

66-138 1000

Record No. 1656

In the
Supreme Court of Appeals of Virginia
at Richmond

W. M. TAYLOR

v.

C. M. GRACE

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS.

“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 138

IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 1656

W. M. TAYLOR, Plaintiff in Error,

versus

C. M. GRACE, Defendant in Error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Chief Justice and Justices of the Supreme
Court of Appeals of Virginia:*

Your petitioner, W. M. Taylor, plaintiff in the Court below, plaintiff in error in this Court, and hereinafter referred to as plaintiff, respectfully represents unto your Honors that he is aggrieved by a final judgment of the Circuit Court of the City of Newport News, Virginia, rendered against him on the 13th day of October, 1934, in a certain action brought by him against C. M. Grace, defendant in the court below, defendant in error in this Court, and hereinafter referred to as defendant. The action was brought by notice of motion by the plaintiff against the defendant claiming \$10,000.00 damages on account of certain insulting words alleged to have been spoken against him by the defendant, the said action being brought pursuant to Section 5781 of the Code of Virginia 1919, which reads as follows:

"All words which, from their usual construction and common acceptation, are construed as insults and tend to violence and breach of the peace, shall be actionable. No demurrer shall preclude a jury from passing thereon."

The defendant demurred to the original notice of motion (Tr., pp. 6, 7), which motion was sustained as to the third ground therein stated without exception on the part of the plaintiff, and which notice of motion was amended to meet the objection raised. (Tr., pp. 8, 9, 10). To this amended notice of motion a demurrer was likewise filed (Tr., pp. 12, 13); which was overruled. (Tr., p. 12.) On motion of the plaintiff the said amended notice of motion was further amended by striking out certain words which had been inadvertently copied in the said notice of motion. (Tr., p. 9.) At the conclusion of the plaintiff's evidence the defendant moved the Court to strike out all of the evidence of the plaintiff, which motion was overruled. (Tr., pp. 86, 87.) At the conclusion of all the evidence the defendant again renewed his motion to strike out all of the evidence of the plaintiff (Tr., pp. 221, 227), which motion the Trial Court sustained (Tr., p. 228), and instructed the jury accordingly, to which action of the Trial Court the plaintiff by counsel excepted stating his reasons therefor. (Tr., p. 231.) The jury thereupon returned their verdict for the defendant. The Trial Court also refused the instructions tendered by counsel for the plaintiff, to which action of the Court the plaintiff, by counsel, likewise excepted. (Tr., p. 237.) The jury then retired and returned their verdict for the defendant. The plaintiff thereupon moved the court to set aside the verdict as being contrary to the law and the evidence and for misdirection of the jury and stated his reasons therefor (Tr., p. 231); which motion was overruled and judgment entered for the defendant. Thereafter, at the same term of Court on the 13th day of October, 1934, the plaintiff renewed his motion that the court set aside the verdict of the jury and grant him a new trial stating his reason therefor (Tr., p. 238); being the same reasons theretofore urged with the additional reason that the action of the Court operated to deprive the plaintiff of his right to a trial by jury, which motion was overruled (Tr., p. 15), to which action of the Court the plaintiff, by counsel, excepted, assigning his reasons therefor. (Tr., pp. 238, 239.) The Court thereupon entered final judgment for the defendant (Tr., p. 15), but ordered that said judgment be suspended for a period of sixty (60) days upon execution of bond in the sum of One Hundred (\$100.00) Dollars conditioned accord-

ing to law, the plaintiff having indicated his desire to apply to this Court for a writ of error and *supersedeas* to said judgment.

Your petitioner, the plaintiff, duly excepted to the several rulings of the Court, of which he complains, stating his reasons therefor fully and respectfully prays that a writ of error and *supersedeas* to said judgment be awarded by this Court. A transcript of the record in said case is filed herewith and from it will appear the following facts. (References are to the paging as given in the transcript of the record at the top of each page.)

STATEMENT OF FACTS.

The plaintiff was a member of the "United House of Prayer for All People, etc.", an organization founded, fostered and conducted by C. M. Grace, who calls himself "bishop". The character and nature of this organization will appear from a copy of the constitution and by-laws, which was filed as "Exhibit One", the original being used by stipulation in this Court. The plaintiff was appointed treasurer of this organization by C. M. Grace and served as such during the latter part of the year 1929 and during the year 1930. During that time as a part of his duties he received the monies collected from the membership, deposited such monies in the First National Bank of Newport News, Virginia, to the credit of C. M. Grace, trustee, and likewise under the instructions of C. M. Grace deposited certain checks which the said C. M. Grace had drawn as such trustee payable to C. M. Grace, personal, or to the First National Bank of Newport News, Virginia, said checks being in the sum of \$500.00 principal and interest and used to repay a loan made to the said organization by C. M. Grace. Upon the deposit of such checks the bank delivered to the treasurer notes in the sum of \$500.00 each and interest and transferred the amount indicated on the checks from the account of C. M. Grace, trustee, to the account of C. M. Grace, personal; that during the period of time said W. M. Taylor was treasurer he deposited monies collected and nine checks and withdrew from the bank nine notes, the said nine checks deposited by the said C. M. Grace at the time of withdrawal of the said nine notes being the first nine of the original checks filed as "Exhibit A" and used in this Court by stipulation; that certain differences had arisen between the plaintiff and the defendant by reason of the plaintiff informing the membership as to the payments on their obligation, causing the removal of the plaintiff as treasurer by the

said C. M. Grace and the appointment of another in his stead; that thereafter, during the year 1931, such other treasurer had deposited monies and checks and had withdrawn four additional notes. The last four of said original checks used as "Exhibit A" in this Court being the checks so deposited.

That on the day of June, 1932, in the building known as "The House of Prayer" in the City of Newport News, Virginia, the said C. M. Grace in public discourse in the presence of a congregation of around six hundred people stated: "Now you all beat me down last night that you had nine notes. I have been over to the First National Bank and they told me there had been only six notes taken out of the bank and I believe the man", referring to a dispute which had taken place on the previous night with reference to the number of notes which had been paid; that by use of such language C. M. Grace meant to charge W. M. Taylor with falsely stating that he had taken nine notes from the bank when he had only taken six and meaning to charge the undersigned with misappropriating the sum of \$1,500.00; that thereafter the plaintiff exhibited to the defendant nine notes showing that he had paid the entire amount for which he could be held accountable and requested the defendant to publicly rectify the wrong he had done the plaintiff, but that the defendant refused, saying: "I won't do that. To do so would lower my standing and I don't want the people to know I was lying". That W. M. Taylor was the only person to whom these words could have referred and that they were so understood by those who heard them; that C. M. Grace bore ill will toward the plaintiff because he was keeping the people informed as to the rapidity with which they were discharging the debt upon their building and that this gave offense to C. M. Grace, who did not want them to know how they stood; that thereafter the plaintiff left the organization and was not a member thereof at the time of institution of this suit.

The above statement of facts is based upon the testimony of the plaintiff and his witnesses and does not consider the evidence of the defense at all, since the Court sustained a motion to strike out all of the plaintiff's evidence, the only question with reference thereto to be considered in this Court being whether there was sufficient evidence to have sustained a verdict for the plaintiff had one been rendered by the jury in his behalf.

It is sufficient to state that the defendant and his witnesses contradict every material statement of the plaintiff and his witnesses.

ASSIGNMENTS OF ERROR.

It is respectfully submitted to this Court that the Trial Court erred in the following respects:

FIRST: The Court erred in striking the evidence presented on behalf of the plaintiff and instructing the jury that there was no evidence before it upon which to find for the plaintiff; that such action and instruction amounted to sustaining a demurrer to the evidence which is forbidden in actions under the statute of insulting words. (Section 5781, Code of Virginia 1919.)

SECOND: The Court erred in holding that the occasion upon which the alleged insulting words were spoken was privileged.

THIRD: The Court erred in sustaining the motion to strike out all of the plaintiff's evidence, in refusing the plaintiff's instructions and in instructing the jury that there was no evidence upon which they could find for the plaintiff.

FOURTH: The Court erred in holding that there was no evidence in the case to show that the words had been spoken maliciously.

FIFTH: The Court erred in refusing to set aside the verdict of the jury as being contrary to the law and the evidence; that, under the statute, the Court had no right to strike the evidence which was equivalent to sustaining a demurrer; that the occasion upon which the words were spoken was not privileged; that even if the occasion had been held to be privileged, yet the question of malice would have been for the jury and that there was evidence to show malice; that there was sufficient evidence to have sustained a verdict for the plaintiff had one been rendered by the jury; and that the action of the Court operated to deprive the plaintiff of his right to a trial by jury.

ARGUMENT.

FIRST ASSIGNMENT OF ERROR.

THE COURT ERRED IN STRIKING THE EVIDENCE PRESENTED ON BEHALF OF THE PLAINTIFF AND INSTRUCTING THE JURY THAT THERE WAS NO EVIDENCE BEFORE IT UPON WHICH TO FIND FOR THE PLAINTIFF; THAT SUCH ACTION AND INSTRUCTION AMOUNTED TO SUSTAINING A DEMURRER TO THE EVIDENCE WHICH IS FORBIDDEN IN ACTIONS UNDER THE STATUTE OF INSULTING WORDS.

There is no reported case in Virginia passing upon the question of the right of a Trial Court to sustain a motion to strike the evidence of the plaintiff where the action is brought under Section 5781 of the Code of Virginia, commonly called "The Statute of Insulting Words". However, this Honorable Court has, on numerous occasions, held that a motion to strike is to be considered very much as on a demurrer to the evidence, *Buchanan v. Wilson*, 159 Va. 49; *Green v. Smith*, 153 Va. 675; *Katron v. Birchfield*, 159 Va. 64; *Virginia Electric Company v. Mitchell*, 159 Va. 855; *Holladay v. Colt*, 177 S. E. 862; the Court, in these cases, holding that such a motion is closely analogous to a demurrer to the evidence and that when the purpose of such a motion is to take the issues from the jury it should be granted only in a clear case because if sustained the adverse party is out of Court. If overruled, the mover still has the election of demurring to the evidence with its attendant consequences or developing his case before a jury; that the refusal to sustain such a motion enables either party to take the whole case to the Court of Appeals in one record so that if in the opinion of the Appellate Court the Trial Court had erroneously sustained such motion, a new trial would be necessary and probably another hearing before the Appellate Court with additional expense and delayed final judgment.

The case of *Chalkley v. Atlantic Coast Line Railroad Company*, 153 Va. 301, was urged as sustaining the right of the Trial Court to sustain such a motion in the case at bar, counsel for the defendant stressing Note 3 and Paragraph 3 of the opinion, page 306. This opinion was delivered by the late Robert Riddick Prentis, Chief Justice, and was rendered in a case in which the action was a common law action for libel to which the statute has no application and was heard upon a demurrer in which the plaintiff joined. As the statute in question was enacted for the benefit of the plaintiff, the plaintiff may waive its benefit and join in a demurrer. *Brown v. Norfolk, etc., Railroad Company*, 100 Va. 619-624. The case sustains the contention of the plaintiff to this extent; that there is no practical difference between a demurrer and a motion to strike the evidence.

It is submitted that this Court will not hold that Trial Courts in the State of Virginia may deprive plaintiffs of the right guaranteed them by Section 5781 by sustaining motions to strike the plaintiff's evidence. To do so would merely mean that a motion to strike the plaintiff's evidence might be substituted in all cases for a demurrer and that the defendant might thus do by indirection that which the law prohibits him from doing directly.

In fact as pointed out by the Court of Appeals in the cases above mentioned the sustaining of such a motion works a greater hardship on the plaintiff than would the sustaining of a demurrer to the evidence and it is earnestly submitted that this Court will not permit a plaintiff to be deprived of the benefit of this section which has been construed as to its nature and purpose so often (*W. T. Grant v. Owens*, 159 Va. 906; *Hines v. Gravins*, 136 Va. 313); by sanctioning a practice which will permit a defendant to substitute in lieu of a demurrer a motion which works greater hardship on the plaintiff than a demurrer and thus accomplish by indirection that which the law prohibits directly. 149

Should this Court hold that this assignment of error is well taken a consideration of the other assignments of error becomes immaterial.

SECOND ASSIGNMENT OF ERROR.

THE COURT ERRED IN HOLDING THAT THE OCCASION UPON WHICH THE ALLEGED INSULTING WORDS WERE SPOKEN WAS PRIVILEGED.

