

26-125-

Record No. 1616

In the
Supreme Court of Appeals of Virginia
at Richmond

STANDARD LAUNDRY SERVICE, INC.,
Plaintiff in Error,

v.

LOUIS PASTELNICK, Defendant in Error.

FROM THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

“The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements.”

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

166 Va 125

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1616

STANDARD LAUNDRY SERVICE, INCORPORATED,
Plaintiff in Error,

versus

LOUIS PASTELNICK, Defendant in Error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Justices of the Supreme Court of Appeals
of Virginia:*

Your petitioner, Standard Laundry Service, Incorporated, respectfully represents that it is aggrieved by a final order of the Circuit Court of Arlington County, Virginia, entered on the 24th day of October, 1934, in an action at law, wherein the said petitioner was defendant and Louis Pastelnick was plaintiff. A transcript of the record of the proceedings of said action and the said final order therein, duly certified is herewith filed and asked to be taken as a part of this petition, in which the errors hereinafter complained of appear.

STATEMENT OF THE CASE.

On February 23rd, 1932, the defendant, Standard Laundry Service, Incorporated, entered into a written agreement with the plaintiff, Louis Pastelnick, by the terms of which agreement the Standard Laundry Service agreed to employ the said Pastelnick as salesman, collector and sales manager for a period of two years, from February 23rd, 1932, to February 23rd, 1934. Pastelnick, by the terms of the said contract, was

to receive the sum of \$30.00 per week, this salary was to be raised gradually until by the end of the first year Pastelnick was to receive \$50.00 per week.

The contract also contained a provision whereby the said Pastelnick covenanted and promised that he would not during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of his employment, directly or indirectly, disclose to any person, firm or corporation, the name, address or requirement of any customers of the said Standard Laundry Service, and that he would not divulge any other information that he had or should acquire during his period of employment, and that he would not for a period of one year after the end or termination of his employment as aforesaid, directly or indirectly, either as principal or employee, solicit, serve or cater to any of the customers served by him or any other employee of the said Standard Laundry Service during the term of his employment with the said Standard Laundry Service, or for a period of one year after the termination thereof.

Pastelnick further agreed that a violation of any covenant or promise in the contract made by him would cause irreparable damages, the exact amount of which it would be impossible to ascertain. The contract is set out in full in the record in this case, but the extracts given above are all that is material or pertinent to a decision of the issues in the case, or for a discussion of the errors hereinafter alleged to have been committed by the Trial Court.

The said Pastelnick entered into the service of the said Standard Laundry Service under the terms of the said contract and worked from February 23, 1932, until about August 5, 1932, at which time Standard Laundry Service discharged Pastelnick. Pastelnick received his pay according to the terms of the contract up until the time of his discharge. The Standard Laundry Service claims it had cause to discharge him, but Pastelnick claims the corporation had no just cause to discharge him or terminate the employment. As to this contention we are not concerned with as this was a jury question, and no error is assigned in the record as to this feature of the case.

On August 26, 1932, Pastelnick instituted this suit and in due time filed his declaration. The defendant Standard Laundry Service filed a demurrer to this declaration, which was argued before the Honorable Judge of the Circuit Court of Arlington County at the June, 1934, term of Court, and after argument the Court overruled the demurrer, and the Court's action in overruling the demurrer is assigned as one of the errors in this case.

At the October, 1934, term of Court the case was tried with a jury, under a plea of general issue, and at the close of the plaintiff's testimony the defendant moved to strike out the evidence of the plaintiff on the grounds set forth on pages 62, 63, 64, 65 and 66 of the transcript of the testimony in this case. Which motion was overruled by the Trial Court and the defendant duly excepted, and this action of the Trial Court is assigned as error.

INSTRUCTIONS.

The Trial Court granted and gave ten instructions to the jury. Instructions numbered 1, 2, 3, 5 and 6 were offered on motion of the plaintiff. Defendant objected to the giving of instructions Numbered 5 and 6, but the Court overruled the objection, and defendant duly excepted. Said instructions 5 and 6 are made a part of the record in this case by certificate of exceptions Nos. 1 and 2, and the action of the Court in granting instructions 5 and 6 is assigned as error. The grounds of the defendant's exception to the granting of said instructions 5 and 6 is set forth on page 124 of the transcript of testimony.

On motion of the defendant the Trial Court refused to grant instructions identified in the record and transcript of the testimony as instructions A, F and G, to which action of the Court defendant duly excepted, the ground of said exceptions being given on page 124 of the transcript of testimony, and the action of the Trial Court in refusing to grant said instructions A, F and G is assigned as error.

The jury found a verdict for the plaintiff and fixed his damages in the amount of \$1,000.00. Thereupon the defendant moved the Court to set aside the verdict as contrary to the law and evidence, but the Court denied this motion and the defendant duly excepted, the grounds of said exception are given on page 125 of the transcript of testimony, and the action of the Trial Court in overruling defendant's motion to set aside the verdict is assigned as error.

ARGUMENT.

Petitioner will discuss the errors alleged to have been committed by the Trial Court and embraced in the transcript of testimony, bills of exceptions and certificate of exceptions in the order set forth in the foregoing part of this petition.

A resume of the same being as follows:

- (1) The action of the Court in overruling the demurrer.

(2) The refusal of the Trial Court to strike out the evidence of the plaintiff.

(3) The granting by the Trial Court of instructions numbered five and six.

(4) The refusal of the Trial Court to grant instructions A, F and G.

(5) The refusal of the Trial Court to set aside the verdict of the jury.

FIRST.

The action of the Trial Court in overruling the demurrer. The declaration in this case consists of one count, which, after setting forth the contract as to the employment of the plaintiff (a copy of said contract being filed with the declaration), by the defendant, and the amount of salary that the plaintiff was to receive weekly, the fact that the plaintiff entered into the service of the defendant and the wrongful discharge of the plaintiff by the defendant, concludes as follows: " * * * by means whereof the said plaintiff has suffered the loss of his wages for the balance of the terms, or from July 30, 1932, until February 23, 1934, which he otherwise might and would have derived and acquired from being continued in said service of said defendant". Wherefore the said plaintiff says that by reason of the premises he is injured and has sustained damages in the amount of \$3,000.

GROUND OF DEMURRER.

Two of the grounds of demurrer relied upon was as follows:

(1)

"The suit involved in this case was filed returnable to first September rules, 1932, and the declaration shows on its face that the contract was terminated in August, 1932, and, therefore, there cannot be any recovery of damages for breach of contract for the balance of the period of the said contract because no cause of action has accrued."

(2)

"The declaration shows on its face that all wages up until the time of the termination of the contract, and the filing of the suit for collection of damages for the remainder of the contract, is premature."

It is conceded that a wrongfully discharged employee may before the expiration of his term of employment bring a suit to recover any wages or salary due him up to the time of discharge, or he may bring a suit for damages for breach of contract.

But it is respectfully submitted that if the only allegations in the declaration is for the recovery of wages he is confined and limited to the wages that are due him at the time the suit is brought.

The declaration in this case has only one count in it, and that is a count in *indebitatus assumpsit*. The language of the declaration is, " * * * that the plaintiff has suffered the loss of his wages for the balance of the term, * * * ".

What he is seeking to recover is wages for the balance of the term. If he is seeking to recover damages for the breach of contract for a wrongful discharge, then the damages recoverable are those resulting as a natural and legal consequence from the breach, and not wages. *Sullivan v. McFarland*, 1 Tex. App. Civ., Sec. 1201; *Crescent Horse Shoe and Iron Co. v. Eynon*, 95 Va. 151, 27 S. E. 935.

In the case of *Willoughby v. Thomas*, 65 Va. (24 Gratt.) 521, this Court held where the employee is discharged without sufficient cause for the dismissal, and before the end of his term, it is error to hold that the employee, if entitled to recover at all upon the contract, is entitled to recover the hire or wages for the whole year. His right of recovery, in case of discharge without cause, should be limited to the amount of damages actually sustained by such illegal discharge.

This Court in the case of *Va. Talc and Soapstone Co. v. Hurkamp*, 124 Va. 721, said this: "When a contract of hiring is breached by the discharge of the person employed, then, of course, the latter cannot recover his hire or wages for the whole original contract period merely by continuing to perform the services originally required thereby, for the contract is then at an end; his right of action is, in such cases, not upon the contract, but for damages for the breach of it, and he must minimize the damages by doing all reasonably within his power to obtain employment elsewhere." "Such is the principle on which rest the cases of *Willoughby v. Thomas*, 65 Va. (24 Gratt.) 521; *Crescent Co. v. Eynon*, 95 Va. 151, 27 S. E. 935."

18 R. C. L., under the subject of Master and Servant, Sec. 37, page 527, says this: "Apparently there is no dissent to the proposition that future installments of salary may not be recovered as such." Footnote 6 to this section refer to

notes in 5 L. R. A. 579 (N. S.), where the authorities are collected. Reference is also made to 6 L. R. A. (N. S.) 111.

If a servant sues before the end of the term he can recover only for installments that have matured at the time of the suit, notwithstanding the fact that the term expires before the case is tried. *Hamlin v. Race*, 78 Ill. 422.

An action, not for damages for a wrongful discharge, but for a monthly salary, cannot be maintained where the salary suit for is for a period after the alleged wrongful discharge, and no service was rendered. *Arnold v. Adams*, 27 App. Div. 345, 49 N. Y. Supp. 1041.

Again the Supreme Court of New York in the case of *Elliott v. Miller*, 43 N. Y. S. R. 536, 17 N. Y. Supp. 526, said: "Nor can an employee employed by the month or week, who is discharged in the middle of the month or week, recover in an action for wages compensation for his services rendered during the month, since such wages are not due until the end of the period; for that purpose he must resort to an action for damages."

Petitioner concedes that if the suit is brought by a wrongfully discharged employee after the expiration of the contract period the employee is entitled to recover the whole amount of the wages provided by the contract upon showing that he exercised diligence to secure other employment and thus reduce his damages. This rule as to the measure of damages seems to be universal, and the Supreme Court of Missouri, in the case of *Ream v. Watkins*, 27 Mo. 516, after referring to this general rule as to the measure of damages, says this: "While the foregoing rule with reference to the measure of damages for the wrongful discharge of an employee are stated without qualification, they must be taken, as a general rule, as applicable only to the estimation of damages after the expiration of the contract period, when the estimate is made before the expiration thereof, this rule is denied by many of the cases, and the rule adopted by some of them is that an employee wrongfully discharged before the expiration of the time for which he is hired is not entitled to recover, in an action brought before the expiration of the term of service, for the full amount of wages for the full term at contract price; and an instruction in such case to that effect is erroneous."

It is respectfully submitted that looking to the declaration in this case, and in view of the holding of this Court in the Virginia cases cited above, and supported by such respectable authority as the Courts of New York, Missouri and other states as cited above, that the defendant's demurrer should have been sustained by the Trial Court.

Even if the declaration be construed as setting up a case for wages due the plaintiff from July 30, 1932, to August 26, 1932, the time when the suit was brought, then it would on its face show that the Circuit Court of Arlington County had no jurisdiction, because the statute creating the County Court of Arlington County gives the County Court exclusive jurisdiction in civil cases up to \$300.00. Therefore a suit brought for wages due for less than \$300.00 should have been instituted in the County Court.

SECOND.

The refusal of the Trial Court to strike out the evidence of the plaintiff at the close of the plaintiff's case.

The contract introduced in evidence showed that Pastelnick, by an independent covenant and promise therein, agreed that * * * irrespective of the time, manner or cause of the termination of said employment * * * that he will not for a period of one year after the end or termination of his employment * * * either as principal or employee, solicit, serve or cater to any of the customers of the Standard Laundry Service, and that for any violation on his part of any covenant it will cause such damages to the Standard Laundry Service as will be irreparable and the exact amount of damages for such violation it will be impossible to ascertain. (This contract as read to the jury will be found on pages 4, 5, 6 and 7 of the transcript of testimony.)

The testimony of the plaintiff in this case shows that on July 5, 1932, the plaintiff received notice from the defendant that 30 days from July 2, 1932, the plaintiff's services would no longer be required, that would mean that the plaintiff was discharged on or about August 1, 1932. (See transcript of testimony, page 42.)

The plaintiff further testifies that he organized another business in August, 1932, which was a business in competition to the business of the Standard Laundry Service. (See transcript of testimony, page 35.) The testimony of the plaintiff further shows that he helped to conduct this business, and that he solicited the customers of the Standard Laundry Service and took its customers away in violation of the covenants in the contract. (See Transcript of testimony, pages 35 to 47, inclusive.)

The testimony of the plaintiff further shows that by a letter dated July 6, 1932, Pastelnick gave the Standard Laundry Service notice that he intended to hold the Standard Laundry Service to the terms of the contract. (See transcript of testimony, pages 41 and 42.)

It is to be further noticed that the plaintiff instituted this suit in August, 1932, to recover wages under the terms of the contract. 13 C. J. 624, Sec. 685, under the heading contracts says that a party suing for breach of contract thereby ratifies the contract as valid and binding.

Now it is respectfully submitted that taking the above facts into consideration in connection with the defendant's motion to strike the plaintiff's evidence, that it shows a state of facts whereby the plaintiff was doing everything in his power to hold the Standard Laundry Service to the terms of the contract, and at the same time the plaintiff was violating an independent covenant and promise, which provided that upon violation such violation would cause the defendant such damages as would be irreparable, and the amount of which would be impossible to ascertain. In other words, the plaintiff's own testimony showed a state of facts whereby there was nothing to submit to the jury, because the plaintiff by his own breach of contract, and his agreement upon such breach was that the damages were to be such that he was not entitled to recover from the defendant any damages whatever.

The plaintiff could not eat his cake and have it, too. He is not allowed to blow both hot and cold. By his own acts, admissions, promises and covenants he had placed the matter beyond any right he had to recover damages, and the construction of the contract being for the Court, it is, therefore, respectfully submitted that the Trial Court erred in refusing to sustain the motion of the defendant to strike out the evidence of the plaintiff.

THIRD.

That the Court erred in granting instructions Nos. 5 and 6. Instruction No. 5 was erroneous.

First: Because it was misleading. It told the jury that if they believed from the evidence that the plaintiff did keep and perform the stipulations of the contract on his part.

As has already been referred to the plaintiff admitted that he breached the part of the contract which provided that, irrespective of the time, manner and cause of the termination of the employment that he would not engage in any business, either as principal or employee, that was competitive to the business of the defendant. (See transcript of testimony, page 47, *et seq.*) C. J., under the subject of contracts, 13 C. J. 629, Sec. 695, in speaking of independent covenants and promises in contracts, says this: "A failure to perform an

independent stipulation, while it may subject the party failing to damages, does not constitute a bar to the right of such party to recover for a breach of the promise made to him and does not excuse the party on the other side from the performance of all stipulations on his part."

Second: Instruction No. 5 was also erroneous because the measure of damages was wrongly stated therein.

The instruction plainly told the jury that the measure of damages was the wages that would have been due the plaintiff for the whole term of the contract.

This question has already been discussed to some extent under the action of the Trial Court in overruling the demurrer, but if it were conceded that the Court was right in overruling the demurrer, it is respectfully submitted that the measure of damages is wrongfully stated in instruction No. 5, under the facts in this case as shown by the evidence. In addition to the Virginia cases and cases from other states already cited on the question of error alleged to have been committed by the Trial Court in overruling the demurrer, petitioner refers to and cites the following cases, as to the doctrine of the true measure of damages in the case of a wrongful discharge where the suit is instituted before the period of the contract has expired.

In the case of *Olmstead v. Beach*, 78 Md. 132, 44 Am. St. Rep. 273, the Court after a lengthy review of the cases expressly repudiated the doctrine of allowing the discharged servant to recover on the ground of constructive service under an allegation and proof of readiness and willingness to perform his contract of service.

The Court said: "Salary, as salary, definitely fixed and agreed to, and not a sum of money as liquidated damages for a broken contract of hiring, is what is sued for under the declaration in the case at bar. It is a suit to recover wages, though no service has been rendered at all, and, if maintainable in that form, would preclude the defendants from showing by evidence that the plaintiff could have secured other similar employment during the time covered by the contract; because if wages, distinctively as wages, can be recovered under such conditions, instead of damages for wrongful discharge or dismissal, they must be recovered as specific, ascertained debts, the amount of which is fixed by the contract, and is in no way subject to abatement by circumstances which would reduce the damages in a suit founded on a refusal by the defendant to allow the plaintiff to perform his part of an indivisible contract of hiring. In other words, if under such

a contract the plaintiff is entitled to recover wages, as wages, upon a mere offer to perform, he must be entitled to recover just precisely the wages named in the contract, even though he might have obtained other work of the same kind at the same price during the period for which he claims his wages under the contract. This would be recovering for constructive services. That doctrine has altogether been repudiated both in England in this country. *Keedy v. Long*, 71 Md. 389." "The doctrine of constructive service has, in England, where it had its origin, been repudiated, and the law there established that a servant wrongfully discharged has not an action for wages, unless something is due for past services actually rendered; and as to any other claim on the contract, it is for a breach of it, and for damages resulting therefrom, being ordinary action for damages, and not the common law action of *indebitatus assumpsit*"; *James v. Allen County*, 44 Ohio St. 226, 58 Am. St. Rep. 821; *Howard v. Daly*, 61 N. Y. 362, 19 Am. Rep. 285, where *Gandell v. Potigny*, 4 Camp. 375; *Thompson v. Wood*, 1 Hilt. 96, "and the cases in Alabama, Mississippi and Wisconsin", are distinctly disaffirmed, and the doctrine of constructive service declared to be "so opposed to principle, so clearly hostile to the great mass of authorities" that it could not be accepted. We hold then, that the contract declared on is entire and indivisible; that for a breach of it by the defendants in discharging the plaintiff before the expiration of the year, or in refusing to allow him to work, a right of action arose, not for unearned wages or salary as such, but for damages for breach of contract, the measure of which damages would be the stipulated salary for the stipulated period of one year, less the amount the plaintiff actually earned, or might by due and reasonable diligence have earned after his dismissal. *Jaffray v. King*, 34 Md. 223.

In the case of *Howard v. Daly*, 61 N. Y. 362, 19 Am. Rep. 292, *supra*, the Court, after a thorough and exhaustive review of the authorities, repudiated the right to recover for constructive services in the following forcible language:

"This doctrine is, however, so opposed to principle, so clearly hostile to the great mass of authorities, and so wholly irreconcilable to that great and beneficent rule of law, that a person discharged from service must not remain idle, but must accept employment elsewhere if offered, that we cannot accept it. If a person discharged from service may recover wages, or treat the contract as still subsisting, then he must remain idle in order to be always ready to perform the service. How absurd it would be that one rule of law

should call upon him to accept another employment, while another rule required him to remain idle in order to receive full wages. The doctrine of 'constructive service' is not only at war with principle, but with the rules of political economy, as it encourages idleness and gives compensation to men who fold their arms and decline service, equal to those who perform with willing hands their stipulated amount of labor. Though the master has committed a wrong, the servant is not for one moment released from the rule that he should labor; and no rule can be sound which gives him full wages while living in voluntary idleness. For these reasons, if the plaintiff was discharged after the time of service commenced, she had an immediate cause of action for damages, which were *prima facie* a sum equal to the stipulated amount, unless the defendant should give in evidence in mitigation of damages.

