

rightfully recovered in the court below and should be sustained in this learned court.

Wherefore the appellee prays that

the decision of the lower court be, in all things, affirmed.

Respectfully Submitted,

ARTHUR C. KEENEY,

Attorney for Appellee.

NOTRE DAME CIRCUIT COURT

CAUSE NO. 26.

Charles Dunn

vs.

Maud Thomas

Alfonso A. Scott and

James Murtaugh,

Attorneys for the Plaintiff.

Clarence Manion and

Thurmond F. Mudd,

Attorneys for the Defendant.

TRIAL RECORD

Come now the attorneys for the plaintiff and show to the court that they filed their complaint and praecipe for summons on November 14th, 1921. Return of the sheriff. Plaintiff's complaint in one paragraph. Come now Clarence Manion and Thurmond Mudd for the defendant and file a demurrer to the complaint of the plaintiff. Demurrer sustained. Plaintiff files an amended complaint in one paragraph and alleges as follows: That the defendant falsely and maliciously, and with intent to injure the plaintiff's good name and reputation in the community in which he resides, i. e., South Bend, Indiana, County of St. Joseph, did write and publish of this plaintiff a certain false and defamatory letter; addressed to one Rose Kramer. (H. I. copy of letter.) And that by reason of this letter the plaintiff, an attorney of high standing, was damaged to the extent of \$1,000.00 and suffered a loss of \$500.00 because of the rental he had paid on a house which he and his intended bride were to oc-

cupy. And that by reason of this false letter she refused to marry him until he had proved the allegations to be false and untrue."

Comes now the defendant by her counsel and files an answer to the complaint of the plaintiff in three paragraphs: (1) General denial; (2) Communication was addressed to one who was an interested party, and (3) That the facts contained in the letter were true."

Attorneys for the plaintiff now file a reply in one paragraph to the answer of the defendant and deny each and every allegation of the answer of the defendant.

Cause being at issue the jury were empanelled and sworn, case submitted to trial. Trial had and concluded.

Plaintiff now tenders instructions numbered from one to six inclusive, with a request in writing that each and all of them be given to the jury. Defendant also tenders instructions, numbered from one to ten inclusive, together with a request in writing that each and all of them be given to the jury. The court now indicates which instructions shall be given and which shall be refused, which instructions are ordered made a part of this record without a bill of exceptions.

Arguments of the counsel are now heard and the court instructs the jury, and files instructions numbered from one to twelve inclusive, ordered a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a just verdict. Come again the jury into open court with their general verdict, to-wit: "We the jury find for the defendant as against the plaintiff. S. E. Carmody, Foreman."

Comes now the plaintiff by his attorneys and moves the court for a judgment "*non obstante veridicto*." Motion overruled and plaintiff excepts. Plaintiff now files a motion for a new trial. Motion overruled. Plaintiff excepts. Plaintiff now files a motion in arrest of judgment. Motion overruled. Plaintiff excepts.

Court now renders judgment on the verdict; to which the plaintiff excepts.

Plaintiff now prays an appeal to the Supreme Court of Notre Dame, which is granted and five days are given in which to file a general bill of exceptions. Ten days are given the said plaintiff in which to file appeal bond in the sum of \$200.00, with C. Haggerty and F. Hughes as sureties thereon, which bond so executed and filed is hereby approved.

CAUSE NO. 27

Paul J. Donovan

vs.

South Bend Motor Sales Co.

John P. Brady, and

E. John Hilkert,

Attorneys for the Plaintiff.

Charles Foley, and

J. Paul Cullen,

Attorneys for the Defendant.

TRIAL RECORD

The plaintiff by his attorneys shows to the court the filing of the complaint of the plaintiff, in two paragraphs and the filing of the praecipe, which was duly issued by the clerk and served by the sheriff.

The summons returned by sheriff. Plaintiff files complaint.

Comes now the defendant and files a motion to strike out certain parts of the complaint of the plaintiff. Motion sustained partially to the first paragraph, and motion sustained to the entire second paragraph.

Plaintiff now files an amended complaint in one paragraph, and alleges that the defendant offered to sell him a 1920 Maxwell car in first class condition, free from all defects. And that the plaintiff purchased the said machine. That the machine sold the plaintiff was a second class machine and defective in its mechanism. That the plaintiff, as soon as he ascertained the actual condition of the machine, offered to return it and receive his money back, and a release and discharge from the agreement. Wherefore he demands a release from the agreement and \$900.00 purchase price with interest from day of purchase.

Defendant moves to strike out certain parts of the complaint. Motion overruled. Defendant excepts. Defendant's attorneys file a demurrer to the complaint. Overruled. Exception.

Defendant now files an answer to the complaint of the plaintiff in two paragraphs, 1) General Denial, 2) Confession and Avoidance.

Plaintiff files a motion to strike out the second paragraph of the answer. Overruled. Exception. Plaintiff files a motion to require the defendant to separate the second paragraph into separate defenses. Overruled. Exception. Plaintiff now files a demurrer to the second paragraph of the answer. Demurrer sustained.

Attorneys for the defendant now

file an amended second paragraph of answer.

Plaintiff files a demurrer to the second paragraph. Overruled. Exception. Plaintiff now files a reply in denial to the answer of the defendant.

Cause being at issue, jury empanelled and sworn, and case submitted to trial. Trial of the case is concluded.

Come now the attorneys for the plaintiff and file a request for the submission of four interrogatories to the jury in the event that the jury return a general verdict. Defendant objects. Objection sustained to two of the interrogatories.

Plaintiff now tenders instructions numbered from one to five inclusive with a request in writing that each and all of them be given to the jury. Defendant now files instructions numbered from one to four inclusive with a request in writing that each and all of them be given to the jury. The court now indicates which shall be given and which shall be refused, which instructions are ordered filed and made a part of this record without a bill of exceptions.

Arguments of the counsels are now heard and the court instructs the jury, and files instructions numbered from one to eleven inclusive, ordered a part of this record without a bill of exceptions.

The jury now retire in charge of a sworn jury bailiff to deliberate upon the case and arrive at a just verdict. Come again the jury into open court

with their general verdict, to-wit: "We, the jury find for the defendant as against the plaintiff. F. Hughes, Foreman."

Their answers to the interrogatories of the plaintiff were: "1) Was the automobile fit for the purpose for which it is ordinarily used? Answer. Yes.

2) Was there any defect which could not have been discovered by one not familiar with automobile mechanics upon ordinary examination? Answer. Yes. F. Hughes, Foreman."

CAUSE NO. 28

Rose Ett

vs.

Ike N. Foolem

Jerome Dixon, and

Eugene Kennedy,

Attorneys for the Plaintiff.

Frederick Dressel, and

James Murphy,

Attorneys for the Defendant.

TRIAL RECORD

Plaintiff files praecipe declaring in the action of special assumpsit (Breach of Promise). Process ordered for the defendant, returnable April 1st, 1922. Plaintiff shows issue and service of process. Defendant comes by counsel. Plaintiff files declaration (H. I.) Defendant files plea in two counts, general issue and confession and avoidance. Cause pending on the issues.

EDWIN J. MCCARTHY,

Clerk.