The law with reference to privileged communications is discussed in many Virginia cases. An examination of authorities has failed to disclose any case in Virginia passing upon the question of privileged communications with reference to religious organizations. Without conceding that the organization in this case is a religious one we submit that in principle no bishop, minister, preacher or other leader of any religious organization should be permitted to slander members of the organization in public meeting, certainly not in a case where as in the case at bar, the constitution and by-laws provide a method by which members should be tried for their misdoings. According to the testimony of C. M. Grace there was no such trial in the case at bar. It is further submitted that a reading of the so-called constitution and by-laws will reveal the fact that the so-called organization is nothing more or less than a private business of C. M. Grace; that he is accountable to on one for his actions with reference to finances or otherwise. (Constitution and by-laws, Exhibit One, Article 6, page 5.) There are many decisions in other jurisdictions with reference to this question which are collected in a note, 63 A. L. R. 649. However, at the utmost the case would be one only of qualified privilege and a showing of malice would entitle the plaintiff to recover despite privilege. However, it is submitted that in the case at bar the organization is not a religious one but is merely the

private business of C. M. Grace and that the occasion was not privileged.

THIRD ASSIGNMENT OF ERROR.

THE COURT ERRED IN SUSTAINING THE MOTION TO STRIKE OUT ALL OF THE PLAINTIFF'S EVIDENCE, IN REFUSING THE PLAINTIFF'S INSTRUCTIONS AND IN INSTRUCTING THE JURY THAT THERE WAS NO EVIDENCE UPON WHICH THEY COULD FIND FOR THE PLAINTIFF.

In the instant case the plaintiff's evidence was to the effect that the words were spoken of and concerning him (Tr., p. 34); that they could have referred to no other party than him (Tr., p. 35). The evidence of the plaintiff's witnesses, Stanley (Tr., p. 70) and Danel (Tr., p. 75), was that the words were spoken of and concerning the plaintiff and so understood by the congregation. The fact that the defendant's witness, Grevious, was the first one to speak up on the night of the controversy in question and stated that nine (9) notes had been paid which could have referred only to the notes contended for by Taylor (Tr., p. 88); that it was a question for the jury as to whether the words complained of were insulting or not; that their plain import was to accuse Taylor of lying and of stealing as he testified that he was the only one who had access to the money and the only one who could have paid the notes (Tr., pp. 34, 35, 36); and that had the notes not been paid the money would necessarily have to be accounted for by Taylor. The evidence further shows that the constitution and by-laws of the organization in question make no provision whatsoever for finances but all is left entirely in the hands of C. M. Grace (see constitution and by-laws, Exhibit One, original being used in this Court): that the words spoken were spoken by C. M. Grace intending to insult and injure W. M. Taylor with the congregation as shown by the letter of C. M. Grace introduced in evidence (Tr., p. 38); that from the entire evidence it would appear that the organization was merely the private business of C. M. Grace and that no privilege attached to his statements; that the statement was made with actual malice and that upon this evidence the jury might have found for the plaintiff Taylor had they believed his testimony and the testimony of his witnesses since such testimony with the fair inferences which might have been drawn therefrom would have been sufficient if believed. It is, therefore, earnestly submitted that even if this had not been a case under the statute of insult-

ing words, still the court would have had no right to have sustained a motion to strike the plaintiff's evidence.

FOURTH ASSIGNMENT OF ERROR.

THE COURT ERRED IN HOLDING THAT THERE WAS NO EVIDENCE IN THE CASE TO SHOW THAT THE WORDS HAD BEEN SPOKEN MALICIOUSLY.

It is respectfully submitted that the Court erred in instructing the jury that there was no evidence upon which they could find that the words were spoken maliciously. The evidence of the plaintiff and his witnesses together with the fair inferences to be drawn therefrom would establish actual malice if believed by the jury and that it was a jury question to determine whether such malice actually existed or not. (*Snyder v. Fatherly*, 158 Va. 335). While the question of privilege is one for the Court, whether insulting words were spoken with or without malice is a question for the jury under proper instructions. (*Farley v. Thalheimer*, 103 Va. 504 and cases cited.)

The plaintiff testified that C. M. Grace didn't want the members to know how fast they were taking up their obligations and that his action in so informing the people had inflamed C. M. Grace against him. (Tr., p. 30.) The constitution and by-laws are silent as to finances and the whole matter of finance is according to the will of C. M. Grace. This difficulty occurred at least eighteen months after the payment of the last note by W. M. Taylor and C. M. Grace either had or should have had from the bank his cancelled checks showing that nine of such notes had been paid by W. M. Taylor. One of his own witnesses, the witness Grevious (Tr., p. 88), on the first evening of the discussion of this matter stated to him that nine of the notes had been paid. (Tr., p. 88.) The woman who had replaced Taylor had in her possession four of the notes and the check book showed that thirteen checks had been withdrawn therefrom, which checks were introduced in evidence. (Tr., p. 136). The evidence also showed that no notes had been paid since the controversy from which the jury might properly have inferred that Taylor's evidence with reference to C. M. Grace's animosity towards him was true. (Tr., p. 30.) Taylor also testified that C. M. Grace was "the whole thing". C. M. Grace, in a letter to W. M. Taylor charged that W. M. Taylor was hurting his influence. (Letter, Exhibit 2, Tr., p. 38). The jury might have drawn from this the inferences that C. M. Grace in such letter

was complaining of the action of W. M. Taylor in keeping the people advised as to their progress in paying their debt. There was no evidence that W. M. Taylor was in any other manner hurting the influence of C. M. Grace. The same letter says: "You was caught doing wrong in 'The House of Prayer'. I have chance to hurt your business. Remember Dr. Moore and his wife." (Tr., p. 38.) This letter, together with the inferences that may be drawn therefrom is sufficient to show that C. M. Grace bore actual malice toward W. M. Taylor and that he had ruined the business of W. M. Taylor because of Taylor's failure to get things straight. Taylor's evidence that he had requested C. M. Grace to admit his error before the congregation after exhibiting to him the nine notes in question and that C. M. Grace had replied that he would not do so since to do so would lower his standing and that he did not want the people to know he had been lying (Tr., pp. 36, 37); that he refused to let the preacher make such a statement (Tr., pp. 36, 37); that such statement constituted an admission that he was lying when he made the statement in the first instance and that he was more concerned with retaining his standing than he was in protecting Taylor's good name. The evidence of Taylor with reference to the boycott of his store (Tr., p. 42), the statement of C. M. Grace that he did not know the meaning of the word boycott (Tr., p. 189), the evidence of William Stanley with reference to the meeting at the home of Darden, the attitude of Darden, on the stand in refusing to answer a question with reference to the purpose of the meeting at his home (Tr., pp. 122, 123), and the language of C. M. Grace in the letter above referred to; and the action of C. M. Grace in making the charge complained of when he had or could have had in his possession the cancelled bank checks which would have settled the question without a doubt.

FIFTH ASSIGNMENT OF ERROR.

THE COURT ERRED IN REFUSING TO SET ASIDE THE VERDICT OF THE JURY AS BEING CONTRARY TO THE LAW AND THE EVIDENCE; THAT, UNDER THE STATUTE, THE COURT HAD NO RIGHT TO STRIKE THE EVIDENCE WHICH WAS EQUIVALENT TO SUSTAINING A DEMURRER; THAT THE OCCASION UPON WHICH THE WORDS WERE SPOKEN WAS NOT PRIVILEGED; THAT EVEN IF THE OCCASION HAD BEEN HELD TO BE PRIVILEGED, YET THE QUESTION OF MALICE WOULD HAVE BEEN FOR THE JURY AND THAT THERE WAS EVIDENCE

TO SHOW MALICE; THAT THERE WAS SUFFICIENT EVIDENCE TO HAVE SUSTAINED A VERDICT FOR THE PLAINTIFF HAD ONE BEEN RETURNED BY THE JURY.

In support of this assignment of error, it is sufficient to say that if the Court had no right to sustain a motion to strike evidence in an action brought under Section 5781 of the Code of Virginia, its act in doing so in this case was contrary to the law; that there was evidence on behalf of the plaintiff that the words were spoken of and concerning Taylor; that they were intended and understood as insulting and that the occasion upon which the words were spoken was not a privileged occasion, and even if held to be privileged by this Court, the privilege was abused and the words spoken were spoken with actual malice which would entitle the plaintiff to recover, if the jury believed the evidence introduced on his behalf and the inferences which might be drawn therefrom; that the action of the Court in so doing deprived him of his right to a trial by jury on the issues raised.

CONCLUSION.

It is therefore earnestly submitted that this Court should reverse the judgment of the lower Court upon the ground that the Court had no right to sustain a motion to strike out all of the evidence of the plaintiff in an action brought under Section 5781 of the Code of Virginia for the reason that such action with reference to sustaining a demurrer which is positively forbidden by the statute and that the Court may not do by indirection that which it is prohibited by statute from doing directly.

It is further submitted that even should the Court hold that a motion to strike could be made in such a case, yet such a motion should not have been sustained in the case at bar because the evidence of the plaintiff and the fair inferences to have been drawn therefrom would have been sufficient to have sustained a verdict for the plaintiff in this case had the jury found for him.

Your petitioner will adopt this petition as his brief in this case.

Counsel for petitioner desires to appear and state orally the reasons for refusing the decision complained of in this petition. Before this petition is presented to a Judge of this Court in vacation or to this Court in term, or filed with the Clerk of this Court, a copy thereof was sent by registered mail to Mr. J. Winston Read and Mr. W. R. Walker,

of Newport News, Virginia, opposing counsel in the Trial Court, on the 10th day of April, 1935.

Wherefore, your petitioner prays that for the errors above assigned a writ of error and *supersedeas* be granted him to the judgment herein complained of entered on October 13, 1934; that said judgment may be reviewed, set aside and reversed and that your petitioner may be awarded a new trial before a jury under proper instructions of the Court.

All of which is respectfully submitted.

W. M. TAYLOR,
By JOHN W. MASSEY,
His Counsel.

JOHN W. MASSEY,
Attorney for Petitioner.

I, John W. Massey, an attorney practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in my opinion the judgment of the Circuit Court of the City of Newport News in the action at law herein W. M. Taylor was plaintiff and C. M. Grace was defendant, rendered on the 13th day of October, 1934, complained of in the foregoing petition should be reviewed, set aside, and annulled and a new trial granted your petitioner, and this cause remanded to the Circuit Court of the City of Newport News, Virginia, for that purpose, a transcript of the record in such case being attached hereto.

Given under my hand this 11 day of April, 1935.

JOHN W. MASSEY.

Copy of above petition received this Apr. 10, 1935.

J. WINSTON READ, &
W. R. WALKER,
Atty. for C. M. Grace.

Rec'd April 11, 1935.

M. B. WATTS, Clerk.

Writ allowed, *supersedeas* awarded. Bond \$300.00.

5/1/35.

E. W. HUDGINS.

Rec'd May 1st, 1935.

M. B. WATTS, Clerk.

RECORD

VIRGINIA:

Pleas before the Circuit Court of the City of Newport News, at the court-house thereof, on Saturday, the 13th day of October, in the year 1934.

Be It Remembered, That heretofore, to-wit: On the 30th day of June, 1933, came W. M. Taylor, by counsel, and docketed in said Court a certain Notice of Motion for judgment for money against C. M. Grace, which said Notice of Motion is in the words and figures following, to-wit:

Virginia,

In the Circuit Court for the City of Newport News.

W. M. Taylor

v.

C. M. Grace.

NOTICE OF MOTION.

To C. M. Grace,
2130 Marshall Avenue,
Newport News, Va.