The Maryland case of *Olmstead v. Beach* and the New York case of *Howard v. Daly*, *supra*, are suits that were apparently brought after the term of employment or the contract period had expired, and the rule laid down there had the measure of damages for the breach of contract of hiring is the stipulated salary for the stipulated period of hiring, less the amount the plaintiff actually earned, or by due and reasonable diligence might have earned at similar employment after his dismissal, is the rule adopted by a majority of the authorities, in cases where the suit is brought after the contract period of employment had expired. These cases are cited to show, not only the reason of the Courts on the correct measure of damages, but also to show that by parity of reason that where the suit is brought before the term of service expires that there is no way to show what the employee might have earned for the unexpired term, and that any damages gauged on the future would be purely speculative, and tend to encourage idleness in the discharged employee.

DAMAGES RECOVERABLE ONLY AS TO THE TIME THE ACTION IS BROUGHT.

17 C. J., page 1085, Sec. 395, on the question of the time at which damages are to be assessed, says this:

"As a general rule, damages are to be assessed as of the date at which the action is brought, and only such damages as have then accrued may be awarded in either actions of contract, or of tort. Plaintiff can recover only for such damages as are the consequence of what the defendant did before action is brought. Damages which have accrued after the action is begun may be allowed where they are the con-

sequence of acts done before the beginning of the action and constituting a part of the cause of action declared on * * * .

“Where the injury sued for is caused by a mere repetition or continuing of acts of the same class, plaintiff’s recovery is limited to the damages resulting from such of those acts as were done before the bringing of the suit. So where the continuance of the act is *not necessarily injurious*, then the recovery must be limited to the damage which has accrued at the time of the action, or where the act is of a permanent character, but may or may not be injurious, or may or may not be continued, only the damages which has happened may be recovered for.”

The cases of *Olmstead v. Beach* and *Howard v. Daly* are cited also to show that where the action is brought for damages the pleading must show this and not an action for wages already accrued or wages that are to accrue in the future. That is to say, that where the action or pleading shows *indebitatus assumpsit*, that is for wages, you cannot recover for breach of contract under such pleading, where the facts show that you are trying to recover for wages that are to accrue in the future.

Now, in the instant case the declaration is not only one in *indebitatus assumpsit*, but instruction No. 5 tells the jury that the measure of damages is the salary contracted for during the whole term of the contract, although the salary was to accrue in the future.

In the case of *Ream v. Watkins*, 27 Mo. 516, the Court, in speaking of the measure of damages for wrongful discharge of a servant, said this: “The measure of damages in an action by an employee for wrongful discharge before the completion of his term of service, brought before the expiration of such term, is not the contract price for the full term, and it is error to rule that it is. *The amount of damages in such action is a question for the jury.*”

The New York Court in *Adams v. Adams*, 49 N. Y. Supp. 1041, *supra*, says this: “An action not for damages for a wrongful discharge, but for a monthly salary, cannot be maintained where the salary sued for is for a period after the alleged wrongful discharge, and no services were rendered.

“If he sues before, he can recover only for the installments that have matured at the time the suit is brought, notwithstanding the fact that the term expires before the case is tried.” *Hamlin v. Race*, 78 Ill. 422, *supra*.

It is, therefore, respectfully submitted that taking into

consideration the time this suit was brought, that the declaration is one in *indebitatus assumpsit*, and that the instruction is one for the recovery of salary that was to accrue in the future, that the Trial Court erred in granting instruction No. 5.

FOURTH.

The Court erred in refusing instructions A, F and G offered by the defendant.

Instruction A told the jury that if the plaintiff violated an independent covenant and promise in the contract they must find for the defendant.

The evidence to support this instruction was the contract between the parties, and the admissions of the plaintiff that he had violated the promise he made in the contract.

The contract provided that irrespective of the time, manner or cause of his discharge he would not disclose to others any information concerning the business of the defendant, and that if he violated this provision the damages suffered by the defendant would be irreparable, the amount of which it would be impossible to determine.

It is respectfully submitted that the legal effect of this provision in the contract was the same as saying that if the plaintiff was wrongfully discharged and he violated his promise not to disclose to others information concerning the business of the defendant, he, the plaintiff, could not suffer any damages, by reason of a wrongful discharge, that would be equal to the damages suffered by the defendant. It is respectfully submitted that the instruction was entirely proper under the evidence in the case, and that the Court erred in not granting instruction A.

INSTRUCTION F.

The principles applicable to this instruction are the same in the above instruction "A", the only difference being that if the plaintiff violated his promise not to *solicit the customers of the defendant, irrespective of the manner of the discharge, & etc.* It is, therefore, respectfully submitted that under the evidence that this was a proper instruction, and should have been allowed by the Court.

INSTRUCTION G.

This instruction left it to the jury to determine if the plaintiff had been rightfully or wrongfully discharged, and

if the defendant had been justified in discharging the plaintiff, and if the plaintiff after his discharge had violated his promise not to engage in a competitive business, then such violation on the part of the plaintiff should be taken into consideration by the jury in mitigation of damages.

This instruction should have been granted because, under the evidence, the questions involved in the instruction were purely matters of fact which, under the evidence, were for the jury to decide.

FIFTH.

THE REFUSAL OF THE COURT TO SET ASIDE THE VERDICT OF THE JURY.

The reasons set forth in the preceding part of this petition for errors committed by the Trial Court are asked to be read as a reason for the exception saved under the refusal of the Trial Court to set aside the verdict of the jury.

It is, therefore, respectfully submitted that for the reasons stated herein, the Trial Court erred in overruling the defendant's demurrer, the defendant's motion to strike out the evidence of the plaintiff at the close of the plaintiff's case, in granting instructions Numbered 5 and 6, in refusing the defendant's instructions A, F and G, and in refusing to set aside the verdict of the jury.

Wherefore, the plaintiff prays that it may be awarded a writ of error and *supersedeas* to the judgment of the Trial Court; that the said judgment of the Trial Court may be set aside for the reasons herein stated, and that such judgment or order be entered by this Court as the law directs.

And in accordance with the rules of this Court, petitioner states that he adopts this petition as its brief, and requests that it be considered as such upon the review of this case by this Honorable Court upon the writ of error prayed for, if granted.

A copy of this petition was duly delivered to Mr. Edgar W. Pumphrey, of opposing counsel in the trial court, at his office at Arlington County Court House, Clarendon, Virginia, on the 15th day of December, 1934.

Respectfully submitted,

WILLIAM C. GLOTH,
H. W. DUDLEY,
Counsel for the Petitioner.

The undersigned counsel, practicing in the Supreme Court of Appeals of Virginia, do certify that in our opinion there is error manifest in the record of the proceedings in the foregoing case, and in our opinion it is proper that the judgment rendered by the Circuit Court of Arlington County, Virginia, therein on October 24, 1934, should be reviewed by the Supreme Court of Appeals of Virginia.

WILLIAM C. GLOTH,
H. W. DUDLEY,
Attorneys.

January 18, 1935. Writ of error and *supersedeas* awarded by the court. Bond, \$1,500.00.

M. B. W.

RECORD

In the Circuit Court of Arlington County, Virginia.

Louis Pastelnick, 1214 L St., N. W., Washington, D. C., Plaintiff,
v.

Standard Laundry Service, Inc., Rosslyn, Virginia, Defendant.

At Law No. —.

Filed Aug. 26, 1932.

To John A. Petty, Esq., Clerk of said Court.

Please issue process in the above entitled cause returnable at the 1st September rules, A. D. 1932.

EDWARD W. PUMPHREY,
Attorney for the plaintiff.

Memorandum: The object of this suit is to recover for the plaintiff from the defendant the sum of \$4,000.00, as the amount due for a breach of contract dated Feb. 23, 1932. Action of *Assumpsit*.

page 2 } COMMONWEALTH OF VIRGINIA,

To the Sheriff of Arlington County, Greeting:

WE COMMAND YOU TO SUMMON Standard Laundry Service, Inc., Rosslyn, Virginia, if it be found within your

bailiwick to appear at the Clerk's Office of our Circuit Court of our said County of Arlington, at the Rules to be holden for said Court, on the First Monday in September next, to answer Louis Pastelnick in an Action of *Assumpsit*, Damages—\$4,000.00, and have then and there this writ.

WITNESS, John A. Petty, Clerk of our said Court, at the Court House of said County, the 26th day of August, 1932, and in the 157th year of the Commonwealth.

JOHN A. PETTY, Clerk.

A Copy--Teste:

By EDITH B. CORDER,
Deputy Clerk:

Executed the within Summons this 29th day of August, 1932, by serving a true copy thereof on A. Zinnamon, manager and owner of the Standard Laundry Service, Inc., in person, in Arlington County, Virginia.

GIVEN under my hand this 29th day of August, 1932.

H. B. FIELDS,
Sheriff Arlington County, Virginia.

In the Circuit Court of Arlington County, Virginia.

Louis Pastelnick, 1214 L Street, N. W., Washington, D. C.,
Plaintiff,

v.

Standard Laundry Service, Inc., Rosslyn, Virginia, Defendant.

At Law.

page 3 }

Filed Aug. 26, 1932.

The plaintiff Louis Pastelnick sues the defendant, the Standard Laundry Service, Inc., for that heretofore to-wit, on the 23rd day of February, 1932, the plaintiff and the defendant, by its duly authorized agent, entered into an agreement, copy of which is hereto attached and prayed to be read as a part hereof whereby it was mutually agreed between the parties that the defendant was to employ the plaintiff as a salesman, canvasser, collector and sales manager for a period

of two years from the aforesaid date and to pay him \$30.00 per week, subject to such modifications and changes as should be mutually agreed to by the parties, but with the express understanding that such modifications for compensation should be raised gradually until it should reach \$50.00 per week maximum by the end of the first year; that the defendant in consideration thereof was to devote his entire time and attention to the service of the defendant and to serve faithfully in all respects and to perform other duties more fully set forth in the attached agreement.

And the said plaintiff on or about February 23rd, 1932, *pursuance* to the terms of the aforesaid agreement entered into the service and employ of the said defendant and did continue in said service and employ under the terms and conditions as aforesaid until on or about August 6, 1932; and the said plaintiff has always been ready, able and will-
page 4 } ing and has always offered to continue in the said service and employ of the said defendant under the terms and conditions as aforesaid until the expiration of the two year period as set out in the said agreement. But the defendant, disregarding the aforesaid agreement would not continue and did not continue the said plaintiff in his service and employ until the expiration of the aforesaid agreed term, but to the contrary thereof, on or about August 5, 1932, the defendant without just cause, refused to suffer or permit the said plaintiff to continue in his said service and employ and then and there discharged the plaintiff therefrom without just or reasonable cause and has from that time hitherto wholly neglected and refused to retain or employ the said plaintiff in his said service and control and by means whereof the said plaintiff has suffered the loss of his wages for the balance of the term, or from July 30th, 1932, until February 23, 1934, which he otherwise might and would have derived and acquired from being continued in said service of said defendant.

Wherefore the said plaintiff says that by reason of the premises, he is injured and has sustained damages in the amount of \$4,000.

LOUIS PASTELNICK,
LOUIS PASTELNICK, Plaintiff.

WARREN E. MILLER,
Attorney for Plaintiff,
Shoreham Building,
Washington, D. C.

page 5 }

COPY.

AGREEMENT made this 23rd day of February, 1932, by and between STANDARD LAUNDRY SERVICE, INC., of Rosslyn, Va., hereinafter called the "Corporation", and LOUIS PASTELNICK, of Washington, D. C., hereinafter called the "Employee".

WITNESSETH:

WHEREAS, the Corporation is engaged in laundering and in supplying a service of laundered coats, aprons and other laundered articles, and

WHEREAS, the Employee is about to be employed by the Corporation for the purpose of adding to the aforesaid goodwill and the Corporation is about to make a considerable outlay of time, money and effort in order to acquire such additional good will through the employ, and

WHEREAS, it is desired that such additional good will shall be safeguarded for the Corporation and that terms of employment be definitely provided for the Employee, NOW THEREFORE,

1. The Corporation agrees to employ the Employee as Salesman, canvasser, collector and sales manager, for a period of two (2) years from date hereof and pay him thirty dollars (\$30.00) per week subject to such modifications and changes as to compensation as may hereafter be mutually agreed upon by the parties, but with the express understanding that such modification for compensation shall be raised gradually until it reaches fifty dollars (50.00) per week (maximum) by the end of the first year.

2. The Employee agrees to serve the Corporation at least the period aforesaid and to devote to the service of the Corporation his entire time and attention and to serve it faithfully in all respects and further covenants as follows:

(a) That he will not, during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, directly, or indirectly, disclose to any person, firm or corporation, the name, address or requirements of any customer of the Corporation and that he will not divulge any other information that he has or shall have acquired during his period of employment.

(b) That, upon the termination of his employment as aforesaid, he will surrender to the Corporation all lists, books and records of or in connection with the Corporation's customers or business and all other property belonging to the Corporation.

(c) That he will not for a period of one (1) year after the end or termination of his employment as aforesaid, directly or indirectly, either as principal or employee, or solicit, serve or cater to any of the customers served by him or by any other employee of the Corporation during his employment with the Corporation.

3. The Employee agrees that a violation on his part of any covenant herein will cause such damage to the Corporation as will be irreparable and the exact amount of which will be impossible to ascertain and that the Corporation shall, therefore, be entitled as a matter of course to an injunction restraining any further violation of the said covenants by himself, his employee or other persons associated with him, such right to be cumulative to whatever other remedies the Corporation may have in the premises.

4. This agreement shall be automatically renewed unless terminated by either party upon thirty days' written notice prior to the expiration of the term hereof.

page 7 } WITNESS the hands and seals of the parties hereto, the day and year first above written.

STANDARD LAUNDRY SERVICE, INC.,
By A. ZINNAMON, Prs.
LOUIS PASTELNICK.

State of Virginia,
County of Arlington.

Subscribed to and sworn to before me this the 23rd day of February, 1932.

C. T. MERCHANT,
Notary Public.

October 24, 1934.

We the Jury find for Plaintiff and fix his damages in the amount of One Thousand Dollars.

A. D. DAVIS, Foreman.

In the Circuit Court of Arlington County, Virginia.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Inc., Defendant.

DEMURRER.

page 8 }

Filed Jan. 4, 1934.

Now comes the defendant and demurs to the declaration filed in this case and assigns the following grounds of demurrer.

The declaration and alleged exhibit shows on its face that the alleged contract was to continue for a period of two years from the twenty-third day of February, 1932, and that the same was terminated upon the sixth day of August, 1932.

The declaration does not allege that upon the termination of the contract, as alleged in said declaration on August 6, 1932, that the plaintiff attempted to obtain any other employment to cover the balance of the period of contract as alleged in said declaration and thus arrive at a proper legal measure of damages.

The suit involved in this case was filed returnable to first September rules, 1932, and the declaration shows on its face that the contract was terminated in August, 1932, and, therefore, there cannot be any recovery for damages or breach of contract for the balance of the period of the said contract because no cause of action has accrued.

The declaration shows on its face that all wages were paid up until the time of the termination of the contract and the filing of the suit for collection of damages for the remainder of the contract is premature.

The declaration does not show any legal cause
page 9 } of action of any kind whatsoever in favor of the
plaintiff against the defendant.

WILLIAM C. GLOTH,
Attorney for the Defendant.

page 10 } Circuit Court of the County of Arlington, Vir-
ginia, on Saturday, the twelfth day of May, in the
year of our Lord, nineteen hundred and thirty-four.

Present: The Honorable Walter T. McCarthy, Judge.

Louis Pastelnick, Plaintiff

v.

Standard Laundry Service, Inc., Defendant.

Law No. 1971.

ORDER.

THIS CAUSE coming on to be heard upon the demurrer heretofore filed by the defendant, and was argued by counsel,

AND IT APPEARING to the Court that the grounds of said demurrer are not well taken, the Court doth overrule the same, to which ruling of the Court the defendant excepts.

WALTER T. McCARTHY, Judge.

page 11 } In the Circuit Court of Arlington County, Virginia.

Louis Pastelnick, complainant,

v.

Standard Laundry Service, Inc., defendant.

In Chancery #—.

The depositions of Louis Pastelnick, et al., taken before Hon. Walter T. McCarthy, Judge of the Circuit Court of Arlington County, Virginia, at the Arlington County Court-house, Clarendon, Virginia, at 10 o'clock A. M., on the 23rd of October, 1934, to be read as evidence in the above entitled cause.

Appearances: Warren E. Miller, Esq., & Edgar W. Pumphrey, Esq., counsel for plaintiff; Wm. C. Gloth, Esq., counsel for defendant; the plaintiff in his own proper person; Arthur Zimmerman in his own proper person, representing Standard Laundry Service, Inc.

page 12 } Mr. Miller: We would like to call for the books of the defendant—I believe Mr. Pumphrey called for them yesterday—the books showing the income of the defendant immediately preceding the contract and during the time of the contract. From 1930 on down is what he asked for.

Mr. Gloth: I don't mind giving any books that can help to give some enlightenment on the subject. I think they should

apply to what business Pastelnick got for the company; however, whatever your Honor desires, is all right with me.

Court: He was sales manager, wasn't he?

Mr. Gloth: Yes, sir, I believe so.

Court: I think the request is reasonable.

Mr. Gloth: I have no objection to getting anything he wants.

Mr. Miller: We want the books to show the income of the company from 1930 until the termination of this contract; that is, the expiration of the contract on February 23rd, 1934.

Mr. Gloth: He didn't get there until the end of 1931, and the contract is dated February 23rd, 1932.

Mr. Miller: You said in your argument to the jury that he did not build the business up and we will show by the books that he did.

Court: What were those dates you asked for?

Mr. Miller: 1930 to 1934.

Court: What do you want to go back to 1930 page 13 } for?

Mr. Miller: Merely to show the increase in business; the increase from then on.

Court: The increase from 1930 to 1932 would have no bearing on this matter.

Mr. Miller: Then say from six months prior to the time that he entered the business.

Mr. Gloth: That does not say he made that increase, if any.

Court: That is a matter of argument. You want the books from September, 1931, to February, 1934?

Mr. Miller: Yes, sir.

Mr. Gloth: The witness who can get that information is Tillie Zimmerman.

Court: Bring her in here.

TILLIE ZIMMERMAN,

being first duly sworn, testified under oath as follows:

By the Court:

Q. Miss Zimmerman, are you the bookkeeper of the Standard Laundry Service, Inc.?

A. Yes, sir.

Q. These gentlemen want the books showing the income—I suppose the sales service—from about September, 1931, to February, 1934.

page 14 } Mr. Gloth: Are there many of them or are they in one big volume?

A. They are in one book.

Court: Can you get them?

A. Yes, sir.

Mr. Miller: From September, 1931, to February, 1934.

And further deponent sayeth not.

Mr. Miller: Do you admit the contract, Mr. Gloth?

Mr. Gloth: You had better prove it.

Court: Read it to the jury.

