time you picked it up? A. It was at home.

Q. So that after you hired this motor car you went home and got the baggage? A. Yes, sir.

Q. You went home and got the kit of tools? A. Yes, sir.

20 Q. And put them in the car? A. Yes, sir.

Q. Who was the person that you hired the motor car from? A. Mr. Oakley.

Q. You have told the Court and Jury that you told him you were going to Erie? A. Yes, sir.

Q. Is that clear in your mind now? A. Yes, sir.

Q. You knew Erie was about four hundred miles away? A. Yes, sir.

30 Q. You said that he explained that the expense of hiring would be 20¢ a mile and 20¢ an hour? A. Yes, sir.

Q. So that the trip to Erie would not cost less than \$160 the trip there and back? A. Yes, sir.

Q. You could have bought a Ford for \$160 couldn't you?

Mr. Goldenhorn: I object to what he could buy a Ford for.

The Court: Sustained.

40 Q. You are clear, and you want this Jury to believe that you told Mr. Oakley of the U Drive It

*Stephen Quincy Jones, for Plaintiff—Cross.*

Company that you were going to Erie, Pa.? A. Yes, sir.

Q. Do you recognize this letter (handing witness)? A. Yes, sir.

Q. Whose handwriting is that envelope in? A. Mine.

Q. Whose handwriting is this letter in? A. Mine. 10

Mr. Perkins: I would ask to have them marked for identification.

Marked for identification as D-1 A and B respectively (for identification) of this date.

Q. After you were in jail, you wrote Mr. Oakley a letter? A. Yes, sir.

Q. You told Mr. Oakley in that letter— 20

Mr. Goldenhorn: I object to that; the letter is not in evidence.

Mr. Perkins: Well, if counsel will read the letter.

Mr. Goldenhorn: Without reading the letter I don't object to its going in evidence.

Mr. Perkins: Then may they be marked in evidence?

(D-1 A and B for identification now marked in evidence.) 30

Q. Didn't you write a letter to Mr. Oakley in which you told him you did not tell him you were going to Erie? A. Yes, sir.

Q. Didn't you write him for mercy, you made a big mistake that you didn't tell him you were going to Erie?

Mr. Goldenhorn: I object to it on the ground that the letter is in evidence and speaks for itself. Why should we have the quotations of counsel on it? 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

The Court: I will permit the question whether or not he did.

Q. Didn't you write him a letter telling him you made a big mistake not telling him you were going to Erie? A. I didn't write that; I wrote him a letter.

Q. You mean to say now you did tell him? A. I have told him I was going to Erie, but I don't know what I wrote.

Q. Did you not tell Mr. Oakley when you hired this car that you were not going to Erie? A. I told him that I was.

Q. Did you tell him you were going far away? A. Yes, sir.

Q. Didn't you say this in the letter written to Mr. Oakley December 26th, 1926, marked in evidence as D-1:

“Dear Sir and Mr. Oakley: I would like to ask if you please give me another chance, as you know that I didn't have the intention to steal your car. Where I was wrong is I was too dumb to tell you that I was going so far.”

Q. Didn't you write that? A. I wrote that.

Q. So that you didn't tell him that you were going to Erie, did you?

Mr. Goldenhorn: I object, if your Honor please, because the witness has already said he told him he was going to Erie before that letter was written, before he went on the trip.

Mr. Perkins: Let us see.

Q. Didn't you write Mr. Oakley and say:

*Stephen Quincy Jones, for Plaintiff—Cross.*

“I would like to ask you if you would please give me another chance. As you know I didn’t have the intention to steal your car. Where I was wrong is I was too dumb to tell you I was going so far.”

Didn’t you write that? A. I wrote that. 10

Q. So that you didn’t tell him you were going so far? A. I told him I didn’t know the mileage of the trip.

Q. You didn’t know then that Erie was about four hundred miles away? A. No, sir.

Q. You are sure that is the explanation? A. Yes, sir.

Q. You said in your direct examination that you offered to pay him when you were in jail at Canisteo the expenses of the car, the hire? A. 20  
Yes, sir.

Q. How much money did you have with you then? A. I had \$150 then.

Q. Who was with you at the time? A. Another fellow with me.

Q. I want to know his name? A. Gorsky.

Q. Did Gorsky have any money with him, do you know?

Mr. Goldenhorn: I object to that as immaterial, whether Gorsky had any money with him or not. 30

The Court: Sustained.

Q. You had \$150? A. Yes, sir.

Q. You never paid for this car, did you?

Mr. Goldenhorn: I object to whether he ever paid or not.

(Argued and objection withdrawn.)

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. You never paid for this? A. Mr. Oakley refused the money.

Mr. Perkins: I ask that that be stricken out as not responsive.

- 10 Q. You never paid, did you? A. No, sir.  
 Q. If Erie be 400 miles away, 800 there and back, would be \$160? A. Yes, sir.  
 Q. Did you ever get to Erie? A. Yes, sir.  
 Q. Did you ever tamper with the speedometer of that car that gives the mileage? A. No, sir.  
 Q. Do you know what the mileage was when the car was returned to Jersey City? A. I know the mileage as far as Canisteo; I looked at the meter.  
 Q. What was the mileage there? A. It was reading three thousand something.
- 20 Q. How many miles did you have to travel from Canisteo to that point? A. It was a little over 500 back to Canisteo.  
 Q. Now, what was your baggage contained in that you went from the U Drive It place, when you got your baggage? A. You mean how they were fixed?  
 Q. How? A. I have garage tools and the accessories, carried in a tool box and I had a clean suit in a suit case.
- 30 Q. I asked what did you have it in? A. In a suit case.  
 Q. So that it is clear that after you hired this car for this long trip of more than eight hundred miles, and didn't tell Mr. Oakley you were going so far you left the U Drive It Company alone; is that correct? A. No, sir.  
 Q. Was somebody with you then? A. Yes, sir.  
 Q. Then you went down to the place you boarded, 153 Pavonia Avenue? A. Yes, sir.
- 40 Q. You took baggage, didn't you? A. Yes, sir.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. You took a kit of tools, didn't you? A. Yes, sir.

Q. Tools for fixing and operating a motor car?

A. Yes, sir.

Q. And you started on the journey at what time on Saturday, November 6th, 1926? A. You mean leaving Jersey City?

10

Q. Yes? A. 6 p. m.

Q. Which way did you go out of Jersey City?

A. I went by way of Paterson, Suffern, Port Jervis, Elmira, Binghamton.

Q. Had you been over the course before; did you know the route? A. Yes, sir.

Q. Had you traveled to Erie before? A. Yes, sir.

Q. You did know it was so far? A. I took a different highway out of Erie.

20

Q. How many times had you been to Erie in a motor car? A. That was the second time in Mr. Oakley's car.

Q. Why didn't you take your baggage and the kit of tools and put them in the car when you hired the car? A. The tools are very heavy; they weigh over a hundred pounds.

Q. You had over a hundred pounds of tools with you. You knew how to adjust the needle valve on this car, didn't you? A. If the carburetor for instance was——

30

Q. Please answer my question. You knew how to adjust the needle valve on this car? A. Yes; just a minute; what do you mean? There is more than one.

Q. The one in the carburetor? A. Yes, sir.

Q. When you left the U Drive It Company that needle was adjusted so that you could drive at a relatively slow rate of speed? A. No, sir.

40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. It was not so adjusted? A. You can't do that. You can't adjust your carburetor that you can get more speed out of it.

Q. You can't readjust it? A. You can readjust it.

10 Q. Do you mean to tell this Court and Jury that when you left that car in Canisteo, that the carburetor was in the same condition as when you left here so far as adjustment? A. I did not touch the car anywhere.

Q. Will you please tell us why you took a hundred pounds of tools with you? A. Because you never can tell about this rear end; I had a rear end fall apart on the highway that cost me \$10 extra.

20 Q. Tell us what was in that tool kit? A. There was tools in it.

Q. Tell us what they were that weighed 100 pounds? A. There were big wrenches and hammers, small wrenches and chisels.

Q. What else? A. And pliers; different kinds of pliers, cutting pliers, diagonals, and all kinds. I had small hand wrenches and big hand wrenches.

Q. How many hammers? A. Two.

Q. How many large wrenches? A. I don't know.

Q. Approximately? A. Over twelve.

30 Q. Over twelve wrenches; how many pliers did you have in there? A. Three to four pliers.

Q. What other kind of tools did you have in there? How many chisels did you have in there? A. Two.

Q. What other kinds of tools did you have in there? A. I had all sorts, because I have different makes of cars.

Q. You had tools that would adjust, then, practically any make of car? A. Yes, sir.

40 Q. Altogether, how many pieces of tools were in there? A. Over fifty pieces.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. When did you say you arrived at Erie? A. Sunday noon.

Q. You left Jersey City on Saturday at 6 o'clock in the afternoon, and rode all Saturday night until Sunday noon; is that right? A. Yes, sir.

Q. Then you must have known the highway, didn't you? A. I knew it as far as Westfield and Hornell, New York. 10

Q. You told this Court and Jury a few minutes ago, you said to Mr. Oakley that you were going to Erie, didn't you? A. Yes, sir.

Q. Didn't you write this in the letter that you gave us an explanation of, that you didn't know how far Erie was; didn't you write this to Mr. Oakley: 20

“Would you please forgive this time. I know I was wrong that I didn't notify you that I was going to Erie”

(Handing witness D-1-A)? A. I wrote that.

Q. So what you told the Court and Jury was not correct, was it? A. It was correct, but I just wanted to try with that letter what he would do.

Q. You were trying to deceive Mr. Oakley when you wrote that letter; is that the explanation? A. No. 30

Q. What do you mean you were trying to do? A. See whether he would settle without bringing it up to the Grand Jury.

Q. Weren't you trying to deceive him then?

Mr. Goldenhorn: I think that is a conclusion. I think that is for the jury to say whether he tried to deceive him or not; the letter speaks for itself.

The Court: Sustained. You might ask 40 what he meant; why he put that in there.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Why did you write to Mr. Oakley and say "Mr. Oakley, would you please forgive me this time. I know I was wrong that I didn't notify you that I was going to Erie"? A. The reason I wrote that because he didn't remember; he knew that.

10

Mr. Perkins: I object to what he remembered.

Q. You tell us that is the reason you wrote it?

A. So he can come up there and settle with me.

Q. So that you were trying by a false representation to prevent him from prosecuting you?

20

Mr. Goldenhorn: I object to the form of the question; I don't think it is a fair statement of the facts.

Mr. Perkins: We will let the jury say.

The Court: Go ahead.

Q. You were trying to put it over on Oakley so that he would not prosecute? A. I didn't want to have a record in Court.

Mr. Perkins: I move to strike that out as not responsive.

30

Mr. Goldenhorn: That is his answer.

The Court: That is not an answer to the question. Just answer the question. You can explain afterwards.

Q. You were trying to deceive Mr. Oakley so that he would not prosecute you; isn't that right?

A. Yes, sir.

40

Q. How did you think it was going to deceive him by saying you didn't tell him you were going to Erie, when you say you did tell him? A. Because he didn't remember that where I asked him when I called up the office.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. What did he say? A. He said, "Why didn't you call up." He said, "Did you call me up?"

Q. He said, "Why didn't you call up? Why didn't you call on the phone"? A. Yes, sir.

The Court: When did you say you called up on the phone; I have forgotten?

10

The Witness: That was on Sunday afternoon when I arrived at Erie, Pa.

Q. Now, Mr. Jones, the first time you saw Mr. Oakley after your departure from the U Drive It and after you came back and were put in the jail was this time when he came to see you in response to this pleading letter? A. He didn't come to see me.

Q. Where was it he said to you, "Why didn't you call me on the phone"? A. That was in Canisteo, N. Y.

20

Q. When you met him in Canisteo, you told him you didn't intend to steal the car? A. I told him I didn't steal it.

Q. Then he said, "Why didn't you call me on the phone"? A. No, first he came and said—

Q. Please answer the question I am asking. Didn't you tell the Court and jury that when Mr. Oakley saw you at Canisteo he said to you, "Why didn't you call me at the office"? A. He told me that later on.

30

Q. Where? A. In Canisteo.

Q. Then he did ask you, "Why didn't you call me on the phone", didn't he? A. Well, he first—

Q. Please, yes or no; he did ask you why you didn't call him on the phone? A. Yes, sir.

Q. And that was when he saw you at Canisteo? A. It was just before leaving town.

40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Now, you said you lived in Jersey City all your life? A. Yes, sir.

Q. You are quite correct about that? A. Yes, sir.

Q. Didn't you live in Florida? A. I lived there during the winter time.

10 Q. Didn't you say in this letter to Mr. Oakley, "Mr. Oakley you are from the south. So am I. I am from Dania, Florida"; did you write that? A. Yes, sir.

Q. Why did you tell us you lived in Jersey City all your life? A. I lived there during the winter season.

Q. You were making a play in this letter to be merciful because you were both southerners? A. Yes, sir.

20 Q. Was that true? A. Well, I didn't live there all my life; just the winter season.

Q. How many winter seasons? A. One.

Q. You were making a play to be lenient because you were both southerners? A. Yes, sir.

Q. Did you intend to deceive Mr. Oakley about your being a southerner? A. I wanted to beg him to come up; I was going to explain it to him.

Q. Where do you live now? A. Detroit, Michigan.

30 Q. How long have you been in Detroit? A. Since July 20th.

Q. What year? A. 1928.

Q. Mr. Jones, you said that you were born in Jersey City and your name was Stephen Quincy Jones and your father's name was Anthony Jones? A. Yes, sir.

Q. Do you know whether or not there is any record in the Board of Health of the birth of Stephen Quincy Jones?

40 Mr. Goldenhorn: I object to that on the ground it is immaterial. How can it pos-

*Stephen Quincy Jones, for Plaintiff—Cross.*

sibly be relevant and material? Does he mean to discredit that he was born in Jersey City, whether he was born in 1903 or any other time?

The Court: If he says he was and he wasn't.

Mr. Goldenhorn: I withdraw the objection. 10

The Witness: They have no records over in New Jersey of my birth, because I have tried to get them.

Q. How often have you tried to get records of your birth?

Mr. Goldenhorn: I object to that as immaterial. 20

(Question withdrawn.)

Q. Where were you employed in Jersey City last before you hired this car? A. I was working at the Nash Sales Corporation before I made the trip.

Q. Is that the last place you were employed in Jersey City before you made the trip? A. Yes, sir.

Q. When did you leave the Nash Sales Corporation? A. A few days before then. 30

Q. How long? A. I don't know. I can't remember that.

Q. So that at the time you took this car from the U Drive It, you were not employed at all, were you? A. No, sir.

Q. You don't remember how many days before you had lost your employment with the Nash Sales Corporation? A. I am pretty sure it was on Thursday.

Q. Of the same week? A. Yes, sir. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Now, from Thursday before you hired the car until the month of March, you were not employed at all anywhere, were you? A. I was employed when I was out on bail.

Q. You didn't tell that to this jury before? A. Yes, sir.

10 Q. Where were you employed? A. By the Yellow Cab.

Q. You told that to us before? A. You asked me was I employed. I said I was working when I was out on bail three days. I was turned in the day before pay day.