You are hereby notified that on 3rd day of July, 1933, between the hours of 10 o'clock A. M., and 3 o'clock P. M., or as soon thereafter as it may be heard, the undersigned will move the Circuit Court for the City of Newport News, Virginia, for a judgment against you for the sum of Ten Thousand (\$10,000.00) Dollars, together with the costs
page 2 } incident to this proceeding, all of which is due and
owing from you to the undersigned for this, to-wit:

That heretofore, to-wit: On the ... day of June, 1932, in the public place of worship known as "The House of Prayer", located in Newport News, Virginia, in a certain discourse which you then and there had in the presence and hearing of others, you well knowing the undersigned to be a good, true, just and honest citizen of this Commonwealth, and as such reputed, esteemed, and accepted by and among all neighbors of the undersigned, and other good and worthy citizens of this Commonwealth, to whom the undersigned was known,

but contriving and maliciously intending to insult the undersigned, and to injure the undersigned in his good name, fame, and credit, and to bring the undersigned into public infamy, scandal and disgrace, you, at the time and place aforesaid maliciously, falsely, and insultingly spoke of and concerning the undersigned the false, scandalous, malicious, defamatory, and insulting words following, which are from their usual construction and common acceptation are construed as insults, and tend to violence, and a breach of the peace, and which were construed as insults, by those who heard them, to-wit: On the 3rd day of June, 1932, you asked the undersigned how many notes were taken out of the bank, referring to the First National Bank of Newport News, Virginia, whereupon the undersigned informed you that there were thirteen notes out, meaning that thirteen notes of Five Hundred (\$500.00) Dollars each had been paid off at the First National Bank of Newport News, Virginia thus the amount of Sixty-five Hundred (\$6,500.00) Dollars, had been deposited to your page 3 } personal account in the First National Bank of Newport News, Virginia, that amount having been taken from the church account, he having nine notes himself and one Sarah Furbush having four notes. The following night, June 4th, 1932, you appeared in the aforementioned House of Prayer and made the following statements, to-wit: "Now you all beat me down last night that you had nine notes, I have been over to the First National Bank today and they told me there had been six notes taken out the bank and I believe the man", meaning by "the man" the official of the First National Bank of Newport News, Virginia, to whom you talked concerning these notes. On each of these occasions, you made these statements before congregations of approximately six hundred people. The following day, to-wit: June 5th, 1932, the undersigned took the nine notes to the House of Prayer and after showing them to Charles Ingram and R. B. Greaves, both being members of the aforementioned House of Prayer, Charles Ingram approached you and informed you of the fact he (Charles Ingram) knew that the undersigned had the said nine notes, that he had actually seen that number of notes in the hands of the undersigned, whereupon you sent R. D. Greaves to call the undersigned into the church office, informing the undersigned that you had heard that he had the notes, whereupon the undersigned asked you if you knew your own handwriting, whereupon you answered in the affirmative; thereupon the undersigned showed you the nine notes which he then had in his possession, whereupon you acknowledged the handwriting on the said notes to be your own; following such *acknowledgement*, the undersigned suggested that you

appear before the congregation and make due
page 4 } apology to the undersigned, by admitting that you
had treated the undersigned in a wrongful manner
and had made a mistake. Whereupon, you replied in the following words, to-wit: "I won't do that, to do so would lower my standing, I don't want the people to know I was lying". Whereupon, following such statement by you, the undersigned requested to know if it was your intention, by the inference resulting from your refusal to make such apology, to make it appear that he, meaning the undersigned, himself had been speaking falsehoods" to which you made no reply. Whereupon, because of your failure to make such apology, or to clarify such inference the undersigned has been greatly injured in his good name, fame and credit, and brought into public infamy, scandal and disgrace; the same being apparent by the fact that shortly after the above mentioned controversy, the undersigned was by necessity forced to close a prosperous grocery business which he had been operating prior to that time, due to the fact that your failure to clarify such inference had continued to leave certain people under the false impression that the undersigned was actually guilty of the offense of speaking falsely about the notes aforementioned in this notice of motion, which impression and inference you permitted to stand by your refusal to apologize to me before the congregation, thereby causing my customers to stop dealing with me which resulted in forcing me to close the afore-said grocery business; and by means of the premises afore-said, the said plaintiff hath been and is greatly injured and damnified.

page 5 } Whereupon, judgment for said sum of Ten Thousand (\$10,000.00) Dollars, together with said costs, will be asked at the hands of the said Court at the time and place hereinabove set out.

Given under my hand this 22nd day of May, 1933.

Respectfully,

W. M. TAYLOR,
By Counsel.

A. L. BIVINS, Counsel.

And at another day, to-wit: At a Circuit Court held for the City of Newport News, on Monday, the 13th day of November, 1933:

W. M. Taylor, Plaintiff,
Against
C. M. Grace, Defendant.

ON A MOTION FOR JUDGMENT FOR MONEY.

This day came the parties, by their attorneys, and on motion of the defendant, by his attorney, it is ordered that the plaintiff do file herein his bill of particulars; and the defendant, by his attorney, asked leave to plead, which leave is granted him.

And at another day, to-wit: At a Circuit Court held for the City of Newport News, on Monday, the 12th day of March, 1934:

page 6 } W. M. Taylor, Plaintiff,
 Against
C. M. Grace, Defendant.

ON A MOTION FOR JUDGMENT FOR MONEY.

This day came the parties, by their attorneys; and the defendant, by his attorney, filed in writing a demurrer to the plaintiff's notice of motion, the grounds of said demurrer being fully set out in writing, and argument being fully heard on said demurrer, the court doth overrule the demurrer as to the first and second grounds, but doth sustain the demurrer as to the third grounds therein, and leave is granted the plaintiff to amend his said notice of motion.

The defendant's demurrer filed herein on the 13th day of November, 1933, is in the words and figures following, to-wit:

Virginia: In the Circuit Court of the City of Newport News:
W. M. Taylor, Plaintiff,
v.
C. M. Grace, Defendant.

ON NOTICE OF MOTION FOR JUDGMENT.

DEMURRER.

The said defendant says that the notice of motion for judgment in this action is not sufficient in law; And states the grounds of demurrer relied on, among other things, to be as follows:

1.

page 7 } That said notice of motion sets up no cause of
action in law against the defendant.

2.

That it appears from the notice of motion itself that the words complained of were not spoken to, of or concerning the plaintiff; Nor is therein anything which by a fair construction concerning them will apply to the plaintiff.

3.

That the failure of the defendant to reply to the plaintiff's inquiry, made on the day following the use of the words complained of, as to the defendant's intention by the use of the said words; The failure of the defendant to make such apology as alleged to have been requested of him by the plaintiff; And the failure of the defendant to clarify such inferences as might result therefrom, complained of in the plaintiff's said notice of motion for judgment, are not actionable at law.

W. R. WALKER, P. D.

And at another day, to-wit: At a Circuit Court held for the City of Newport News, on Monday, the 10th day of September, 1934. This day came the plaintiff, by his attorney, and filed his amended Notice of Motion in writing, page 8 } which amended Notice of Motion is in the words and figures following, to-wit:

Virginia: In the Circuit Court for the City of Newport News.

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

AMENDED NOTICE OF MOTION.

To C. M. Grace
2130 Marshall Avenue
Newport News, Virginia

Your are hereby notified that on 3rd day of July, 1933, between the hours of 10 o'clock A. M., and 3 o'clock P. M., or as soon thereafter as it may be heard, the undersigned will move the Circuit Court for the City of Newport News, Virginia, for a judgment against you for the sum of Ten Thousand (\$10,000.00) Dollars, together with the costs incident to this proceeding, all of which is due and owing from you to the undersigned for this, to-wit:

That heretofore, to-wit: On the ... day of June, 1932, in the public place of worship known as "The House of Prayer", located in Newport News, Virginia in a certain discourse which you then and there had in the presence and hearing of the undersigned and others, you well knowing the undersigned to be a good, true, just, and honest citizen of this Commonwealth, and as such reputed, esteemed, and accepted by and amongst the neighbors and acquaintances of the undersigned, and other good and worthy citizens of this Commonwealth, to whom the undersigned was known, but

page 9 } contriving and maliciously intending to insult the undersigned, and to injure the undersigned in his good name, fame, and credit, and to bring the undersigned into public infamy, scandal, and disgrace, you, at the time and place aforesaid maliciously, falsely, and insultingly spoke of and concerning the undersigned the false, scandalous, malicious, defamatory, and insulting words following, which are from their usual construction and common acceptation construed as insults and tend to violence, and a breach of the peace, and which were construed as insults by those who heard them, to-wit: "Now you all beat me down last night that you

had nine notes (meaning thereby to say that the undersigned had falsely contended that he had paid for and taken nine notes from the First National Bank of Newport News, Virginia), I have been over to the First National Bank, and they told me there had only been six notes taken out of the bank (meaning to say that the undersigned had falsely reported that he had paid to the First National Bank, the amount of money due on nine notes of Five Hundred (\$500.00) Dollars, when, as a matter of fact, the undersigned had only paid six of said notes of Five Hundred (\$500.00) Dollars each) and I believe the man", meaning by "the man", the official of the First National Bank of Newport News, Virginia, to whom you had talked concerning these notes and (meaning to say that the undersigned had misappropriated the sum of Fifteen Hundred (\$1,500.00) Dollars, that representing the amount due on account of three notes of Five Hundred (\$500.00) Dollars each) that the above statement

page 10 } was made before a congregation of approximately six hundred people.

That thereafter, the undersigned desiring to give you an opportunity to correct the slanderous matter stated by you in the presence of others exhibited to you the nine notes of Five Hundred (\$500.00) Dollars showing you that he had paid the entire amount due on account thereof and requested that you rectify the wrong you had done him, but that you refused

saying, "I won't do that; to do so would lower my standing and I don't want the people to know I was lying".

That as a direct and proximate result of the slanderous words uttered by you with reference to the undersigned, the undersigned has been greatly injured in his good name, fame, and credit, and brought into public infamy, scandal and disgrace, causing him to close a prosperous business which he was operating at that time, due to loss of customers directly attributable to your slanderous remarks; and otherwise greatly damaging and injuring him, all as a proximate and direct result of the wrong done him by you in uttering said slanderous remarks and by means of the premises aforesaid, the undersigned has been and is greatly injured and damaged in his good name, fame, and credit.

Wherefore, judgment for said sum of Ten Thousand (\$10,000.00) Dollars together with costs will be asked at the hands of the said Court at the time and place hereinabove set out.

Given under my hand this 22nd day of May, 1933.

Respectfully,

W. M. TAYLOR,
By Counsel.

JOHN W. MASSEY, Counsel.

page 11 } And at another day, to-wit: At a Circuit Court
held for the City of Newport News on Monday,
the 24th day of September, 1934:

W. M. Taylor, Plaintiff,
Against
C. M. Grace, Defendant.

ON AN AMENDED MOTION FOR JUDGMENT FOR
MONEY.

This day came the parties by their attorneys and the plaintiff by his attorney asked leave to amend his amended notice of motion filed herein on the 10th day of September, 1934, by striking out at the top of the second page thereof the following words, to-wit: "On the 4th day June, 1934, you appeared in aforementioned 'House of Prayer' and made the following statements, to-wit: "And the defendants not objecting, the said notice of motion is accordingly amended by striking out the aforementioned words. And the defendant by his attorney filed herein his grounds of defense hereto, and the

plaintiff by his attorney moved the Court to strike out the second paragraph of the defendant's grounds of defense for the reason that the same is contradictory to the grounds stated in the first paragraph thereof, and to strike out the last ground of the defendant's grounds of defense for the reason that it constitutes no defense under the statute of insulting words, which said motion being fully argued, the Court doth overrule the same, and to which action of the Court in overruling the said motion, the plaintiff, by counsel, excepted, and the defendant by his attorney says that he is not guilty of the trespasses laid to his charge in the manner and form as the plaintiff against him has complained and of this he puts himself upon the country and the plaintiff likewise, and issue is joined. Thereupon came a jury of seven persons, to-wit: T. L. Willett, Alexander McCrae, Vincent Monfalcone, B. C. Green, J. W. Jenkins, D. E. Phillips and H. T. Roane, who being elected, tried and sworn the truth to speak upon the issue joined, after having heard the evidence of the plaintiff, the defendant by his attorney moved the Court to strike out all the evidence of the plaintiff on the grounds that the alleged remarks in the notice of motion were addressed to the entire congregation and not to W. M. Taylor and that the words were not susceptible to the innuendo placed thereon, which said motion being fully argued, the Court doth overrule the same and to which action of the Court in overruling the said motion, the defendant by counsel excepted, and the evidence of the defendant being partly heard, this cause is continued until tomorrow morning at 10 o'clock A. M.

The defendant's grounds of defense filed herein on the 24th day of September, 1934, are in the words and figures following, to-wit:

Virginia: In the Circuit Court of the City of Newport News,
to-wit:

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

GROUND S OF DEFENSE.

This defendant, reserving to himself the right to plead the general issue and to make such defense thereunder as are allowed by law, states as his grounds for defense:

page 13 } First—That he did not make the statements in manner and form as alleged in the plaintiff's notice of motion.