Mr. Miller (to the jury): This contract, upon which this cause of action is based, the execution of which is admitted by both parties, is signed by A. Zimmerman, President of the Standard Laundry Service, Inc., and by Louis Pastelnick, before a Notary Public, C. T. Merchant. Here it is:

“Agreement made this 23rd day of February, 1932, by and between Standard Laundry Service, Inc., of Rosslyn, Virginia, hereinafter called the ‘Corporation’ and Louis Pastelnick, of Washington, D. C., hereinafter called the ‘Employee’.

WITNESSETH—Whereas the Corporation is engaged in laundering and in supplying a service of laundered page 15 } coats, aprons and other laundered articles, and

Whereas, the Employee is about to be employed by the Corporation for the purpose of adding to the aforesaid good will and the Corporation is about to make a considerable outlay of time, money and effort in order to acquire such additional good will through the employ, and

Whereas, it is desired that such additional good will shall be safeguarded for the Corporation and that terms of employment be definitely provided for the Employee, Now Therefore

1. The Corporation agrees to employ the Employee as Salesman, Canvasser, Collector and sales manager, for a period of two (2) years from date hereof and pay him thirty dollars (\$30.00) per week subject to such modifications and changes as to compensation as may hereafter be mutually agreed upon by the parties but with the express understanding that such modification for compensation shall be raised gradually until it reaches fifty dollars (\$50.00) per week (maximum) by the end of the first year.

2. The Employee agrees to serve the Corporation at least the period aforesaid and to devote to the service of the cor-

poration his entire time and attention and to serve it faithfully in all respects and further covenants as follows:

page 16 } (a) That he will not, during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, directly or indirectly, disclose to any person, firm or corporation the name, address or requirements of any customer of the corporation and that he will not divulge any other information that he has or shall have acquired during his period of employment.

(b) That, upon the termination of his employment as aforesaid, he will surrender to the Corporation all lists, books and records of or in connection with the Corporation's customers or business and all other property belonging to the Corporation.

(c) That he will not for a period of one (1) year after the end or termination of his employment as aforesaid, directly or indirectly, either as Principal or employee, or solicit, serve or cater to any of the customers served by him or by any other employee of the Corporation during his employment with the Corporation.

3. The employee agrees that a violation on his part of any covenant herein will cause such damage to the Corporation as will be irreparable and the exact amount of which will be impossible to ascertain and that the Corporation shall, therefore, be entitled as a matter of course to an injunction restraining any further violation of the said covenants by himself, his employee or other persons associated with him, such right to be cumulative to whatever other remedies the Corporation may have in the premises.

4. This agreement shall be automatically renewed unless terminated by either party upon thirty days' written notice prior to the expiration of the term hereof.

Witness the hands and seals of the parties hereto, the day and year first above written.

STANDARD LAUNDRY SERVICE, INC.,
By A. ZIMMERMAN, Pres.,
LOUIS PASTELNICK.

State of Virginia,
County of Arlington:

Subscribed and sworn to before me this the 23rd day of February, 1932.

(Seal)

C. T. MERCHANT,
Notary Public.

page 18 } MRS. HELEN PASTELNICK,
a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. What is your name?

A. Mrs. Helen Pastelnick.

Q. You are the wife of the complainant here, Louis Pastelnick?

A. Yes, sir.

Q. When were you married to him?

A. June 11th, 1932.

Q. Prior to the time of your marriage, where were you living?

A. I lived in Virginia all my life until after my marriage.

Q. Where, in Virginia?

A. Cherrydale.

Q. Where were you working before your marriage?

A. Before my marriage?

Q. Yes.

A. Standard Laundry Service, Inc., Rosslyn, Virginia.

Q. About how long did you work for Standard Laundry Service, Inc.?

A. About two years. No, I worked there about four years.

Q. About four years altogether?

page 19 } A. Three or four years.

Q. When did you first know Mr. Pastelnick, your husband, Mrs. Pastelnick?

A. In February.

Q. Please state the year.

A. 1932.

Q. What were your duties at the laundry?

A. I did most anything.

Q. Name some of the things.

A. I was catcher and folder.

Q. You saw the laundry and worked on the machines?

A. Yes, sir.

Q. About how many people were employed there, can you tell, Mrs. Pastelnick?

A. He didn't have many at first.

Q. Did there come a time when the work of the laundry expanded?

A. After my husband came there, yes.

Q. After he came there. What did you, personally, notice about the difference in the quantity of work or the number

of people employed and the time they worked, after your husband came there?

A. We worked later at night after he came there. Before he came there, we would get off at two o'clock; two page 20 } or three.

Q. After he had been there a while, how late did you work, Mrs. Pastelnick?

A. Some nights until six thirty.

Q. Then did there come a time when you left that employment?

A. I left? What was that, Mr. Miller?

Q. Did there come a time when you left that employment?

A. Right before I got married, I left. I left on Friday.

Q. A day or two before your marriage?

A. No. I left Friday and didn't go back.

Q. When were you married?

A. June 11th, 1932.

Q. Was that the day before your marriage?

A. Yes, it was.

Q. Was your husband working there on the 18th of June, after you were married?

A. Yes, he was.

Q. How do you know that?

A. I called up and had him on the phone as he was late getting home. He was supposed to be home at four o'clock and he wasn't there.

Q. You talked with him by calling him at the Standard Laundry, Inc.?

page 21 } A. Yes, sir.

CROSS EXAMINATION.

By Mr. Gloth:

Q. Mrs. Pastelnick, you were working at the Standard Laundry Service, Inc., before you ever met your husband, were you not?

A. Yes.

Q. And do you remember when he first came there?

A. He came to work there in February.

Q. February?

A. Yes.

Q. What year?

A. 1932.

Q. As a matter of fact, the contract was made in February, Mrs. Pastelnick, February 23rd, 1932. Didn't he work there some time before that, before he had the contract?

A. Oh, he came back and forth once in a while. I guess he was working.

Q. He was working there for some time prior to that and isn't it a fact that after he worked there for a while, he got the contract which is the subject of litigation here; isn't that right?

A. Yes.

page 22 } Q. And, as I understand, you never met him until he came to the laundry there to work?

A. That is correct.

Q. Then he began to keep company with you, isn't that right?

A. Yes.

Q. Do you remember Mr. Zimmerman speaking to him about spending so much time back there talking with you?

A. No.

Q. Did you work on Saturdays?

A. Some Saturdays.

Q. He was supposed to work every day, wasn't he?

A. I guess he was.

Q. Isn't it a matter of fact that some Saturdays he was found at your house when you were off?

A. Oh, no.

Q. You left there when? When did you leave there?

A. I left there on Friday, June 10th.

Q. And you were married when?

A. June 11th.

Q. That was 1932?

A. Yes.

Q. After you were married on June 11th, 1932, how much longer did your husband work for the Standard Laundry Service?

page 23 } A. Just for a little while afterward.

Q. About how long?

A. I could not recall.

Q. Do you know why he lost his job?

A. Well, I think that was on account of his marriage that he lost his job.

Q. On account of his marrying?

A. Yes.

Q. They didn't object to you, did they? *You* worked there for three or four years?

A. He did not.

Q. I said you.

A. I quit on Friday. I did not want to work after I got married.

Q. And that is the only reason you can give that he was dismissed is because he married you, is that right?

A. That is all I know.

Q. You do not know of any misunderstandings between the Standard Laundry Service and your husband during this time of the contract?

A. While I worked there, they were very good friends.

Q. While you worked there, they were very good friends?

A. Yes.

Q. And you are sure you quit on Friday and you were married on Saturday?

A. Yes.

page 24 } Q. And he was dismissed when?

A. I do not know. I did not say.

Q. Was it May or June or July of 1932; do you remember that?

A. I do not know.

Q. What business did your husband go into after he left there; after he was dismissed?

A. For a while he did not work. He wasn't in business for a little while afterward.

Q. What business did he go into when he did go into any business?

A. Laundry business.

Q. What was the name of the laundry he went into?

A. Victory.

Q. What did he call it, Victory what? Look at me, Mrs. Pastelnick, and not at your husband.

A. Victory Laundry.

Q. Do you know what the Victory Coat & Apron Company was?

A. Yes.

Q. He organized that company, did he not?

A. Yes.

Q. That company's business was doing what? Don't look at your husband. Look at me.

page 25 } A. I am not looking at him. I don't know.

Q. They were in the coat and apron laundering business, were they not?

A. Yes.

Q. And your husband went around and got business for the Victory Coat & Apron Company?

A. He was in partners with another fellow.

Q. Yes, and the other fellow's name was Riley?

A. Yes.

Q. And they were in the same kind of business as the Standard Laundry Service, Inc.?

A. Yes.

Q. And that was the business he went into right after he lost his job and was fired from the Standard Laundry Service, Inc.?

A. It was a little while afterward.

Q. Was it a month or two months or what?

A. I don't know.

Q. And he went out and solicited laundry business of coats and aprons for the Victory Coat & Apron Company?

A. He solicited and so did his partner.

Q. Beg pardon.

A. His partner was soliciting, too.

Q. Yes, and that was your husband's business?

A. He took care of it more than he solicited.

page 26 } Q. Your husband was really head of the business, was he not?

A. Both of them were.

Q. And that was the business they were in?

A. Yes, coats and aprons.

Q. Coat and apron business. They didn't have a plant of their own, did they? All they had was the partnership to get coats and aprons from people and then took them to the Victory Laundry to have them washed and cleaned and pressed; isn't that right?

A. Yes.

Q. And that is where they took it—to the Victory Laundry. They solicited the business and the business was owned by your husband and Mr. Riley. After they got the business, they took it to the Victory Laundry to have it washed and ironed?

A. Yes.

Q. How long was he in that business?

A. I don't know.

Q. Can you approximate how long it was?

A. Seven or eight months, I guess.

Q. Seven or eight months?

A. I think so.

Q. And that was the identical business as done by the Standard Laundry Service, Inc.?

page 27 } A. What's that.

Q. That was the identical same business as was done by the Standard Laundry Service?

A. Yes.

Q. Yes. Now, Mrs. Pastelnick, did you ever visit the plant of the Victory Laundry?

A. I worked there.

Q. You worked there after you were married and after your

husband had left the employ of the Standard Laundry Service; is that correct?

A. I worked there after he went in business.

Q. Do you know what places he solicited business from; what companies he solicited business from; where you got your coats and aprons?

A. No, I don't.

Q. Did you observe any of the kind of aprons or coats that were being laundered by the Victory Laundry and the Victory Coat and Apron Company? In other words, did you ever notice the marks on the laundry?

A. It was marked "Victory". All of ours were.

Q. Did you ever see coats in there with "Standard" on them?

A. I don't think there were.

Q. Are you sure?

page 28 } A. I don't think there were.

Q. Let me ask you this: do you remember when you worked with Standard Laundry Service, they did the coat and laundry service for Broadmoor Apartments?

A. Yes.

Q. And do you remember that when you worked for the Standard Laundry Service, in Rosslyn, they were doing the coat and apron business for the Westchester Apartment, on Wisconsin Avenue?

A. Yes.

Q. And do you remember that after your husband went in business with Mr. Riley they did that business for the Westchester Apartment and for the Broadmoor Apartment?

A. Yes.

Q. How did they get that business?

A. I don't know.

Q. But you know they got it, don't you?

(No answer.)

Q. You know they were doing it, don't you?

A. Yes.

Q. And did you not see on the articles of the Broadmoor Apartment, the coats and aprons that came from there, and also on the coats and aprons from the Westchester Apartment, did you not see the old, familiar marks of the
page 29 } Standard Laundry?

A. No.

Q. Did you ever look for them?

A. No.

Q. So you do not know whether they were or were not on there?

A. No.

Q. But you do know that the Victory Laundry, or Victory Coat and Apron Company, which was run and operated by your husband and Mr. Riley, was doing the same kind of business as the Standard Laundry Service, Inc., and, when they got organized, they were doing the business of the Westchester and Broadmoor Apartments, each of which formerly did business with the Standard Laundry Service, Inc.?

A. Yes.

Q. Do you know of any other big apartment houses that did business with your husband's company after he left the Standard Laundry Service?

A. No.

Q. Can you recall any?

A. What was your question?

Q. Do you know of any other big apartment houses that did business with your husband's company after he left the Standard Laundry Service?

page 30 } A. No, I do not.

Q. How long was your husband in the laundry business after he left Standard Laundry?

A. I don't know. About seven or eight months. I cannot just recall how long it was.

Q. Then what happened to that business? Did that business keep on going or not?

A. No. I don't know, I guess it did.

Q. Did he leave that business or give it up or did the business fail?

A. I don't know.

Q. You know it quit, don't you?

A. No.

Q. You know that business didn't run any more, don't you?

A. No.

Q. Beg pardon.

A. I think they sold it.

Q. You think they sold it?

A. I don't know.

Q. Did you ever hear of the Electric Sanitary Laundry?

A. No.

Q. Do you know whether or not your husband ever worked for the Electric Sanitary Laundry?

A. No.

page 31 } Q. You don't know that?
A. No.

Q. You say you don't know whether he ever worked for that company or not?

A. No.

Q. Has your husband been working recently?

A. Yes, he works.

Q. Where does he work?

A. Now, at some school.

Q. At some school?

A. Yes, at a public school.

Q. What does he do there?

A. He is a clerk.

Q. Do you know how much he gets?

A. Yes.

Q. How much does he make?

A. About \$20.00.

Q. \$20.00 a week or what?

A. A week.

Q. How long has he been working there?

A. Two or three weeks.

Q. Where did he work before that?

A. I don't know exactly. He has been working
page 32 } different places.

Q. I cannot hear you, Mrs. Pastelnick, and some of those gentlemen (indicating the jury) cannot hear you. Has he been working all the time since he got out of the business with Victory Laundry?

A. No. Sometimes he has no job and sometimes he has a job.

Q. Sometimes he has no job and sometimes he has a job?

A. Yes.

Q. Have you any way of knowing how much money he earned since he lost his job in 1932, with the Standard Laundry Service?

A. No.

Q. You have no way of knowing that?

A. No.

Q. You say he was in partnership, in business for seven or eight months, after he left the Standard Laundry Service in Rosslyn?

A. Yes, I think so. I just cannot recall.

RE-DIRECT EXAMINATION.

By Mr. Miller:

Q. I want to ask you one or two more questions, Mrs. Pastelnick. You were asked by Mr. Gloth with
page 33 } your husband was discharged by the Standard
Laundry. As I recall, you answered, "I think it was on account of his marriage to me that he lost his job".

Will you be so good as to explain more in detail just what you meant by that?

A. They were very good friends when I worked there and every time we would go out, some of his boys would ask me where we went—attending to our business instead of to their own—and that is why I think it was on account of that.

Mr. Gloth: And that is just what you think?

A. Yes.

By Mr. Miller:

Q. What, may I ask, is your religion?

A. I just haven't any.

Mr. Gloth: I object.

By Mr. Miller:

Q. What is that?

A. My religion?

Mr. Gloth: I object, if your Honor please.

Mr. Miller: I want to show, by facts I will bring out later, why—

Witness: Protestant.

Court: I cannot imagine how that has any bearing on this case.

Mr. Miller: I wish to bring out other facts by page 34 } another witness, your Honor.

Court: All right.

By Mr. Miller:

Q. Your husband did not go into business until—

Mr. Gloth: I object to the leading question.

By Mr. Miller:

Q. State whether or not your husband went into business before he was discharged from the Standard Laundry Service.

A. No.

Q. And there was a period, or gap, a period of time between the time he left the Standard Laundry and the time he went into another business?

A. Yes, there was.

Q. This work your husband is doing now in school work, as a clerk in a school, is that under the ERW, or Emergency Relief Work, in the District?

A. I cannot tell you.

Mr. Miller: That is all.

Mr. Gloth: That is all.

And further deponent sayeth not.

page 35 }

TILLIE ZIMMERMAN,

a witness of lawful age, being first duly sworn,
testified as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. Miss Zimmerman, you are the bookkeeper for the Standard Laundry Service, Inc.?

A. Yes, sir.

Q. How long have you been keeping books for them?

A. Yes.

Q. And your name is Tillie Zimmerman?

A. Yes.

Q. What relation are you to Mr. Zimmerman the President of Standard Laundry?

A. Daughter of Mr. Zimmerman in the other room and sister to this man here (indicating Arthur Zimmerman).

Q. Can you tell from the books, and I am asking you now because you may have to prepare some data from them, what the income was for the Standard Laundry business, as a monthly average income, six months prior to February, 1932; will those books show that?

A. It should, yes.

Q. And could you then tell from the book what the average monthly income was, by months, from March, 1932, through August, 1932?

page 36 } A. Yes.

Q. I wonder if you could, in order to save the time of the Court, go over the books and make a statement showing that, while we are calling some other witnesses, and then we will call you back on the stand.

A. Yes.

Q. And do you have any statement showing the monthly income, already prepared?

A. Not in these books. This is just for sales. I can prepare the sales.

Q. If you will, please prepare the average monthly sales from September, 1931, to February, 1932, and then the sales, by months, actual monthly sales, from March, 1932, on until

February, 1934; just by months. If you will prepare that statement, we will call you back later. You may take the books out with you. I will appreciate it.

And further deponent sayeth not.

LOUIS PASTELNICK,
a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. You are Louis Pastelnick, the complainant in page 37 } this case?

A. Yes, sir.

Q. Mr. Pastelnick, I show you Complainant's Exhibit #2 and ask you when you received that.

A. I received this on the 5th of July, 1932.

Q. July 5th, 1932?

A. Yes.

Q. Speak out so the jury can hear you. Turn around this way. I notice that this notice here, which is dated July 2nd, 1932, and sworn to on that day, says that you were absent from business, that is, that you left your employment without the consent of the corporation (and this was the 2nd of July) on Saturday, the 18th of June. I ask you if you did leave your employment for any extended length of time, other than you were doing in your regular work, on Saturday, June 18th, 1932?

A. Well, on Saturday, June 18th,—

Q. That was the week after you were married?

A. That's right. I was working to five-thirty that evening and about four-thirty, my wife called me up—

Q. Mr. Pastelnick, I said were you away from business, as set forth in this notice?

A. I might have been out for collections or page 38 } straightening out a customer or making a special delivery and came right back. I may have stepped out for that purpose.

Q. Would you, on your regular business out, have any particular time for being out?

A. No. Each time it would probably take me a half to three-quarters of an hour. I went with the delivery car, especially on Saturdays, as I was the only one that knew all the orders and it was my business to see that all the stock got out because we had no delivery on Sunday.

Q. This notice to you, dated July 2nd, 1932, which states that you were away from business on the 18th of June, 1932, says, among other things, "and for other reasons not herein stated". It also says it is based on paragraph 2 of the contract. Now, Mr. Pastelnick, I ask you whether or not you devoted all of your time to the services of the corporation and served it in all respects faithfully during the period of time from the time you were employed up until you received this notice when they breached this contract with you?

A. Well, I never did have regular office hours. I used to come in at six in the morning every morning and stayed until school time. I used to go to school in the evening and took up television theory and stayed until eight o'clock.

Q. Please answer the question.

page 39 } A. I used to stay from six to eight o'clock, until all the drivers were away. I was the last one to go out.

Q. Did you work there for the Standard Laundry from the time you were employed, in February, until you got this notice, giving your entire time to the company and serving it faithfully?