Q. How much were you getting with the Yellow Cab? A. \$42 a week.

20 Q. What were you employed at? A. Floor inspector.

Q. You are an expert mechanic, so far as motor cars are concerned, aren't you? A. Yes, sir.

Q. You know how to reconstruct cars all right? A. Yes, sir.

Q. Now, when you were arrested up there on the highway in or near Cuba, N. Y., by whom were you arrested? A. By the State troopers.

Q. State troopers, New York State troopers? A. Yes, sir.

30 Q. Who was with you? A. Another fellow was with me.

Q. Who was he? A. I just knew him from Jersey City here.

Q. Don't you know his name? A. Yes, sir.

Q. Well, I am asking you? A. Stanley Gorsky.

Q. You only knew Stanley Gorsky from Jersey City? A. Yes, sir.

Q. Is he related to you? A. No, sir.

40 Q. You are sure? A. Positive.

Q. What is your sister's name? A. Josephine.

Q. Josephine what? A. Gorky.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Not Gorsky? A. No, sir.

Q. How long have you known this Gorsky? A. I know him when I used to eat in a restaurant, in the Exchange Buffet.

Q. I said how long? A. About six to eight months.

Q. Before you went away with him from Jersey City? A. Yes, sir. 10

Q. You took him with you, didn't you? A. Yes, sir.

Q. Where did you and he first have trouble with the police?

Mr. Goldenhorn: I object to that; it is all in the direct case. What police are you talking about?

Mr. Perkins: He will know what I mean. 20

Q. Where did you and Gorsky first have trouble with the police on that journey? A. It was in Westfield, N. Y.

Q. That isn't very far from Erie, is it? A. It is about forty miles.

Q. It is on Lake Erie? A. Yes, sir.

Q. Right across Lake Erie is Canada, isn't it? A. Yes, sir.

Q. When you are on your way to Canada, you go right up the eastern shore of Lake Erie till you get to Westfield, don't you? A. No, you can go to Canada from Erie. 30

Q. You have got to take a ferry across there? A. Yes, sir.

Q. Is is a long ferry? A. Yes, sir.

Q. They examine your car license, don't they? A. Yes, sir.

Q. So that you started northerly from Erie, Pa., kept up along the easterly shore of Lake Erie to Westfield, didn't you? A. Yes, sir. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Then you got in trouble with the police? A. I didn't get no trouble there.

Q. I thought you said that was the first? A. You said the police; they told us where I was; I was questioned what I was doing by the gas station.

10 Q. The first time that you got in difficulty with the police authorities of New York State was at Westfield, N. Y.? A. Yes, sir.

Q. You were headed in a northerly direction? A. No, I was headed east.

Q. You think Westfield is east of Erie? A. Yes, sir.

Mr. Goldenhorn: It happens to be north-east.

20 Q. Unless you had a motor car that could go through water, the only way to get up to Buffalo would be up through Westfield? A. Well, I don't know whether that is east or west; all I know is my sister lived on East 9th Street.

Mr. Perkins: I object and ask to have that stricken out. That has nothing to do with my question.

30 Q. In order to get to Buffalo from where you were was up along the shore of Lake Erie, through Westfield? A. Yes, sir.

Q. That is the way you were headed when the police first interfered with your progress? A. No, sir.

Q. Where was it that they first interfered with you? A. I didn't go to Buffalo.

40 Q. I said you were at Westfield, headed northerly when the police first stopped you? A. Yes, sir.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. What did they stop you for? A. They didn't stop me there; I run out of gas.

Q. It was lack of gas that stopped you? A. Yes, sir.

Q. Notwithstanding the fact that you had \$150 in your pocket? A. That didn't have anything to do with the gas line working loose. 10

Q. What time did you run out of gas at Westfield? A. About 2.30 in the morning.

Q. You travel at night, don't you?

Mr. Goldenhorn: I object to that.

Q. On this journey, you travelled by night? A. And day.

Q. Night and day? A. Yes, sir.

Q. You were going some distance; you travelled night and day; you hired a car at two o'clock in the afternoon and you didn't start till after dark, did you? A. That is right. 20

Q. You travelled all night of Saturday night, and the early morning of Sunday morning? A. Yes, sir.

Q. You say you laid over at Erie during the day time on Sunday, didn't you? A. I didn't lay there. I rode around the town.

Q. You stayed in Erie? A. Yes, sir. 30

Q. And at night you started out of Erie? A. Yes, sir.

Q. And on the way to Westfield, you ran out of gas? A. Yes, sir.

Q. And then the police interfered, didn't they? A. Yes, sir.

Q. What did they do? A. I seen a plain clothes man coming. We are standing by the gas station, and he said: "What are you standing there for? What are you fellows doing there?" I said, "We are run out of gas. We broke the gas line. Can 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

you get gas in this town anyway?" He said, "You can't get gas till six or seven in the morning". I said, "We are going south, going back home to Jersey City".

10 Mr. Perkins: I just asked you what the police did there.

Mr. Goldenhorn: And he is trying to tell you.

Q. I didn't ask you for the conversation? A. Well, he didn't do nothing.

Q. Had you fixed the gas line? A. Yes, sir.

Q. How did you know he was a plain clothes man? A. He showed me a badge, like that (indicating).

20 Q. It was 2.30 in the morning, on Monday morning? A. Yes, sir.

Q. Did he stay by the gas station till you got gas? A. Yes, sir.

Q. Then did you see any other policeman there? A. Not in that town.

Q. Did any other policeman interfere with you there? A. Not in that town.

30 Q. After this policeman approached you at 2.30 in the morning and showed you his badge, you say you turned east toward New York, didn't you? A. Yes, sir.

Q. Where were you next interfered with by the New York police authorities? A. Cuba, N. Y.

Q. What was the occasion of being stopped there? A. To allow the New York State police to examine papers; they stopped us to see if there is any stolen cars on the road.

Q. The police stopped you to see if there were any stolen cars on the road? A. Yes, sir.

40 Q. Just you? A. No, there was a line in front of me.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. It was what time in the morning then? A. About eight o'clock.

Q. Eight o'clock on Monday morning? A. Yes, sir.

Q. How many cars had they stopped there? A. Three in front of me.

Q. How many cars did they take into custody? A. None that I know of. 10

Q. Except yours? A. Mine.

Q. Who were in the car at that time when they took you in custody? A. Gorsky.

Q. Mr. Gorsky that you met in this eating house? A. Yes, sir.

Q. Had he been with you all the time? A. Yes, sir.

Q. What was Gorsky; was he your guest in the car? A. Yes, sir. 20

Q. You were standing all the expenses of the trip? A. Yes, sir.

Q. Where did the police take you from there? A. Took us to the railroad station.

Q. First they asked you to produce your license, didn't they? A. Yes, sir.

Q. What did they say about something being phoney? A. They said—they didn't say to me first. He said to the other State trooper in the side car. 30

Q. How many troopers were there? A. Two of them. He said, "That looks to me kind of phoney". He showed it to him. They went to the other side of the car and they talked something there. I heard them say, "We will hold them".

Q. What was funny? A. The owner's license.

Q. Are you sure you got the owner's license of the car? A. I had it with me then.

Q. What was funny about it? A. I don't know. They told me it didn't connect with the car; that is what I got from the State trooper. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Whereabouts on the highway were you then, when you were stopped by the police in New York? A. In the village of Cuba.

Q. It was out in the country, wasn't it? A. Yes, sir.

10 Q. Did you drive the car into the village of Cuba? A. I did.

Q. Was the policeman with you, by your side? A. When we drove into Cuba, no, sir, nobody was there.

Q. Were they on motorcycles? A. We were in the city; we were riding in the town when we were stopped.

Q. Where did the police take you? A. Took us to Friendship, N. Y.

20 Q. How far away was that? A. I could not tell you how many miles it is, because we drove quite some time.

Q. Were you in the custody of the police then? A. Yes, sir.

Q. How many troopers? A. With them two.

Q. Tell us approximately how far it was? A. I have no idea.

Q. Were you under arrest? A. No, sir; they were just going all the way down from Cuba to Friendship; we drove into the railroad station.

30 Q. Were these troopers on motorcycles? A. Just one motorcycle and side car they had.

Q. Who drove the car from Cuba to Friendship? A. I drove the car.

Q. With them right alongside? A. No, sir; one of them rode in the car; the other rode in the motorcycle.

Q. Then you were in the custody of the police? A. Just gone to Friendship to send telegrams and find out.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Did they send out telegrams? A. I asked them for permission.

Q. Did the police——

Mr. Goldenhorn: I think he is permitted to tell what happened.

Mr. Perkins: I asked if the police sent telegrams. 10

Q. Did the police send telegrams? A. They sent one.

Q. Who did they send the telegram to? A. I don't know; they said they are sending to the U Drive It Company.

Q. You don't know. You tell us that the police said they were sending this to the U Drive It Company? A. Yes, sir. 20

Mr. Perkins: Have you any objection to that going in evidence?

Mr. Goldenhorn: I don't know what it is. (After receipt of paper from counsel.)

I object to that as not being properly proven and not binding on the plaintiff.

Q. Did you see the telegram that was sent? A. No, sir.

Q. You say the police told you they were going to send a telegram to the U Drive It Company? 30

A. Yes, sir.

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

Q. They didn't say they were going to send a telegram to the Police of Jersey City? A. No, sir.

Q. You didn't see the telegram? A. No, sir.

Q. How did they know this car belonged to the U Drive It Company?

Mr. Goldenhorn: I object; how does he know what they knew? 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Did you tell them the car belonged to the U Drive It Company? A. They read it off the owner's card.

Q. You are sure of that, too, aren't you? A. Yes, sir.

10 Q. You say the police, having you in custody, and Gorsky in custody, at Friendship read an owner's license which said U Drive It Company on it? A. Yes, sir.

Q. And having read that said they were going to send a telegram to the U Drive It Company? A. That is what they told me.

Q. You don't know whether they sent it to the U Drive It Company or not, do you? A. I don't.

20 Q. From Friendship, where did you go? A. We stayed there forty-eight hours.

Q. Where? A. In the county jail.

Q. Forty-eight hours? A. Yes, sir.

Q. From there, where were you taken? A. We went to Canisteo, N. Y.

Q. Who took you there? A. Just one State trooper.

Q. Where were you put there? A. State troopers' headquarters.

30 Q. Did you tell the police of New York that this car belonged to the U Drive It Company? A. Yes, sir.

Q. Who did you tell? A. To the State trooper.

Q. What was his name? A. I don't know none of their names.

Q. Was it E. H. Gavin? A. I don't know him, either one of them there.

Q. Now, as a matter of fact, don't you know that the State trooper at Friendship sent a telegram to the Chief of Police of Jersey City?

40 Mr. Goldenhorn: If your Honor please, my friend wants to get to Congress; he

*Stephen Quincy Jones, for Plaintiff—Cross.*

will never get there at the rate he is going.  
This is trespassing on eternity.

Q. Don't you know that the trooper at Friendship sent a telegram to the Chief of Police at Jersey City? A. I don't know he sent it. He told me he was going to wire to the U Drive It Company. 10

Q. Don't you know that he telegraphed the Chief of Police of Jersey City asking him to find out—

Mr. Goldenhorn: I am going to object to this, getting in the contents of a telegram this way. The witness said he was told they were wiring to the defendant Company.

The Court: Sustained. 20

Q. Now, Mr. Jones, from Friendship, you were taken to the jail in Canistota? A. Yes, sir.

Q. And remained there until Detective O'Neill—is he a detective?

Mr. Goldenhorn: Call him "Chief".

Q. Till Chief O'Neill came. Didn't he say he got some telegrams, when he arrived there? A. No, sir. 30

Q. Did he tell you where he came from? A. I recognized him.

Q. You knew him? How long had you known Chief O'Neill?

Mr. Goldenhorn: I object to that as immaterial and irrelevant.

The Court: I will allow the question to be asked. He says he knew him.

Mr. Goldenhorn: Exception.

The Court: Yes. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

A. From seeing him around Newark Avenue and Grove.

Q. How long? A. About a year or so.

Q. Now, who took you into custody at Canisteo?  
A. Mr. O'Neill.

10 Q. You knew that he was connected with the police department of Jersey City? A. Yes, sir.

Q. Who was with Mr. O'Neill? A. Mr. Oakley.

Q. Where was the car when you were in jail at Canisteo? A. It was put in the garage.

Q. What condition was it in then? A. It was in the condition I took it out from Jersey City.

Q. So far as the entire running mechanism is concerned? A. Yes, sir.

20 Q. Had anybody tampered with the speedometer or the hub? A. Not that I know of.

Q. Had anybody tampered with the running mechanism, to feed more gas to it? A. Not that I know of, because the car was taken away from me from the time I was arrested till Mr. Oakley arrived.

Q. Now, did you do anything else at either Friendship or Cuba or Canisteo with reference to getting in communication with the U Drive It Company? A. Yes, sir.

30 Q. What did you do? A. I wired Mr. Oakley.

Q. Where did you wire from? A. From the railroad station.

Q. Where? A. To Jersey City.

Q. What railroad station? A. I think it is Erie. At the railroad there; I don't know what railroad it is because there was no railroad sign.

Q. What is the name of the railroad station?  
A. Canisteo, N. Y.

40 Q. Then you wired from Canisteo? A. No, sir. Friendship, N. Y., I mean.

Q. You are sure it wasn't Cuba? A. No, sir; Friendship, N. Y., I mean. It was Friendship.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. How long had you been in jail before you sent this wire? A. I wasn't in jail yet.

Q. Did you keep a copy of this telegram you said you sent? A. The Western Union did.

Q. Did you keep a copy? A. They won't give you a copy.

Q. Did you keep a copy? A. No, sir. 10

Q. You didn't keep any copy? A. No, sir.

Q. How do you know the Western Union kept a copy? A. They hold the copy.

Q. You mean that is their usual practice? A. Yes, sir.

Q. You were in the habit of sending telegrams? A. Yes, sir.

Q. You came back in the custody of Chief O'Neill to Jersey City, didn't you? A. Yes, sir. 20

Q. Where were you put? A. Put in police headquarters.

Q. Up to that time Mr. Oakley had never had you in custody, had he? A. Not that I know of.

Q. You would know if you were in the custody of anyone else? A. I reckon so.

Q. You remember you were stopped at Westfield by the police; you were taken to Canistoto; at Cuba taken and put in the jail at Friendship; then finally turned over to the police authorities of Jersey City by the police authorities of New York? A. I don't know who I was turned over to. I was coming back with them two. 30

Mr. Perkins: I move that that be stricken out as not responsive.

Q. You did come back; didn't you know you were taken into custody by Chief O'Neill? A. Not that I know of.

Q. Didn't he tell you he had come for you? A. No, sir. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Mr. Goldenhorn: I want to object. How can that be material?

10 Q. Don't you know that the police authorities in Jersey City sent a telegram to the trooper in New York asking certain information about the car? A. No.

Mr. Goldenhorn: I object to that as immaterial.

Mr. Perkins: He might know.

The Court: He says he doesn't know.