Second—That all the statements made in the relationship to the matter referred to in the plaintiff's notice of motion for judgment were made in connection with a church organization in the usual manner of investigating its business affairs and were privileged communications.

The defendant further says that he did not make the statements, alleged to have been made by him, in the plaintiff's notice of motion for judgment, to of or concerning the said plaintiff.

And this defendant further says that, as a grounds of defense, the plaintiff has sustained no loss, whatsoever, in his business or otherwise by reason of any statements made by this defendant to, of or concerning him.

The words alleged to have been used by the defendant of and concerning the plaintiff, in the notice of motion, are not susceptible of the interpretation set out in the innuendos.

W. R. WALKER, P. D.

And at another day, to-wit: At a Circuit Court held for the City of Newport News on Tuesday, the 25th day of September, 1934:

W. M. Taylor, Plaintiff,
v.
C. M. Grace.

ON AN AMENDED MOTION FOR JUDGMENT FOR MONEY.

This day came again the parties by their attorneys and the jury appeared in Court in accordance with the adjournment herein on yesterday, and the evidence being
page 14 } fully heard, the defendant by his attorney renewed his motion made herein on yesterday to strike out all the evidence of the plaintiff on the grounds stated herein on yesterday and on the further ground that no malice has been shown, which said motion being fully argued, the Court doth sustain the same, and to which action of the Court in sustaining said motion, the plaintiff by counsel, excepted. Thereupon the Court informed the jury that all of the evi-

dence for the plaintiff had been stricken out and that there was no evidence upon which they could find a verdict for the plaintiff, and to which instruction of the jury by the Court, the plaintiff, by counsel excepted, and the jury retired to their room to consider of their verdict, and after some time, returned into Court having found the following verdict, to-wit: "We, the Jury find for the defendant (Signed) T. L. Willett, Foreman." Thereupon the plaintiff by his attorney moved the Court to set aside the verdict of the jury as being contrary to the law and the evidence, and without evidence to support said verdict and for the misdirection of the jury by the Court, which said motion being fully argued, the Court doth overrule the same, and to which action of the Court in overruling said motion, the plaintiff by counsel excepted, assigning the reasons therefor. Therefore it is considered by the Court that the plaintiff take nothing by reason of his said notice of motion, but for his false clamour be in mercy, etc., and that the defendant go thereof without *today* and recover against the plaintiff his costs by him about his defense herein expended. Thereupon at the instance of the plaintiff, who desires to apply to the Supreme Court of Virginia for a writ of error and *supersedeas* to the aforesaid judgment, it is ordered, that execution of the aforesaid judgment be suspended for a period of sixty days from and after this date.

page 15 } At this day, to-wit: being the day and year first
herein above written: At a Circuit Court held for
the City of Newport News on Saturday, the 13th day of Oc-
tober, 1934:

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

This day came again the parties by their attorneys; and thereupon the plaintiff renewed his motion originally made on the 25th day of September, 1934, that the Court set aside the verdict of the jury entered on the 25th day of September, 1934, on the grounds that the verdict of the jury was contrary to the law and the evidence and for misdirection of the jury, and to award the plaintiff a trial *de novo* and adds an additional ground, to-wit: the action of the trial court in sustaining the motion to strike all of the plaintiff's evidence amounted to a denial of the plaintiff's statutory and constitutional right to a trial by jury.

Which motion being duly argued and maturely considered,

the Court is of the opinion that the same should not be sustained and doth overrule said motion, to which action of the Court, the plaintiff, by counsel, excepted, assigning his reasons thereto.

Therefore, it is considered by the Court that the plaintiff take nothing by his action, but for his false clamour be in mercy, etc., and that the defendant recover against the plaintiff his costs by him about his defense in this behalf expended.

And the plaintiff thinking himself aggrieved by the said judgment and having indicated a desire to present to the Supreme Court of Appeals a petition for a writ of error and *supersedeas* to such judgment, the Court doth order that the execution of said judgment shall be suspended for sixty days from this date upon the said plaintiff or someone for him; giving bond before the Clerk of this Court within thirty days from the date of this order with security to be approved by the said Clerk in the penalty of One Hundred (\$100.00) Dollars, with condition according to law.

And at another day, to-wit: At a Circuit Court held for the City of Newport News on Thursday, the 22nd day of November, 1934:

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

This day at 1 p. m. as the Court was adjourning for lunch in the midst of the trial of a damage suit begun on yesterday, came the plaintiff by his attorney, and proper notice having been given the defendant as required by law of the time and place of presenting his certificate of exception, the said plaintiff presented his certificate of exception #1, and counsel for defendant having duly accepted service of said notice and agreeing that said certificate #1 is a correct record, the Court not being able in the midst of trial of another case to read over same within time limited within which to file same, doth sign the same and make the same a part of the record in this case.

The defendant's certificate of exceptions #1 are in the words and figures following- to-wit:

page 17 } In the Circuit Court for the City of Newport News,
Virginia.

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

Be it remembered that after the jury was sworn to try the issue joined in this cause, the following evidence was introduced in the trial of this case; the following instructions which are all of the instructions offered and refused and the exceptions to the refusing of instructions; the motion on behalf of the defendant that the court strike out all of the evidence of the plaintiff the exceptions of the plaintiff to the court's action in sustaining said motion and in instructing the jury that there was no evidence upon which it could find for the plaintiff; the motion to set aside the verdict of the jury upon the grounds that the verdict was contrary to the law and the evidence and without evidence to support it and to grant the plaintiff a new trial; and the exceptions to the court's ruling in overruling the motion to set aside the verdict and grant the plaintiff a new trial.

page 18 } In the Circuit Court for the City of Newport News,
Virginia.

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

STENOGRAPHER'S TRANSCRIPT:

PLAINTIFF'S CERTIFICATE OF EXCEPTIONS.

Note: Copies of Exhibits 1 and A are not appended, the original exhibits to be used in the Court of Appeals.

H. C. IVY,
Law Stenographer
Newport News, Va.

page 19 } In the Circuit Court for the City of Newport News,
Virginia.

September 24th-25th, 1934.

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

Before: Judge C. Vernon Spratley and a Jury.

Appearances: Mr. John W. Massey, Counsel for plaintiff; Mr. J. Winston Read and Mr. W. R. Walker, Counsel for defendant.

STENOGRAPHER'S TRANSCRIPT.

BILL OF EXCEPTIONS 1.

By Mr. Walker: We wish to file these Grounds of defense. (Handing to Clerk.)

By Mr. Massey: Mr. Bivins is no longer in this case, but I am. In drawing the amended pleadings, my stenographer made a mistake, and it makes bad English, and I want to move the court to strike that out, that is on page 2, after the words "to wit", then it avers the language—page 20 } (Indicating to court).

Notice of motion is amended.

By the Court: Have you made your amendment in writing?

By Mr. Massey: Yes, sir, I have made—

By Mr. Read, interposing: That is all right.

By the Court: I will let the record show an amendment is made, and defendant pleads not guilty, and file your grounds of defense. Let the amendment show it was made before, so there will be no question.

By Mr. Massey: Now I want to move the court—I have only received the grounds of defense—

By the Court: I will allow this amendment—today is the 24th I believe?

By Mr. Massey: Yes, sir.

By the Court: Very well.

By Mr. Massey: I want to move the court to strike out the second ground of defense, on the ground that he can't deny he used the words—

By the Court, interposing: Let's get the jury and send them out, if you are going to talk about that.

By Mr. Massey: Very well.

Note: The jurors are called and then leave the room.

By the Court: Very well, Mr. Massey.

Note: At request of Mr. Massey, the stenographer reads his last statement.

By Mr. Massey, continuing: Move the court to strike out the second paragraph in the grounds of defense, page 21 } on the ground it is Contradictory to the statements made in the first; or to require the defendant to elect on which ground he alleges; and move the court to strike out entirely the last two paragraphs which are numbered, at the bottom of the page, on the ground that under the Law that is solely a question for the jury, and he can't say, under the statute of insulting words, that no injury followed therefrom. Now in support of the first proposition I have only found one case.

(Note: Authorities are here read to the court.)

By Mr. Read: I thought it was statutory, in Virginia, you may plead as many defenses, whether consistent or not. That is what your honor was taught at the University, and the first thing you learned was that you may plead as many defenses as you choose to plead, whether consistent or inconsistent. The only Plea, according to my opinion, that would have to be specially pleaded and set out in this case would be the plea of Justification, and we do not do that. Now as to the other, whether a jury passes on the matter, or whether your honor passes on the matter, why. we would have to make that defense, if we expect to rely upon it. If your honor is of opinion that the only possible interpretation of the language used, whether it be slanderous or against the Insulting Words statute, your honor can't say, what I know the statute says: "No demurrer"—"No demurrer will prevent a jury passing on it." The statute read, prior to '87, that No plea will prevent the jury from passing on it", but as it now reads, "No demurrer", so I take it that would not, in a proper case, prevent a motion to strike. But however that may be, it is one of our grounds, and we expect to rely on it at the proper time. But certainly, under the General Issue, it has been held in at least four cases in Virginia.

By Mr. Massey: Now, as I say to the court, there is no purpose for grounds of defense, except to require the defendant to specify the defense he expects to show under the general issue. You don't have to, in grounds of defense, make a man file special pleas; he has got to file those specially, any way, and unless grounds of defense require him to specify the defense on which he expects to rely under the general issue, it is absolutely useless. I can conceive, also, under the elementary principles of law, a man can plead as many defenses of law or fact as he has, whether consistent or inconsistent; but I deny the right anywhere, of any law,

to plead contradictory, and this is not an inconsistent plea, it is contradictory. He says "I did not speak the words", then he says "I did speak the words, but they were spoken under privileged communication". That is a contradictory plea, and I don't think that even under the broad latitude of Notices of Motion, you can plead contradictory. This is the only case I have found on the point at all. (Indicating.)

By the Court: Motion overruled.

By Mr. Massey: We except to the ruling of the court on the ground stated.

page 23 } Note: The jurors return to court room, are sworn and qualified. Opening statements are made by counsel.

All witnesses, except the parties, are excluded from the room prior to opening statements of counsel, and prior to testifying.

C. E. HOLLAND,
plaintiff's witness, affirmed and testified:

By Mr. Massey:

Q. What is your name, sir?

A. C. E. Holland.

Q. What is your occupation?

A. Grocery and meat business.

Q. You reside in the city of Newport News?

A. Yes, sir.

Q. How long have you lived here?

A. 38 years.

Q. Do you know W. M. Taylor, the plaintiff in this suit?

A. Yes, sir, I know Taylor.

Q. How long have you known him?

A. About 25 years.

Q. Do you know his general reputation for truth, veracity and honesty?

A. Well, what dealings I have had with Taylor are very good.

Q. It is not what you have had with him, it is his general reputation.

page 24 } By the Court: His general reputation, what the people think of him.

By Mr. Massey:

Q. What he is thought of in the community generally, by people who know him.

A. Oh, well, I think—

Q. Don't tell us what you think personally about him, but what the people in the community think of him, so far as his reputation is concerned for truth, veracity and honesty, if you know.

A. Good, so far as I know.

CROSS EXAMINATION.

By Mr. Read:

Q. You are a tenant of Taylor?

A. No, sir.

Q. Is your son?

A. Yes, sir.

No further questions. Witness leaves.

C. R. JOYNER,
plaintiff's witness, affirmed and testified:

By Mr. Massey:

Q. Please state your name?

A. C. R. Joyner.

Q. Your address?

A. 2310 Orcutt avenue.

Q. Your occupation?

A. Inspector, City of Newport News.

Q. How long have you been residing in the city
page 25 } of Newport News?

A. 36 years.

Q. Do you know W. M. Taylor?

A. I do.

Q. How long have you known Taylor?

A. Thirty years.

Q. Do you know his general reputation in his community
for truth, veracity and honesty?

A. Yes, sir.

Q. What is it?

A. Excellent.

No further questions. Witness leaves.

W. M. TAYLOR,
plaintiff, affirmed and testified:

By Mr. Massey:

Q. Please state your name?

A. William Taylor.

Q. Age?

A. 59 years old.

Q. Your occupation?

A. Merchant.

Q. How long have you been a resident of the city of Newport News?

A. I have been here—I came here in 'ninety-one.

Q. In 1891, that is 43 years. Do you know C. M. Grace, the defendant in this *Notion* of Motion?

A. Yes, sir, I know him.

page 26 } Q. What is the position of C. M. Grace, what is his occupation?