A. Yes, sir.

Q. And did you, at any time during that period of time that you were actually employed by this company, prior to the time you received this notice, did you, in any manner, directly or indirectly, disclose to anyone, to any person, firm or corporation, the name or address of any customer of that corporation or divulge any secret information you had obtained?

A. No, sir.

Q. On this notice to you, Plaintiff's Exhibit #2 which is dated July 2nd, 1932, it says that on the 18th of June, you were way. Did you work from the 18th of June, until you received this notice from the company?

A. Every day. I worked every day and I worked after I received the notice.

Q. Did you work during that period?

A. Yes, sir.

page 40 } Q. Did you know of any reason why they would single out Saturday, June 18th, two weeks before they made up this notice they gave you, as a reason for terminating your employment?

A. Absolutely not.

Q. Have you computed what you have made since you were discharged pursuant to this notice from the company, as income? Just how much have you made?

A. In what period do you mean?

Q. The period of time from the last check you got from

the Standard Laundry under this contract until February 23rd, 1934; two years after the date of this contract.

A. You want to know the total amount?

Q. Yes.

A. \$874.00.

Q. \$874.00?

A. Yes, sir.

Q. That is income that has resulted from your own independent efforts?

A. Yes.

Q. Does that take into consideration any income you may have received from any other sources?

A. No.

page 41 } Q. In addition to that, did you not receive from the federal government compensation for disability suffered in the World War?

A. Yes, I used to get \$40.00 a month.

Q. That is not included in the \$874.00?

A. No.

Q. I believe you said, or started to say a while ago, that you worked even after you received this notice. Just tell us what occurred. When did you get this notice?

A. July 5th, 1932.

Q. That was on what day of the week?

A. Tuesday.

Q. And the 2nd was on Saturday?

A. Yes.

Q. What did you do when you got the notice?

A. I came into the office that morning. No. The morning I got the notice—well, of course, not in the morning. The notice I received was on the 5th of July, because the mail generally comes at eight thirty or nine in the morning and I go to work early.

Q. What did you do?

A. When I came home Tuesday evening, I found the notice there.

Q. In other words, you worked Tuesday all day
page 42 } before you got the notice?

A. Before I knew about it, yes. I had the notice at home but didn't know about it.

Q. Was anything said to you on Tuesday when you got the notice that night?

A. Yes.

Q. What was said?

A. The owner, Mr. Zimmerman, the old gentleman, the one I signed the contract with, called me over on the side and he said to me, "Listen, Pastelnick, I cannot afford to keep you.

I got more trouble with my sons in the last few weeks so that it has got to be either you or my family and I cannot keep you. I got to break up with you". I never had an idea that he sent me that notice already and I said, "Well, if you cannot keep me, have you any reason? Isn't the business I built up, constructively and financially, doesn't that justify me to enjoy the fruits of the business I have given you now?" He says, "That's why I don't need you. I have three big, husky sons and we can take it up, ourselves".

Q. How much had you increased the business?

A. Approximately one thousand; from seven hundred and fifty to one thousand additional collections.

Q. You mean that the business was taking in from \$750.00 to \$1,000.00 more at that time than at the time you page 43 } came there with them?

A. I go by that figure by what Mr. Zimmerman told me when I went to work there; that he had \$350.00 to \$450.00 collection a week. After bringing in all that business—and I was treated like a member of the family. I was very familiar with these accounts and he asked me to look over these accounts many times and I saw they had increased over the one thousand mark; maybe fourteen hundred some weeks. Naturally, I think I increased that additional business. I was the only outside man. I was the only builder.

Q. How did you come to get a job from Mr. Zimmerman?

A. I was working with a man in the federal bureau—

Q. What was your first salary with Mr. Zimmerman?

A. \$10.00 a week.

Q. How long did you work for \$10.00 a week?

A. The first four days.

Q. And after that, what?

A. After that, he made up with me that he would give me, I don't recall, \$17.00 or \$20.00 a week.

Q. How long did you work for that higher figure?

A. The following week I got that raise. When he gave me \$10.00 a week, I went out half a week and he gave me half of the \$10.00 but the following week, I think page 44 } it was \$17.00 or \$20.00. I cannot recall now. That is what I got the following pay-day. That was Saturday. Four weeks after that I was raised to \$25.00. Finally, it came up to the point of signing a contract. He wanted to protect himself on all the business I brought in. I said all right, I would sign a contract for a year. He said no, to make it for two years. I said, "Give me a chance. Let me think it over". He gave me a chance and in three days I gave my answer. I said, "Yes, I will sign a contract for two years, commencing February 23rd". At that time,

he had boosted my salary from \$25.00 a week to \$40.00 a week under the condition that I buy my own gasoline; that he would either buy the gasoline and oil for my car and give me \$35.00 a week or I buy it and he give me \$40.00 a week. So, with that understanding, he gave me \$40.00 a week.

Q. And you used your own automobile in the plaintiff's business?

A. Yes.

Q. And Plaintiff's Exhibit #1 bears your signature and is the contract between you and the Standard Laundry, Mr. Pastelnick?

A. Yes, sir.

Mr. Miller: You may cross examine.

page 45 } CROSS EXAMINATION.

By Mr. Gloth:

Q. Let me see that little card you had there to show what you made since this contract was terminated.

A. I don't mind.

Q. Earnings from August 1932, to February 1934:

A. That's right.

Q. For August I see you have nothing.

A. Yes.

Q. What does that mean? March you sold what?

A. In March I sold out the business.

Q. March 1933, you sold the business you were in?

A. Yes.

Q. When did you go in business?

A. I was in two businesses.

Q. Speak so the jury can hear you.

A. In August, we organized the coat and apron firm.

Q. August of when?

A. 1932.

Q. August, 1932?

A. Yes, and Mr. Riley had the money and I had the experience. I did not have a job. I was laid off with this firm and I had just gotten married and had to make a living so I just decided to go in and that would be my opportunity. We bought a little stock of coats and aprons and started off to deliver and solicit customers and actually worked it up to a point where we needed more money to get more coats and aprons.

Q. Let me interrupt you here. You say you and Mr. Riley started this coat and apron business?

A. Yes.

Q. And you formed a partnership, and not a corporation, at first?

A. A partnership; no corporation.

Q. And you went in the coat and apron business?

A. Yes.

Q. What is that business?

A. Coat and apron business? Supplying to confectionery, grocery or other stores or places, coats and aprons and then we laundered them.

Q. And you called that the Victory Coat and Apron Company?

A. Yes.

Q. And that business was operated by you and Mr. Riley, as partners?

A. Yes.

Q. And you went out and solicited firms, organizations and apartment houses for their business.

page 47 } A. Yes.

Q. And after you got their business, you took it to the Victory Laundry and had it laundered?

A. No, there was no Victory Laundry at that time.

Q. Where did you take them to have them laundered?

A. To the North East Laundry. They had an office on K Street.

Q. You were soliciting and Mr. Riley was a salesman?

A. Both of us were driving and soliciting.

Q. Among those solicited, did you solicit the Broadmoor Apartments?

A. Broadmoor called me up to give them an estimate. That was before the Christmas holidays of 1932. They asked what it would cost to buy their own linen under my prices. So, all right, they called me up and asked me to come down and he said they wanted to buy their own linen; what did I think it would cost them to stock "at your prices", because we get mill prices from the wholesaler. I gave them a figure and they thought it was running into too much money and so he said, "I will just keep on being supplied instead of buying my own linen". I said, "All right, you want to be supplied". He said, "You send me a figure that you would be willing to supply me at. Give me some figure on each speci-
page 48 } fied item—so much per cloth and per coat and per apron".

Q. You did their business?

A. Yes.

Q. And prior to the time you did their business and while you worked for the Standard Laundry, the Standard Laundry was doing their business?

- A. That is right.
- Q. So you took that business away from the Standard Laundry?
- A. I did.
- Q. And when you worked for the Standard Laundry, in Roslyn, under this contract, the Westchester Apartment was having its coat and apron work done by Standard Laundry?
- A. That's right.
- Q. And after you left Standard Laundry, you solicited and got the business of the Westchester Apartments?
- A. That's right.
- Q. That is a competitive business?
- A. All business is competition.
- Q. And were you not giving, in this business, the same service—didn't those coats and aprons belong to the Standard Laundry and not to the apartment houses?
- A. No. When I solicited the stock, all the firms were against me. In the first place, because I was the
 page 49 } only man in the market at that time who did not belong to the linen associations and if I got customers, they used to make it their business to steal my linen. I found out many times that they took my linen away because they were all working against me, including Standard, as well as Elite and others.
- Q. And you went after all the apartment houses or confectionery stores and others and solicited them to get their business away from the Standard Laundry after you left the Standard Laundry?
- A. I don't know as I went after the Standard Laundry particularly. I went after all business.
- Q. You went after all businesses?
- A. Yes.
- Q. And you were doing coats and aprons, thru your soliciting, that had on them the mark of the Standard Laundry?
- A. I never saw any Standard Laundry marks on my coats and aprons. I would say, "Here, give that to your laundry man". If I did that, they would do it to me. I never saw anything and if my partner saw anything, he would do the same thing.
- Q. You drew this contract?
- A. Both of us did.
- Q. Who got the contract up?
- A. I suggested most of it.
- page 50 } Q. Didn't you, as a matter of fact, write it up and bring it to Mr. Zimmerman to have him sign it?
- A. No.

Q. Who did the handwriting? Was it done on a typewriter or in long hand?

A. It was originally in long hand.

Q. Was it in typewriting after that?

A. In the first place, before it was in long hand, Mr. Zimmerman was after me—

Q. I asked you who had that done in typewriting?

A. The bookkeeper of that firm did it.

Q. You did not draw this contract?

A. Yes. Yes.

Q. You both signed it?

A. Not right away. He had it in his pocket three weeks before we signed.

Q. And you finally signed it on the 23rd of February, 1932?

A. Yes. That's right.

Q. And you lost your job when?

A. I lost my job when I got my notice; four weeks notice.

Q. When did you start going in this competitive business; Victory Laundry?

page 51 { A. In the month of August.

Q. You remembered your contract very well, did you not, Mr. Pastelnick?

A. Very well.

Q. You remembered your contract, paragraph 3, in which you say this:

“(a) That he (meaning you) will not, during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, directly, or indirectly, disclose to any person, firm or corporation the name, address or requirements of any customer of the Corporation and that he will not divulge any other information that he has or shall have acquired during his period of employment.”

You remembered that, did you?

A. Yes. That paragraph says “during employment”. I was not employed at that time.

Q. But you are claiming employment during the whole time.

A. I claimed it but it didn't do me any good.

Q. Didn't you write them a letter on July 6th, 1932? Isn't that your signature there? Look at this and see if this is your signature.

A. Yes, it looks like it.

Q. Read it out loud to the jury.
page 52 } A. This is to the Standard Laundry.

“Standard Laundry Service,
Mr. A. Zimmerman, President,
Rosslyn, Va.

Gentlemen:

This is to advise you that I received this morning the paper writing purporting to be notice that your corporation does not require my services beginning thirty days from July 2nd, 1932. I do not feel that this notice is in accordance with our contract entered into February 23rd, 1932, neither do I feel that I have violated any provision of the said contract and I intend to continue as an employee of your corporation, under the provisions of said contract until the termination thereof two years from February 23rd, 1932.

I also wish to state that I intend to hold you under our agreement of February 23rd, 1932, and if this letter does not fully advise you, I suggest that you take the matter up with my attorney, Warren E. Miller, 840 Shoreman Building, Washington, D. C.

Very truly yours,

(Signed) LOUIS PASTELNICK.”

It is dated July 6th, 1932. I received the notice on July 5th, 1932, and I immediately asked a lawyer's advice on that.

Q. If you wanted to hold them to that contract,—did you expect them to hold up to their part of the contract until the contract expired?

page 53 } A. If he had held to his contract, I would not have gone into this business.

Q. And you violated your contract by going into it?

A. No. I went in business after he breached his contract. I did not cancel the contract. I reported for work every night and every morning to the Standard Laundry and he abused me and chased me when I went in there so how could I throw up my employment?

Q. Did you not say in your letter, “I expect to hold you to your contract”, and didn't that contract provide,

(c) That he will not for a period of one (1) year after the end or termination of his employment as aforesaid, directly or indirectly, either as principal or employee, or solicit, serve

or cater to any of the customers served by him or by any other employee of the Corporation during his employment with the Corporation.

A. At the end of the period; at the end of the life of the contract but I had one and a half years to go.

Q. Is it your idea that you were able to go into a competitive business and field and get all the customers and yet hold the Standard Laundry up to the terms of this contract, Mr. Pastelnick?

A. It was not my idea to do that while I was page 54 } in the employ of that corporation but when I was practically thrown out just four weeks after my marriage just when a man needs a job, and I had done this man a world of good, he threw me out and terminated my contract without reason or rhyme. What was I to do? Should I stand there and let my wife starve? What would you do in my place? I went in business.

Q. Did you not tell him you were going to hold him to the letter of his contract?

A. Yes, after I got the notice.

Q. You wanted to hold him to the letter of the contract but you did not want to hold yourself to the contract?

Mr. Pumphrey: We object to counsel arguing with the witness.

By Mr. Gloth:

Q. After you got that notice, you got four checks of \$40.00 each from the Standard Laundry?

A. That's right.

Q. And while you worked for the Standard Laundry, you asked Mr. Zimmerman, whom you don't seem to like now, if he would help you get \$75.00 from the American Small Loan Company, which he later had to pay. Is that correct?

A. He didn't pay that in the first place. I paid two payments on that and I wrote a letter to the company that I lost my job with him, my employer which happens to be page 55 } the endorser, and as soon as I got straightened out, I would continue to pay the installments and that letter was mailed to the company. When I lost my job, I didn't have money to pay it back.

Q. I am not asking you that. I asked if you did not get the \$75.00 and if the receipt does not show payment by Abraham Zimmerman?

A. Yes. He was the endorser. I presume he would have to pay it.

Q. You did not pay it?

A. I paid two payments.

Q. How much did you pay?

A. I think each payment was between three and four weekly payments. I cannot recall. Maybe it was \$5.00. I have the book home to show I made two payments and Mr. Zimmerman made the balance good.

Q. You did not enquire about paying the balance?

A. I didn't have the money. I couldn't help it.

Q. You got in with the Victory Laundry? I do not mean the Victory Coat and Apron Company.

A. There was no such thing as Victory Laundry but there was the Victory Coat and Apron Company.

Q. That was incorporated when?

A. In the month of November.

page 56 } Q. How long did you work for them?

A. I did not work for them.

Q. Did you solicit for them?

A. I was a partner in the business.

Q. In November. How long did that business run?

A. From November to March.

Q. Did you make a memorandum of that on this card?

A. In the month of March, I received \$300.00 for good will that I sold to my partner.

Q. And they were in the same kind of business as the Standard Laundry?

A. Who was?

Q. Victory Laundry. That was your laundry?

A. Yes.

Q. And you were in the same kind of business as the Standard Laundry?

A. Yes, that's right.

Q. And you were taking all the customers from Standard Laundry that you could take?

A. We didn't deal with customers for family wash. I only dealt in coats and aprons. The laundry branch, there was another man in charge.

Q. You were a partner and you solicited in that business?

A. I was but I had nothing to do with the family wash; only coats and aprons.

Q. I am not asking you about that. I asked you if you were not doing the same kind of business as the Standard Laundry and if you were not trying to get business away from them.

A. I was.

Q. And so you were violating your contract with the Standard Laundry, were you not?

A. Before I organized the Victory Coat and Apron, there was a breach of contract on the part of Standard Laundry and I tried to make a living, which you cannot deny a man.

Q. What did you do after August; anything?

A. September—\$10.00 a week.

Q. September—\$10.00 a week. That was in competitive business against Standard Laundry?

A. Not particularly Standard Laundry but against all coat and apron businesses.

Q. October—\$40.00.

A. That's right.

Q. November—\$20.00.

A. Yes.

Q. And December—\$30.00.

A. Yes.

Q. And that was all with the Victory Laundry
page 58 } Company?

A. Victory Coat and Apron.

Q. And, later on, the Victory Laundry?

A. Victory Laundry incorporated November 7th.

Q. And you were a partner in that business?

A. Yes.

Q. And you were a partner in both businesses?

A. Yes.

Q. And in January, you made \$60.00. What was that for?

A. \$15.00 a week drawing account.

Q. And in February, \$80.00?

A. I was raised \$5.00 a week because my other partner happened to buy out Mr. Riley, another partner, and the whole thing depended on me and that gave me a raise of \$5.00 and that made my drawing account \$80.00 a month.

Q. This December—\$48.00. What year was that?

A. December, 1932.

Q. What was that for?

A. The \$48.00?

Q. Yes.

A. Salary, of course.

Q. From whom?

A. From the Victory Laundry.

Q. And in January, \$96.00?

A. January? \$96.00? From the laundry, too.

page 59 } Q. February—\$36.00?

A. That's right.

Q. That was in nineteen thirty when?

A. Part of 1932, and part of 1933.

Q. Did you ever work at any other time?

A. I did.

Q. Have you got that on the book?

A. Yes.

Q. Where is it on the book; how much does it amount to, Mr. Pastelnick?

A. We are only figuring to February; to the life of the contract.

Q. That's right, the life of the contract. In other words, you are holding the Standard Laundry responsible for the life of the contract for \$40.00 a week—\$50.00 a week, even though you, yourself, admit that you were in two different kinds of businesses, businesses of the same kind against the Standard Laundry?

A. I do not admit anything. I admit my employer breached the contract and it is the birthright of a man to go and make a living for his family. After he breached it, I went in the coat and apron business, the only business I knew, and that was the business I followed.

Q. Did you ever work for the Electric Sanitary Laundry?

A. No.

page 60 } Q. Did you ever hear of them?

A. I certainly did.

Q. But you never worked for them?

A. No.

Q. Is your name Pastelnick or Post?

A. Pastelnick and Post. It is Pastelnick but I am called Post for strictly business reasons.

Q. Part of this time you were not able to work, were you, Mr. Pastelnick?

A. Part of the time after the breach of the contract?

Q. Yes.

A. I was not able to get a job.

Q. Part of the time you were not able to get a job because you were in jail, were you not?

A. Yes. I was in Occoquan for seventy-five days; ninety days, with fifteen days off for good times.

Q. You were sentenced from the District of Columbia for ninety days in Occoquan?

A. That is right.

Q. Prior to that time, you came from New York, did you not?

A. I did.

Q. And in New York you went to the penitentiary for forgery and served two years for forgery?

page 61 } A. Yes.

Q. Did you plead guilty when you went to the penitentiary in New York?

A. I was found guilty.

Q. After trial or how?

A. No jury trial. By the judge.

Q. You were found guilty and got two years for forgery?

A. Yes.

Q. And you also were sent to the Reform School as an incorrigible, were you not?

A. When I was a minor I was sent to Reform School, many, many years ago.

Q. You also were sent to the workhouse for one year and six months?

A. Never for one year and six months. It was for six months.

Q. And in 1916, you were sent to jail for petty larceny, were you not? And you were sent to jail for jostling?

A. For what?

Q. Jostling; as a pickpocket.

A. Not for jostling.

Q. What was it for?

A. Minor offenses such as staying away from school and throwing bricks.

page 62 } Q. Isn't jostling the same as pickpocketing?