Q. When you hired this car, you signed some sort of paper for the U Drive It Company, didn't you? A. Yes, sir.

20 Q. You told this Court and jury that you deposited \$25, didn't you? A. Yes, sir.

Q. How much did you deposit? A. \$25.

Q. If you deposited \$25 you would not take a receipt for \$15, would you? A. No, sir.

Q. Is this your signature at the bottom of this paper I am showing you (handing witness)? A. Everything but this here.

Q. Everything but the dollar mark down there, you say you wrote on the paper? (Unanswered.)

30 Mr. Perkins: By agreement with counsel, we have agreed that Route 17, from New York City to Erie, Pa., is 505 miles.

Q. Now, Mr. Jones, I have shown you a paper. You say you signed the front, Stephen Jones, 153 Pavonia Avenue, 10 p. m., on there? A. Yes, sir.

Mr. Perkins: I ask that it be marked for identification.

40 Mr. Goldenhorn: You may offer it in evidence.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Accepted and marked as Defendant's Exhibit D-2 of this date.

Q. This is the paper you kept a duplicate of when you signed? A. I had it, yes sir.

Q. You did have a duplicate of it? A. Yes, sir. 10

Q. When it was written, having a carbon on the back of it, it makes a duplicate copy? A. Yes, sir.

Q. So the copy you got was the same as this? A. Yes, sir.

Q. So this paper which you signed said you deposited \$15? A. Well, he made that out before I gave him that money.

Q. It said you deposited \$15? A. Yes, sir.

Q. When you signed this, Stephen Jones, 153 Pavonia Avenue, will return about 10 p. m.; you signed that, didn't you? A. No, sir; I didn't write will return about. 20

Q. You signed 10 p. m.? A. Yes, sir.

Q. And it was right after the words, "Will return about"? A. Yes, sir.

Q. So that the paper you signed at the U Drive It Company, copy of which you took along said that your home address was 153 Pavonia Avenue, and that you would return at 10 o'clock p. m.? A. But not saying the day and date. 30

Q. Did you have a mental reservation it might be 10 o'clock some other night? A. I made reservations?

Q. Did you mean that you might return at 10 o'clock a week or two weeks later? A. No, sir.

Q. You mean to say that you didn't mean you were going to return at 10 o'clock that night? A. No, sir.

Q. You didn't mean that when you said that? A. Not that night. 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Ten o'clock some other night? A. Yes, sir.

Q. Nobody knew what night? A. I said Monday night. I mentioned to Mr. Oakley Monday night because he wanted me to put down the date and the day.

10 Q. Didn't you get a receipt for \$15? A. No, sir.

Mr. Perkins: If the Court please, I suppose it would be proper for me to read this to the jury.

20 "Car rented to Stephen Jones, Cash \$15. Car 43. Dated November 6, 1926. I hereby agree that the automobile herein mentioned is taken into my possession under the terms of and with the full knowledge of the provisions and agreement of the automobile contract signed by me which is taken to be part hereof. Type of car given. Signature Stephen Jones, address 153 Pavonia Avenue. Will return about 10 p. m."

The Court: What were you going to Erie for, Mr. Jones?

The Witness: To bring a radio up to my sister.

30 Q. Now, Erie is 505 miles away, at 20¢ a mile, which would be \$101? A. Yes, sir.

Q. Erie back would be \$101 more? A. Yes, sir.

Q. So you were spending \$202 to take a radio to Erie? A. Yes, sir.

Q. At the same time you took clothing along with you and a hundred pounds of tools; is that right? A. Yes, sir.

Q. And having left Erie, you started on up on route 5 that leads to Buffalo? A. No, sir.

40 Q. Isn't it Route 5? A. I don't know whether it does; I wasn't going to Buffalo.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. You started on the route that leads up along Lake Erie, didn't you? Erie, Pa., is down here somewhere (indicating)? A. Yes, sir.

Q. When you started, you started on a route—well it is 20 on this map? A. That is past Westfield, N. Y.

Q. That goes beyond Westfield, on to Buffalo, doesn't it? A. Yes; but I didn't travel on that—

Q. That is where the first policeman showed you his badge and asked what you were doing on the roadside? A. In Westfield.

The Court: Did you go from Westfield through Westfield on you way to Erie?

The Witness: I had to go through Westfield.

Q. You could go right through Pennsylvania?

Mr. Goldenhorn: The witness said he had to go through, and he is going to tell why.

Q. Your way to Erie would be right out through Pennsylvania? A. No, it would take me two days to get through by way of Pittsburgh; I would have to run to Cleveland, Ohio, if I ran that way.

Q. You seem to be pretty familiar with the way? A. It is since I am in Detroit I am familiar out there.

The Court: How long did you figure it would take you to get to Erie?

The Witness: Well, I figured a shorter time than I made before with a car.

The Court: How long did you figure it would take you to get to Erie?

The Witness: I knew I would get there before noon, if I didn't have no trouble with the car.

*Stephen Quincy Jones, for Plaintiff—Cross.*

The Court: Noon when?

The Witness: Sunday. But I did have trouble with the tires and it brought me 12 sharp into Erie, Pa.

The Court: Six o'clock Saturday, to noon you were going 550 miles?

10

The Witness: I don't know how many miles it is.

Q. Mr. Jones, you put down that you were going to be back at 10 p. m., didn't you? A. Yes, sir.

Q. You meant 10 p. m. some other night. You didn't mean Saturday night? A. No, sir, not Saturday night.

20 Q. In you letter to Oakley, you said that you didn't tell him you were going to Erie, didn't you? A. I don't remember what I wrote in that letter.

Q. "Mr. Oakley, would you please forgive this time. I know I was wrong that I didn't notify you that I was going to Erie"; is that right? A. Well, I wrote that.

Q. Now, from Jersey City to Erie is 505 miles, and back 505, that is 1,010. You were going to take this motor car 1,010 miles for the sake of getting a radio out to your sister? A. Yes, sir.

30

Mr. Perkins: I would like to read this letter to the jury:

December 26th 1926. Top of it, Stephen Jones 153 Pavonia Avenue.

Hudson County Jail,

Jersey City, New Jersey.

40

Dear Sir and Mr. Oakley: I would like to ask you if you please give me another chance. As you know, I didn't have inten-

*Stephen Quincy Jones, for Plaintiff—Cross.*

tions to steal your car. Where I was wrong  
 is I was too dumb to tell you I was going  
 so far. As you see now, Christmas was  
 here and I was in jail. My poor father  
 didn't enjoy Christmas very well as I sat  
 in my cell and cried just tonight. What a  
 lesson I have got. Mr. Oakley, have you  
 any faith in me, you would please tell Judge  
 Kinkaid to give me another chance. I will  
 pay you whatever I owe you. Mr. Oakley,  
 please, don't send me away to prison.  
 Please have some mercy. Stephen Jones.

Then written below.

Mr. Oakley, you are from the south, and  
 so am I, from Dania, Florida. That is a  
 small town on the east coast. I was trusted  
 down there with Cadillacs, Packards. The  
 reason I have stayed in Jersey on account  
 of my father. I want to be with him for  
 Christmas, as he is an old and sickly man.  
 Mr. Oakley, would you please forgive this  
 time. I know I was wrong that I didn't  
 notify you I was going so far. Mr. Oakley,  
 I will pay you for your trouble, but please  
 free me out, as I have got more than a les-  
 son since I am here. You know I was com-  
 ing back to Jersey when I was arrested. I  
 can prove my innocence to you, where I  
 have been trusted with money, \$1,200 when  
 I was in Jersey City with the Nash Sales  
 Corporation, Mercer Street. I was trusted  
 with a new Nash as you can go there and  
 find out about my honesty. Mr. Oakley, if  
 you give me another chance or not, will you  
 please call up the jail and tell the warden  
 to tell if you are going to give another  
 chance or not. Please do me this favor as

*Stephen Quincy Jones, for Plaintiff—Cross.*

I was never in my life in no jails and this is the first time in my young life. Please Mr. Oakley, give another chance and I will pay you for your trouble.

Yours respectfully, Stephen Jones.

10 Mr. Goldenhorn: I am very glad counsel read that letter.

Mr. Perkins: I move to strike out the happiness of counsel.

Q. After you got out of jail on bail, where did you go to live? A. I went back to 153 Pavonia Avenue, but the people were moved at that time.

Q. So that you left 153 Pavonia Avenue on the morning of November 6th, when you hired this motor car—  
20

Mr. Goldenhorn: I want to object to counsel repeating everything that the witness has testified to. The jury has heard; I have heard it five times, and I certainly object to this repetition.

Q. Mr. Jones, when were you bailed out first?  
A. On Saturday afternoon.

Q. What date was that? A. On the 12th.

30 Q. Why did the bondsman surrender you, do you know?

Mr. Goldenhorn: I object to that as immaterial.

The Court: Sustained.

Q. How long were you out? A. Just about three days.

Q. These people moved away in the meantime; had moved away from 153 Pavonia Avenue? A.  
40 Yes, sir.

*Stephen Quincy Jones, for Plaintiff—Cross.*

Q. Did you ever go back to live there? A. The rooms were empty.

Q. Now, after you left 153 Pavonia Avenue in the morning without bag or baggage or tools and came up to hire this motor car, went back and got 100 pounds of tools and your baggage and started on this long journey of 500 miles, you never went back to live at 153 Pavonia Avenue? 10

Mr. Goldenhorn: I object to that as repetition.

The Court: Did you go back to live?

The Witness: I went back there and I found they moved just the day before I got let out.

Mr. Perkins: I move that what he found out as far as the time of moving is concerned, be stricken out. 20

Q. You found the people moved away, the question was. Did you ever go back to live there? A. At 153?

Q. Yes? A. I could not live there.

Q. Please say no, or whatever the answer is?

A. No, sir.

Q. So the last you ever lived at 153 Pavonia Avenue was the day you hired the motor car and took your baggage and your tools; isn't that so? 30

A. Yes, sir.

Q. Then at the jail, when you wrote this letter, with your address as 153 Pavonia Avenue, when you wrote that letter on December 26th, 1926, you didn't live there? A. I was at the present in Hudson County jail, waiting for trial, waiting for bondsman. When I got bailed out, I found the people had moved.

Q. I am asking you why did you write you lived at 153 Pavonia Avenue on December 26th, when 40

*Stephen Quincy Jones, for Plaintiff—Cross.*

you never lived there? A. I beg pardon; I made a mistake. They didn't leave until after January.

Q. I am asking you—you have said that two or three times. You never lived at 153 Pavonia Avenue after November 6th, 1926?

10 Mr. Goldenhorn: He said he did live there.

Q. Now, Mr. Jones, did you ever live at 153 Pavonia Avenue after November 6th—live there?

A. Yes, sir, I did.

Q. When the house was empty? A. No; I say I could not think when they moved; I just thought about it now.

20 Q. Your testimony seems to be a bit progressive?

Mr. Goldenhorn: I object to that characterization. Witness has a perfect right to change his testimony.

Q. You told this Court and jury that these people moved the day before you got out of jail the first time, didn't you? A. Because I don't know what day they moved. When I went back they were gone.

30 Q. You never lived there afterwards? A. No, sir.

Q. I want to know why you put 153 Pavonia Avenue on this letter? A. Because my license was written under that address.

Q. It wasn't because you went back and lived there afterwards, was it? A. When he looks at the contract, he knows just where the address is and who I was.

40 Q. It is clear you never lived there after November 6th? A. I could not say, because I can't remember.

*Stephen Quincy Jones, for Plaintiff—Re-direct.*

*Re-direct examination by Mr. Goldenhorn:*

Q. Your last known address was at this address on Pavonia Avenue? A. I have said they moved—

Mr. Perkins: I object until we find out he knows when. 10

Q. Where did you live last before you went to jail? A. Before I went back after bail.

Q. Listen to my question. Where did you live at the time you were put in the jail? A. At 153 Pavonia Avenue.

Q. Did you have any other address at that time? A. No, sir.

Q. That is why you wrote the address in that letter? A. Yes, sir. 20

Q. Now, I notice that just under your name on the receipt for \$15 is the figure "8" —looks like a figure 8. Please explain what that is (indicating)? A. I don't know what that is.

Q. Did you ever hire cars of this U Drive It Company before? A. Yes, sir.

Mr. Perkins: I object as not re-direct examination.

The Court: I think I allowed it to be said he did. 30

Mr. Goldenhorn: If counsel will admit he hired before.

The Court: He has said so.

Q. You said to Congressman Perkins, in an answer to a question, that you didn't pay for the hire of this car. Did you offer to pay? A. Yes, sir.

Q. Where were you when you offered to pay? A. In Canistota, N. Y. 40

*Stephen Quincy Jones, for Plaintiff—Re-direct.*

Q. To whom did you offer to pay? A. To Mr. Oakley.

Q. What did he say when you offered to pay?

A. He refused the money from me.

10 Q. Did you ask him? A. Yes, I told him I have the money, money enough to pay for it now, to pay him.

Q. What did he say? A. He said, "I don't want a God-damned cent from you."

Q. You are sure he used that language? A. Yes, sir.

Q. While you were in jail, did you see anybody using that car? A. Yes, sir.

Q. Who used it? A. The State troopers.

20 Q. After you got in the car on your way back to Jersey City, did anything happen along the road? A. When?

Q. With the car? A. With Mr. O'Neill in the car?

Q. Yes. A. Yes, sir.

Q. What happened to it? A. Mr. Oakley, when he was going to make an "S" curve across the railroad track, he blew a tire out.

Q. What happened to your car then? A. That meant he had to get a new tire and tube for it.

30 Q. You drive back to Jersey City with Officer O'Neill? A. Yes, sir.

Q. Did he tell you at that time that there was a warrant issued for you in Jersey City? A. He never said a word to me.

Q. Did the car at any time on your way back to Jersey City overturn? A. Mr. Oakley ran it into a bank where I told him to watch his step when he is going to hit that spot there.

Q. When you were in jail and you wrote that letter, it was around Christmas time, wasn't it?

40 A. Yes, sir.

*Stephen Quincy Jones, for Plaintiff—Re-direct.*

Q. You wanted to get out; is that right? A. Yes, sir.

Q. Is that why you wrote the letter? A. The reason I wrote the letter was because I knew it is a big corporation. I am a poor man. They can ride me for life.

Mr. Perkins: I object to that and ask that it be stricken from the record.

Mr. Goldenhorn: I consent.

The Court: Strike it out.

10

Q. You wanted to get out, is that right? A. Yes, sir.

Q. Did Oakley come to see you in jail? A. No, sir.

Q. You had your trial, is that right? A. Yes, sir.

20

The Court: You said something yesterday about having phoned Mr. Oakley?

The Witness: I called around four o'clock in the afternoon of Sunday from Erie, Pa.

The Court: What for?

The Witness: To tell Mr. Oakley that I had trouble with the car, I had a lot of trouble with the tires being flat, no blow out, no punctures, just going flat themselves. That meant they were giving out these very bad tires.

30

The Court: Did you tell him you had bad tires?

The Witness: I told him I had bad tires, I would not be in till Monday. I didn't give the time; I figured I could get in with the car.

40

*Stephen Quincy Jones, for Plaintiff—Re-direct.*

The Court: You didn't figure you said until Monday night at 10 o'clock that you would return?

The Witness: No, I would be in before ten, but I would not return the car until ten.

10

The Court: On Monday night?

The Witness: Yes, sir.

The Court: Sunday afternoon you called him up to tell him that?

The Witness: There is a rule that you must call up every twenty-four hours.

Mr. Perkins: I object to the recital of the rule.

20

Mr. Goldenhorn: I call upon counsel for the other side to produce the telegram sent by this witness to the company.