A. His occupation is going from church to church, city to city, seaport to seaport, so far as I know.

Q. Well, he is the head of some religious organization, or body, is not he?

A. If he is, I know—

Q. (Interposing.) What is that called, his religious organization?

A. He calls it House of Prayer, Apostolic Faith Church on the Rock.

Q. Is it organized by the church?

A. I don't think so.

(Note: Document produced and exhibited to defendant's counsel.)

By Mr. Read: Offer it now, I will read it later, I haven't time now.

By Mr. Massey:

Q. I hand you here a pamphlet and ask you what is that?

A. This is what he rules the church with.

Q. Is that—

A. That is his instructions.

Q. This is on the outside page: Constitution, by-laws—

By Mr. Read: Mr. Massey—(Pause).

By Mr. Massey:

Q. All right. Is this the constitution and by-laws of the organization?

A. Yes.

page 27 } By Mr. Massey: I wish to offer this in evidence,
Mr. Read will have an opportunity to read them.

Note: Said document is filed in evidence as part of this witness's testimony, and marked Exhibit 1.

Q. Is this organization governed according to that constitution?

A. Yes.

Q. Where does the organization meet, in the city of Newport News?

A. It meets on the—Ivy avenue and 18th street, on the north side.

Q. Were you a member of this organization?

A. Yes, I certainly was.

Q. Were you a member of it in the first part of 1932?

A. Yes, sir.

Q. What was your position?

A. Well, my position was to try to keep peace in the church.

Q. What office did you hold?

A. Banker, I banked the money.

Q. You banked the money?

A. Yes.

Q. Now how were the finances of the organization handled?

A. The money was taken up, small debts was paid by the people. I have the book in my pocket now where some was paid and the money was counted out by two or
page 28 } three people and banked by me.

Q. In what bank did you put the money?

A. I put the money in the First National Bank in his name.

Q. Who was the treasurer of the organization, or was there one?

A. There was no treasurer there.

Q. Well, were you supposed to be the treasurer?

A. I was supposed to be the treasurer. He asked me to do that.

Q. How was the money deposited in the bank?

A. It was deposited in C. M. Grace's name, Trust.

Q. It was deposited in the name of C. M. Grace, Trustee?

A. Yes, sir.

Q. How was it checked out?

A. I guess it was checked out by him, I never was able to check out nothing, and never did try; I don't think anybody could check it out but him.

Q. Well, how did he check it out?

A. I don't know how he checked it out, but it was checked

out. It was moved from—the notes were moved from the House of Prayer, Treasurer, to his personal account, it was his account.

Q. Let's see: In paying the notes, you moved the money from C. M. Grace, Trustee account—

A. On his personal account.

Q. To his personal account?

A. Yes.

Q. And the notes were charged against his personal account?

A. I gave them \$500.00 and the trustee would give me the note, marked Paid.

page 29 } Q. Was there any other man could check the money out of bank except on a check signed by C. M. Grace?

A. No, sir, I didn't hear of any money being drawn out of bank except on checks signed by him. Never did, and nobody else, I don't think.

Q. Now what were the relationships between you and Bishop Grace in the early part of 1932?

A. Well—

By Mr. Read: It ought to be confined to June, not prior thereto.

By Mr. Massey: Well, I am just leading up to it—

By Mr. Read: All right.

By Mr. Massey: To go into the question of malice.

By the Witness: I used to pay out money to different people he owed, and some times I would pay them fifty dollars, or something like that (he didn't count two or three cents in five or six dollars), and I told him I thought, as he owed the people, they ought to be paid.

Q. How did you pay those bills?

A. Some times I would pay them and take receipts for them.

Q. How did you pay those bills, did you pay them by check or in cash?

A. On these—paid small bills in cash.

Q. You could not pay anything by check, could you?

A. No, sir.

Q. All right, go on: Did you have any controversy with Bishop Grace?

page 30 } A. Yes, a little unsatisfaction betwixt me and him, and he said "Well, I am going to put Mrs. Furbush in as treasurer"—

Q. Talk to the jury.

A. (Continued.) "We don't want you." Now that was before—

Q. And he became dissatisfied with you?

A. Because I would tell them, would tell the people how they stand. He would come and ask me "How are you getting on, how many notes are you getting out of bank", and I said "We are getting on fine". I said "I have got a note on this date and a note on that day, and we have nine out now, but, of course, things have been slow and the work gave out", and I told him further—He said "There have been nine notes taken out". I said "Yes, that was the report of his committee". And he said "Six", six notes had been taken out. I told him it was nine taken out, and he said it was six.

Q. Had any of them been taken out by anybody else?

A. He gave Furbish four checks, he got out four more notes.

Q. All right: Did you get this statement from the bank? Or what is that statement (I beg your pardon), what is that statement?

A. (Examining.) I haven't got my glasses.

Q. That is a list of notes showing the days they were due and days they were paid.

A. Yes.

By Mr. Read: I haven't seen that.

By Mr. Massey: I thought you had a copy of it.

By Mr. Read: Have you got anybody to identify this paper at all?

page 31 } By Mr. Massey:

Q. Where did you get this paper?

A. I went to Mr. Plummer, about eight months prior.

Q. We don't want to go into the details of the conversation. You got that from Mr. Plummer at the First National Bank?

A. Yes.

By Mr. Massey: I wish to offer that in evidence.

By Mr. Walker: Objected to; it is an unsigned paper, and it is not identified, when it was given, it states some figures here.

By Mr. Massey: He said he got it.

By Mr. Walker: From the bank. Can't that be introduced by some official of the bank?

By Mr. Massey: I think I can show the jury from whom he got it.

By the Court: All right, sir, I will give you a chance.

By Mr. Massey, continuing:

Q. Did you take this matter up with Bishop Grace?

A. No, I didn't have a chance. I didn't take that up with him.

Q. You did not take that up with him?

A. No, sir.

By Mr. Massey: All right, sir, I will not offer that in evidence.

Q. When was the next time that you had any conversation with Bishop Grace over this matter?

By Mr. Walker: We object to that question. It is leading. The witness has stated he did not take it up
page 32 } with Bishop Grace, and now he asks when was the
next time.

Objection sustained.

By Mr. Massey:

Q. You state that you had a controversy with Bishop Grace over how many notes had been paid out?

A. Yes.

Q. He said there has only been six, and you said there had been nine?

A. I said nine, and there had not been six. I said there had been nine notes paid; he said it was six, and I said it was nine, there had not been six.

Q. What became of that controversy, did you ever settle it?

A. No, sir.

Q. When was the next time, if any, that controversy arose?

A. Next time? Well, the next night he appeared—

Q. What night was that?

A. This was the next night after the first night.

Q. I mean what was the date of that?

A. The date of it?

Q. Yes.

A. That was in '32.

Q. Well, what date?

A. I say may be it is 1932.

Q. Well, what month?

A. June. So one night he appeared in the House of

Prayer, and that happened on the first night. He page 33 } came there and asked me "How many notes have you got out of the bank". I said "There is nine out, existing, and I have got nine of those myself". He said "Oh, no, you have not got no nine notes". I said "I have got nine". He said "I know you have not". Two fellows got up then and said "Yes, he has got them". And he insulted me, and I went on out the church. And the next night he appeared on the rostrum again. He said "You beat me down last night you had got out nine notes. I have been over to the bank"—"I have been over there half a day, and the banker says you have not got out but six, and I believe the banker." And I said "Yes, and everybody else will believe the bank, if the bank says so".

By Mr. Read: We move to strike that entire answer out, because the Notice of Motion is "You all beat me down", referring manifestly to the Congregation.

By the Witness: He told me—

By the Court (to witness): One minute.

By Mr. Read: It so happens that there is a very essential variation between the Notice of Motion, that Grace said this about him, and the allegation is there "You all beat me down", and now he says "You beat me down". Now he is attempting to say that Bishop Grace said "You beat me down" as though he were addressing you, whereas the Notice of Motion on its face shows he was addressing the congregation; and I think that is a very essential variance.

By Mr. Massey: Your honor, I say that it is immaterial; that frequently people say "You all", and they page 34 } are addressing one person, and it does not make any difference if he did say "you all", all the words were directed at Taylor, and his manner showed they were applied to Taylor and to nobody else. The words are admissible, and it is for the jury to say whether, under this statement, he was referring to Taylor as the one to whom they applied, and they referred to him, and none other.

By Mr. Read: Now, as my reply, you state with meticulous care, Judge, they were made before six hundred persons.

By Mr. Massey: I do.

By Mr. Read: And he turns to the congregation and says—

By Mr. Massey: I don't say he turned to the congregation. I say "Meaning thereby the undersigned"—had falsely—meaning thereby to say the undersigned. That is in the notice.

By Mr. Read: Well, I, of course, have a congregation. If I turn to those members and say "You all know that I am

telling you the truth'', I don't see, by any possibility, or any flight of imagination, how you can think I am addressing one person.

By the Court: Objection overruled.

(Exception noted.)

By Mr. Massey:

Q. To whom was he referring?

A. He was talking to me and me only. Everybody knowed I was treasurer.

Q. What did he charge you with doing, in that language?

A. I feel that he was charging me—

Q. I say what was he charging you with in that language?

A. Charged me with that money.

page 35 } By Mr. Walker: We object to that.

By the Court: Wait a minute.

By Mr. Walker: We object to that. That is an opinion. What he felt about it would not be evidence.

By Mr. Massey: I didn't ask him what he felt about it.

Last 2 questions and answers read.

By the Court: That is his answer to the question.

By Mr. Massey: I didn't ask him what he felt about it, Judge. I asked him what he charged him with doing.

By the Witness: He was charging me as a thief.

By Mr. Read: That is a question for the court and jury, the interpretation of that language.

By the Court: I think so, Mr. Massey, and I think all you can do is to show the language this man used, and the jury and myself will draw the conclusion.

By Mr. Massey: All right, sir.

Q. And who contended there had been nine notes paid?

A. I contended.

Q. Who had taken out the notes from the bank?

A. I taken them out.

Q. Could anybody else do it?

A. No, sir, nobody else could do it, because I had the checks he gave me to take them up with.

Q. Did you have opportunity to steal this money?

A. I had plenty; all I had to do was not to put it in bank.

Q. All you had to do was not put the money in bank?

A. All I had to do was not put the money in bank.

Q. And there was no one else could draw the
page 36 } money out but you?

A. I could not draw that out.

Q. With these checks.

A. I could not draw the money out.

Q. With these checks, I said.

A. Yes.

Q. And nobody ever deposited anything in bank but you?

A. I am the one who deposited it in bank.

Q. All right. When did you next see Bishop Grace after that controversy?

A. After that time, I met him in my cafe over across the street, talking to Mr. Kline, where I rents; he came there, and I said "Look here, I can't carry that Slab on me that you are putting on me, I have been here too long, and I am a gentleman in this town, nobody has had anything against me—against my principle". I said "You look like you don't want to go and tell the people you made a mistake"—

By Mr. Read: That is objected to as self-serving.

By Mr. Massey: That was a statement from the Bishop himself.

Objection withdrawn.

By Mr. Massey:

Q. All right, go ahead.

A. I said "I see you don't want to go back and tell the people you made a mistake".

By Mr. Walker: Objected to.

A. (Continued.) I said "let the preacher do it, and I will be satisfied". He said "I ain't going to let them
page 37 } do nothing".

Q. All right. What reply did he give, if any, for his failure to apologize?

A. Because he said it would lower his standing, he was not going to let them catch him in a lie, and it would lower his standing.

Note: Document here handed defendant's counsel.

By Mr. Read (examining): I can't make out the date of this, it seems to be erased, the date on this envelope.

By Mr. Massey: It does seem to be erased, but it looks like January 20th, 1933, the top one is perfectly plain.

By Mr. Read: They can look at it, it will speak for itself.

By Mr. Massey:

Q. Taylor, I am handing you here an envelope dated January 20th, and at the bottom of it, it looks like "1933", and it is mailed in the Postoffice, Washington, D. C., January 20th, three o'clock P. M., and ask you what that is?

A. That is a letter.

Q. Just the envelope.

A. The envelope.

Q. Did you receive that envelope?

A. Bishop Grace written to me at my home.

Q. I hand you here a two page letter, and ask you if that is the letter which was enclosed in that envelope?

A. (Examining.) This seems to be the letter.

page 38 } By Mr. Massey All right, sir. I wish to offer that in evidence.