A. I don't know as I ever heard that word.

Q. I am showing you the record here.

A. If it is on record, it must be it.

Q. I show you the record and ask you if that isn't so? "Six months in the House of Refuge in New York for jostling."

A. That's it. I guess it is.

Q. Does that say "jostling"?

A. Yes.

Q. And you were guilty of that?

A. I don't know. I was a little kid. It was in 1927.

Q. That is not so many years ago that you went to jail for forgery?

A. It was business reasons.

Q. Is that the same reason you had to try to hold the Standard Laundry to this contract?

A. No, it was not. Just because a man was in the penitentiary it doesn't say he must be kept down for the rest of his life and this is the place I started to go in a new life. I got a job with the Standard Laundry. It was the man I was with before that caused me to go to the penitentiary. I looked at it in a different way. I tried to forget it.

page 63 } Q. I did not ask you that. All right. After you got your start, didn't you go to jail after your marriage?

A. Yes, as a result of the Victory Laundry business. A

\$5.00 check. The testimony of my partner will tell the whole thing of the Occoquan proposition: insufficient funds in the bank.

Q. Doesn't your contract here provide, Mr. Pastelnick, does this contract not read:

"3. The employee agrees that a violation on his part of any covenant herein will cause such damages to the Corporation as will be irreparable and the exact amount of which will be impossible to ascertain and that the Corporation shall, therefore, be entitled as a matter of course to an injunction restraining any further violation of the said covenants by himself, his employee or other persons associated with him, such right to be cumulative to whatever other remedies the Corporation may have in the premises."

Do you not admit that you violated your contract?

A. No.

Q. Even though they made a mistake in violating theirs?

A. I don't know whether they made a mistake. I think it was planned because they only used me to build their business from the ground up and, of course, they could
page 64 } carry on the work I had built up. Of course they could carry on without me.

Q. How long were you there?

A. Five months.

Q. And you didn't build up the Victory business, did you? They failed?

A. No, it did not fail.

Q. It isn't in business now, is it?

A. No. The business was sold by a partner of mine.

Q. How much did you get for it?

A. I don't know. I got \$300.00. I sold out to a partner of mine.

Q. Who was he?

A. Plotnig and Rich.

Q. Don't you know how much the business brought?

A. I sold my shares and got \$300.00 for my shares.

Q. You say here you got \$380.00.

A. \$80.00 was for wages and I figured I went out in March.

Q. Do you remember about being found asleep in Washington while you were still working for the Standard Laundry; remember that? A young lady found you asleep?

A. I don't know. I am a man that for the last fifteen years
page 65 } I have not slept much so it wasn't possible I could fall asleep on the job.

Q. How much did you sleep?

A. Average six hours.

Q. So it would be impossible for you to fall asleep on the job?

A. No, but I cannot sleep in the daytime and I cannot sleep much at night.

Q. You told Mr. Miller you were not away on that Saturday, the Saturday prior to the time your services were not wanted any more. Don't you remember you went to Atlantic City that week-end?

A. I went there Saturday night and arrived there Sunday morning.

Q. Did you not go Saturday morning?

A. I got my pay there Saturday morning. How could I go to Atlantic City?

Q. And were you not loafing around and doing no work, after you got your contract signed up, and that is why you lost your job?

A. I do not know whether that is logical for any thinking man to assume. In the first week, I got \$10.00 a week and worked up to \$40.00. I kept getting raised every week. If

I had not produced, do you think my employer
page 66 } would raise me every week and then have a contract? How can that be explained that I was loafing after he raised me and praised me. He said, "God sent me a gift when he sent me Pastelnick".

Q. God sent what?

A. God sent him a gift "when he sent me Pastelnick to work for me".

Q. Mr. Pastelnick, isn't this what happened: You kept working along until you got the contract signed up and after it was signed, you began to loaf on the job?

A. No.

Q. And after you lost your job, they still gave you your wages of \$40.00 a week and you wrote this letter and said you would hold them to the contract?

A. After I got the notice, I gave them a chance to change their attitude. I notified him of my attitude and he notified me of his when he sent me that notice and it was only fair after that for me to notify him of my attitude.

Q. And if you were going to hold them to strict accountability of the contract, didn't you expect them, likewise to hold you, too?

A. Not after they breached it.

Q. And you think you didn't do anything wrong even though of what the contract stated?

A. No, I did not.

page 67 } Mr. Gloth: We offer in evidence these four checks the two records, and the letter dated July 6th, 1932, to the Standard Laundry, signed by Louis Pastelnick.

Court: The contract and notice are already in evidence and I don't know whether there is any objection to the checks.

Mr. Miller: There is no objection to the checks nor the letter.

By Mr. Gloth:

Q. When did you say you formed this company, Mr. Pastelnick?

A. In the month of August.

Q. And you were dismissed when?

A. I was not dismissed. I sold out my interest.

Q. I mean in the Standard Laundry. When were you dismissed from there?

A. Dismissed? I was dismissed on the 8th.

Q. 8th of what?

A. July.

Q. And you say you came over every day for one month, after your dismissal?

A. Yes.

Q. But while you were going there to the Standard Laundry every day, you were already forming this partnership in the other business?

page 68 } A. I thought the best thing was to show them I was on the job.

Q. But you did not tell Mr. Zimmerman that while you were not on the job you were starting another laundry, did you?

A. I reported and he insulted me and chased me like a dog.

Q. And while you were going over there and reporting, as you say, you were then forming this other partnership?

A. How could I form the partnership when the partnership took place in the month of August and this reporting took place in July? How could I report the partnership then?

Q. But you could not go into that business in fifteen minutes, Mr. Pastelnick.

A. No, but I went in there in one or two weeks' time.

Q. How long did you know Mr. Riley?

A. About a year.

Q. How long had you talked to him about this business?

A. While in the hospital, he said he wanted to go in my line of business. He knew that I knew Mr. Zimmerman—

Q. When was that?

A. When I got my job with Mr. Zimmerman in the month of January or February. I got my job February 7th. Mr. Riley was in Mt. Alto Hospital and I said something about my work and he said, "Get me a job. I am getting page 69 } out of the hospital soon". I said, "You don't know anything about the coat and apron business", and, as a result of that talk, we went in partners, after I was through at Zimmerman's.

Q. And you were talking to him about that business at the time this contract was signed?

A. No, I talked about getting him a job with Mr. Zimmerman because I had the rating and had the job of hiring and firing a man.

Mr. Gloth: I want to offer in evidence this note and receipt of Zimmerman and ask that it be marked as Defendant's Exhibit 2.

Mr. Gloth: That is all.

Mr. Miller: That is all.

And further deponent sayeth not.

TILLIE ZIMMERMAN

having been previously sworn, is recalled and testifies as follows:

DIRECT EXAMINATION.

By Mr. Miller:

Q. Miss Zimmerman, did you go over the books and see what the average income was prior to February, 1932?

A. I have the sales for the six months.

page 70 } Q. For the six months just preceding February, 1932, what was the total amount that the business took in?

A. The total amount of business, \$2,360.58.

Q. And what was that monthly income?

A. \$393.43.

Q. Now, starting with February, 1932, would you read off to the Court and the members of the jury the amounts of income, by months, starting with February, 1932?

A. February, 1932,	\$494.75
March, 1932,	931.18
April, 1932,	917.33
May, 1932,	807.25
June, 1932,	1,170.66

July, 1932,	902.82
August, 1932,	656.99
September, 1932,	815.38
October, 1932,	1,168.22
November, 1932,	1,087.25
December, 1932,	1,039.32

Q. By the way, Miss Zimmerman, this paper you prepared has been prepared by you from the books?

A. Yes.

Mr. Gloth: There is no evidence to show that Pastelnick did this. It was just the business.

Court: Their testimony is that that is the business.

Mr. Gloth: Yes. There is no evidence that he did that.

Court: It is not for me to say what effect it had. The jury will know.

page 71 } By Mr. Miller:

Q. Miss Zimmerman, would you mind inserting there the months that those figures are for?

Mr. Miller: We offer this in evidence. (Plaintiff's Exhibit 3.)

CROSS EXAMINATION.

By Mr. Gloth:

Q. Miss Zimmerman, that shows that business has been increasing every month?

A. Yes.

Q. And it is bigger now than it has ever been?

A. Yes.

Q. And it is bigger now and Mr. Pastelnick has not been there for over two years?

A. Yes.

Q. And business has increased more rapidly in the past year than for the period you spoke of there then at that time?

A. Yes, sir.

Mr. Gloth: That is all.

And further deponent sayeth not.

Mr. Miller: That is the plaintiff's case.

Mr. Gloth: If your Honor please, I desire to make a motion.

Court: We will now recess until tomorrow, as page 72 } far as the jury is concerned. Gentlemen of the jury, there won't be any more evidence introduced today and you are excused until tomorrow morning at 10 o'clock. While out, don't discuss this case with anyone nor allow anyone to discuss it with you or in your presence.

(Jury dismissed.)

Mr. Gloth: If your Honor please, the motion I wish to make is to strike the evidence of the plaintiff on the ground that the evidence, as produced by the plaintiff, is insufficient for any cause of action. Courts are bound entirely by the evidence of the plaintiff as to whether he has any cause of action. Here is the contract, itself, which reads: (reads contract.) He claims his damage, as set forth, to be \$4,000.00. He admits that he made \$784.00 during the time his contract was supposed to run and he writes a letter to the company and tells them he intends to hold them strictly to the contract, which contract provides:

“(a) That he will not, during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, etc.” He says in his letter to them that he is holding them to strict accountability with the contract. Now, it is the contention of myself that the plaintiff, from his own testimony and the testimony of his wife, who, I believe, is telling the truth as far as page 73 } she can tell it,—I see what might happen, his being served with the notice; that irrespective of whether they were right or wrong, and, of course, we have heard only one side, but, as soon as he gets this notice that his services are no longer required, he says, “I am going to hold you to every single item of the contract for the full term thereof”. Not “until I get another job” or “until I can form another company or do some kind of business and take customers away from the Standard Laundry” but “I am going to hold you to strict accountability during the entire term of this contract” and then what does he do? He is fired about July 8th,—from the testimony of the plaintiff, it is hard to tell when he was but I think that is when he was dismissed. In August, and while his money was being paid to him at \$40.00 a week, he formed a company with a man named Riley. Mr. Riley was here today and was in that witness room. The plaintiff and Mr. Riley go into a business known as the Victory Coat and Apron Company and his wife admits and he admits, if your Honor please, that in di-

rect violation of that contract, he went out and got all the business he could get away from Standard, Elite or Yale or any other laundry and he admits that two separate firms, the Broadmoor and the Westchester Apartments, had page 74 } both been doing business and were customers of the Standard Laundry, and he solicited and catered to that business and served them in that business, all in violation of the contract he signed and all in violation thereof when he, himself, said, "I expect to hold you to strict accountability".

What could his damages be under any condition? If he hadn't worked a lick and hadn't written the letter. If he had stayed idle and not attempted to get work, irrespective of who was right or wrong; when his services were dispensed with, he was in duty bound to go out and make a living and his damages would lie between what he actually got and what he would have gotten if the contract had been complied with, provided he lived up to his contract; provided he had not gone out and catered to and had not served and solicited the same kind of business that his employer was engaged in at the time that he had this contract, dated February 23rd, 1932, and so I say that irrespective of anyone else in this case, the very fact that he, himself, entered—and he says he did it knowingly—engaged in, not once but twice, as two separate and distinct companies, engaged in business competitive to the business that the defendant was engaged in, which was in violation of the second paragraph of this contract, is a breach of the contract, the breach of which, according to the last paragraph, the damages are irreparable and page 75 } you can tell that they are and that the defendant company shall be entitled to him not going in any other such business. He says in his letter what he intends to do and yet his very actions are in violation of the same contract. I say he is precluded, under the same law, from claiming damages. He has violated his contract. If he had honestly tried to get work and mitigate the damages he sustained and had come in here with clean hands, although this is not a court of equity, and could say, "I have not violated my contract in any way in the world but have lived up to it to the best of my ability", then there would not be a question in the minds of the jury as to what would be the proper amount of damages to require from the defendant company but when we have these two things, when we have a contract which is so clear that anyone can understand it when it says it is all being done for the good will of the corporation, and when he says that not once, but twice, irrespective of the terms of the contract or its termination thereof, he goes

out and enters a competitive business, he puts himself in a position where he cannot maintain or prove damages of any kind. You can't have your cake and eat it, too. He expects to hold them to strict accountability of the contract. Then he was duty bound to not violate the conditions of his contract and that, of course, is one of the very big things in this contract; every business and every laundry that has
page 76 } a man to solicit, that he will not, within a certain period, go out and solicit customers against the parties with whom he has a contract and when he does, he violates his contract. This plaintiff says he knew the Broadmoor Apartment was a customer of the Standard Laundry and he also went and got the business of the Westchester Apartment, whose work had been done by the Standard Laundry. He took advantage of the things he had learned at the Standard Laundry and went and got that business away from them. He certainly violated his contract there. When I asked him what other apartment houses and what other firms and associations or places of business he solicited, he answered, "I did not confine it to the Standard Laundry. I went and got all the business I could get from anywhere I could get it, whether it was served by the Standard Laundry or not", and I say, as a matter of law, he has precluded himself from a claim of damages and I move to strike all the evidence of the plaintiff because, taking it for granted to be true, as it is he is precluded from recovery under the contract.

Mr. Miller: I do not believe much argument is necessary. The contract was breached, according to the evidence of the plaintiff. As to damages, if he had made more money than he made under this contract, he would not have brought this suit. It was his duty to, by due diligence, make as
page 77 } much money as he could. The laundry business was all he knew, and, carrying on as he did, as any reasonable man would do under the circumstances, we feel that the contract having been breached by the defendant, he was doing no wrong in what he did and we feel that there is plenty of evidence to support the verdict that we feel sure the jury will bring.

Court: I reserve my decision on the motion until tomorrow morning. I would like to go back over the books I have studied on this question. I will give my decision in the morning.

Thereupon court adjourned at 5 o'clock P. M.

page 78 } In the Circuit Court of Arlington County, Virginia.

Louis Pastelnick, plaintiff,

v.

Standard Laundry Service, Inc., defendant.

This cause was continued this day, the 24th of October, 1934, at 10 o'clock A. M., with counsel, as heretofore noted, present. The court was called to order and the following proceedings took place:

Court: Gentlemen, the motion to strike, as made yesterday afternoon by Mr. Gloth, is denied.

Mr. Gloth: I note an exception.

Court: I am informed that one of the jurymen is ill. Do you wish to go ahead with what you have or what do you want to do about it?

Mr. Miller: It will be agreeable to us to go ahead.

Mr. Gloth: I am willing to go ahead.

Court: Very well. Proceed, gentlemen.

page 79 } BENJAMIN RICH,
a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Tell the court your name and residence.

A. Benjamin Rich; 1356 Staples Street, N. E., Washington, D. C.

Q. What business are you in?

A. Manufacturing.

Q. In 1932, what business were you in, Mr. Rich?

A. In the manufacturing of uniforms.

Q. Were you ever interested in the business known as the Victory Laundry Company?

A. Victory Coat and Towel Supply, yes, sir.

Q. What was the nature of that business?

A. Renting out coats and towels; a renting proposition it was.

Q. Explain to the jury what you mean.

A. I mean that there are some customers that rent towels and coats or uniforms for any purpose, like being so much apiece, and then we collected soiled linen and washed it and served them again.

Q. Were you in that business between February, 1932, and February, 1934?

A. I was in that business from the month of page 80 } November, 1932, up to, I believe, October of the following year; 1933.

Q. Do you know the plaintiff in this suit, Mr. Pastelnick or Mr. Post?

A. I do.

Q. How long have you known him?

A. May I tell it in my own way?

Q. Yes.

A. In the month of May, 1932, at the time I was in the business of manufacturing uniforms, the Standard Laundry Service (I know Mr. Post) sent him to me to make certain uniforms. After he came in, he began to talk and our business wasn't running the way it should run and I was in the market for something else. We began to talk and asked me if I I would be interested in the linen business. I didn't know what he meant but I said if he knew of anything, to advise me of it and then I lost track of him until the month of October or November, 1932. I then received a telephone call from him that he was connected with this business that he was in, the Victory Coat and Towel Supply, and that there was also a laundry for sale. I didn't remember the name but he wondered whether I would be interested in this proposition and I said yes, I would. He came to me after a certain amount of dickering and we came together and myself and my brother-in-law purchased fifty per cent of page 81 } that stock in that corporation and we stayed together—may I continue?

Q. Yes, go right ahead.

A. We stayed in business there from November to the following year, 1933, I believe it was the month of March, when I began to see that things were not conducted the way I thought they should be and, after dickering for a certain time, I succeeded in purchasing his stock and became sole owner of seventy-five per cent of the stock. There was another man but I succeeded in buying Pastelnick's stock.

Q. Do you know how much you paid for the stock?

A. I don't remember.

Q. Can you approximate it?

A. I cannot. I don't remember it. After that, we signed a contract with Pastelnick that he was not to engage in a similar business—

Court: What has that to do with this?

Mr. Gloth: The type of business was the same, competi-

tive, as done by the Standard Laundry. It was the exact business and he was part owner in that laundry. At that time, he was engaged in getting customers and doing some of the delivering and collecting.

page 82 } By Mr. Gloth:

Q. Mr. Rich, the business was the exact type of business as the Standard Laundry?

A. Yes.

Q. And he was with you from November until the following October?

A. No. From November until March of the following year.

Q. Was he paid a salary as well as part of the business, Mr. Rich?

A. Yes.

Q. Do you recall his salary?

A. I do not recall. We did not take a regular salary. It was a question of how much we had and it was in the neighborhood of between \$20.00 and \$30.00 a week.

Q. Did he have a contract at that time with your company as to the kind of services he was to give or was it verbal as between the parties of the firm?

A. Do you mean the position he should serve in the corporation?

Q. Yes.

A. He was engaged as manager of that entire side; that is, of the Victory Coat and Towel Supply Company.

page 83 } CROSS EXAMINATION.

By Mr. Miller:

Q. Were you subpoenaed here, Mr. Rich?

A. No.

Q. Or did you come of your own volition?

A. I was not subpoenaed.

Mr. Gloth: You live in Washington, do you not, Mr. Rich?

A. Yes.

By Mr. Miller:

Q. Mr. Pastelnick was a good manager and good laundryman, wasn't he?

A. He had ability. If I thought he was a good manager, he would have been still there on the place.

Q. Did he not show marked ability in this type of work?

A. For a little while, he did. It was rather a short time though.

Q. This business is a rather profitable business, isn't it? About what per cent would you expect to receive from the income you got? In other words, for \$100.00 you took in, how much profit would there be out of that?

A. Mr. Miller, it would be hard to estimate. It would depend upon how much business you are doing in the laundry and service business. When the business is larger, the profits are larger and it is hard to estimate the profit. page 84 } its in that business.