Mr. Perkins: In response, I say we never received any telegram.

Q. Where did you send the telegram from? A. I sent it from Friendship, N. Y.

Q. Who was with you when you sent it? A. The State troopers.

Q. Do you recall what the contents of that telegram was? A. What I can remember, I say, "What are you holding me for?" That's about all I can remember. I know I said something about a phoney license. I wired to him before the State troopers' telegram was sent.

30

Q. What did you pay for the telegram? A. I don't know. The State troopers gave me a bill.

Q. You did pay for the telegram; is that right? A. Yes, sir.

40

*Stephen Quincy Jones, for Plaintiff—Re-cross.*

*Re-cross examination by Mr. Perkins:*

Q. Now, you say that when you were in Friendship—that was what day?

Mr. Goldenhorn: We have gone over that about four or five times. I don't object to it being stated. 10

Mr. Perkins: I want to fix the date he sent this imaginary telegram.

Q. What day were you in Friendship? A. On the 8th; that was Monday.

Q. What time? A. Around nine or ten o'clock in the morning.

Q. And you said the telegram read something like this, "What are you holding me for?"; is that right? A. Yes, sir. 20

Q. Why, as a matter of fact, you knew that it was the New York police picked you up on the ground, as they said, you had something wrong with your license? A. Well, the trooper gave me another story. They said this car is stole, "we got a complaint".

Q. So that besides what you told us before, the troopers then said, "This car is stolen"? A. That is after we were sending telegrams.

Q. After who were? A. After our sending a telegram to Mr. Oakley. 30

Q. I am not asking you about that. I am asking another question entirely. You know you were picked up by the police because there was something wrong with your license, and they suspected the car was stolen? A. Yes, sir.

Q. That was in Friendship? A. Yes, sir.

Q. Then you immediately, as I understand it, telegraphed Oakley? A. Yes, sir.

Q. You said, "What are you holding me for"? A. Yes, sir. 40

*Patrick McGovern, for Plaintiff—Direct.*

Q. And that was on Sunday? A. No, sir; Monday.

Q. You knew that Oakley wasn't holding you, didn't you? A. Yes; the State troopers, when we had gone to the station, they spoke to me when we got off at the station to send telegrams; he says, "We got a wire that is a stolen car". That is what he told me at the station, so that is why I sent this kind of telegram.

Q. You knew you were being held because someone suspected it was a stolen car? A. That is what the broadcast was supposed to be.

Q. Was it broadcast? A. Yes, sir.

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20 PATRICK MCGOVERN SWORN for the Plaintiff.

*Direct examination by Mr. Goldenhorn:*

Q. You are employed in the Prosecutor's Office of Hudson County? A. Yes, sir.

Q. In what capacity? A. Investigator.

Q. Did you, in accordance with subpoena, produce the records of your office in the case of the State against Stephen Jones? A. I have.

Q. I show you what purports to be the record in your office and ask you whether that is it? A. Yes, sir.

Q. And looking at that record, can you tell us whether Stephen Jones waived examination so as to be tried before the Court of Special Sessions?

Mr. Perkins: The record speaks for itself. I will not object to the admission of any part of the record that is evidential. I will ask counsel to offer the papers that he wants.

*Patrick McGovern, for Plaintiff—Direct.*

Mr. Goldenhorn: With your Honor's permission, I desire to offer the complaint made in the First Criminal Court, Jersey City, by William C. Oakley as complainant, Manager of the U Drive It Company, a corporation, dated the 9th day of November, 1926, the complaint sworn out before Edward Markley, Clerk of the First Criminal Court, Jersey City. 10

Mr. Perkins: I don't object to this as far as Mr. Oakley is concerned. I object as far as the U Drive It Company is concerned.

The Court: If it is evidence as to one defendant, it has to be as to the other.

Mr. Goldenhorn: I also offer on the blank of the Department of Public Safety, Detective Bureau, letter sent to the Prosecutor of the Pleas, Jersey City, November 20th, 1926, by John J. O'Neill. 20

Mr. Perkins: I object as not evidential in this case; immaterial.

Mr. Goldenhorn: It is part of the record of the Prosecutor.

The Court: I will sustain the objection as to O'Neill's report. The only record we want, is whether the complaint was made, indictment followed, and a trial and acquittal; that's all. 30

Mr. Goldenhorn: I offer waiver of trial by Jury and the trial in Special Sessions.

The Court: I think that is important, to show that he actually was tried.

Mr. Goldenhorn: Then I offer these two papers, with your Honor's permission, and excuse the witness.

Accepted and marked as Plaintiff's Exhibits P-1 and P-2 of this date, respectively. 40

*John J. O'Neill, for Plaintiff—Direct.*

DETECTIVE JOHN J. O'NEILL, sworn for the Plaintiff.

*Direct examination by Mr. Goldenhorn:*

- 10 Q. Your name is what? A. John J. O'Neill.  
 Q. You are a detective connected with the Police Department of Jersey City? A. Yes, sir.  
 Q. You have been for some years, haven't you, Mr. O'Neill? A. Yes, sir.  
 Q. Did you go up to this place in New York to make this arrest of the plaintiff? A. Yes, sir.  
 Q. Where was it, what place? A. First we went to the Erie station, left the Erie station at 3 o'clock and got to Olean, N. Y., about 10 o'clock in the morning.  
 20 Q. What day of the week was it? A. November 9th.  
 Q. That would be on a Sunday? A. No, that would be on Monday.  
 Q. When was the warrant turned over to you? A. November 9th.  
 Q. On that Monday? A. On that day.  
 Q. Was that warrant delivered to you at Police Headquarters? A. It was delivered to me from the Court.  
 30 Q. Did you have a copy of the complaint with you at the time? A. Copy of the warrant; certified copy of the warrant and complaint.  
 Q. Were you in the Court in Jersey City when the warrant was sworn out? A. Yes, sir.  
 Q. With whom were you in Court; who swore to the warrant? A. Mr. Oakley.  
 Q. Swore the complaint, I mean? A. Yes, sir.  
 Q. Did he accompany you to this place in New York? A. Yes, sir.  
 40 Q. Did you and he see the plaintiff? A. Yes, sir.

*John J. O'Neill, for Plaintiff—Direct.*

Q. What happened then? A. The plaintiff was in a small village jail at Canisteo when I got there and Mr. Oakley and I went in. State trooper Gavin brought Jones and another fellow by the name of Gorsky into the room where we were, and he said "Here is the two men". I said "We only have a warrant for Jones; we don't care about the other fellow at all". 10

Q. Who said that? A. I said that we only called for one man, Jones; so the State trooper said the warrant had no force up there, it wasn't a Governor's warrant, so then Jones said, "I am going back in that car to Jersey City".

Q. Jones said that? A. Yes, sir; then we left there and had lunch and got into the car, Mr. Oakley, Jones, Gorsky and myself. 20

Q. Who drove it? A. Mr. Oakley.

Q. Did anything happen? A. Yes, we had tire trouble that delayed us a whole lot. Then we had an accident on the road at a place called Endicott, N. Y. The car went off, skidded on the road.

Q. Did it upset? A. No, it didn't upset. It turned pretty near over.

Q. Then you got to Jersey City? A. Yes, sir.

Q. What did you do then? A. After we got to Jersey City, he was placed under arrest and taken to Headquarters and booked. 30

Q. Let me interrupt you. Was Mr. Oakley present at Headquarters? A. No, sir.

Q. Then you took him from headquarters to where? A. He was sent from headquarters to the Police court.

Q. Was Mr. Oakley there then? A. I didn't appear at Court.

Q. You don't know whether he appeared there or not? A. No, sir.

Q. Were you at the trial? A. No. 40

*John J. O'Neill, for Plaintiff—Cross-Re-direct.*

Q. You didn't appear at the trial either? A. No.

*Cross-examination by Mr. Perkins:*

10 Q. Were you present in jail at Canisteo all the time that Oakley was there? A. Yes, the building, yes, sir.

Q. Was there any conversation between Oakley and the plaintiff? A. No, I heard no conversation. Well, they did talk; there was some words between them.

Q. What was said? A. I can't remember truthfully what was said. I wasn't paying much attention to them at the time.

20 Q. You and Jones left the car at Endicott and took the train to Jersey City? A. Yes, sir.

Q. Oakley went up to bring the car back? A. Mr. Oakley, myself and Jones went into Endicott to get a wrecking outfit, to right the car back on the road, so Jones and I came on to Jersey City. We went to get a trolley car to the station.

Q. For what purpose did Oakley go up to Canisteo? A. To get the car and identify the man that was up there.

30 Q. Did anybody else ride back as far as Endicott with you? A. The four of us.

Q. Gorsky? A. Gorsky I believe his name was.

*Re-direct examination by Mr. Goldenhorn:*

Q. You said, as I understood you, that Jones volunteered to go back with you? A. Yes, sir.

Q. Even when the trooper said the warrant was no good? A. Yes, he demanded to go back in the car.

*John J. O'Neill, for Plaintiff—Re-cross.*

*William C. Oakley, for Plaintiff—Direct.*

*Re-cross-examination by Mr. Perkins:*

Q. He was going to ride back instead of on the railroad train? A. Yes; the other fellow had no place to go and rode back as far as Endicott.

Q. That is, when Jones told you he was going back, he was coming back with you? A. He was going to come back, he said. 10

Q. Gorsky had no place to go? A. He had no place to go. He was brought in the car, brought him back to where we had the accident.

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WILLIAM C. OAKLEY, SWORN for the plaintiff.

20

*Direct examination by Mr. Goldenhorn:*

Q. Where do you live? A. 64 Sip Avenue.

Q. You are employed and were employed in 1926 by the U Drive It Company? A. Yes, sir.

Q. Had been for how long before that time? A. About three years.

Q. During that three years, had you ever seen Mr. Jones before? A. No, sir; one time previous since I have been located in Jersey City.

Q. That is what I mean? A. Yes, sir. 30

Q. Had you done business with him? A. Yes, sir.

Q. What was your business with the Company? A. Manager.

Q. Were you the only manager there? A. No, there was a head man that makes his headquarters there.

Q. You had charge of the hiring out of cars and the giving of receipts and expenditure of money? A. I had. 40

*William C. Oakley, for Plaintiff—Direct.*

Q. Were you present when he paid this money?

A. Yes, sir.

Q. How much did he pay? A. \$15.

Q. It wasn't \$25? A. No.

Q. You gave him a receipt for it? A. \$15.

10 Q. You have charge of the books of the Company? A. Yes, sir.

Q. And it is your duty to keep a record of where cars go and when they are going to come back?

A. No, we don't keep any record where they go at all.

Q. You do keep a record of the fact that they are out? A. Yes, sir.

20 Q. Was there any rule with respect to calling you up if a car is out over twenty-four hours? A. They are not permitted over eighteen hours without permission.

Q. Well, there is nothing to that effect, however, no rule is there that you remember? A. No, sir.

Q. It is a sort of understanding, as I understand it? A. Yes, sir.

Q. If a fellow were to stay out more than eighteen hours, you would feel that under the understanding you have with him, he was to call you up? A. Yes, sir.

30 Q. And apprise you of that fact? A. Yes, sir.

Q. If anything happens to a fellow who takes one of your cars, for example like the tire getting out of commission, or upsetting, or an accident, as I understand, he is supposed to call up? A. Yes, sir.

Q. And this message is given to you? A. Yes, sir.

Q. You made the complaint in this case? A. I did.

40 Q. As manager of the Company, is that right?

*William C. Oakley, for Plaintiff—Cross.*

Mr. Perkins: I object; he had no authority to bind this Company.

Q. Under whose direction did you make this complaint? A. My own direction.

Q. You did that yourself? A. Yes, sir.

Q. Individually? A. Yes, sir. 10

Q. Sure about that? A. Absolutely.

Q. Were you going to get any benefit from getting the car back? A. Was I going to get any benefit?

Q. Yes, personal benefit? A. No, sir.

Q. So you didn't do it for yourself, did you?  
A. I took out the complaint for myself.

Q. Did you do it for yourself; did you? A. Certainly I did.

Q. What benefit were you going to get by making this complaint yourself? 20

Mr. Perkins: I object; it makes no difference. This is not the proper method of examining this witness, his own witness. He had shown no hostility whatever, and the witness has already answered.

The Court: Go ahead.

The Witness: Personally I wasn't going to get any; it is my duty. 30

Q. It was your duty under your employment as manager? A. It was.

*Cross-examination by Mr. Perkins:*

Q. That is to say, you conceived that was your duty? A. Yes, sir.

Q. Mr. Oakley, did you ever receive any telephone message from this man?

Mr. Goldenhorn: I object to that as not proper cross-examination. I didn't ask anything about that. 40

*William C. Oakley, for Plaintiff—Cross.*

Mr. Perkins: You asked whether there was a custom.

The Court: Was the custom complied with?

10 Q. Was the custom complied with in this case?  
A. It was not.

Q. Did you hear a word from this man by telephone or telegraph or any other way, until you heard from the police in Jersey City? A. I didn't.

Q. When was the first you heard and from whom, about this man being in custody?

Mr. Goldenhorn: I object to that as immaterial, irrelevant; cannot be binding upon this plaintiff.

20 The Court: Sustained.

Q. From the time this man hired the car at 1:20 on November 6th, when did you next see or hear from him? A. It was Tuesday morning I heard from headquarters. I didn't hear from him.

Q. That was Saturday until Tuesday morning?  
A. Yes, sir.

Q. You heard nothing from him by telephone or telegraph or in any way? A. No, sir.

30 Q. Did you know where he was? A. I did not.

Q. Did you know where the car was in that time? A. I did not.

Q. When you said you were manager of this place at 77 Sip Avenue, what are your managerial duties?

Mr. Goldenhorn: I object, if your Honor please, to the characterization of what his duties are.

(Question withdrawn.)

40

*William C. Oakley, for Plaintiff—Re-direct.*

*Re-direct examination by Mr. Goldenhorn:*

Q. Didn't you testify before Judge O'Regan you got a telephone message?

Mr. Perkins: That is objected to as not re-direct examination. Nothing was asked by me as to the testimony before Judge O'Regan. 10

(Objection sustained; argued, and question withdrawn.)

Q. Didn't you testify before Judge O'Regan you got a telephone message from this man, that he had gone to Erie to visit his sister? A. I did not.

Mr. Goldenhorn: Plaintiff rests. 20

Mr. Perkins: I move for a non-suit so far as the U Drive It Company is concerned. There is absolutely no evidence in this case to connect it up with the complaint.

Furthermore, it is incumbent upon the plaintiff to show by his evidence two things: malice and want of probable cause.

Certainly there is no evidence here of any kind imputing malice to the U Drive It Company. There is no corporate act. There is no evidence that Mr. Oakley had any authority derived from the Corporation to do what he did. What he did he did in his individual capacity. There is no evidence to connect the U Drive It Company with it. 30

The Court: The motion for a non-suit will be refused with an exception allowed.

Mr. Perkins: I make the same motion with respect to Mr. Oakley.

The Court: Same ruling and exception. 40

*Louis M. Bryson, for Defendants—Direct.*

LOUIS M. BRYSON, sworn for the defendants.