Note: Said letter was then filed in evidence, as part of this witness's testimony marked Exhibit 2.

By Mr. Massey: And I will read that to the jury. (Counsel reads Exhibit 2 to the jury as follows:) "Washington, D. C. Dear Bro. Taylor: Just to say to you that I know your plans and your evil idea in trying to hurt my influence after I bore with you so long, and at last you was caught doing wrong in the H. of P. and I had and yet have chance to hurt your business, but I have not expose your deeds with the people. I loaned you 500.00 and never got it back, you quit the H. of P. keeping from just judgement and I have been bearing all for God Sake Still you have the caurage to say what you are saying and have a bunch working with you to hurt me, but it is alright.—Remember Dr. Moore in N. C. and his wife—Remember that God is not sleeping, whatever you sow you shall reap. I rather see you praying than to hurt God's work.

I am as ever

C M G—

Your business could have been running nicely had you tried to get things strate."

Q. He states in here that he loaned you \$500.00. Did he ever loan you \$500.00?

A. Never loaned me a cent in his life. I never asked him to.

Q. He says he caught you doing wrong in the page 39 } House of Prayer.

A. I don't know. I never did wrong my neighbors in my life.

Q. Did you ever have any cause of controversy other than about these notes?

A. With him?

Q. Yes.

A. No, we all got along like brothers before.

Q. In the House of Prayer?

A. No.

Q. What does he refer to here when he says "Remember Doctor Moore in North Carolina"?

A. Some years before, Doctor Moore—

By Mr. Walker: We object. This witness is undertaking to explain what a written instrument means, when the letter speaks for itself.

By the Court: I think he can make an explanation of the reference to Doctor Moore.

(Exception noted.)

A. Doctor Moore sued him—

By Mr. Massey:

Q. Well, let's leave that part out.

A. Doctor Moore sued—

Q. Let's leave that part out, we don't care anything about that. But I want to know what does this reference here to "Remember Doctor Moore and his wife" refer to?

A. Doctor Moore, they had him arrested in court, and he got three years, and went to Raleigh and he got page 40 } suspended, he had the money, he drew the money out of the bank, where he had collected it there.

By Mr. Walker: Objected to.

By Mr. Massey: I will admit that is irrelevant, I am willing to strike that out.

By the Court: You answer Mr. Massey's questions, we are not interested in this case, except what is here.

By Mr. Massey:

Q. What I mean is what did he mean by telling you to "Remember Doctor Moore"?

A. He means I was going to die as Doctor Moore was going to die, by tampering with his business.

Q. Doctor Moore died, after calling that to your attention?

A. He lost his home, and lost a lot of stuff. I think that is what he was referring to.

By Mr. Read: Objected to.

By Mr. Massey: I will stop him.

By Mr. Read: You say you are going to stop him?

By Mr. Massey: I am going to ask him where he got it.

By Mr. Read: It will be hearsay.

By Mr. Massey: Not if it was coming from Bishop Grace.

Q. Who did you hear say that about Doctor Moore, who did you hear talking about Doctor Moore?

A. I heard him say so. He said so many times in the church. That is where I got my information from.

page 41 } Statements handed defendant's counsel and examined.

By Mr. Read: What is this? This is written practically a year after the alleged offense.

By Mr. Massey: It is offered to show malice and aggravation.

By the Court: I think he can show that, for what it is worth.

By Mr. Massey:

Q. What is this?

By Mr. Read: We note an exception. I suppose your honor would like to read the letter.

By the Court: Yes, sir. I thought your objection was as to the time rather than to the contents.

By Mr. Read: Both. It was written in an effort to settle the matter by compromise. I don't think this is admissible here, something with reference to this particular suit.

Court examines document.

By Mr. Massey: Here is what I want to get. (Indicating.)

By the Court: I think the objection is well taken.

By Mr. Massey: Here is the paper I wanted to show the court. (Handing document which the court examines.)

By the Court: I think it is still inadmissible.

By Mr. Massey: We except to the ruling of the court in refusing to permit the introduction of this letter, solely on the question of malice and aggravation of damages.

page 42 } Note: Said document is appended for identification, and is marked "Rejected 1".

By Mr. Massey:

Q. Now, you say: What was this business you were conducting that you mentioned?

A. I had rented a cafe at twenty dollars a month.

Q. Who did you rent it from?

A. I had rented it from Mrs. Johnson, the mother of the preacher, the preacher at the House of Prayer.

Q. What I am trying to show: What was this business you were conducting, about lending you this money?

A. The Rising Star Grocery Company.

Q. What was your position with it?

A. My position was manager.

Q. In what building was the business conducted?

A. In mine.

Q. What became of that business?

A. He busted it up.

Q. How?

A. He told the people not to go there, not to go there and spend a cent, to stay away from there.

Q. Did you try to adjust that matter with him?

A. Yes, sir.

Q. What success did you have?

A. Didn't have any.

page 43 } CROSS EXAMINATION.

By Mr. Read:

Q. You join the House of Prayer at the time the church was opened here, or some time after that?

A. No, sir, I joined at the time it had a tent.

Q. That was before the present building was erected?

A. That is right.

Q. As I understand, this money represented by the Notes was covered by a deed of trust on the property, is that correct?

A. No, sir.

Q. The notes in the bank that you were paying off.

A. Well, I don't know how they got that.

Q. You don't know how they got—

A. (Interposing.) The notes in the bank, I don't know how they got that.

Q. The notes were covered by a deed of trust, were they not? Just answer the question, if you don't know, say so.

A. No, sir.

Q. We will get along faster. You don't know whether there was a deed of trust on the property or not?

A. No, sir, I don't know nothing about it.

Q. You answered your counsel as to what position you occupied in the church, you said "My position was to keep peace in the church".

A. That is what he asked me, not to—

Q. (Interposing.) You adhere to that now, do page 44 } you?

A. Yes, sir.

Q. You have nothing further to add to that answer?

A. No, I have nothing further to add.

Q. Well, you were one of the judges of the court, weren't you?

By Mr. Massey: What court, Mr. Read?

By Mr. Read: I am going to ask him.

A. No, sir, I was not judge.

Q. Did you have such an institution in the church known as a court, to which you could appeal?

By Mr. Massey: There has been no evidence of a Church court.

By Mr. Read: I am asking him now. I am asking him now. I will undertake to show that the judge of the court was the first one, or rather, in the church, to investigate charges made against anybody.

Q. Now, is that a fact or not?

By Mr. Massey: I want to object to that on the ground the constitution and by-laws of the organization are the best evidence of that.

By Mr. Read: I think what they did is the best evidence.

By Mr. Massey: I don't think it would have any effect unless it was provided for by the by-laws and constitution.

By the Court: He may answer that.

By Mr. Walker: Except the by-laws may be changed at will, and as to what the people can do at each meeting, is the governing authority.

page 45 } By the Court: I think the question is right.
Objection overruled.

Exception noted by plaintiff.

By Mr. Read:

Q. Will you please answer the question. You know what I mean by the court. Did you have such a thing—I will call it a court, because I will undertake to show hereafter that there was. You say you were not a member of that court?

A. I was a member of the House of Prayer. He asked me to keep peace, and get one or two fellows with me, and I had two people with me, one was J. Darden and one was Dr. Banks; but then these was in the court, and if anybody had anything against anybody we could settle it, we settled it in love and peace and of all of the people, and didn't nothing amount to nothing—

Q. (Interposing.) I asked a simple question: Were you or were you not a member of that court?

A. Yes, I was a member of that court.

Q. All right. Then you were also chairman of the Trustee board?

A. No, sir, they had no trustee board, as I know of. What trustee board was there?

Q. You were also treasurer of the church?

A. I was treasurer, but not trustee.

Q. And general paymaster?

A. General paymaster?

Q. Paymaster.

page 46 { A. No, I was not paymaster.

Q. Who else paid the bills beside you?

A. For the necessities, Mrs. Joyner—Joyner and Sarah Furbush.

Q. Did you not pay the dues?

A. No, sir.

Q. In June, 1932?

A. No, sir.

Q. Receive the dues?

A. No, sir.

Q. At the time you claim the Bishop insulted you.

A. No, I was not paymaster then.

Q. I understood you to say that was one of the differences between you and the Bishop, that you said that these bills ought to be paid. Did you say that or not?

A. I said that about eight or nine months prior to that time; that is where the insurrection started.

Q. Were the business affairs of the church discussed before the congregation from time to time as to how they stood, financially?

A. No, they didn't do that; they didn't tell the congregation

nothing; the congregation had to find out the best way they could.

Q. You claim this statement was made by the Bishop in the presence of six hundred people.

A. I stated the congregation. That was in the congregation. But that talk about the notes, we took the business up first, it was not a regular meeting of the church there, we had done with the singing and prayers.

Q. The church was open for discussion?

page 47 } A. Yes.

Q. For the transaction of the affairs of the church when he asked how many notes had been paid?

A. He asked about it at the time of the services.

Q. Now in answer to counsel you said the Bishop never loaned you a cent.

A. Outside of that money that he loaned to the Rising Star grocery business, he did make that loan, and put all his people there.

Q. Why didn't you make that explanation when you were asked about it?

A. I did make it.

Q. You did?

A. Yes.

Q. You were on that note representing that loan?

A. Yes.

Q. You are on that note today, aren't you?

A. Certainly I am.

Q. Who else constituted the Rising Star Grocery business?

(Pause.)

Q. I mean when it was first organized.

A. (Examining document.) I am telling you now—

Q. Well, can't you remember?

By the Court: You tell him.

By Mr. Read:

Q. It was bankrupt at first, was not it?

page 48 } A. No, sir, never bankrupt. W. M. Taylor, R. D. Cooke, Joseph Darden, fellow named Little; and he had ten of them. I can't remember them.

Q. Well, whatever you choose to call it, Taylor, you went in together, you didn't have any charter, did you; you weren't incorporated then?

A. Yes, sir, we got a charter; lawyer Walker got it.

Q. I say you first opened that business?

A. Yes, sir.

Q. When you first opened that business?

A. Yes, sir, when it first opened. That is when it first opened.

Q. You were a corporation then?

A. Yes, sir, when we first opened.

Q. You were the manager?

A. Yes, sir.

Q. In fact, you looked after the business entirely, didn't you?

A. Not entirely, I had a friend that worked with me, but they made me manager because they know'd I could get anything they needed, and he could not get it.

Q. And you were supposed to make reports from time to time—

A. We got along—

Q. (Continued.) To your business associates, were you not?

A. Sure, we made report every night.

Q. Do you recall one occasion in the fall of 1932 that you had a business meeting, in which Darden stated—A meeting of you and your associates, in January, 1932, do you remember that?

A. No, sir, I don't remember that.

page 49 } Q. Well, I will try to refresh your memory: At which meeting Darden said that, after your report, he would not give ten cents for the business. Do you remember his saying that?

A. He might *said* said—

Q. (Adding:) And you said, in response to his request for a statement of the affairs "I didn't come here to argue", and you left the business—you left the building, I mean?

A. No. I didn't keep the statement, R. D. Grevious was the bookkeeper.

Q. Did he accuse you of having reported the payment of certain bills which were thereafter found out not to have been paid?

A. They haven't accused me of paying no bills relating to the store.

Q. No, I say of not paying them.

A. Of not paying bills?

Q. Yes, did Darden accuse you of that?

A. No, he has not accused me of nothing.

Q. Didn't they, in that meeting I have last suggested, didn't they say "Here is a bill", and "There is a bill", and so forth, which you reported as having been paid, and they found out it was not paid?

A. Don't remember nothing about it.

Q. All right.

A. I just checked up the bills of five hundred dollars to be paid, and they didn't have it, and there was no money.

Q. What was the condition of the affairs of the page 50 } Rising Star in June, 1932?

A. We was getting along fairly well, and we got along until he boycotted the business, and then people were afraid to come to the store.

Q. You have eminent counsel here to argue your case—

By the Court: He asked you about the condition of the business, you answer the questions he asks you.

By Mr. Read, continuing:

Q. I asked you what the affairs of the business were in June, 1932, or along about that time?

A. The first part of 1932—the first part of 1932, it was getting on fine.

Q. I asked you in June, you don't call June the first part of the year, do you?

A. In the first part of the month it was pretty fine.

Q. When did you borrow this money, the organization borrow this money, the note on which you went, on the property there in the charter?