Q. You are unable to say how much salary he drew during that period?

A. Approximately \$20.00 and \$30.00 a week.

Q. Are you positive of that? Can you actually say, as a definite fact, how much he did get?

A. I would not like to say.

Mr. Miller: That is all.

RE-DIRECT EXAMINATION.

By Mr. Gloth:

Q. Mr. Miller asked you if Pastelnick was not a good man. What was your answer?

A. I did not get the answer.

Q. Mr. Miller asked you if he wasn't a pretty good man. What was your answer to that question?

Court: His answer was that if he thought he was a good man, he would still be with him:

By Mr. Gloth:

Q. As a matter of fact, you had trouble with him, did you not?

A. Yes.

Q. Can you tell the jury what the trouble was?

page 85 } Mr. Miller: We object to that.

Court: Just what has that to do with this case?

Mr. Gloth: Mr. Miller brought it out.

Court: It does not show any specific action. Sustain the objection.

Mr. Gloth: That is all.

And further deponent sayeth not.

ETHEL YOUNG,

a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Your name is what?

A. Ethel Young.

Q. Where do you live, Miss Young?

A. 310 E Street, N. W., Washington, D. C.

Q. Where do you work?

A. Standard Laundry.

Q. How long have you worked there?

A. About fourteen months.

Q. Where did you work prior to that time?

A. Victory Laundry.

Q. Do you know the plaintiff, Louis Pastelnick?

page 86 } A. I know him by the name of Post.

Q. Where did you first meet him?

A. At the Victory Laundry.

Q. What was his work there, do you know?

A. My understanding of his work—

Q. Never mind your understanding. What did he do there, Miss Young?

A. As far as I know he was in coats and aprons and I was press girl.

Q. You were press girl?

A. Yes.

Q. Did he have supervision over your work?

A. Not exactly.

Q. I believe you were not able to tell me yesterday as to the marks of the Standard Laundry.

A. Yes, sir, I recognized the laundry marks in the coats and aprons and pants.

Q. Do I understand that in the coats, aprons and pants you laundered at the Victory Laundry, you recognized the marks of the Standard Laundry?

A. Yes, sir, but at that present time I did not know them as belonging to the laundry I am working for now.

Q. Do you know now that it was the marks of the Standard Laundry you saw at that time?

page 87 } A. It was the Standard Laundry mark.

CROSS EXAMINATION.

By Mr. Miller:

Q. Are you doing the same work with the Standard Laundry now that you did with the Victory Laundry?

A. No, sir.

Q. In your work with the Standard Laundry, do you see the coats before they are washed or after?

A. Both.

Q. Do you have occasion to see sometimes a laundry mark of some other laundry in your work?

A. No, sir.

Q. You do not do that?

A. No, sir.

Q. Have you had any other experience in laundry work other than with these two laundries?

A. No, sir.

Q. Do you have any knowledge with reference to the gathering in of these soiled linens to the laundry; the manner in which it is done?

A. I don't quite understand you.

Q. Do you know anything about the manner in which the laundry is sent to the laundry from the people?

A. No.

page 88 } Q. Do you know that some of these customers change laundries from time to time; you know that?

A. No, I don't.

Q. You do not know they ever change?

A. No.

Q. In other words, when a customer starts with a laundry, he just stays with that laundry?

A. The average person does if they like the laundry.

Q. Can you state as a fact whether or not laundry comes into the Standard Laundry bearing laundry marks of other laundries, occasionally?

A. I have not seen it.

Q. When linen is soiled and taken in and the customer may have had it done previously by another laundry, don't you know it can be washed with other things; don't you know that is easily done?

A. I guess it is easy for it to be done.

Q. In other words, when clothing is dirty, it is rather difficult to read the mark but when it is clean, it is easily done?

A. I suppose so.

page 89 } RE-DIRECT EXAMINATION.

By Mr. Gloth:

Q. Coats and aprons are in a different category than other linen, isn't it?

A. Yes, sir.

Q. The coats and aprons you work on, to whom do they belong?

A. The coats and aprons have the Standard Laundry mark on them. Many I worked on at the Victory Laundry had the Standard Laundry on them.

Q. Do you know whether the coats and aprons belong to the laundry or to the customers?

A. They belong to the laundry, is my understanding.

Mr. Gloth: That is all.

RE-CROSS EXAMINATION.

By Mr. Miller:

Q. Miss Young, were you served or did you come at the request of your boss?

A. Just what do you mean?

Court: Did an officer of the court serve a paper on you to be here today?

A. No, sir. He did not ask me, personally.

Court: Who did?

A. No one asked me, personally.

page 90 } By Mr. Gloth:

Q. Who asked you? Tell the facts, Miss Young.

A. I happened to know. I did this work at the Victory Laundry and when I first came to work at the Standard Laundry, me and a couple of other girls made the remark about doing the Standard work at the Victory.

By the Court:

Q. Who asked you to come here?

A. There didn't anyone especially tell me to come here.

By Mr. Gloth:

Q. Tell the facts. That is all you have to tell.

A. There are no exact facts to tell.

Q. How did you know the trial was coming up? Did you talk with me?

A. I talked with you yesterday.

Q. Did you talk with me at the laundry?

A. No, I didn't.

Q. No, you were not there that day, were you?

A. No, sir.

And further deponent sayeth not.

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MARY MOODY,

a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Your full name is Mary Moody?

A. Yes, sir.

Q. Where do you live, Miss Moody?

A. 619 Elliott Street, N. E., Washington, D. C.

Q. Where do you work at the present time?

A. Standard Laundry, Rosslyn, Virginia.

Q. How long have you worked there?

A. I don't just know exactly how long.

Q. About how long?

A. It has been eight months or nine.

Q. Did you ever work for any laundry prior to that time, Miss Moody?

A. Yes, sir.

Q. What laundry?

A. You mean before that time?

Q. Yes.

A. Victory Laundry.

Q. Do you know the plaintiff in this case?

A. Mr. Post? Yes.

Q. What was his name then?

A. Mr. Post.

page 92 } Q. Is that the name you knew him by?

A. Yes.

Q. Where did you first meet him?

A. Victory Laundry.

Q. What were your duties at the Victory Laundry?

A. In the day time, I worked on finish bundles and lots and in the evening I stayed two later and worked on coats, aprons and uniforms.

Q. In the evening?

A. Yes, and also pants.

Q. Do you know whose coats and aprons you were doing there at the Victory Laundry?

A. I don't know whose they were but I know many of them were marked with the Standard Laundry mark.

Q. What was Mr. Post's connection with the Victory Laundry; was he one of the bosses?

A. I don't know whether he was a boss but I know he handled coats and aprons and I pressed them, the other two girls and I, and then he came and took them from the table.

I know I counted them because I was paid so much a piece.

Q. He told you to take them to the table and count them, did he?

A. Yes.

Q. He was superintendent of your work, or supervisor?

A. Yes, he was supervisor.

page 93 } Q. Did you see many of the Standard Laundry marks on the coats and aprons while you worked at Victory Laundry?

A. Quite a few.

CROSS EXAMINATION.

By Mr. Miller:

Q. When did you first know that these laundry marks that you saw there were marks of the Standard Laundry?

A. When did I first know?

Q. Yes.

A. When I did them. You could see them plain enough. They were run in big letters.

Q. What were the letters?

A. Standard Laundry, Rosslyn, Va.

Q. The name, itself, was stamped on?

A. Yes. On the pants, inside the belt; uniforms, inside the pocket and on the coats, inside the side pocket.

Q. What work are you doing with the Standard Laundry now? What are your duties?

A. Finish bundles and lots.

Q. Is that after the work has been laundered and ironed?

A. Before I press it up and then the other girls touch it up.

Q. In other words, it has been washed before
page 94 } you handle it?

A. Yes.

Q. Don't you sometimes run across, now with the Standard Laundry people, a garment stamped with the name of another laundry?

A. No, sir.

Q. You never do?

A. No, sir.

Q. Whom have you talked to about this case, Miss Moody?

A. About what case?

Q. This case here in court today.

A. To nobody.

Q. You did not talk with anybody about it?

A. No. It was none of my business.

Q. How did you come to be here today? Were you sub-

poenaed by the Clerk or the Marshal or the Sheriff with a paper to be here today?

A. No. I was asked if I worked at the Victory Laundry and I said I had and then they asked if I had ever seen anything there at Victory with the Standard mark on it and I said that I had.

By the Court:

Q. What are you doing here today? Did anyone ask you to come here today?

page 95 } A. Yes, sir.

Q. Who?

A. He. (Indicating Mr. Gloth.)

Q. Who; Mr. Gloth?

A. Yes, sir.

By Mr. Miller:

Q. During the past year, isn't it a fact that the Standard Laundry has put on three new routes; three new trucks?

A. Indeed, I do not know. I know nothing about their trucks.

Q. You are positive that you never see any other laundry symbols in your work there with the Standard Laundry?

A. No, I do not.

Mr. Miller: That is all.

And further deponent sayeth not.

GLADYS VIOLA BLACKBURN,
a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Tell the jury your full name.

A. Gladys Viola Blackburn.

page 96 } Q. Where do you live, Miss Blackburn?

A. 611 H Street, N. W., Washington, D. C.

Q. By whom are you now employed?

A. Standard Laundry.

Q. In Rosslyn, Virginia?

A. Yes, sir.

Q. How long have you worked there?

A. A year this month; the 10th of October.

Q. What kind of work do you do there?

A. Run the shirt unit.

Q. Where did you work prior to that time?

A. Where was I working before the Standard Laundry?

Q. Yes.

A. For the Victory Laundry.

Q. For the Victory Laundry. Do you know the plaintiff in this case; this gentleman here? (Indicating Mr. Pastelnick.)

A. I know him now and knew him when he came there.

Q. By what name did you know him?

A. He came there as Mr. Post.

Q. What position, if any, did he occupy there?

A. Coats and aprons.

page 97 } By the Court:

Q. By "Coats and aprons", what do you mean?

A. He brought them in there. I guess he solicited. He brought them in there and taken them out. When he first came there, he taken them in and out, himself.

By Mr. Gloth:

Q. For how long was he there?

A. I don't know how long he was there.

Q. Did you work under his supervision while you were there?

A. Only at night when I did his coats. I worked for Mr. Rich.

Q. Why did you do coats at night?

A. They were specials and there was no other time to do them except at night.

Q. Did you ever observe any marks of the Standard Laundry in those coats?

A. I surely did; Standard Laundry at Rosslyn, but I never paid much attention at the time.

Q. You talked to me in my office about this case, did you not?

A. Yes, I surely did.

Q. And you are here at my suggestion?

A. Yes.

Mr. Gloth: You may cross examine.

page 98 }

CROSS EXAMINATION.

By Mr. Miller:

Q. Do you see any marks of any other laundry sometimes in the work that comes into the Standard Laundry?

A. No, I did not notice any more. They had Victory and Standard.

Q. I mean now with the Standard Laundry.

A. I do not do any coats. I do not see any coats. I do not touch them.

Mr. Miller: That is all.

And further deponent sayeth not.

CHARLIE ENGLE,

a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Tell the Court and jury your name.

A. Charlie Engle.

Q. Where do you live?

A. 1246 Eleventh Street, N. W., Washington, D. C.

Q. Where are you in business?

page 99 } A. 1407 Lee Highway, Rosslyn. That is just
two doors next to Mr. Zimmerman's laundry.

Q. You are in business in Rosslyn?

A. Yes.

Q. What business are you in?

A. Mill work.

Q. How long have you been in business there?

A. Two or two and a half years.

Q. Do you know the plaintiff in this case?

Court: What did you say? Two or three years?

A. Two and a half years. Yes, sir, I know him.

By Mr. Gloth:

Q. Did the plaintiff ever have any conversation with you about soliciting business from you?

A. Yes, sir.

Q. When was that?

A. When he was employed at the Standard Laundry.

Q. What happened at that time?

A. He came to the shop and asked if he could get a contract to make lunch boxes that looked like books and I told him he could not work at two places while he was working there. I said, "You cannot do that".

Q. That was when he was employed there?
 page 100 } A. Yes, at the Standard Laundry. Then, after
 he was discharged, he came a week after he was
 discharged—

Q. When was that? When are you talking about now?

A. I think that was in 1932 or 1933.

Q. Do you know the month?

A. I could not say.

Q. All right, go ahead.

A. So he came and asked me how I was getting along with Mr. Zimmerman. I said, "All right". So he said, "Listen! I want you to come as a witness for me against Zimmerman". I asked why and he said, "He didn't do me right. Did he do you right?" I said yes, he had and then he said, "Did he pay you for your work?" I said to him that Mr. Zimmerman had paid me before my work was done. He then said, "If you will be a witness, I will pay you \$50.00",—he said he was suing Mr. Zimmerman. He said, "I will give you \$50.00 if I lose the case and if I win, I will give you \$100.00". I said, "Mr. Pastelnick", or Post, "I would not go and take an oath for anybody that I did not know anything about. Mr. Zimmerman has treated me very nice and, after all, we are neighbors and I would not do anything like that. I do not know anything against Mr. Zimmerman to go against him".

Q. What did he testify to?
 page 101 } A. That he didn't use him right in the Stand-
 ard Laundry and that he didn't pay him the way
 he should have. I said, "No. In fact, he advanced me \$90.00
 before I started the job". He said he was suing the Standard
 Laundry for \$4,000.00.

Q. He said he was suing Standard Laundry for \$4,000.00
 and if you went as witness for him he would pay you \$50.00
 if he lost the case and \$100.00 if he won it?

A. That's right.

CROSS EXAMINATION.

By Mr. Miller:

Q. You did some work for the Standard Laundry?

A. Yes, sir.

Q. Were you subpoenaed here today?

A. Yes.

Q. By the Marshal?

A. No. I was asked to come.

Q. Who asked you to come here?

A. Mr. Zimmerman.

Mr. Miller: That is all.

And further deponent sayeth not.

page 102 } ARTHUR ZIMMERMAN,
 a witness of lawful age, being first duly sworn,
testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Tell the court and the jury your name.

A. Arthur Zimmerman.

Q. How old are you?

A. Twenty-four.

Q. Where do you live?

A. 608 Madison Street, N. W., Washington, D. C.

Q. Are you employed with the Standard Laundry?

A. Yes, sir.

Q. How long have you been employed there by that company, Mr. Zimmerman?

A. Approximately six years.

Q. Where has the business of the Standard Laundry been during all that time?

A. 1421 Lee Highway, Rosslyn.

Q. Is that the length of time Standard Laundry has been in business?

A. No, sir.

Q. How long has it been in business?

A. It was incorporated in 1924.

Q. And been in business there continuously
page 103 } since that time?

A. Yes, sir.

Q. What position, if any, do you occupy there?

A. General manager.

Q. How long have you been general manager?

A. About five years.

Q. Were you general manager during the time the plaintiff, Mr. Post, worked for that company?

A. Yes, sir.

Q. What position does your father occupy with that corporation?

A. He is President of the corporation and also sort of overseer.

Q. He is President of the company?

A. Yes.

Q. The contract that is in dispute here, about which this suit is, was that contract signed by you as general manager for the Standard Laundry or by your father?

A. By my father.

Q. When did Mr. Post first come to work for that company, Mr. Zimmerman?

A. In the late part of 1931. It was some time in the latter part of 1931. I do not exactly remember the month.

Q. Before we get to that, what is the type of page 104 } business done by the Standard Laundry?

A. At that time, we were doing nothing but coat, apron and towel business, table linen and napkins; only rental business.

Q. Tell the jury what you mean by "rental business".

A. We owned all the merchandise and rented it to stores, hotels, restaurants, cafeterias and anyone that used aprons, coats, towels or table linen.

Q. You say you owned the merchandise. You owned the coats and aprons?

A. We owned the coats, aprons, towels, napkins and table linens. We owned the whole thing. We rented everything.

Q. And you got a service charge for the work?

A. Yes. We rented out and parties paid us so much per item and for all the soiled stuff the driver took away, he he would leave in exchange clean stuff and they paid the rental cost.

Q. In what capacity did Mr. Post first come to work for the company?

A. Post came there—I think I was the first to speak to him. He came in the office and I spoke to him and he told me at the time that the gentleman from the Jewish Community

Center sent him there and recommended him to page 105 } us. He said at the time he was at Walter Reed Hospital and was willing to go to work for something to eat and somewhere to sleep.

We hired him, at first, for \$15.00 a week. Mr. Post is a smooth talker and the first thing you know he wraps you around his finger. We started to raise him. He was producing at the time. He produced business and we raised his salary to \$30.00 a week and then he showed us the contract that he had with the New York Linen Supply, signed by Jos. Thorpe, where he was drawing \$100.00 a week on salary and commission on new accounts and all business and he told my father—

Mr. Miller: We object to what was told.

By Mr. Gloth:

Q. Never mind what he told your father. Leave that out, Mr. Zimmerman.

A. He drew this contract and wanted it signed because he said that if he went and solicited business, if anything should happen to my father, the three boys might not want to keep him.

Mr. Pumphrey: We object.

By Mr. Gloth:

Q. Were you there when he said that?

A. Yes, I was there. That he wanted protection for himself and he figured he was entitled to a two year contract. At the time, we asked not to sign it but he got my father to sign it.

Q. Who prepared the contract?

A. Mr. Post.

Q. Did you or your father know anything about preparing a contract?

A. No, sir.

Q. Was any lawyer called in to prepare the contract?

A. No.

Q. And the contract was prepared and brought there by Mr. Post?

A. Yes.

Q. And then your father signed the contract?

A. Yes.

Q. Then what happened?

A. Then things started slipping. Post started running down on the job and didn't bring in any business that he should have brought in. He did not work.

Q. How long was he with you after the contract was signed? The contract was signed in February.

A. The contract was signed in February and he was there until the early part of July.

page 107 } Q. At the time you dismissed him, was he doing any work of any kind at all?

A. Not for us he wasn't.

Q. How did he spend his time, if you know?

A. He came in the office several times with stories that he wanted contracts to sign up different hotels and they never went through for some reason or other. I mean it was just his way of doing. He was trying to bluff his way by bringing in contracts that never were written and he had the girl in the office type them but we never saw them after that. Sometimes it takes a little time to close a big job. If it is a

hotel, you cannot get it over night. We know that but he bluffed his way by bringing these in and so he bluffed people and all he did was to bring these in. He said all he had to do was to get the contract and so he put us off week to week until we got tired of it and at last he didn't do anything at all.

Q. And at last he didn't do anything at all?

A. No.

Q. Did you give him notice?

A. Thirty days.

Q. Did you send him his pay for thirty days?

A. Yes.

Q. Those checks that are in evidence, for \$40.00
page 108 } each, were they the checks given him?

A. Yes.

Q. And did you get that letter that has been introduced in evidence here?

A. Yes.

Q. This is the letter you got after you sent him the check and notified him of his dismissal:

"This is to advise you that I received this morning the paper writing purporting to be notice that your corporation does not require my services further from July 2nd, 1932. Etc."

That is the letter you got from him after that?

A. Yes, sir, we received it.

Q. Did he ever come back any more after that? He said in that letter that he expected to hold you to the letter of the contract.

A. He used to drive by the laundry—he had a Nash coupe—and he used to drive by the laundry real slowly and that is all. He never came in the plant to talk it over or never made any attempt, although there was no need to do it because he was told, before he was sent the written notice, that he wasn't needed any longer.