*Direct examination by Mr. Perkins:*

Q. Mr. Bryson, what is your connection, if any,  
with the U Drive It Company? A. I am District  
10 Manager.

Q. What is Mr. Oakley's connection there? A.  
Manager of the local branch, Jersey City.

Q. Is Mr. Oakley under you? A. He is.

Q. Did the U Drive It Company, or you as its  
Manager of the District, have any knowledge of  
the arrest or the complaint in this case?

Mr. Goldenhorn: I object to that as im-  
material and irrelevant; not the best evi-  
20 dence.

The Court: You may ask.

Mr. Goldenhorn: Exception.

A. I did not.

Q. Did anyone connected with the Corporation,  
any officer of the U Drive It Company, have any  
knowledge of the hire of this car and the filing of  
this complaint against Mr. Jones?

Mr. Goldenhorn: I object to that on the  
ground it is immaterial and irrelevant; he  
30 can't state whether they had any knowl-  
edge. The best evidence is the people  
themselves.

The Court: This is whether he knows.

Q. Do you know of any? A. I do not; no, sir.

Q. Where is this corporation located, where is  
its headquarters? A. The home office is Norfolk,  
Va., 310 Monticello Avenue.

Q. Where is the place of any of its officers? A.  
40 I am an officer and at our Headquarters in Jersey  
City, 77 Sip Avenue.

*Louis M. Bryson, for Defendants—Direct.*

Q. Has any other officer authority or control over Jersey City headquarters other than yourself? A. In my absence, Mr. Hendricks, who resides in Newark.

Q. Did you say where he was? A. He is in Newark.

Q. Where were you—

10

Mr. Goldenhorn: I object to that, where he was. The District Manager may have no more power than the office boy. The best evidence of the power of the manager is the records of the corporation.

The Court: You may proceed.

Mr. Goldenhorn: Your Honor will grant me an exception.

20

A. Paterson, New Jersey.

Q. Were you or were you not in actual supervision of the Jersey City office? A. I was in complete contact.

Q. Did any other officer of the Company have any contact with the Jersey City office on that day? A. Not to my knowledge.

Q. On the day of the issuance of the warrant? A. No, sir.

Q. Did you have any knowledge of the filing of this complaint? A. I did not.

30

Q. So far as you know, did any officer of the Company have any knowledge of it? A. No, sir.

Q. Did you know Stephen Jones? A. No, sir, I did not.

Q. So far as you know, did any officer know Stephen Jones? A. No, sir.

Q. Did you know Stephen Jones had hired a car? A. I may have known that there was a car out that had not returned. I can't say that I knew it was Stephen Jones, no, sir.

40

*Louis M. Bryson, for Defendants—Cross.*

*William C. Oakley, for Defendants—Direct.*

*Cross-examination by Mr. Goldenhorn:*

Q. I assume that your manager has supervision and control of the hiring of the cars, the letting of them out; is that right?

10

Mr. Perkins: I object to that.

Mr. Goldenhorn: I withdraw it.

Q. Your manager has control of the cars, hasn't he? A. Yes, sir.

Q. And the renting of them? A. Yes, sir.

Q. And the receipt of the money for them? A. Yes, sir.

Q. And the keeping of the record when they go out and when they return? A. Yes, sir.

20

Q. And who takes them out? A. Yes, sir.

Q. And the condition of the cars? A. Yes, sir; correct.

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WILLIAM C. OAKLEY, recalled for defendants.

*Direct examination by Mr. Perkins:*

Q. Mr. Oakley, do you remember the day of November 6th, 1926, when Mr. Stephen Jones came to engage a car of the U Drive It Company?

30

A. I do.

Q. Did he have any baggage with him? A. Not at the time.

Q. Did he have a kit of tools? A. No, sir.

Q. Was there anybody with him? A. No, sir.

Q. Do you know what time he came? A. Well, around one o'clock, approximately one.

Q. Who rented the car to Mr. Jones? A. I did, personally.

40

*William C. Oakley, for Defendants—Direct.*

Q. When he rented the car, was there a paper signed by him? A. Yes, sir.

Q. Is that the original of it? A. That is the original.

Q. Referring to Exhibit D-2? A. Yes, sir.

Q. Did you have a conversation with Mr. Jones at the time he rented this car? A. I did not. 10

Q. Did he tell you that he was going to go to Erie with it? A. He did not.

Q. Did he tell you he was going to go a long distance away? A. If he had, I would have got a God darn——

Mr. Goldenhorn: I ask that that be stricken out.

Mr. Perkins: I consent that it be stricken. 20

Q. When he signed this receipt, was there a duplicate of it? A. Yes, sir.

Q. What became of the duplicate of it? A. He keeps the receipt and we have one on file.

Q. Did he sign this in your presence?

Mr. Goldenhorn: That is all admitted. It is in evidence.

Q. On this paper it says "will return about 10 p. m." Did Mr. Jones speak to you about the time he would return? A. 10 p. m. Saturday evening. 30

Mr. Goldenhorn: I ask that that be stricken out. The witness just a moment ago said there was no conversation with the plaintiff at all.

The Court: Overruled.

Mr. Goldenhorn: Exception.

Q. Did you have any knowledge that he intended to go out of the State with the car? A. No, sir. 40

*William C. Oakley, for Defendants—Direct.*

Q. Did you know that after he took the car he went and got baggage? A. No, sir.

Q. That he got a kit of tools weighing 100 pounds?

10 Mr. Goldenhorn: I object, on the ground that the questions asked by counsel of the witness are purely negative, and he can go on forever asking him about things he doesn't know about.

The Court: I take it he didn't know, because the plaintiff himself says he didn't get these things until after he had taken this car away from this man's place and went to his own house to get them.

20 Q. Mr. Oakley, when, after this man Stephen Jones left with the motor car, was the first you heard from that car?

Mr. Goldenhorn: I object to that, if your Honor please.

The Court: I will permit the question.

A. Tuesday morning.

Q. From whom did you hear?

30 Mr. Goldenhorn: Objected to as hearsay.

(Overruled: Exception.)

A. Police headquarters.

Q. Who communicated with you?

(Same objection; ruling; exception.)

Q. From whom? A. Detective John O'Neill.

Q. What was that communication?

40 Mr. Goldenhorn: I object to what the communication was.

The Court: Sustained.

*William C. Oakley, for Defendants—Direct.*

Q. Why did you make this complaint? A. The car had been missing since Saturday. The car was due back Saturday night. Sunday morning, when the car had not returned, we were a little bit alarmed. We let it go over to Monday, when I made a personal investigation down at 153 Pavonia Avenue. On my questioning them down there, they told me Mr. Jones had checked out. 10

Q. From where?

Mr. Goldenhorn: I object to his finding Mr. Jones had checked out. That is pure hearsay, and a conclusion, and certainly we can't be bound by that.

The Court: Go ahead.

Mr. Goldenhorn: Exception. 20

Q. You said last that you went to 153 Pavonia Avenue? A. I did. 20

Q. What did you do then? A. I inquired what floor he lived on. If I am not mistaken it was the third floor, living with a Polish family. I went up to the third floor. There was a man, a woman and a little child there. I asked this woman if Stephen Jones lived there. She said that he did. I said "Do you know his whereabouts today?" She said, "I don't know; he took all his belongings Saturday and moved out". 30

Mr. Goldenhorn: Your Honor will grant me an exception to this conversation he had with another party, not in the presence of the plaintiff.

The Court: Yes.

The Witness: He moved out. I asked if she knew of his whereabouts. She said she didn't. "Well", I said, "Do you expect him back today here?" She said "No, 40

*William C. Oakley, for Defendants—Direct.*

and furthermore if he does come we don't want him here''.

(Same objection, ruling and exception.)

10 Q. Proceed. A. That is all I found out there, only that they are moving shortly. That particular day they were packing and moving to some other address.

Q. What next did you do, or did you hear from him? A. I didn't do anything until the following morning, until I heard from Headquarters.

Q. What headquarters? A. Police Headquarters, Jersey City.

Q. From whom? A. John O'Neill.

Q. Did they produce anything? A. A wire.

20 Mr. Goldenhorn: I want to object to that on the ground the plaintiff was not present and how can he be bound by anything the police showed him?

30 The Court: Let's get this out of the way to save time. What is the difference, whether the plaintiff is to be bound or not? The plaintiff is not attempted to be bound by this. This is merely to show, as the answer which the defendant gives, as to why he issued the complaint, and it is for the jury to say whether or not from the story he tells and the reasons which he advances as to why he had the complaint issued, whether, based upon these reasons, the jury finds that there was probable cause for his having issued the complaint. The plaintiff is out of the question, as far as that conversation.

40 (Argued; objection overruled, and exception to Mr. Goldenhorn.)

*William C. Oakley, for Defendants—Direct.*

Q. Did Detective O'Neill show you the telegram? A. He did, yes, sir.

Q. I show you one and ask you if he showed you that? A. Yes, sir.

Mr. Perkins: I offer it in evidence.

Accepted and marked as Defendant's Exhibit D-3 of this date. 10

Mr. Perkins: The telegram is from Belvidere, N. Y., to the Chief of Police, Jersey City, N. J. "Holding Chrysler coach license No. 341, also occupants, Stanley Gorsky and Stephen Jones. Waiting advice if car is stolen. Trooper E. H. Gavin, Friendship, N. Y., 11:59 a. m."

Q. Did he show you some other telegrams? A. Yes, sir. 20

Q. Did he show you this telegram (handing witness)? A. Yes, sir.

Mr. Perkins: I offer that in evidence.

Mr. Goldenhorn: So that I will have my exception noted, I except to the admission of these telegrams.

The Court: All right.

Accepted and marked as Defendant's Exhibit D-4 of this date.

Mr. Perkins: (Reading D-4) "To John H. Desmond, Captain of Detectives, Jersey City, dated November 8th 9 p. m. Information asked for regards Chrysler coach, license No. 341 N. J. issued to U Drive It Company, Jersey City serial No. Y. S. 5740 engine 23605. No Bertillon facilities available. Does car owner permit out of state trips." 30

*William C. Oakley, for Defendants—Direct.*

Q. Did he show you this copy of telegram too?

A. Yes, sir.

Q. Were you notified by Detective O'Neill? A. I was.

Q. As to the location of the car and of Mr. Jones? A. Yes, sir.

10 Q. What did you do after O'Neill showed you these telegrams? A. We studied about how to make the trip up to Olean to get the car.

Q. I am speaking of before you started out; did you make a complaint before or after you talked to O'Neill? A. I made the complaint after I talked with O'Neill.

Q. Did you have the information in these telegrams in your mind at the time you made the complaint? A. I did.

20 Q. At the time you made the complaint, did you or did you not know he had been arrested near Friendship, N. Y.? A. He was not arrested to my knowledge.

Q. Did you know he was in the custody of the police up there? A. Yes, sir.

Q. Did you make an investigation at 153 Pavonia Avenue before or after you made the complaint? A. Before I made the complaint.

30 Q. How many days elapsed from the time he took the car until the time you made the complaint? A. Two days; two and a half days.

Q. During the two and a half days, had you any idea where this car was? A. No, sir.

Q. Did you or did you not know when you made the complaint that Jones had left Jersey City? A. I did not.

Q. When you made the complaint, did you know he had left 153 Pavonia Avenue? A. Yes, sir.

40 Mr. Goldenhorn: I want to object to the form of these questions; of course, if coun-

*William C. Oakley, for Defendants—Direct.*

sel wants to testify—but I think the witness ought to be able to tell what he did.

The Court: I think so; sustain the objection.

Q. Did you know where Jones had gone to when you made the complaint? A. I did not. 10

Q. Did he at any time before you made the complaint advise you that he was going to Erie, Pa.? A. No, sir.

Q. Or that he was going to go on a long trip? A. No, sir.

Q. Did he, before you made the complaint, any time advise you that he had tire trouble? A. No, sir.

Q. Did he communicate with you by telephone? A. No, sir. 20

Q. Did he communicate with you by telegraph? A. No, sir.

Q. Did he communicate with you in any way from the time he left the U Drive It about 2 o'clock on November 6th, 1926, until the time you heard from Chief O'Neill that he was in custody in New York? A. No, sir.

Q. Did you receive a letter from Mr. Stephen Jones around November 26th? A. Yes, sir. 30

Q. I show you the letter marked D-1 and ask if that is the letter you received? A. Yes, sir.

Q. He says in this letter, "Mr. Oakley, would you please forgive this time. I know I was wrong that I didn't notify you that I was going to Erie". Is that correct that he did not? A. Yes, sir.

Q. Where did you take custody of this car again? A. A little town called Canistota, or whatever they call it, whatever the town is.

Q. Were there any mechanical changes made on this car? A. Yes, sir. 40

*William C. Oakley, for Defendants—Direct.*

Q. What can you tell us about the regulation of the car when it went out of the U Drive It?

A. Our cars at that time which we do with most new cars, we just fix them so that they can't go above a speed of 40 miles. When I took possession again, the foot feed would go completely  
10 down to the floor boards which would make the regular speed of the car, which was 62.

Q. When the car left its maximum speed was forty miles an hour? A. Yes, sir.

Q. And when you took possession of it, you found it would go up to 62 miles? A. Yes, sir.

Q. Can anyone make that change, without knowledge of cars and the tools to do it with? A. They would have to have knowledge of motor cars.

20 Q. Did you give this man the owner's license of the car when he left? A. I did not; we had that in our possession.

Q. Did he ever have any owner's license of this car? A. No, sir.

Q. Before you had this man arrested, did you communicate in any way with any officer of the U Drive It Company about having him arrested? A. I didn't.

30 Q. So far as you know did any officers of the U Drive It Company know you were going to have him arrested? A. No, sir.

Q. What was the value of this Chrysler car? A. Somewheres around \$1800 or \$1900.

40 Q. The complaint says "W. C. Oakley, 77 Sip Avenue, Manager U Drive It Company, Inc., being duly sworn complains that on the 6th day of November, A. D. 1926, at Jersey City aforesaid, the following described goods and chattels, were stolen, one Chrysler Coach \$1900 automobile in all value \$1900. That said goods and chattels were the property of the U Drive It Company Inc.

*William C. Oakley, for Defendants—Cross.*

of 77 Sip Avenue, and has just cause to suspect and doth suspect that same were stolen by Stephen Jones''? Did you at that time suspect they were stolen by Stephen Jones? A. Yes, sir.

*Cross-examination by Mr. Goldenhorn:*

10

Q. When cars are taken from your place, you told us a while ago you don't know where they are taken to, do you? A. No.

Q. You are not interested in that at all, are you? A. Surely; we cannot ask a customer where he is going with the car.

Q. So that it is not unusual for a man to take a car out of your place and go to Erie, Pa., or Buffalo, N. Y.? A. It is.

Q. Why? A. Because it is a rather big trip. 20  
There is very few ever do it; it is very expensive.

Q. You never have people take out cars on expensive trips? A. No.

Q. They are usually taken out for short rides? A. Yes, sir.

Q. When you got up and saw your car and saw this plaintiff, you said to him, did you not, or words to this effect; "I am going to ride you", did you? A. I did not.

Q. You didn't say anything like that? A. Absolutely not. 30

Q. Didn't talk to him at all? A. I talked to him.

Q. Didn't he offer to take the car back and drive it back for you and you would not let him? A. No, sir.

Q. You drove it, didn't you? A. I drove the car.

Q. You drove it into a ditch, didn't you? A. Yes, sir.

Q. And ruined a tire? A. I did not. 40

*William C. Oakley, for Defendants—Cross.*

Q. You didn't ruin a tire? A. I certainly did not.

Q. If they change the speed of the car from forty miles an hour to 62 miles an hour, that didn't make any difference as to the price, does it? A. No.