A. I don't recall just the day and time they borrowed it.

Q. That was in the early part of 1932, was not it?

A. I don't know just the time they borrowed it.

Q. It was before this alleged stealing?

A. It was before anything like that come up, of course.

Q. Well, didn't you have to borrow that money to tide you over?

A. I don't know whether we had to have it, but we felt like we wanted it.

page 51 } Q. You say the Bishop told the people not to deal with you?

A. Yes.

Q. You mean he told them in church?

A. He said it in the church, public.

Q. Have you any witnesses to that effect—

A. I think I have.

Q. Except your own evidence?

A. I think I have.

Q. Can you fix the day and time?

(Pause.)

Q. I say can you fix the day and time?

A. I don't know, it was somewhere in June, 1932, in June of 1932.

Q. He made the statement in the House of Prayer.

A. Yes. Prior to June, 1932.

Q. Did you hear the statement yourself?

A. I got disgusted after—

Q. I just asked you if you heard the statement yourself?

A. No, I didn't hear it.

By Mr. Walker: We move to strike out all of this evidence.

By Mr. Massey: You asked him.

By Mr. Walker: No, he made the statement in his direct testimony. We move to strike out all of this evidence relative to the statement he claims the Bishop made, wherein he told people not to deal with him, in the House of Prayer, as being hearsay, because he now says he was not present page 52 } and didn't hear it himself.

By Mr. Massey: He has not made any such statement in his direct examination.

By the Court:

Q. Did I understand you to say you didn't hear the bishop make the statement to people not to deal with you?

A. Yes, sir.

By Mr. Walker: He was not present.

By the Court: Well, any statement the bishop made about him, coming from other people, would be inadmissible; if he didn't hear it, we will strike it out.

By Mr. Massey: He stated the fact, he didn't state the conversation.

By Mr. Walker: Well, he didn't state the fact, if he didn't know it of his own knowledge.

By Mr. Massey: If he had knowledge of it, it is all right.

By the Court: Just continue the cross examination, Mr. Read.

By Mr. Read:

Q. Now, as to this transaction at the First National Bank, I want the jury to understand that clearly: Every check that Grace left with you was made payable to the First National Bank, was not it, and signed by him, as C. M. Grace, trustee—

A. Yes.

Q. Is that right

A. That is right.

page 53 } Q. The object being for you to take up these notes as fast as you could take them up, that is correct, is not it?

A. That is correct.

Q. So that a child could know, out of the high school, that you could not possibly take any part of that money yourself, personally, on his check?

A. No, that is true.

Q. So that Mr. Plummer or some other official of the bank had to endorse every one of the trustee's checks before they ever could be paid, is not that true?

A. Yes, sir.

Q. Now how many of these checks did he leave with you?

A. I got out nine.

Q. I say how many did he leave with you, I didn't ask you how many you got out. How many did he leave with you, twenty checks was not it?

A. Yes, sir.

Q. Did he leave any checks with you?

A. Yes, sir.

Q. How many did he leave?

A. I think he left five the first time, but when he kept coming back, and went to my house on Marshall avenue, he asked me how many of them I had, I said "I haven't got but one or two more notes"—"One or two more checks"—

Q. (By the Court:) Just tell us how many checks you got?

A. That was nine.

page 54 } Q. Left nine checks with you?

A. Yes, sir.

By Mr. Read:

Q. Didn't leave but nine checks with you?

A. He might have left one or two more, I never took particular notice of them, only one time, he got a check—I went to the bank and gave a check, and he gave me the note.

Q. Now your conduct of affairs, financial affairs, was investigated by the court, was not it?

A. (Pause.) Investigated what?

Q. You understood what I meant.

By the Court: He means the church court.

By Mr. Read:

Q. When I say "court", I mean church court. When I use the word "court", I mean church court.

A. No, sir, it was not.

Q. Didn't have any investigation at all?

A. No, sir, not about the church.

Q. You don't remember their findings?

A. No, sir, not in the church.

Q. They did not?

A. No, sir, not in the church, at all.

Q. Did they have any investigation about these notes?

A. No, sir.

Q. If not in the church, did they have any investigation about these notes?

page 55 } A. About the notes? No, sir.

Q. No investigation about the notes at all?

A. No, sir.

Q. Didn't you appear before this church court?

A. Yes, sir, but—

Q. What did you appear for?

A. I borrowed \$3,151.00 from Mr. West. I got four people to go in with me to borrow the money, a loan was made to him to pay his note off.

By the Court: He didn't ask you anything about that.

By Mr. Read:

Q. You deny that you were summoned to appear before the court on account of these notes?

A. Yes, I do.

Q. You deny that?

A. Yes, I do.

Q. And you deny they made a finding against you that the bishop's charges against you were upheld, do you deny that?

A. I deny all of that, only these notes, but I can tell you what that meeting done if you give me a chance, I can tell you what that meeting was and what was done at it.

Q. Do you also deny you said you would appeal. You stated there that "I will appeal from the findings of the court"?

A. I will appeal.

Q. You remember that?

A. Yes, I remember that; and I came before the page 56 } meeting, and that meeting was held.

Q. Now the appeal was taken under the rules of the church, as it then existed, the appeal was taken to the Bishop, was not it?

A. No, sir, that was gone into plain by him when the call was made, to call me to the church—

By the Court: You will have to answer his questions.

By Mr. Massey: You just answer Mr. Read's questions.

By Mr. Read:

Q. I say was not an appeal, in all cases, taken to the bishop from the decisions?

A. Oh, yes, sir.

Q. That would be to Bishop Grace?

A. Yes, sir.

Q. Did you ever ask for a hearing before him?

A. Yes, sir.

Q. In that very court?

A. In that very court.

Q. And you refused to take it?

A. No, sir, he said he would take it at some convenient time.

Q. Did you ask for it?

A. Yes.

Q. Did you ever make any effort to have that appeal. You walked out of the church and quit and said "I am not going to stand here all the evening in the court, to suit the convenience of the court".

A. No.

page 57 } Q. Didn't you say that?

A. No, sir.

Q. And you quit the church?

A. No, sir, I didn't do that; that was a long time after that.

Q. When the Bishop first asked you about the notes that had been paid, you told him you had destroyed the notes?

A. He didn't talk about the notes, and nobody else, and those notes didn't come up in that meeting.

Q. I didn't ask you that. I say when he first asked, when the Bishop first asked you to produce the notes, you stated you had destroyed them?

A. No, sir, I have never.

Q. You never stated to him that you had destroyed the notes?

A. I never told him I had destroyed them, that is not a fact.

Q. Did you give him any information at all about them prior to June 2nd, 1932?

A. I give him all the information he wanted, and he was not talking about them, he was talking about the loan notes.

Q. What did you tell him about the notes at the First National Bank, how many did you tell him had been paid?

A. I told him nine.

Q. When was that?

A. That was in June, too.

Q. That was after the meeting in which he was supposed to have slandered you, was not it?

A. Yes.

page 58 } Q. You positively refused to give him any information whatever prior to June 2nd, 1932, about these notes?

A. I gave him all he asked me for.

Q. And you had no hesitation whatever in doing so?

A. No, sir, I have never refused.

Q. Now, the Bishop asked you to go with him and a man named Cotton. Do you know Cotton?

A. I know him.

Q. He asked you to go over to the First National Bank, and stand there so you could be in hearing of the teller's cage. He thereupon went to the teller and said "How many notes of the church have been paid" and the teller said six. Did you hear that?

A. No, I didn't hear him. I heard him say six. I did not hear him say that, he did not at that time.

Q. What did he say?

A. He told him I had paid nine notes, nine notes was outstanding.

Q. Not six?

A. Not six—nine.

Q. And you and Cotton were standing by, so you could hear the teller answer the Bishop?

A. At the time, he told me to come close to him, so I could hear, but after he got there he got in the corner there.

Q. He went to the teller's cage, that is the only place he could go?

A. That is where he went.

page 59 } Q. What did you understand the Bishop was taking you over there for?

A. He was taking me over there because he has done said such a Blank in the Church, and he was asked of it. That didn't do no good with him going over there.

Q. Well, he wanted you to hear what the teller was saying, that is what he told you?

A. Yes.

Q. That is what he told you.

A. That is what he told me, but I didn't have to hear that, because I had them in my pocket.

Q. Didn't the Bishop tell you he wanted you to go over—

A. No, he didn't tell me.

Q. So you could hear what the teller had to say?

A. No, sir.

Q. Well, you didn't want to go there because you had the note, because the note had been paid?

A. No, sir.

Q. Do you know the name of that teller, because they have several there?

A. No, sir, I don't.

Q. The contributions there at the church are entirely voluntary, aren't they? Do you know what I mean by voluntary?

A. Well, I consider it—

Q. Do you know what I mean by voluntary?

A. It was some compulsion.

page 60 } Q. Do you know what I mean by voluntary?

A. You say "voluntary", it was not compulsion, no.

Q. I don't want to mislead you or anybody, I have no desire to do that, if you don't know what I mean by that I will explain it.

By the Court: He said it was not compulsory.

By Mr. Read:

Q. Compulsion. Well, that is what I want.

Last four questions and answers are read.

By the Court: I may have misled you, because he says he understood you to mean compulsion.

By the Witness: I say he had some compulsion, it was not up to the rest of the people.

By the Court: That is his answer.

By Mr. Read:

Q. You mean he might force them to give?

A. That is what he tried to do.

Q. How did he force them to do so?

A. Well, he would ask them to pay their tithes.

Q. Well, the book says that.

A. Yes, the book says that; then he wanted them to pay 25 cents a week, every member to pay 25 cents a week.

By the Court: Mr. Read didn't ask you that, he asked you how the Bishop exercised any force over them to compel them to pay the money to the church?

By the Witness: He told them to pay it, them that was not paying up, he told to pay it up.

page 61 } By Mr. Read:

Q. Did you pay 25 cents a week?

A. Yes, I done it.

Q. Everybody paid 25 cents a week?

A. I could not say everybody, but that was the law, they turned it up.

Q. When did your business close over there?

A. I think we closed the last of June, I don't have the day, because when he blowed the light out, it was out, that was all.

Q. Did he blow the light out or did you blow it out?

A. He blowed it out. I asked him not to blow it out, I asked him to modify his statement and he would not do it.

Q. Well, they accused you of doing it?

A. Nobody accused me of nothing, except they told him all that since I left there. I left there clear.

Q. And for that very reason you got angry and said "I am going to sink the whole business".

A. I did not.

Q. Do you deny you made that remark ?

A. I deny it flatly,—I did not.

Q. "I am going to sink the whole business."

A. I deny it flatly. I have never used that word in my life nowhere.

Q. Well, were you heavily in debt?

A. Sir?

Q. Were you heavily in debt on June 2nd, 1932?

page 62 } A. Was I heavily in debt?

Q. I mean the business, when I say you I mean the business.

A. Yes, sir, because he stopped them from patronizing the store, and they owed me, because they had not paid it to me.

Q. And why were you heavily indebted, in June, 1932?

A. Because I stood for stuff coming in the store.

Q. You say the defendant made charges on the 2nd of June.

A. No, sir.

Q. Anyhow, the paper will speak for itself.

A. No, sir, it was in June, I said.

Q. Well, the paper will speak for itself. How are these associates of this business—you are manager—how were they supposed to get a return on dividends, every month or every six months?

A. No; they had not come to that point, because they had not cleared expenses.

Q. Well, that business began in May, 1931, this Rising Star began in May, 1931, didn't it?

A. I don't recollect the day it started.

Q. And there never was a cent dividend paid to anybody?

A. Dividends? No, sir, because they had not paid their obligations.

Q. Did you make expenses?

A. (Adding:) From ninety dollars down.

Q. Did you ever pay expenses?

A. Was not able to pay, when people didn't pay their obligations to the store, I have their notes now where they owe us, they have never paid them.

page 63 } Q. I don't recall that you answered when the business was closed in June, did you say, 1932?

A. Some time in June.

Q. The Rising Star, when I say "business", the Rising Star.

A. Some day in June.

Q. 1932?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Massey:

Q. Taylor, I want to get this matter clear about this boycott.

A. Yes.

Q. Did you ever have any—State whether or not you ever had any conversation with Bishop Grace with reference to the boycott of that business?

A. Yes, sir, I have.

Q. Did you testify to that on your direct examination?

A. Yes.

Q. What happened at that conference you had with him about the boycott?

A. I called my men together and had them—

Q. Leave out all that. When you were talking to Bishop Grace, what did he say to you?

A. I asked him to modify the statement, else to get among themselves, I was suspected around town of paying the notes—

page 64 } Q. I told you to leave that out: Just tell what the Bishop said when you asked it?