Q. Before you gave him notice, were there days he did not show up at the plant?

page 109 } A. Yes, sir. That Saturday mentioned in the notice, he wasn't at the plant at all; in fact, he called the plant and he took Miss Campbell, who is now his wife, away from her duties, telling her that her mother or someone at the house was sick and he and the now Mrs. Post went away for the weekend.

Q. Prior to that time, were there times you did not know where he was?

A. There were times when he went to take a special, and one, I know, was out at Rossdhu Castle. He went, and that evening about three o'clock, the castle called and asked where their order was and we checked up and he hadn't delivered it and so we sent someone up to Miss Campbell's house and Mr. Post was there. He asked the two fellows—they both happened to be on routes—not to say anything to Mr. Zimmerman about it.

Mr. Gloth: You may have the witness.

CROSS EXAMINATION.

By Mr. Miller:

Q. Did you hear him ask them that?

A. No.

Mr. Miller: Then, your Honor, I move to strike that out.

page 110 } By the Court:

Q. Mr. Zimmerman, I don't know how much of this you have told that you really don't know anything about, except what someone else told you. Did you go to the house?

A. No, sir.

Q. You don't know anything about it except what they told you?

A. These men are on routes. I could bring them here.

Q. When we get them here, we will get their evidence. All that goes out.

Mr. Gloth: You know he was not there, Mr. Zimmerman; you know that much?

A. Yes, sir.

By Mr. Miller:

Q. Mr. Zimmerman, you are the A. Zimmerman who signed that notice dated July 2nd, 1932?

A. Yes, sir.

Q. You were then President of the Standard Laundry Service, Inc.?

A. No, sir.

Q. But you signed it as the President.

A. I have the right to.

Q. You did sign it as President?

A. I did, yes, sir.

Q. How came you to sign as President when page 111 } you were not President?

A. I just have the power of attorney, you might say.

Q. Your father gave you something in writing? Your father is A. Zimmerman, President?

A. Yes, and I am A. Zimmerman.

Q. How many brothers have you working there?

A. Two.

Q. Besides yourself?

A. Yes.

Q. So there are four male members of the family named Zimmerman; not A?

A. Yes.

Q. How many other members of the family named Zimmerman work there?

A. Just my sister.

Q. Who owns this corporation?

A. My father is President.

Q. Who owns the stock?

A. A closed corporation.

Q. In other words, the Zimmerman family?

A. Yes, sir.

Q. And none of you live in Virginia?

A. No, sir.

Q. All of you live out of Virginia?

page 112 } A. Yes.

Q. Mr. Zimmerman, how did it come to pass that you waited until July 2nd, to give this man a discharge, or to discharge from your employment there, based on something that happened on the 18th of June?

A. That was not based entirely on that.

Q. But didn't you say here in this notice:

"The Corporation bases its notice on the following facts:

Saturday, June 18, 1932, said employee left his employment without the consent of the said corporation. And other reasons not herein stated."

Did you not say that?

A. That is right.

Q. How did you come to pick out this one date so long afterward?

A. That day I know he went to Atlantic City.

Q. Was that the date he got married?

A. I do not know. I would not say for sure.

Q. And then your statement with reference to Mr. Pastelnick coming to the laundry, getting his wife away from work and taking her to Atlantic City.

A. I did not say that. I said he called the laundry. He did not come there. She left her work in the middle of the day and she did not come back any more.

Q. She never came back any more?

A. No.

Q. Was that the day she got married?

A. I don't know.

Q. Wasn't that Saturday, the 11th, instead of the 18th, that this happened?

A. No, sir.

Q. I tell you, as a matter of fact, that they were married on the 11th of June.

A. I do not know that.

Q. What were your duties there in the laundry, Mr. Zimmerman?

A. General manager.

Q. Mr. Zimmerman, how long had you been working with the Standard Laundry when Mr. Pastelnick went to work there?

A. About three years I would say.

Q. What was your salary at that time?

A. When I first started there: \$5.00 a week.

Q. No. I mean when Mr. Pastelnick went there.

A. I do not know.

Mr. Gloth: I don't know what that has to do with this case but I don't want to object.

page 114 } Court: He said he does not remember.

Witness: I do not remember what it was when he came there.

By Mr. Miller:

Q. Why did you send Mr. Pastelnick this notice, Mr. Zimmerman?

A. We were advised to do so.

Q. By whom were you so advised?

A. Mr. Bruce Green.

Q. Who is Bruce Green?

A. A lawyer in Arlington County.

Q. Did he prepare this notice or did you?

A. I don't remember if he drew it up or whether we wrote it at the plant.

Q. And that still does not answer the question as to what

was the reason for your sending this notice to Mr. Pastelnick.

A. To fulfill our part of the contract.

Q. In other words, why did you fire him?

A. Because he was not working.

Q. And he was not working on Saturday, the 18th of June, is that right?

A. I believe so.

page 115 } Q. Why did you not put those other things in
here that you have been testifying to on the stand
if they were true?

A. They are true.

Q. Why did you not put them in there?

A. We did not think it was necessary.

Q. How did you happen to go to see Mr. Bruce Green?
Did you or your father do that?

A. We called Mr. Green and he came to the plant.

Q. This notice says:

“This notice is based on paragraph #2 of contract made February 23, 1932, between aforesaid *said* parties.”

Now I will hand you this contract and call your attention to paragraph #2 and ask what portion of that paragraph that notice is based on?

A. In paragraph #2 here, Mr. Pastelnick agreed to devote his entire time and attention and serve it faithfully in all respects and further covenants:

(a) That he will not, during his employment or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, directly or indirectly disclose to any person, firm or corporation the name, address
page 116 } or requirements of any customers of the corporation and that he will not divulge any other
information that he has or shall have acquired during his period of employment.”

Q. My question was: what portion of paragraph #2 does that notice relate to?

A. That is what I am trying to get to.

Q. You have not yet read the portion you based that notice on?

A. No.

(b) “That upon the termination of his employment as aforesaid, he will surrender to the corporation all lists, books

and records of or in connection with the corporation's customers or business and all other property belonging to the corporation.

(c) That he will not for a period of one (1) year after the end or termination of his employment as aforesaid, directly or indirectly, either as principal or employee, or solicit, serve or cater to any of the customers served by him or by any other employee of the corporation during his employment with the Corporation."

Q. Have you yet come to the portion that you based that notice on?

A. No.

Q. Go ahead.

page 117 } A. Here is the portion.

Q. Just read it to the jury or have you already read it, Mr. Zimmerman?

A. I did read it.

Q. Read it again.

A. All right. Here it is:

2. "The employee agrees to serve the corporation at least the period aforesaid and to devote to the service of the corporation his entire time and attention and to serve it faithfully in all respects, etc."

Q. What did you mean by, or what did you consider was meant by "his entire time"?

A. I would say a certain amount of hours a day.

Q. How many?

A. An average work day is eight hours.

Q. Where would his work be done; there at the Standard Laundry plant or out on the streets of Washington, soliciting business, and in Virginia?

A. His work should have been done soliciting business.

Q. Was he working alone or with someone?

A. By himself.

Q. You went with him for a while?

A. For a couple of days.

Q. He took you around and taught you the
page 118 } method of approach?

A. He didn't teach me anything.

Q. I beg your pardon! He didn't teach you anything. I believe you had been there three years when he arrived?

A. Yes.

Q. Can you explain how it came about that for six months preceding the time he came there the average business was

\$393.00 and for the first month after he came it jumped to \$931.00; the second month it went to \$917.00; the third month it was \$807.00; the fourth month it was \$1,170.00; the fifth month it was \$902.00. Do you feel that his association with the business there had nothing to do with the increase?

A. In the beginning it did, absolutely.

Q. How far along in the beginning?

A. I would say up until March.

Q. Up until March. Then you kept the same customers?

A. Except those he solicited away from us and some of the customers were sold so wrongly that it was impossible to hold them. It was impossible for us to give the customer what he promised and you don't have to be solicited to get that kind of business.

Mr. Gloth: What do you mean by that?
page 119 } A. You sell the customers and sell them entirely wrong so that we cannot give what is promised them.

By Mr. Pumphrey:

Q. Were you present?

A. I know it was going on. I was general manager of the business and knew what was going on.

Q. You were over Mr. Pastelnick?

A. Yes.

Court: We will get in trouble here if three or four people do the examining. Let Mr. Miller examine him.

By Mr. Miller:

Q. Other than what someone told you, do you know anything about him having wrongfully solicited business?

A. Yes, sir.

Q. What is that? Tell us.

A. He would go and promise a customer things—

Q. How do you know?

A. I know it by some of the fool things that came in the office.

Q. Tell me what you know of your own knowledge.

A. He would get a customer at one price and come in the office and tell us we had the customer at another price, and, at the end of the month, we sent a statement for that amount and later find out he told them \$.25 cheaper.

Q. How do you know that?

page 120 } A. From the customer.

Mr. Miller: I move to strike this out as hearsay. He can bring the customer as a witness.

Witness: It is very hard to bring a customer into court as a witness.

Court: It is very hard to bring any kind of case but there is always the necessity of getting witnesses in bringing a case. I know it is hard to get them but you cannot prove it any other way.

By Mr. Miller:

Q. Did you bring these things to Mr. Pastelnick's attention after the trouble arose?

A. Several times.

Q. What did he say?

A. He always had some kind of excuse, that we, or someone, made a mistake. He always had a way of wiggling out of things like that.

Q. As a matter of fact, your wife was working there at that time?

A. Yes.

Q. And did he not discharge her?

A. No. He had no authority to discharge her.

Q. Do you know whether he was earning more money than you and your two brothers?

page 121 } Mr. Gloth: I object to that.

A. I don't know.

By Mr. Miller:

Q. You do not know?

A. I do not remember.

Q. As a matter of fact, did you not have some trouble there with him?

A. Did we have trouble with him?

Q. You, personally?

A. You mean the two of us, personally?

Q. Yes, while he worked there?

A. Only business troubles; no personal troubles.

Mr. Miller: That's all.

Mr. Gloth: That is all.

And further deponent sayeth not.

ABRAHAM ZIMMERMAN,
a witness of lawful age, being first duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Gloth:

Q. Tell the jury your full name.

A. Abraham Zimmerman.

Q. Where do you live, Mr. Zimmerman?
page 122 } A. Brentwood, Maryland.

Q. Are you in business here in Arlington County?

A. Yes, sir.

Q. What business?

A. Supply business; coats and aprons.

Q. You do a general laundry business, too?

A. Yes, sir.

Q. How long have you been doing a general laundry business?

A. Couple of years.

Q. What is the name of the business?

A. Standard Laundry Service, Inc., it is.

Q. Is that a corporation?

A. Yes, sir.

Q. Are you the President of the corporation?

A. Yes, sir.

Q. How long have you been in business in Arlington County?

A. A little over eleven years.

Q. Do you know the complainant, Louis Pastelnick?

A. Yes.

Q. How long have you known him?

A. Since he worked for me.

Q. When did you first know him?
page 123 }

A. When he came to the laundry for a job.

Q. When was that?

A. I cannot say. I think it was 1932. I do not remember the date.

Q. Was it prior to the time this contract was signed?

A. Yes, sir.

Q. What did he want of you over there?

A. He asked for \$10.00 a week.

Q. Did you employ him?

A. Yes.

Q. How long did you employ him; by the week?

A. How many weeks, do you mean?

Q. About how long?

A. Three months.

Q. Then what happened?

A. Then he came to me and said he could not work for that salary; that I should give him more money. I raised him. I kept raising him. He came along every day and I kept raising him and he said he had a better offer. I tried to do the best I could with him and then I found he went in back of me and tried to get another job—

Q. Before that, Mr. Zimmerman, he worked for you three months before the contract was signed?

page 124 } A. Yes.

Q. Who proposed the contract be signed?

A. Pastelnick did.

Q. He brought the written contract?

A. Yes.

Q. Before that, did he do good or bad work?

A. Pretty good.

Q. What, if anything, was said about signing the contract?

A. He said he had a mother in New York to support and that he could not make a living and I should give him \$40.00. Then he came along with the contract for me to sign. He said, "I want to know for sure if I have a job". He said, "I have to support my mother and I want to be sure of a job. If not, I got a better proposition", and he brought the contract and I signed it.

Q. Did you write the contract?

A. No, sir.

Q. Did you help write it?

A. No. I took it to the bank and signed it in the bank.

Q. Who put all those conditions in the contract?

A. Pastelnick did. He had the written contract ready.

Q. The contract was for two years; from February 23rd, 1932, to February 23rd, 1934?

page 125 } A. Yes.

Q. After the contract was signed, Mr. Zimmerman, what happened?

A. After the contract was signed, he started fooling around with the girls in the laundry and I told him to stop but he would not listen to me.

Q. What do you mean by "fooling with the girls"?

A. He told the girls over in one corner, "I am the boss here now", and the girls came back and reported it to me. At that time, I did not bother with him then but then he came along—shall I say about the \$75.00?

Q. Yes. Go ahead.

A. Then he came along and said his mother fell off the

steps, in New York, and I should lend him \$75.00. I did not have it but went to the American Small Loan Company, in Rosslyn, near the bank, and borrowed the \$75.00 and gave him and in a few days he took one of the girls from the laundry and got married. He just did not show up. He called the girl up Friday night to meet him and on Sunday morning I saw it in the papers that he had married her. She worked for me four years. Then he came back and said, "Don't be mad because I got married". I said, "I am not mad but I look for you to do business". I said, "I have nothing to do with your marrying the girl". He said, "Give me a chance". I said, "All right". Then he took
 page 126 } out contracts and said that this was to be signed
 and that was to be signed and that one, and, so, that went along two or three months and we didn't get a penny in business from him at all. Then I found out that he was home almost altogether and I found him there. My drivers went there and got him.

Mr. Pumphrey: Tell only what you, yourself, know.

A. I do know. I know there was a bundle of laundry at his mother-in-law's. He had a bundle there and she would not give up the bundle. The customer was asking for it and finally then she said to me, "You are the boss?" I said I was and so she took the bundle and gave it to me. After that, he went away for a couple of weeks and then one day when he came along at ten o'clock—

By Mr. Gloth:

Q. Mr. Zimmerman, speak more slowly.

A. Then he came at ten o'clock and I said, "Listen, Mr. Post, I cannot pay you \$40.00 a week if you don't attend to business and do better than you have been". He took his finger and poked it in my chest, like this, and said, "You know I got a contract with you, don't you?" I said, "All right, if you have a contract, do what you can. You cannot work here any more." That is all I know.

Q. Did you tell him that you wanted to keep him but
 the boys interfered with you and you had to fire
 page 127 } him?

A. No. The boys had nothing to do with it. I was with him and talked to him and he poked his finger at me and said, "You know I got a contract with you, don't you?" I said, "If you have a contract, do what you can", and that's that.

Mr. Gloth: You may have the witness.

CROSS EXAMINATION.

By Mr. Miller:

Q. When you mentioned there that Mr. Post, or Pastelnick, came back to you and mentioned the contract, wasn't that after this notice had been sent to him?

A. No, sir.

Q. It was before that?

A. Yes, sir.

Q. You are A. Zimmerman?

A. Yes, sir.

Q. And your son is A. Zimmerman?

A. Yes.

Q. And your first name is Abraham?

A. Yes.

Q. And is his Archie?

A. Yes.

Q. And Archie sent this letter to Mr. Pastelnick, discharging him, and signed it A. Zimmerman, President?

page 128 } A. That's right.

Q. He had authority to do that?

A. Yes, sir.

Q. How did it come about that you did not do it?

A. He could handle it better than I could. He has full authority to do what he wants.

Q. You gave your son full authority to do whatever he wants to do?

A. Yes. Sometimes I cannot come in to the business and so I give him full authority.

Q. You do not know whether or not you were there on the 2nd of July, 1932?

A. Absolutely. He told me and I said it was O. K.; to send it.

Q. Did not Mr. Pastelnick bring in a good bit of business, Mr. Zimmerman?

A. To begin with, he started to bring in business but as soon as he got the contract, he stopped entirely.

Q. You say that as soon as he got the contract, he stopped bringing in business?

A. Absolutely.

Q. And he worked for you how long before that?

A. About three months.

Q. And when he was bringing in business, that is, before he stopped bringing in business, was that when your
page 129 } firm took in more money than you were before?

A. He did not bring in all the business. Someone else brought in some.

Q. But when he was working good, you were getting in more money, were you not?

A. Of course. If I have more help now, I am getting more money.

Q. I mean, Mr. Zimmerman, when your income was greater, he was bringing in more work?

A. Yes. He brought it in but after that contract, he stopped.

Q. When this contract was signed, he just laid down on the job?

A. Yes.

Q. How then do you explain the fact that the records of your business, that the books of your business show that for the six months preceding the signing of the contract your average income was \$393.00 a month and the first month after this contract was signed it jumped to \$931.00 and the next month it went to \$917.00; the next month, \$807.00; the next month, \$1,170.00?

A. He was there long enough to cover that and besides, I had more help. He was not the only one bringing in business. I have three boys there and he didn't bring
page 130 } it all in. Let him show me what he did. I am
doing twice as much business since he left. He cannot prove that he brought it in. Let him show me the customers he brought in. He really took customers away from me.

Q. Isn't it a fact that he was doing his best work when your income was greatest?

A. Not so great. He brought in a little bit of business and that was why I gave him a raise every week because he showed that he was working, up until the contract was signed, and if he had been doing the right thing, he could have been there yet as I have a man in his place right now.

Q. What did you pay him?

A. I raised him from \$10.00 to \$40.00 a week.

Q. That was because he was a good producer of business?

A. Very good.

Mr. Miller: That is all.

RE-DIRECT EXAMINATION.

By Mr. Gloth:

Q. And if he had been performing his work, you would still have him?

A. Yes, absolutely. I have two men now.

Q. And if he had been bringing in business, you would have kept him, would you not?

page 131 } A. Yes. He is a good man—but good in another way. He is a man who could do business but he does not do it. I can say that he could be but he is no good. If he wanted to be good, he could make a nice living.

Q. As a matter of fact, when he left, he, instead of helping the business, took away the business?

A. Absolutely. I could not find where the goods were going and found it went to him. He had work in another line of laundry with my stuff. He supplied, with my stuff, the customers he took away from me.

Q. Whose coats and laundry was it, Mr. Zimmerman, for the customers he took away?

A. Standard Laundry's.

Mr. Pumphrey: We move to strike that out as it is only hearsay.

Mr. Gloth: It is all through this case by your own witnesses.

Court: I think the motion is good. He did not see it. He doesn't know anything about it, but, of course, the jury heard it.

RE-CROSS EXAMINATION.

By Mr. Miller:

Q. When Mr. Pastelnick left you, as I understand your testimony, he took a lot of business you had and your business fell off?

page 132 } A. No, I did not feel it. I had other men working and they picked up other business. I lost his customers, of course. I picked up other customers. We do more business now.

Q. How much business do you do now?

A. I don't know exactly. I would have to look at the books and see.

Q. You have some idea?

A. Close to a couple of thousand a week.

Q. How much profit is there in this laundry business?

A. I cannot tell you. I cannot tell you. Maybe you go ahead and be a competitor!

Court: I don't see what bearing it has on the case.