10 Q. You don't know whether the State troopers did that? A. Certainly not.

Q. He told you that the State troopers had used the car while he was in prison? A. He didn't tell me anything of the kind.

Q. Did you ask him anything about them? A. Yes, sir.

Q. The car was in good condition? A. It was not.

20 Q. What was the matter with it? A. Two tires were practically ruined on it.

Q. Two tires; did he offer to pay you for them? A. He did not.

Q. You didn't ask him, did you? A. No, I did not ask him.

Q. You didn't ask him to ever pay for the use of your car? A. I certainly did not.

Q. And he didn't offer to pay? A. He never offered to pay. If he offered to pay me I would have taken it.

30 Q. Did he ever offer to pay you? A. He did not.

Q. Did you ever send him a bill for it? A. No, sir; didn't know his address.

Q. You knew he was in the jail, didn't you? A. Certainly knew.

Q. You got a letter from him? A. Yes, sir.

Q. And you didn't send him a bill even until this day? A. No, sir.

40 Q. Isn't it a fact that you didn't do it because you had some pangs of conscience about the fact that you had him arrested? A. Absolutely not.

*William C. Oakley, for Defendants—Cross.*

Q. Why didn't you demand payment for the use of your car? (No answer.)

Q. Answer the question? A. You can't get blood from a stone.

Q. Is that the reason you give? A. Yes, sir.

Q. You never tried to find out whether you could get blood from him, whether he was a stone or not. You didn't think there was much of stone in this fellow here when he wrote you that pleading letter, did you? A. No. 10

Q. And yet you knew all the time he was in jail, you never made up a bill showing how many hours or how many miles he had gone, or anything about that, did you? A. No, sir.

Q. You haven't done it to this day? A. If he wanted to pay for the car—

Q. (Question read as follows: You haven't done it to this day?) You didn't, did you? A. No. 20

Q. Yet you were up there and he was in custody of the police, and didn't he take out some money and show you what money he had? A. Absolutely not.

Q. You wanted to find out whether your company would be paid or not? A. I didn't ask him.

Q. You didn't know? A. No.

Q. You were not interested? A. I was interested. 30

Q. If you were interested, why didn't you ask him? A. I just didn't ask.

Q. You forgot; you are the manager of this concern and want to collect the money due the company? A. Yes, sir.

Q. And yet you forgot?

Mr. Perkins: I object to that.

*William C. Oakley, for Defendants—Cross.*

Q. Did you forget it? A. Did I forget it? I didn't. I didn't ask him for it. It was my impression that he didn't have it.

Q. So you didn't ask him; your impression was he didn't have it. Where did you get that impression from? A. Where I got the impression?

10

Q. You heard me; what is your answer? A. Naturally his dress and condition—

Q. You fix the ability of your customers to pay by the way they dress, do you?

Mr. Perkins: I object.

The Court: Sustained.

Mr. Goldenhorn: Exception.

Q. You rode down a great many miles with this fellow in your car, didn't you? A. A few miles, yes, sir.

20

Q. How many miles? A. I don't know; just outside Endicott; how far that is I don't know.

Q. About how far? A. The tire trouble we had took us about four hours or five hours.

Q. During all these five hours you never spoke to him about where he was going with the car? A. Did I? I am not sure that I did.

Q. You didn't ask him why he kept the car out from Saturday to Monday when he should have returned it Saturday night, as you say, at 10:30? A. I did.

30

Q. Then you did talk to him about it? A. Yes, sir.

Q. What did you mean when you said a little while ago you didn't discuss this? A. The question was put to me in a different form.

Q. Then you did talk to him about it, didn't you? A. I did.

Q. What did you say? A. I said, "Jones, why wasn't the car returned at the specified time made out on your trip slip?"

40

*William C. Oakley, for Defendants—Re-direct—  
Re-cross.*

Q. What did he say? A. He had no answer for it.

Q. What else did you say to him in the four hours that you were riding with him? A. I can't remember everything that came up. There might have been other stuff said. 10

Q. You can't remember anything else; am I right about that? A. That is right, yes, sir.

*Re-direct examination by Mr. Perkins:*

Q. All this was after the warrant was issued, wasn't it? A. Yes, sir.

Q. Did you ever say you would ride his "arse in" or were going to give him a ride? A. I did not. 20

Q. When you met him, did you say, with some profane word, that you were going to give him a ride? A. No, sir.

Q. During the time that counsel has just examined about, this man was in the custody of Detective O'Neill? A. He was.

Q. With whom did he sit? A. With Mr. Jones? Mr. O'Neill.

Q. What part of the car? A. In the back of the car. 30

*Re-cross-examination by Mr. Goldenhorn:*

Q. What were you doing? A. I was driving.

Q. You can't drive a car without the owner's license, can you? A. Yes, sir; I had the owner's license with me.

Q. How did you expect him to drive your car without the owner's license? A. He didn't have the owner's license with him.

Q. Don't you know that if a man drives a car without the owner's license he can be picked up and locked up? A. Yes, sir. 40

*William C. Oakley, for Defendants—Re-cross.*

Q. You knew that and yet let him take the car without the owner's license? A. He didn't have the owner's license.

Q. That is sure now? A. That is sure.

Q. Were you paid when you made that trip, by your company? A. Was I paid?

10 Q. Why do you repeat my question; don't you understand it? A. Why, my regular salary, yes, sir.

Q. You were paid your regular salary? A. Yes, sir.

Q. While you were up there? A. Yes, sir.

Q. To bring him back; is that right? A. Yes, sir.

Q. You came by train from Binghamton? A. No, sir.

20 Q. You came all the way by car? A. I came all the way by car.

Q. Was the car ditched on the way? A. Ditched right outside of Endicott.

Q. Before it was ditched, Jones told you he would drive the car? A. He did not.

Q. You refused to let him do it? A. He didn't ask to; I drove the car all the way.

Q. Did he discuss with you the fact that the State troopers had been using the car while they had him locked up? A. No, sir.

30 Q. You never heard about that at all? A. I did not.

Q. From anybody? A. No, sir.

Q. You have told this Court and jury all of the conversation you had with Jones from the time that he was there, when you saw him get into the car until four hours afterwards, as you say, when you got out? A. Yes, sir.

*William C. Oakley, for Defendants—Re-cross.*

Q. You never went to see him in jail? A. I did not.

Q. Never went to get an explanation from him at all, did you, as to why he took the car and where he took it? A. I didn't go to see him.

Q. You thought he was going to Canada? A. I had no idea where he was. 10

Q. Didn't the police officer tell you that? A. No, sir.

Q. Sure about that? A. Certainly.

Q. Did he say he had been to Erie, Pa., to his sister? A. When I got to Canisteo, up there.

Q. Did he tell you that? A. He didn't tell me. He informed Detective O'Neill, and I happened to be present.

Q. O'Neill was asking him where he took the car? A. Yes, sir. 20

Q. In your presence? A. Yes, sir.

Q. He told Officer O'Neill he had been up to Erie, Pa., and he was on his way back? A. I believe so.

Q. Didn't he tell you at that time he ran out of gas? A. No, sir.

Q. He ran out of gas at 2 o'clock in the morning and had to wait until about 7 o'clock until he got gas again? A. No, sir.

Q. You never heard about that? A. No. 30

Q. You never got that information? A. To my knowledge.

Q. Well, it would be to your knowledge if you got it? A. Yes, sir.

Q. Then you never got it? A. No, sir.

Q. When you said to your knowledge, was that a slip? A. No, sir.

Q. Well, if you knew it, why didn't you say so without injecting that subconscious activity of your brain? A. I didn't get it. 40

*William C. Oakley, for Defendants—Re-direct—  
Re-cross.*

*Re-direct examination by Mr. Perkins:*

Q. Mr. Oakley, did this man ever offer any explanation to you before you showed the warrant or before you signed the complaint as to his long  
10 absence?

Mr. Goldenhorn: The record itself shows the impossibility of that. He was not here at the time the complaint was made.

The Court: He testified half a dozen times that he didn't.

Q. Did he? A. No, sir.

Q. Now, after you met him up there, tell us what purpose you went to Canisteo? A. To bring  
20 the car back.

Mr. Goldenhorn: I object to what the purpose was in going up there.

The Court: All right.

Mr. Goldenhorn: Your Honor will grant me an exception.

The Court: I don't think it makes any difference; if you want an exception, all right.

30 Q. At any time after he was taken into custody, did he offer any excuse for his long absence with the car? A. No, sir.

Q. When the car left, what was the condition of the tires? A. The tires were in very good condition; it was practically a brand new car.

*Re-cross examination by Mr. Goldenhorn:*

40 Q. You said after he was apprehended he made no explanation; didn't you get that letter of explanation from him while he was in jail? A. Yes, sir.

*John J. O'Neill, for Defendants—Direct.*

Q. Then there was an explanation offered, wasn't there? A. Yes, sir.

Q. What did you mean when you said there wasn't any? A. I thought you had reference to up at Canisteo.

Q. No, may I refer you to the question; you heard the question. You were asked whether you got any explanation from him after he was arrested? A. Yes, sir. 10

Q. You did have? A. After he was arrested.

Q. That's what I mean? A. Yes, sir.

Q. You read the letter? A. Yes, sir.

Q. And did nothing? A. No, sir.

Q. Didn't even go to see him? A. No, sir.

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20

JOHN J. O'NEILL, recalled.

*Direct examination by Mr. Perkins:*

Q. Mr. O'Neill, you know Mr. Oakley? A. Yes, sir.

Q. When did you first meet him? A. The day I went up to notify him about the car that these two men had been picked up in Friendship, N. Y.

Q. How did you find out that the car belonged to the U Drive It Company? 30

Mr. Goldenhorn: I object to that as immaterial.

The Court: Sustained.

Q. When you saw Mr. Oakley, what did you state to him as to this car?

Mr. Goldenstein: I want to object to what this witness stated to Mr. Oakley as immaterial. 40

*John J. O'Neill, for Defendants—Cross.*

The Court: What difference does it make what he told him?

Mr. Perkins: I have a right to corroborate Mr. Oakley.

10 Mr. Goldenhorn: I object to the corroboration.

The Court: All right; go ahead.

Mr. Goldenhorn: Your Honor will grant me an exception?

The Court: Yes.

Q. What did you tell Mr. Oakley? A. That we received that telegram and from our records it was his car.

20 Q. Which telegram do you refer to? A. This telegram that gives the information which we sent to him.

Q. There are two telegrams offered in evidence, D-3 and D-4; did you show these telegrams to Mr. Oakley? A. Yes, sir.

Q. Did you inform Oakley where the car was?

Mr. Goldenhorn: I want to object to that as leading.

30 Q. What did you say to Mr. Oakley? A. That we received a telegram that a car was picked up in Friendship, N. Y., from the State troopers, bearing a license issued to their concern and that the car was up at Friendship with two men. That was the information.

Q. Was that before or after Oakley signed the complaint? A. Before.

*Cross-examination by Mr. Goldenhorn:*

40 Q. Just tell us again; that is very important to me; what was it you said about the license? A. That the license number sent to us from Friend-

*John J. O'Neill, for Defendants—Re-direct.*

ship, N. Y., was listed or registered to the U Drive It Company of Jersey City.

*Re-direct examination by Mr. Perkins:*

Q. How did you find that out that it was listed?

Mr. Goldenhorn: I object; he said he got it from the telegram. 10

The Court: Did you say that you found out from up there to whom the license was issued?

The Witness: We found out when the telegram came from Friendship, with the automobile number.

The Court: You checked it up?

The Witness: It was checked up by the police. 20

The Court: By the police here when you got word from up there; they didn't tell you anything except it was a New Jersey license number, which you checked up and found out was issued to the U Drive It?

The Witness: Yes, sir.

Q. Then you went up and saw Oakley? A. Yes, sir.

(Recess to 1:45 P. M.) 30

*John J. O'Neill, for Defendants—Cross.*  
*Stephen Quincy Jones, in Rebuttal—Direct.*

(After recess 1.45 p. m.)

JOHN J. O'NEILL recalled.

*Cross-examination by Mr. Goldenhorn:*

10

Q. I forgot to ask you this morning; I just want to ask this one question; you read these telegrams to Mr. Oakley, didn't you? A. Showed them to him.

Q. He read them in your presence? A. Yes, no doubt.

Q. After that he made this complaint in your presence? A. He made the complaint, yes, after that.

20

Q. You are quite sure? A. Yes, it was after he received the information.

Mr. Perkins: No questions.

(Defendants rest.)

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STEPHEN Q. JONES, in rebuttal.

*Direct examination by Mr. Goldenhorn:*

30

Q. When you were before Judge O'Regan, did you hear Mr. Oakley testify? A. Yes, sir.

Q. That was in Special Sessions? A. Yes, sir.

Q. There was no stenographer there; is that right? A. I don't know; I never looked.

Q. Did the judge ask him whether or not you had telephoned to him? A. Yes, sir.

Q. What was his answer? A. His answer was "yes".

40

Mr. Perkins: No questions.

(Both sides rest.)

*Motion for a Verdict in Favor of Defendants.*

Mr. Perkins: I move for a direction of a verdict in favor of the defendant U Drive It Company on the ground that the plaintiff has not proved that there was want of probable cause; has not proved any malice on the part of the U Drive It Company; and further, that there has been no evidence whatever on which the Jury could hold the Corporation, the U Drive It Company, for the complaint, nor the prosecution. 10

The Court: The motion will be refused, and exception allowed.

Mr. Perkins: I make the same motion as to the other defendant, William C. Oakley.

The Court: The same ruling and exception. 20

(Counsel summed up to the Jury.)

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**Charge.**

The Court then charged the Jury as follows:

The Court: Gentlemen of the Jury:

The plaintiff in this case brings this suit against these defendants to recover damages for being maliciously prosecuted. It is not disputed that some time in November of 1926 the present defendants, or one of them, made a criminal complaint against this present plaintiff here in Jersey City, and that complaint reads as was read to you by counsel for one or both sides just a moment ago. 30

On that complaint, a warrant was issued and the plaintiff was arrested, kept in custody for 40

*Charge.*

10 some time—I have forgotten just the number of hours or days, as the case might be that the testimony covers—then got bail, was indicted by the Grand Jury of this County, was tried and acquitted, and upon that set of facts this case is brought and the plaintiff seeks damages from these defendants because of that.

Now, before I start in the regular course of my charge, I think it is only fair to say to you that this case is, after all, not a complicated matter, but one which, if the Jury gets the proper theory under which a case like this is brought, must simplify itself very much indeed.

20 There is no question here that can in any way involve the guilt or innocence of this plaintiff, as to whether or not he stole the car. There is nothing that you can do in this case that can in any way either brand him with any stigma of having stolen or release him from any stigma for not having stolen. That was all taken care of in the criminal court when a competent Judge and a Court with competent jurisdiction decided that there was not sufficient evidence to find this man guilty, and acquitted him.

30 You are not to determine and indeed your verdict will have no bearing upon the determination of this question of whether or not at the time that he took this car and went up to New York with it, whether he ever intended to steal it. All of those things are outside the issue.

The only question that you have got to decide is whether or not this criminal complaint was made by the defendants, or one of them, without reasonable or probable cause and with malice.

40 In other words, you have got to say, waiving aside the question or thought entirely of the guilt or innocence or what the intentions of the plain-

*Charge.*

tiff in this case were at that time, and this is the sole issue in this case, were the facts in this case, which the defendant claims that he was working under, sufficient to justify him in having reasonable and probable cause for asking for this man's arrest.

Now, that is the only issue that you have got to determine. If they were not, then this plaintiff is entitled to recover. If they were, if these facts were sufficient in your judgment to produce justifiable cause for this complaint; whether it developed afterwards, or what the defendant in this case might have known afterwards, or what information might have been brought to him or them, either a day or two days or three or four days after the issuing of the complaint, is not an issue. Whatever brought out this complaint, in which they charge that in their judgment they thought this man had stolen this car, were the facts then at their hand and in their possession sufficient to justify them in thinking that they had a good cause of action against this plaintiff.

Now, that is the whole thing.

You see it is important in this kind of a case that you have both sides, and the law construes them important, because a person's liberty in one set of facts is at issue, and no man should be deprived of his liberty without just cause, and because of that, the Constitution and the laws of the State surround a man's liberty with all the safeguards that it is possible to have. But by the same token, it is also important that in the administration of justice and of the law, that persons should have the right to resort to the legal process which the law provides, in order to protect society from being placed in jeopardy by someone who sees fit to violate the law.

*Charge.*

So it is very important, as much for one side as the other, that a case of this kind should be thrashed out in a cold-blooded manner, without allowing sympathy in any way to interfere. Because, as I say, if this man was deprived of his liberty without cause, he is entitled to be compensated. And by the same token, these defendants, at the time when they had this complaint issued, were they acting in the manner in which a reasonable man would act, and if they had justifiable cause from all of the information that they had at their hand at the time, and they exercised that through the legal processes of the law, and made their complaint before a duly authorized officer, why, if every man is to be held in damages because he makes a mistake in his having a complaint issued, it would practically tie up the criminal processes and deprive people of exercising the right which the law gives them to protect their property from those who see fit to take it.

As I say, from both sides and for both sides, it is important, and it is for that reason that the issue in this case is not whether or not a man is guilty or innocent: that is to be determined always in the criminal courts, and this is not a criminal court; the issue in no way affects the man's intentions at the time of the taking; but the issue is entirely and absolutely: was this prosecution started by these defendants without justifiable cause and with malice?

Now, starting out with that premise and remembering just how clear-cut and within what a small compass this case is, I am satisfied that you will be able to determine it more intelligently, because with that in mind, all the issues that might enter because of the sympathy of the jury or another

*Charge.*

reason, must be eliminated. You must get down to the cold facts in this case, and determine from the evidence here just what the situaion was, and whether or not there was sufficient there to justify these defendants in thinking at the time that they had justifiable cause in issuing this complaint. 10

In order to recover in this case, the plaintiff must do more than show that the defendants had him arrested; he must establish by the preponderance of the evidence, that is, the greater weight of the evidence, malice on the part of the defendants, and want of probable cause. It is not sufficient to show merely that the action was maliciously prosecuted, but that it was commenced or continued without probable cause. 20

Want of probable cause cannot be inferred from malice, but malice may be implied as a fact from want of probable cause. Want of probable cause is a question of law for the Court when the facts are not in dispute. But where the facts are in dispute, as in this case, the jury must determine what the facts are and then apply the law that the Court lays down as to what probable cause is.

In this case, you have nothing to do with the trial on the criminal charge, as I said before, and your verdict does not determine the guilt or innocence of this particular plaintiff. The sole question for you to determine in this case is, whether or not the plaintiff was maliciously prosecuted by these defendants, without probable cause. 30

The essential ground of this action is that a legal prosecution was carried on without probable cause, and that by reason of such action, plaintiff suffered injury by being taken into custody and being deprived of his liberty. The guilt or innocence of the plaintiff is not the question to be decided, but whether the defendant had probable cause to institute this proceeding. 40

*Charge.*

The lack of probable cause must be substantially and expressly proven by the plaintiff, and it cannot be implied.

You will be interested in knowing what probable cause is, because it is an important element in this case.

10

Probable cause is a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in believing the party to be guilty of the offense. It involves the consideration of what the facts are and what are the reasonable deductions from these facts. This, therefore, makes it a question of law and a question of fact. The plaintiff must show that the criminal prosecution is ended, and that is not disputed in this case, and that he was acquitted by the Common Pleas Judge in Special Sessions, and that is not disputed in this case; that the prosecution was instituted without reasonable or probable cause; (that is the second ground) and that the defendant was actuated by malice. Those facts the plaintiff must prove before he can ask a verdict at your hands.

20

The plaintiff, to succeed in this action, must establish that the prosecution of the plaintiff was without reasonable or probable cause, and that the defendant in making the charge was actuated by a malicious motive. The evidence in this case must establish the existence of both these grounds, otherwise the plaintiff must fail in this suit.

30

When a party makes a charge against another without having reasonable grounds for believing it to be true, the presumption is that in doing so he is actuated by malicious motives. When the charge is unfounded and is purposely made without the existence of probable cause, malice sufficient to sustain the action of malicious prosecution is inferable.

40

*Charge.*

It is immaterial what information may have come to the defendants after the charge was made. The question for you to determine is what he knew about this when he made the charge. Did he have reasonable or probable cause to suspect that this plaintiff committed the crime which he charged him with committing. You are to determine from all the evidence that you have heard whether the facts stated by the defendants are substantially true in reference to this charge. Does the evidence show that at the time this complaint was made; does it satisfy you that these defendants when one of the defendants made this charge, and had this man arrested, that he had reasonable or probable ground to suspect or to believe that he was guilty of what he charged him with. If he had that reasonable or probable ground, then he was justified in making the complaint and the plaintiff cannot recover.

If on the contrary, you find from all the evidence and testimony that is given here that the defendants had this man arrested and did not have probable and reasonable ground to cause the arrest, then in that case the plaintiff is entitled to recover at your hands. And if he is entitled to recover, he is entitled to recover the damages which resulted to him by reason of his arrest.

The plaintiff says that he was arrested and kept in custody for some little time; that he did not carry on his employment for some period of time afterwards because he was unable to get employment.

There is some testimony that you have got, by the plaintiff himself, that at the time the charge was made he had quit his employment, the employment he was in, so that there is no evidence in this case that would justify you in saying that he lost the position he held at that time because of

*Charge.*

this arrest, because he has testified himself he had given up the position and was out of work at the time when the complaint was made.

10 But there is testimony that because of this complaint he was kept out of getting other work, and if you find that to be true, he would be entitled to be compensated for any loss he was put to because of that.

He is entitled, if he is entitled to recover, for the injury to his character and any injury he received by reason of this malicious prosecution, if you find that there was a malicious prosecution. This includes the money he expended in an effort to defend himself, to have himself cleared of the charge. In other words, he is to be compensated, if compensated at all, for the injury he suffered  
20 as a result of this malicious prosecution, if you find there was a malicious prosecution.

But if on the other hand, you find that it was not a malicious prosecution and the defendant had reasonable and probable cause to make the complaint, or that he was not actuated by malice, then the defendant is entitled to your verdict and not the plaintiff.

Now, that, Gentlemen of the Jury, is the question you have got to decide in this case.

30 There are two defendants here, and the question has been raised as to whether or not the U Drive It Company could in any event be held responsible. They can only be held responsible in the event that you find from the evidence in the case that this man who made the complaint was on the day of the making acting as the agent of this defendant Company, acting as the agent of the defendant Company within the scope of his employment, given to him either expressly or by  
40 necessary implication, arising out of the express authority given; whether he was acting as the

*Charge.*

agent of the defendant Company, or was acting solely of his own volition or at the instigation of someone else than the defendant Company.

If you find that the defendant was acting within the scope of his employment as the agent of the other defendant, that is to say, that he was in fact instructed by the defendant Company, and that what he did was as agent of the defendant Company and not solely of his own volition, or at the direction of some other person than this defendant Corporation then this defendant Corporation itself would also be liable, if you find that there is any liability. 10

Now, of course, within the scope of the agent's authority, such authority may be either express or implied; where, for instance, the Company knows the person performing is doing certain things and it makes no objection; in such a case the authority is implied, as distinguished from express authority. 20

And so the same rules of law apply to both defendants as far as the necessity of the proof which the plaintiff must satisfy you of by a fair preponderance of the evidence, as far as that is concerned.

Now, there is only one other matter that I think necessary to speak to you about. You will recall that during the course of the trial, at the end of the plaintiff's case and again at the end of the defendants' case, motions were made to non-suit and direct a verdict, and both motions were denied by the Court. You are not to consider that that in any way indicated that the Court has any notion of what the merits of this case are. It merely means, as you have heard me read to you during the course of my charge, that in many cases of this kind the question of what constitutes probable cause is a Court question, one for the Judge and 30 40

*Charge.*

not for the Jury, but that only in cases where the facts themselves are not in dispute. It was merely the opinion of the Court that in this case the facts were in dispute, and that being so, it made it a jury question, for the jury to determine these disputed facts and say whether or not there was probable cause. It was the Court's opinion that the question of probable cause was a jury question and not a Court question. The deciding of those motions has nothing whatever to do with and is not to be taken by you as in any way an expression of what the Court might think about the case one way or another. Indeed, it would make no difference what the Court might think of it, because you are the sole judges of the facts, and must determine the case from the way you view the evidence.

As I said at the opening of my charge, and to summarize again, and for the purpose merely of suggestion to you, in order perhaps to eliminate from your mind some of the things that have no pertinency here and are immaterial to the situation, there are three elements that are necessary: First, the prosecution must have ended; that is admitted because of the verdict. Second, that the prosecution was without probable cause. And third, malice. Absence of any one of these three elements is fatal to the plaintiff's case.

On the other hand, if the plaintiff has proven to your satisfaction by a preponderance of the evidence that these three elements do exist, then and only then, would the plaintiff be entitled to recover and he would be entitled to be compensated by what sum would cover the measure of damages covering cases of this kind, as I have tried to give it to you.

You may take the case.

(The Jury retired.)

**Exhibit D-2.**

AACChh 29807050    3355552109    Nov 11-26  
 Amount of Transaction    Sale Number    Date

U-DRIVE-IT Co.

Car Rented to Stephen Jones. 10

Check \$#. Cash \$15.00. Car No. 43.

I hereby agree that the automobile herein mentioned is taken into my possession under the terms of and with full knowledge of the provisions and agreements of the automobile contract.

Signed by me, dated..... which is to be taken as a part hereof.

Type Chrys. Rate 20. Out O. In E.

TIME 20

In Nov 11 3 21-22 PM 1926.

Out Nov 6 1 19-20 PM 1926.

Hrs ..... 7.20

MILES

In ..... 3707

Out ..... 3151    100.08

556    ~~411.20~~

11.12

Out            Gals. 30

GAS

and

OIL

In            Gals.

Insurance ..... .35

Total ..... 118.75

Failure to Lock Car Makes You Liable for

THEFT.

Signature Stephen Jones. 40

Home Address 153 Pavonia Ave.

Will Return About 8 10 P. M.

**Rule to Show Cause.**

## HUDSON COUNTY CIRCUIT COURT.

10	STEPHEN JONES, Plaintiff,  <i>vs.</i>  U-DRIVE-IT COMPANY, a corpora- tion, and WILLIAM C. OAKLEY, Defendants.	}	Action at Law.  Rule to Show Cause Why New Trial Should Not Be Granted.
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20 This matter being opened to the Court on motion of Perkins & Drewen, attorneys for the defendants above named, made within six days after the trial of said cause,

It is on this eleventh day of December, 1928,

ORDERED that the plaintiff show cause before this Court, at the Court House, in the City of Jersey City, on the 14 day of December next, at 2 o'clock in the afternoon, or as soon thereafter as counsel can be heard, why the verdict entered should not be set aside and a new trial granted;

30 AND IT IS FURTHER ORDERED that the defendants' exceptions to the refusal of the trial judge, at the trial of said cause, to order a non-suit at the close of the plaintiff's case, and to direct a verdict for the defendant at the close of the whole case, when moved so to do by the counsel of defendants, be and they hereby are reserved.

FRANK L. CLEARY.

Filed Clerk's Office  
 Dec. 11, 1928  
 Hudson County, N. J.

40

JOHN J. MCGOVERN

### Proceedings On Rule to Show Cause.

(Argument of January 11, 1929.)

Mr. Drewen: If your Honor please, this is the rule to show cause in the case of Stephen Jones *vs.* U-Drive-It Company.

I anticipate from what Mr. Levy just stated to me that there is some objection to the form of the rule, and he stated to your Honor a moment ago that that could be disposed of in one minute, and I think that is true, and I now ask Mr. Levy to state what that deficiency in the rule is. 10

Mr. Levy: The rule does not set forth any reason why a new trial should be granted. We are merely asked to say why a new trial should not be granted, and it does not state that it is against the weight of the evidence, that the verdict was excessive, or anything like that. It merely states that we are ordered to show cause why a new trial should not be granted. 20

Mr. Drewen: If that is all it is a small deficiency, and I ask that the rule be amended to cover that deficiency. I will say right here now that those are the grounds for asking for the new trial, that the verdict is contrary to the weight of the evidence, and is excessive.

The Court: I will allow it. 30

Mr. Drewen: Will your Honor allow the amendment now?

The Court: If they are ready to argue the amendment now.

Mr. Levy: Yes.

Mr. Drewen: It is understood now that formal amendment is waived, is that right?

Mr. Levy: Yes, the reason being that it is against the weight of the evidence.

Mr. Drewen: That is correct. 40

*Proceedings on Rule to Show Cause.*

Mr. Levy: On the ground that it is against the weight of the evidence.

Mr. Drewen: Yes.

Mr. Levy: That is the only question before the Court now.

10 Mr. Drewen: And that the verdict evinces the ignorance, passion or prejudice of the jury?

Mr. Levy: If your Honor please, I think just the one ground—I don't think we are prepared to argue the passion and prejudice of the jury.

The Court: I think there might be objection to arguing on the ground of the ignorance of the jury.

Mr. Levy: Well, we will go ahead on that, on those grounds. You may give him that ground.

20 Mr. Drewen: If your Honor please, your Honor may recall the facts in this case. You certainly will recall the contestants if you don't recall the case, perhaps, but the story related by this plaintiff was that he had hired an automobile from the U-Drive-It Company, whose business is apparently to hire cars to be driven by the bailees themselves, and that he engaged a car on the afternoon of a certain day, Monday; that he went to Erie, Pennsylvania, with the car to the home of his sister, and while he was in Cuba, New York, not  
30 far from Erie, he was taken into custody by the State Police of New York State.

The Court: I don't want to interrupt your train of thought, but I am familiar with all these details.

Mr. Drewen: I can therefore make my argument very brief.

40 I say that there was no fair preponderance of evidence to support the verdict that the jury found. The proof on the whole case showed the fact that this man had hired an automobile. Of

*Proceedings on Rule to Show Cause.*

course I know he said that when it was stated that it would be returned at a certain hour of the night that they didn't mean that night upon which he hired it, but that it meant any night at all—two o'clock next Saturday. That, I say, and the version of it that the plaintiff himself gave, impairs the validity, if it doesn't altogether destroy, the weight of the evidence that the plaintiff's case afforded on that point. Now here we have a case where these defendants—

10

The Court: I was wondering if these motions could not be argued next week.