Mr. Miller: Merely to show that this business that he brought in to them during this period of time that has been

mentioned, it has been money in their pocket ever since and they really have something now which he built up.

Witness: He took away from me and then I got from him. He went away and took it with him, more than he brought in.

Court: I don't think it makes any difference whether he profited on it or not. The question is: the contract. He could lose money under it or not. If they had the contract, they had to pay him whether they lost or not or whether the profits were great or small.

page 133 } By Mr. Miller:

Q. Was A. Zimmerman, your son, Archie, who signed this letter, authorized by the Board of Directors of your corporation to sign this letter to fire Mr. Post?

A. Yes, sir; absolutely. I had him fired when this came along (indicating notice). I had him fired already before that. I had him fired before this letter went out. He poked his finger in my chest and said, "I have a contract with you". I said, "All right, you have a contract. Do what you can." I am the President and have the right to fire him.

Q. Did you have a meeting of your stockholders to authorize your son to sign your name?

A. Yes, sir.

Mr. Miller: That is all.

Mr. Gloth: That is all. That is the defendant's case.

And further deponent sayeth not.

Mr. Gloth: I now renew my motion to strike.

Court: Motion denied.

Mr. Gloth: I note an exception to the Court's ruling.

page 134 } PLAINTIFF'S INSTRUCTIONS.

Mr. Gloth: I object to the granting of #5 by the Court on the ground that the suit was filed August 26th, 1932, and that no cause of action could accrue showing the measure of damages for breach of the entire contract until the period of the contract had expired.

Mr. Gloth: Defendant objects to the granting of #6 by the Court on the ground that where one party to a contract has breached the said contract, the other party to the contract cannot recover where he, himself, has breached the same; in other words, where both parties have breached the contract, there can be no recovery for either.

DEFENDANT'S INSTRUCTIONS.

Mr. Gloth: The refusal by the Court of Defendant's instruction A is excepted to on the ground that it states the correct proposition of law.

Mr. Gloth: Counsel for defendant excepts to the ruling of the Court in refusing instruction F.

Mr. Gloth: Counsel for defendant excepts to the ruling of the Court in refusing instruction G.

page 135 } The jury thereupon was instructed and retired.
Upon its return, the following verdict was rendered:

"We, the jury, find for plaintiff and fix his damages in the amount of \$1,000.00.

(Signed) A. B. DAVIS,
Foreman."

Mr. Gloth: The defendant moves to set the verdict aside as contrary to the law and the evidence. There is no evidence to support the same. Further, upon the ground of admission of evidence in behalf of the plaintiff over the objection of the defendant; the refusal of the Court to allow introduction of the evidence in behalf of the defendant; refusal of the Court to grant instructions of the defendant and the error of the Court in granting the instructions of the plaintiff over the objections of the defendant.

Court: Motion denied.

Mr. Gloth: Exception noted and I believe we have sixty days to get up our bill of exceptions for appeal.

page 136 } This is to certify that the foregoing pages contain a true and correct transcript of the testimony taken in the cause of Louis Pastelnick v. Standard Laundry Service, Inc., at the time, place and for the purpose set forth in the caption hereof.

Given under my hand this 21st day of November, 1934.

AGNES J. CONRAD,
Reporter.

page 137 } I, Walter T. McCarthy, Judge of the Circuit Court of Arlington County, Virginia, do hereby

certify that the within is the testimony, and all the testimony, introduced *the* the trial of the case of Louis Pastelnick, plaintiff, *v.* Standard Laundry Service, Incorporated, defendant, pending in the Circuit Court of Arlington County, Virginia; that said transcript of testimony shows the objections made on behalf of both plaintiff and defendant to the introduction of testimony; the grounds of said objections; the rulings of the Court thereon, and the exceptions taken by the plaintiff and defendant, respectively, thereto. That said transcript of testimony shows the objections made by the defendant to the granting and refusal of instructions by the Court to the jury; the ground of said objections; the rulings of the Court thereon; and the exceptions taken by the defendant thereto, and that said transcript of testimony shows the motion of the defendant to strike out the evidence of the plaintiff at the close of the plaintiff's case, the rulings of the Court thereon, the exceptions of the defendant thereto, and the grounds of said exceptions to the said rulings of the Court on said motion to strike. That said transcript of testimony shows the motion of the defendant to set aside the verdict of the jury; the rulings of the Court thereon, the exceptions of the defendant thereto; the grounds of said exceptions.

And I hereby further certify that counsel for the defendant gave to Edgar W. Pumphrey, attorney of record for the plaintiff, reasonable notice as required by law, of the time and place when said testimony would be presented to the Court to be properly identified and certified, and that counsel for the defendant made application to the Court within a period of sixty days from the final judgment of the Court rendered herein, to have the said testimony identified and certified by me within a period of sixty days from
 page 138 } the rendition of the final judgment herein. Signed
 and sealed this the 1st day of December, 1934.

WALTER T. MCCARTHY, (Seal)
 Judge of the Circuit Court of Arlington County,
 Virginia.

page 139 } Circuit Court of the County of Arlington, Vir-
 ginia, on Wednesday, the twenty-fourth day of
 October, in the year of our Lord, nineteen hundred and thirty-
 four.

Present: The Honorable Walter T. McCarthy, Judge.

ACTION OF *ASSUMPSIT*—LAW NO. 1971.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

PURSUANT TO ADJOURNMENT, this day came the Plaintiff and his counsel and the Defendant and its counsel. Thereupon the jury was polled and E. Marvin Eubank being absent on account of illness, counsel agreed to proceed with six jurors.

THEREUPON the motion made yesterday by the Attorney for the Defendant to strike out the testimony of the Plaintiff on the ground that it was not supported by the evidence, which was taken under advisement by the Court, was denied, to which ruling of the Court the Defendant, through counsel, excepted, and the Defendant, through counsel, proceeded to introduce its evidence.

THEREUPON the Attorney for the Defendant renewed his motion to strike out the evidence of the Plaintiff, which motion the Court denied, and to which ruling of the Court the Defendant through counsel excepted. The Court instructed the jury and after hearing closing arguments of counsel for the Plaintiff and the Defendant, the jury retired to their room; and after a time returned into Court and presented the following verdict:

“We, the Jury, find for Plaintiff and fix his damages in the amount of One Thousand Dollars. (Signed) A. D. Davis, Foreman.”

THEREUPON the Attorney for the Defendant moved the Court to set aside the verdict as being contrary to the law and evidence and because the Court erred in granting certain instructions for the Plaintiff and refusing certain instructions for the Defendant and because there was no proper evidence to support the verdict of the jury and no proper evidence upon which a verdict for damages could be awarded, which motion the Court denied and to which ruling of the Court the Defendant, through counsel, excepted.

IT IS THEREFORE the judgment of the Court that the Plaintiff recover of and from the Defendant the sum of One Thousand Dollars (\$1,000.00) and his costs in this behalf expended.

THEREUPON the Defendant, through counsel, moved the Court to suspend the said judgment for a period of sixty days to permit it to prepare and file petition for a writ of error to the Supreme Court of Appeals of Virginia, which motion the Court granted and it is therefore ordered by the Court that the said judgment be, and the same is hereby, suspended for a period of sixty days from the date of the entry of this order, conditioned, however, upon the said Defendant, or some one in its behalf, entering into a suspending bond before the Clerk of this Court within twenty-five days from the entry of this order, in the penalty of Fifteen Hundred Dollars (\$1,500.00), conditioned as the law directs and with approved security.

WALTER T. McCARTHY, Judge.

page 141 }

Filed Dec. 6, 1934.

In the Circuit Court of Arlington County, Virginia:

NOTICE.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

To Edgar W. Pumphrey, Clarendon, Virginia, and Warren E. Miller, Washington, D. C., attorneys of record for the plaintiff.

You are hereby notified that on Saturday, December 1, 1934, at 10 o'clock A. M., or as soon thereafter as counsel may be given an *opportunity* to be heard, at Arlington County Court House, Clarendon, Virginia, the undersigned will present *it* bill of *execption*, certificate of exception and the stenographer's transcript of the testimony in the above entitled case pending in said Court, to the Honorable Walter T. McCarthy, Judge of said Court, to be signed, sealed, enrolled and made a part of the record in this case.

GIVEN under our hand this the 26th day of November, 1934.

STANDARD LAUNDRY SERVICE, INC.,
By. H. W. DUDLEY, Counsel.

W. C. GLOTH,
H. W. DUDLEY,
Attorneys for the defendant.

Service of the within notice accepted this the 26th day of November, 1934.

EDGAR W. PUMPHREY,
Of Counsel of the Plaintiff.

page 142 { Filed Dec. 6, 1934.

In the Circuit Court of Arlington County, Virginia:

BILL OF EXCEPTIONS NO. 1.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

Be it remembered that, after the jury was sworn to try the issue joined in this cause, the plaintiff to prove and maintain the said issue on his part introduced the following evidence:

(Here insert the evidence for the plaintiff.)

And the defendant to prove and maintain the said issue on his part introduced the following evidence.

All of which evidence is contained in the stenographer's transcript of the testimony in this cause, and which has been duly made a part of the record in this case.

WHEREUPON the counsel for the defendant moved the Court to instruct the jury as follows (which instruction is identified in the transcript of the testimony as instruction "A"), that is to say, "The Court instructs the jury that if they believe from the evidence that the plaintiff and the defendant entered into the contract which has been introduced in evidence in this case and if they further believe from the evidence that the plaintiff, during his employment with the defendant or after the end thereof, irrespective of the time, manner or cause of the termination of said employment, directly or indirectly disclosed, to any person, firm or corporation, the name, address or requirements of any customer of the defendant Company and divulged any other information concerning the defendant corporation that then they must find for the defendant".

page 143 { But the Court refused to give said instruction to the jury. To which opinion of the Court, refusing said instruction, the defendant, by counsel excepted, and tendered this bill of exceptions, and which

he prays to be signed, sealed and made a part of the record in this cause; and the same is done accordingly.

WALTER T. McCARTHY, (Seal)
Judge of the Circuit Court of Arlington County,
Virginia.

page 144 }

Filed Dec. 6, 1934.

In the Circuit Court of Arlington County, Virginia:

BILL OF EXCEPTIONS NO. 2.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

Be it remembered that, after the jury was sworn to try the issue joined in this cause, the plaintiff to prove and *maintain* the said issue on his part introduced the following evidence:

(Here insert the evidence for the plaintiff.)

And the defendant to prove and maintain the said issue on his part introduced the following evidence:

(Here insert the evidence for the defendant.)

All of which evidence is contained in the stenographer's transcript of testimony in this case, and which has been duly made a part of the record in this case.

WHEREUPON the counsel for the defendant moved the Court to instruct the jury as follows, (Which instruction is identified in the transcript of testimony as instruction "F"), that is to say, "The Court instructs the jury that is they believe from the evidence that there was a contract between the plaintiff and defendant, as has been shown in this case and has been introduced in evidence, and that the plaintiff, within a year after the termination of his employment, directly or indirectly, either as principal or employee, solicited, served or catered to any of the customers served by the said plaintiff, with the purpose of getting said business and customers away from the defendant Company that then they must find for the defendant".

But the Court refused to give the said instruction to the jury. To which opinion of the Court, refusing said instruction, the defendant, by counsel excepted, and tendered this bill of exceptions, and which he prays to be signed, sealed and made a part of the record in this cause; and the same is done accordingly.

December 1st, 1934.

WALTER T. McCARTHY,
Judge of the Circuit Court of Arlington County,
Virginia.

page 146 } Filed Dec. 6, 1934.

In the Circuit Court of Arlington County, Virginia:

BILL OF EXCEPTION NO. 3.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

Be it remembered that, after the jury was sworn to try the issue joined in this case, the plaintiff to prove and maintain the said issue on his part introduced the following evidence:

(Here insert the evidence for the plaintiff.)

And the defendant to prove and maintain the said issue on his part introduced the following evidence:

(Here insert the evidence for the defendant.)

All of which evidence is contained in the stenographer's transcript of the testimony in this case, and which has been duly made a part of the in this case.

WHEREUPON the counsel for the defendant moved the Court to instruct the jury as follows, (Which instruction is identified in the transcript of the testimony as instruction "G") that is to say, "The Court instructs the jury that if they believe from the evidence that the defendant *not was* justified in terminating the contract between the plaintiff and defendant, and that after the services of the plaintiff had been terminated by the defendant Company that the plaintiff

became engaged in a business competitive to the business of the defendant Company, and as either principal or employee did solicit, serve and cater to the customers of the defendant Company, that then such service or employment may be considered by the jury in mitigation of damages".
page 147 } But the Court refused to give the said instruction to the jury. To which opinion of the Court, refusing said instruction, the defendant, by counsel excepted, and tendered this bill of exceptions, and which he prays to be signed, sealed and made a part of the record in this cause; and the same is done accordingly.

December 1st, 1934.

WALTER T. McCARTHY, (Seal)
Judge of the Circuit Court of Arlington County,
Virginia.

page 148 } Filed Dec. 6, 1934.

CERTIFICATE OF EXCEPTIONS NO. 1.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

INSTRUCTION NO. 5.

You are instructed that if you believe from the evidence that the plaintiff was employed by the defendant under a contract for a term of two years at a salary of Fifty Dollars (\$50.00) per week for the second year, and Forty Dollars (\$40.00) per week from August 5, 1932, to February 23, 1933; and if you further believe that the plaintiff did keep and perform the stipulations of said contract on his part and that he was wrongfully and without sufficient cause discharged from the service of the said defendant on July 2, 1932, effective in August, 1932, and that he was paid his salary up to the time of the discharge, you shall find for the plaintiff; and you are further instructed that the measure of recovery in his case, if any, will be the amount which would have been due the plaintiff under the contract down to February 23, 1934, the date of its expiration if plaintiff had continued in the services of the defendant Company, less such sum as he has earned or with reasonable diligence might have earned from the time of the breach of the contract to the present time.

The foregoing instruction was granted at the request of the plaintiff and the defendant excepted.

Teste: This the 1st day of December, 1934.

WALTER T. McCARTHY,
Judge of the Circuit Court of Arlington County,
Virginia.

page 149 } Filed Dec. 6, 1934.

CERTIFICATE OF EXCEPTIONS NO. 2.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

INSTRUCTION NO. 6.

You are hereby instructed that after a contract has been breached by one party, there is no obligation upon the other party to thereafter comply with its terms.

The foregoing instruction was granted at the request of the plaintiff and the defendant excepted.

Teste: This the 1st day of December, 1934.

WALTER T. McCARTHY,
Judge of the Circuit Court of Arlington County,
Virginia.

page 150 } Filed Dec. 6, 1934.

In the Circuit Court of Arlington County, Virginia:

INSTRUCTIONS OF THE COURT.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

The following instructions granted at the request of the plaintiff and the defendant, respectively, as hereinafter denoted, which together with instructions numbered five and six and made a part of the record by a certificate of exceptions, are all of the instructions that were granted on the trial of this cause.

INSTRUCTION NO. 1.

The Court instructs the jury that if they believe from the evidence that the contract mentioned in the declaration was entered into between the plaintiff and defendant, and that the *plaintiff* was ready, willing and able to perform the same, and that performance thereof was prevented by defendant without fault of the plaintiff, then there was a breach of the contract by the defendant.

INSTRUCTION NO. 2.

The Court instructs the jury that the defendant's liability to the plaintiff for the breach of the contract is to be measured by the amount to which plaintiff was entitled under the contract from July 30, 1932, to February 23, 1934, the expiration date of the contract, less the amounts which the evidence shows plaintiff actually received, or by the exercise of reasonable diligence might have received for personal services during this period of time.

page 151 } INSTRUCTION NO. 3.

The Court instructs the jury that it became incumbent upon the plaintiff to make reasonable effort to minimize the damage done by the breach of contract as charged in the declaration in this cause.

INSTRUCTION NO. B.

The Court instructs the jury that if a person is hired for service for a given term and is wrongfully dismissed the law imposes upon him the duty to seek other employment, and to the extent that he obtains it and earns wages, or might have done so, his damages are reduced.

INSTRUCTION NO. C.

The Court instructs the jury that damages must be proven and cannot be presumed.

INSTRUCTION NO. D.

The Court instructs the jury that the burden of proof is on the plaintiff, to establish by a preponderance of the evidence each item of his claim for damages and unless they shall believe from the evidence that the plaintiff has sustained that burden they must find for the defendant.

INSTRUCTION NO. E.

The Court instructs the jury that the plaintiff, after the termination of the contract between the parties, was under the obligation to attempt to secure other employment during the period of the contract existing between the parties to this suit and that it was the duty of the plaintiff, by ordinary means to diligently search for other employment, and the Court further instructs the jury that if the plaintiff did not, by ordinary means, seek other employment during the period of the time that the contract was in force that then he is not entitled to recover of the defendant the full amount of the wages provided for in the contract.

INSTRUCTION NO. F.

The Court instructs the jury that if they believe from a preponderance of the evidence that the plaintiff did not devote his entire time and attention to the service of the Corporation, Standard Laundry service, Incorporated, as was provided for in said contract, that then the defendant Corporation was justified in terminating the contract between the parties and the jury must find a verdict in favor of the defendant.

Teste: This the 1st day of December, 1934.

WALTER T. McCARTHY,
Judge of the Circuit Court of Arlington Co., Va.

page 153 } Filed Dec. 11, 1934.

In the Circuit Court of Arlington County, Virginia:

NOTICE OF APPLICATION FOR THE TRANSCRIPT
OF RECORD.

Louis Pastelnick, Plaintiff,

v.

Standard Laundry Service, Incorporated, Defendant.

To Edgar W. Pumphrey, Clarendon, Virginia, and Warren E. Miller, Washington, D. C., attorneys of record for the plaintiff.

NOTICE is hereby given that the undersigned will, on Tues-

day December 11th, 1934, apply to the Clerk of the Circuit Court of Arlington County, Virginia, for a transcript of the record in the above entitled cause, for the purpose of presenting said transcript, together with a petition to the Supreme Court of Appeals of the State of Virginia for the award of a writ of error and *supersedeas* to the judgment of the Circuit Court of Arlington County, Virginia, rendered on the 24th day of October, 1934.

GIVEN under our hands this the 10th day of December, 1934.

H. W. DUDLEY,
W. C. GLOTH,
Attorneys for the Defendant.

Legal service of the within Notice accepted this the 10th day of December, 1934.

EDGAR W. PUMPHREY,
Counsel for the plaintiff.

page 154 } I, John A. Petty, Clerk of the Circuit Court of
Arlington County, Virginia, the same being a
Court of Record, do hereby certify that the foregoing copies
are true copies of the originals on file and of record in my
office, in the case of Louis Pastelnick v. Standard Laundry
Service, Incorporated, and they constitute the transcript of
record in accordance with the designation and notice of H. W.
Dudley and William C. Gloth, Attorneys for the Defendant,
and accepted by counsel for the Plaintiff.

GIVEN under my hand this 18th day of December, 1934.

JOHN A. PETTY,
Clerk Circuit Court of Arlington County,
Virginia.
By RACHEL H. WHITE,
Deputy Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

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