Mr. Drewen: They can as far as I am concerned.

(Discussion.)

The Court: Wednesday morning at ten o'clock, to hear motions. I will hear all motions that are here pending at ten o'clock Wednesday morning, that are ready to be heard.

20

30

40

**Proceedings On Rule to Show Cause.**

(Argument of March 8, 1929.)

HUDSON COUNTY CIRCUIT COURT.

10

STEPHEN Q. JONES

*vs.*

U-DRIVE-IT CORPORATION, &C.,  
*et al.*

Before  
Hon. Frank L.  
Cleary, Judge.

Jersey City, N. J.,

March 8, 1929.

20

Appearances:

I. FAERBER GOLDENHORN, Esq., for the Plaintiff.

RANDOLPH A. PERKINS, Esq., for the Defendant.

30

Mr. Perkins: This is a Rule to Show Cause why a new trial should not be granted in this case of Stephen Q. Jones against the U-Drive-It Corporation, *et al.*

It seems to me an ideal case for the Court to deal with.

As I understand, the real problem before us today is confined to one question: whether the verdict of the jury was against the weight of the evidence.

40

Your Honor will probably remember practically all the facts. I might, for just a moment, recite what happened.

On the 6th of November, 1926, the plaintiff, who had theretofore been living at 153 Pavonia Ave-

*Proceedings on Rule to Show Cause.*

nue, Jersey City, left that place of residence and came along, without bag or baggage, to the U-Drive-It Company and engaged a car under a contract which he signed. He took that car out under a signed contract, on which he said he would return at 10 p. m.

After leaving the U-Drive-It Company, at 77 Sip Avenue, Jersey City, he returned to the place where he had been living at 153 Pavonia Avenue, took his baggage and took a large kit of automobile tools (for the plaintiff was an expert automobile mechanic according to his own statement) and then, waiting until six in the evening—I am speaking only of his own testimony—he started on a journey, he says, to Erie, Pennsylvania. 10

He motored all that night away from this section and half the next day. According to his own story, he got to Erie during the daytime of Sunday afternoon and stayed about half of the Sunday afternoon and then started in a northeasterly direction, and he says he was about to come back. 20

He says he took Route 17, which, according to his own acknowledgment, led in the general direction of Buffalo. He says he ran out of gas at 2:30 in the morning and was accosted by the police at a place called Westfield, New York. 30

He was accompanied by a restaurant acquaintance named Gorsky, who went merely as his guest or pleasure passenger.

After his being spoken to by the policeman at Westfield, he says he obtained gas and got as far as Friendship, where he was arrested by two New York State troopers.

He was taken from Friendship to Canisteo, and from there to Cuba, according to the uncon- 40

*Proceedings on Rule to Show Cause.*

tradicted testimony. The police authorities wired to Jersey City, to the police authorities here, that they had arrested this man under such suspicious circumstances.

10 Now, after all that had happened, one of the defendants (if the Court please, there are two defendants, the U-Drive-It Corporation, that owned this car, and a man named William Oakley, who was employed by the U-Drive-It Company, and who was the man who let the car to the plaintiff), being informed by the police that this man was at that long distance away, about 500 miles—I think we agreed that it was 505 miles to Erie, Pennsylvania—made the complaint on which this suit is based, on hearing that this man was  
20 in custody at Cuba.

Now, if the Court please, there are two defendants, and it is possible that one might be held liable, held legally responsible for a false imprisonment, or malicious prosecution, and the other not.

Oakley, in the first person singular, made a complaint, in which it is stated that this car had been stolen, and that he suspected Stephen Q. Jones, the plaintiff, to have taken the car or to have stolen the car. That was made, as I say, in the  
30 first person singular, by Mr. Oakley, signed by him, and the only connection that appears even remotely of the U-Drive-It Company was the fact that it is parenthetically set out in the complaint “Manager, U-Drive-It Company”.

This man was brought back to Jersey City or came back voluntarily, and was tried and acquitted after he was tried, just about Christmas time, 1926.

40 This case was tried before your Honor, and we contend that the verdict of the jury of \$2,500 was against the plain weight of the evidence.

*Proceedings on Rule to Show Cause.*

There can hardly seem to be a case that would more justify the making of a complaint against a man than this case would justify. As I said, he left 153 Pavonia Avenue, and never resided there again. He took his bag, he took his tools, he took this motor car, and although he hired it at two o'clock in the afternoon, he did not leave Jersey City until six o'clock at night, agreeing to return at 10 o'clock, and he was not heard from for about three days. 10

Now, his explanation of his going away was this: that he was going to take a radio to his sister at Erie, Pennsylvania, and on a question of your Honor it appears that would have cost him under his agreement for the hire of the car, over \$200 to make the trip to Erie and back for the mere purpose of delivering a radio to his sister. 20

Now, I am not saying this young man took this automobile, and stole it, because I think I am perhaps precluded from that. I think the jury that acquitted him, or Judge O'Regan who acquitted him, closed that chapter.

But I do say that under the circumstances here Mr. Oakley was fully justified in making out the complaint, and that the jury, in finding that he was not, found against the clear weight of the evidence. I can hardly fancy a case in which the circumstances were more justifiable than in this case. 30

Suppose your Honor's chauffeur, or my chauffeur, should take out my car, say that at 2 o'clock that he wanted to use my car until 10 o'clock that night. He takes the car away, and I hear nothing from him for over two days. Then I find that he is in the custody of the police, having been arrested under some suspicious circumstances 500 miles away from here, outside our State and close 40

*Proceedings on Rule to Show Cause.*

to the borders of Canada. Would not the circumstances be such as to create justification for making a complaint?

10 The Court: Except this, Congressman. I thought of that at the time of the trial and wondered, and it very often in a case for the Court, as a law question, as to whether or not there is justifiable cause in this kind of a case, and during the case, as I remember it, up to a certain point, it did become almost a law question, until the evidence got in that this man had trouble with his car up there and 'phoned in, telling your people that he was having trouble and that he could not get back. That might not be so.

20 But doesn't that make it a jury question, as to whether or not you, after you got the phone message back from your chauffeur, to the effect that while he had told you he would be back at 10 o'clock, he had trouble with his car, and that he could not get back? It is a jury question.

Mr. Perkins: There is a narrow question. That is why I am saying that. Of course, he did say he phoned in; on the other hand, the testimony was that there was no phone call received.

30 But mark, your Honor, this young fellow, when he started out, went away on an agreement to be back at ten o'clock, although he evades in answering the question. He says not ten o'clock that night; that means any night. He says he telephoned from a distance of 505 miles. However, the fact is that he took this motor car out of the jurisdiction of this State, under an agreement under which he put down fifteen dollars. He says \$25, but the receipt shows \$15. He agreed to be back at ten o'clock. However, the fact is that he  
40 was found five hundred miles away.

*Proceedings on Rule to Show Cause.*

I am going to assume he did telephone back from a distance of five hundred miles, just across the Canadian border. We all know how much traffic there is in cars going across the border. Would that not be reason why Mr. Oakley should make a complaint against him for taking his car? The only justification Jones has is that, at a distance of 500 miles, he phoned back, as he says, whether he did or did not, but he says he did and I am going to assume now he did phone back. I think Mr. Oakley would be justified in then having him arrested. 10

Suppose my chauffeur phoned back tonight, or tomorrow, or two days later, "I am in Erie, Pennsylvania, five hundred miles away." I would be perfectly justified in going before a magistrate and making out a complaint that he stole that car. 20

The Court: I might think so, and so might you yourself, but the question I have got to determine is whether or not there was justifiable cause from all the facts for the verdict of the jury, together with the attitude of this man at the time of his arrest, together with the fact that it is uncontradicted that he was then headed home, that after his arrest he insisted upon being brought home, and while they did not want to bring him back or something, he said, "You will not take that car unless I go with you. I insist upon going back home in this car"—all these things were presented to the jury, and the jury was subsequently instructed that unless there was probable, if there was probable, cause, and I enumerated all the circumstances under which the defendant made this complaint, and submitted it to the jury for them, almost upon this one narrow issue, that if probable cause there could be no recovery. 30 40

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Mr. Perkins: Of course all these facts, the fact that he was willing to come back—he said he had \$150—all of these things were after the making of the complaint. You see, none of these facts were within the knowledge of Oakley when he made the complaint.

10 Now, I say, in any event, the verdict is against the weight of evidence so far as the U-Drive-It Company is concerned. There is practically no evidence of any kind in this case, except some statement in the affidavit that Oakley is the manager of the U-Drive-It Company, and if your Honor should find, so far as the defendant Oakley is concerned, the verdict is not against the weight of the evidence, what evidence can there be on which the jury could find a verdict against the U-Drive-It, especially on the question of malice?

20 All these things tended to clear this matter up, and we will say cleared it up in the criminal trial, but all happened after this man was arrested by the troopers in New York and after the complaint was made, and if all these facts came to the knowledge of the U-Drive-It Company, if they had known he was on his way back with this car, if they knew he would not come back without the car, they never would have had him arrested.

30 The Court: That is the point. They should have known all of the circumstances before they had the man arrested. They can't wait and say, "I didn't make any investigation of the circumstances, but I had him arrested. Now, if I had known then what I know now, I would not have had him arrested."

Mr. Perkins: I will agree. But the things that were known were known only to the plaintiff himself; he could testify to them afterwards.

40

*Proceedings on Rule to Show Cause.*

Suppose your chauffeur today takes your car out and then a day or two later he telephones he is in Erie, Pennsylvania, 505 miles away, and he says, 'I am going to come back.' Even then your Honor would be justified in making a complaint against him, for what business has he, what business had Jones on a fifteen dollar deposit, to take a car worth two or three thousand dollars out of the jurisdiction of the State of New Jersey, to a place 500 miles away, where it was only a question of ferriage to get it into a foreign country? 10

I submit without further argument, as your Honor is familiar with the case, that I think the verdict is against the clear weight of the evidence, and if not against the weight as to the man Oakley (who was the man who actually had him arrested), then positively as against the U-Drive-It Company, who could not have had any malice against him. 20

If a case like this is sustained, there is really no protection to people in the State here. I never have heard of a case yet where goods of the value of \$2,000 were taken such a long distance away and came back. Because this man did not volunteer to come back until he was in the custody of the police in New York. We did not initially have him arrested; we did not bring the clutches of the law upon him, he was in the custody of two policemen in New York and taken to jail, staying in jail forty-eight hours before this complaint was made. 30

In any event, whether your Honor finds it is against the weight as far as Oakley is concerned, so far as the corporation is concerned there is no motive of any kind on their part. There is no evidence, except of the very slightest, that they 40

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had anything to do with it at all. Mr. Oakley said he did this on his own initiative only. The only thing is that in the complaint he is described as the general manager of the U-Drive-It Company.

10 Mr. Goldenhorn: My friend seems to have forgotten the facts. Your Honor will recall what the testimony was. I haven't it before me. It should have been given to us, but it wasn't.

The fact is that there were telegrams, as your Honor will recall. My friend seems to have forgotten all about that. But there were telegrams which informed this defendant U-Drive-It Company of what had happened up in New York State. These telegrams, we served notice on the other side to produce their copy. I introduced them, and one extra telegram, which showed, not only knowledge on the part of one defendant, but knowledge on the part of the company. Oakley testified he was not only the manager of the company but he testified that he was in absolute control of the office in Jersey City and all the hiring was done through him, all money was received by him, and the delivery of all the cars was done by him and that he had entire charge of this entire matter, as manager of this company.

20  
30 I have a memorandum of law covering a great many cases, which I will not burden the Court with, but they all show that where there are disputed questions of fact, and here are disputed questions of fact, they are for the jury, regardless of what the court might want to find.

I will submit memorandum and rest.

(No decision. Counsel to submit memoranda of law.)

**Stipulation.**NEW JERSEY COURT OF ERRORS  
AND APPEALS.

STEPHEN JONES, Plaintiff-Appellee,  <i>vs.</i> U-DRIVE-IT COMPANY, a corpora- tion, and WILLIAM C. OAKLEY, Defendants-Appellants.	}	On Appeal from Supreme Court. Stipulation.	10
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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties hereto that the following are true copies of the memorandum and order of the Trial Judge discharging the rule to show cause heretofore granted in the above entitled matter, and are to constitute part of the state of the case: 20

## HUDSON COUNTY CIRCUIT COURT.

STEPHEN Q. JONES, Plaintiff,  <i>vs.</i> U-DRIVE-IT COMPANY, a corpora- tion, and WILLIAM C. OAKLEY, Defendants.	}	On Rule to Show Cause.	30
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## MEMORANDUM.

CLEARY, J.

This is before the court on the defendant's rule to show cause why a verdict of Twenty-five Hun- 40

*Stipulation.*

10 dred (\$2,500.00) dollars in favor of the plaintiff and against the defendants, should not be set aside and a new trial granted. The rule was argued on the grounds that the verdict is against the weight of the evidence, and it is excessive, and that it is contrary to the charge of the Court. All of the exceptions taken at the time of the trial are reserved.

The plaintiff instituted this action to recover damages for malicious prosecution. The defendants made a criminal complaint against him, charging him with having stolen an automobile belonging to the defendants, which said car had been hired by the plaintiff two days prior to the making of the charge.

20 The matter was made the subject of an investigation by the Grand Jury and an indictment was found. Afterwards the plaintiff herein was tried in the Court of Special Sessions before Judge O'Regan and acquitted, and thereafter the present suit was brought.

30 Proof was submitted that the criminal charge made by the defendants was false, and such proof justified a finding of want of probable cause and of malice. Whether or not the defendant's proof was sufficient to overcome this inference was for the jury.

After a careful reading of the testimony I can see no reason why the verdict of the jury should be set aside.

The rule to show cause will be discharged.

(Signed) FRANK L. CLEARY,  
Judge.



HUPSON COUNTY CIRCUIT COURT

Plaintiff, *William C. Galtley*,  
vs.  
Defendant, *U. Davis & Co.*

Case No. 10  
Filed for record  
July 10, 1922

This matter being opened to the Court before  
The Honorable Frank L. Cherry, Judge of the  
Hudson County Circuit Court, on an application for  
to show cause why a writ should not be  
granted to the defendant, U. Davis & Co.,  
a corporation of the State of New Jersey, and  
William C. Galtley, et al., on the 12th day of  
December, 1922, and returning from time to time  
to the 20th day of March, 1923, in the presence of  
Harry Parr, attorney for the plaintiff, and  
I. F. Brown, Messrs. attorneys for the defendant;  
and the Court having heard and considered  
the arguments of counsel;

It is on this 20th day of July, 1923, ordered that  
the writ to show cause issued should be  
reversed with costs in favor of the plaintiff and  
against the defendant, U. Davis & Co.,  
a corporation of the State of New Jersey, and  
William C. Galtley, et al.

FRANK L. CHERRY,  
Judge.  
This judgment entered July 20th, 1923.  
Harry Parr,  
Attorney for Plaintiff-Applicant.  
I. F. BROWN, GARDNER &  
of Counsel.  
I. F. BROWN & BROWN,  
Attorneys for Defendant-Appellee.