A. I told the Bishop to modify, to please modify that statement he made against the store; he asked me "What do you think"—

By Mr. Read: Objected to—

By Mr. Massey: He testified to that on direct examination, and you say he didn't.

By the Court:

Q. Mr. Massey asked you—he asked you did the Bishop have any direct conversation with you himself about boycotting the store.

By Mr. Massey: That is what I am asking him.

A. Yes.

Q. Well, what did he tell you then?

A. He told me that he boycotted it, did I expect him to take it back, knowing he was not going to do nothing he didn't need.

By the Court: That is enough on that.

By Mr. Massey:

Q. That is enough about that. Who kept the books at this Rising Star store?

A. R. D. Grevious.

Q. How were the bills at the Rising Star Grocery Company's store paid, by cash or check?

A. When we first started I paid myself, with my own check; I have stopped now.

Q. After the corporation was organized how did you pay the accounts?

A. We didn't have any money, we had to do the
page 65 } best we could, five, six and seven dollars at a time.

Q. Are you yourself obligated on any of those debts?

A. Yes.

Q. You are obligated on them, too?

A. Yes, sir.

Q. Did Bishop Grace—Who got back the cancelled checks from the bank showing how many of these notes had been paid?

A. Who got back the cancelled checks?

Q. Who got back those cancelled checks?

A. I got them back.

Q. Did you get the cancelled checks back?

A. No, he got the cancelled checks back, of course.

By Mr. Read:

Q. At this church court the bank deposit book was produced, was it not?

A. Yes, sir.

Q. There was one page torn out of that, was not it?

A. Yes, sir.

Q. Who tore that page out of the book?

A. I did.

By Mr. Massey:

Q. Why did you tear the page out of the book?

A. After he kept on talking this and that, and this here and that there, and the blanks said this and that, and I said

“Now take back all this talk”, because I have got page 66 } to clear myself here now, from now on, and I said

“Take this out of that book”, “Tear that right back out of there”—

By the Court:

Q. He asked you why you tore that page out of that book. Answer that question.

A. Because after he *excused* me of so much mess and round-
tales and so forth, around there, I did take that page out of that book, to justify myself.

By Mr. Massey:

Q. Well, where is it?

A. Well, after that, twelve months after, they didn't say nothing more about it, I just tore out the page up here. (Indicating.)

Q. Did you, at the time you settled up with them, get a receipt showing that you had closed that transaction with them?

A. Yes, sir, I got it.

By Mr. Walker: What transaction?

By Mr. Massey: With the House of Prayer association. (Document handed to defendant's counsel and examined.)

By Mr. Read: This refers to the delivery of certain notes, whereas, I understand he paid all the notes.

Q. (By Mr. Massey:) Who kept a record of the bills that were paid?

A. The treasurer here, or the secretary, but it usually varied.

By Mr. Read: I don't see any objection to that, but it is not in response to your question. (Indicating.)

page 67 } By Mr. Massey:

Q. Taylor, how did you come to be treasurer of this organization?

A. Well, he asked me to be.

Q. Who asked you to be treasurer?

A. Bishop Grace; he asked me three or four times before I accepted.

Q. Was there any board of deacons of this House of Prayer?

A. No, sir, so-called, there was no board.

Q. Well, who were the so-called board?

A. So-called, was R. D. Grevious, Chalkley, Banks and J. Darden, and later on took in fellow named Clarence.

Q. Were you a deacon?

A. Yes, sir, supposed to be, as it was.

Q. Were you ever accused of any matter with reference to these notes before the board of deacons?

A. No, sir.

Q. Is there a board of elders within the House of Prayer?

A. I don't know anything about them, I have never seen them.

Q. Were you an Elder?

A. No, sir, I was not.

Q. Do you know to whom a final appeal had to be taken?

A. Well, according to his talk it had to be taken to him.

Q. To the Bishop himself?

A. Yes, sir.

No further questions. Witness leaves stand.

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WILLIAM STANLEY,
plaintiff's witness, duly affirmed and testified:

By Mr. Massey:

Q. Please state your name?

A. William Stanley.

Q. Your age?

A. Forty.

(Pause.)

By Mr. Read: I want to ask counsel the object of the introduction of this constitution and by-laws of the House of Prayer, because I can't see how they can have any bearing on this case. I don't see how the rules of the Presbyterian faith could possibly be material on the issue as to whether he slandered or not, and we object to these for that reason.

By Mr. Massey: I think, probably, my argument ought to be made in the absence of the jury.

By the Court: Well, do you want to take it up now, gentlemen?

By Mr. Massey: Any time will suit me.

By the Court: It has not been read to the jury.

Note: Further action as to introduction of last-mentioned document is deferred.

By Mr. Massey, continuing:

Q. State your name?

A. William Stanley.

Q. Where do you live?

page 69 } A. 616 20th street, but now, I moved Saturday night to 734 Hampton avenue.

Q. Were you a member of the House of Prayer?

A. Yes, I am still. I am still a member.

Q. You are still a member of the House of Prayer. Were you present in the House of Prayer on the night in the first part of June?

A. Yes, I was.

Q. Were you present on the night that a controversy arose in the House of Prayer about some notes?

A. I was.

Q. Will you please state to the jury as near as you can remember, what was said on that occasion?

A. Yes, sir.

Q. Just tell the jury.

A. Well, on that time, of course I am very sleepy, as everybody knows that, now I could not begin just at first, but I remember we used to have night Gospel. Bishop C. M. Grace spoke something concerning that there was not but six notes had been paid; and as near as I can get at it, it came that Taylor said there had been nine notes taken up; and he disputed that, and he said it was not but six; and I think brother Grevious gotten up (one of the members gotten up), and said there were nine taken up; but he still contended it had not been but six. And on the next night, or the next time that it came up he said "You had beaten me down"—That "You all beaten me down there had not been but six taken out, and there had been nine". He said "It has not been but six, because we put in about a half a day over there at the bankers, and he said it had not been but six taken up, and we will believe him before we believe what Taylor said".

Q. Now, who was he talking to?

A. He was talking to the, direct to the public congregation at that time.

Q. Who was he talking about?

A. That is, everybody had understood he was talking about

brother Taylor, that is after the meeting, referring to brother Taylor, differently from any one else.

Q. Were you present in the House of Prayer on succeeding nights when this matter came up?

A. I was right there, I had charge of the Choir.

Q. You had charge of the Choir. Did you ever hear the Bishop make any statements with reference to the Rising Star business or not?

A. Yes, he spoke—(pause): He spoke slightly of the business.

Q. What do you mean by slightly?

A. Well, he had advised them not to go there. Everybody there thoroughly understood by that, it was for them not to go over there.

Q. State whether or not you—I won't ask that page 71 } at this time. Did you ever talk with the Bishop about this matter?

A. Never has.

Q. You never have?

A. No, sir.

Q. You are still a member of the House of Prayer?

A. Yes, sir.

Q. Have you any interest in this litigation?

A. Not a bit, no, sir.

CROSS EXAMINATION.

By Mr. Walker:

Q. You say you were a director of the choir?

A. At that time, yes.

Q. Are you director of the choir now?

A. No, sir.

Q. Why are you not director of the choir now?

A. Well, it became a disagreement between me and some of the acting trustees. Not trustees, but acting. They gave me directions and I refused to serve under the directions they wanted me to do; and I felt, in other words, to come right out in plain words, I saw I was getting in trouble, and I left the choir in order to keep out of trouble, the pastor mistreated me.

By Mr. Read: I don't think what the pastor did has anything to do with this issue.

By the Witness: The pastor there was specially responsible for it.

By the Court: I don't see any use going into it either, but he asked the question.

page 72 } By the Witness: I instructed the Choir for six and a half years.

By the Court: Well, let's don't go into that. You left because you had some trouble there.

By Mr. Walker:

Q. You say you are rather sleepy now?

A. I don't understand.

Q. You sleep most of the time.

A. Well, most of the time, but I was wide awake at that time, wide awake at that time.

Q. Were you asleep when this conversation occurred?

A. No, sir, I was not sleep then, just as wide awake as I am now.

Q. You said so.

A. Yes, sir, I said so, I said I was sleepy, and on the beginning it might have been some things said I don't know. I am just telling what I know, I am not for either side, I am telling the truth, so help me God.

Q. You said the Bishop addressed the congregation?

A. Yes, sir.

Q. Public meeting?

A. Public meeting, no private meeting.

Q. Public meeting. Where was Taylor at that time?

A. Taylor was sitting there in a little altar they have, like that (indicating), it is so-called Baptized men—so-called Trustees, there are no trustees; you all have that
page 73 } on record, too, so-called, and as the choir starts, and so on, *the* the baptizing starts, the singing starts, and so on, you have a place in there.

Q. It is somewhat shaded from where the Bishop stands, is not it?

A. It is right next to him, it is like that (indicating), it corners there, and he sits up on a stand elevated, you could say twelve to eighteen inches.

Q. The Bishop was on the rostrum—

A. The Bishop was on the rostrum.

Q. Inquiring about these notes, to the congregation?

A. Absolutely.

Q. And two or three members of the congregation, asked them about the notes?

A. Yes.

Q. Among them Taylor?

A. That is right.

Q. That Rising Star Grocery company was composed of eight or ten men, was not it?

A. Well, I could not fairly say, I am not a member of that.

Q. Don't you know that the trustees of the church were members?

By Mr. Massey: You are talking about Trustees, there are no trustees.

By Mr. Walker: They are not Trustees.

By the Court: He says he don't know.

By Mr. Walker:

Q. Don't know, that is all.

page 74 } A. You might pronounce them appointed men.

No further questions. Witness leaves stand.

F. D. DANIEL,
plaintiff's witness, affirmed and testified:

By Mr. Massey:

Q. State your name. Your name?

A. F. D. Daniel. Frank Daniel.

Q. And your address?

A. Address is 709, 18th street.

Q. What is your occupation?

A. My occupation is janitoring around the house of Mr. Dawson and Mr. Colonna; I have been working there about eleven years.

Q. Have you any other occupation?

A. Preacher.

Q. What church are you preacher in?

A. First Baptist Church, Riverview.

Q. Were you a member of the House of Prayer in June, 1932?

A. Yes, I was a member, though I never paid my membership, I was attending there.

Q. Were you present on the night of the first part of June, 1932, when a controversy arose in reference to the payment of some notes at the First National Bank?

A. Yes.

Q. Will you state to this jury what you heard?

A. I heard the Bishop say that he had come over to the bank and he had a talk there—

page 75 } By the Court:

Q. Talk louder.

A. (Repeating.) I heard the Bishop say he and the cashier had been present a whole half-day and could not find but six notes. And he said that nine had been taken out.

By Mr. Massey:

Q. Who said that nine had been taken out?

A. Taylor.

Q. All right. What did the Bishop say then?

A. He said he could not find but six.

Q. To whom was he talking? To whom was the Bishop talking?

A. He was talking to the congregation.

Q. About whom was he talking?

A. Brother Taylor.

Q. Were you present in the House of Prayer on the night next succeeding that night? Did you go back there any more after that night?

A. Oh, yes, sir.

Q. Were you present at any time that any matter with reference to the Rising Star Grocery Company came up?

A. Well, they were in the office, so I never heard that.

Q. You didn't hear that?

A. No, sir.

Q. Is the House of Prayer supposed to be a church, or do you know?

A. He told us not to leave our churches, this was a House of Prayer for all people, those who had not put
page 76 } their name there was as much a member as those
who had joined.

Q. Do you know anything about their organization over there? Do they have any deacons?

A. They have no deacons, no more than he said he appointed these men to attend to his business.

Q. Who appointed them?

A. The elder, because he said he had no right to do so, and would not call them "Elders".

By Mr. Reed: I don't think that is material.

By Mr. Massey, continuing:

Q. Did he have any Trustees?

A. No trustees there either, only appointed by him.

By Mr. Massey: I thought you were contending they were—at some time or other, he was brought before some court there.

By Mr. Read: He said Appointees.

By Mr. Massey: Well, that is what he testified to. We will talk about that when it becomes necessary.

CROSS EXAMINATION.

By Mr. Read:

Q. You say when he made the remarks about the notes that the Bishop was addressing his congregation?

A. Yes, sir.

By Mr. Read: That is all.

By Mr. Massey: Judge, I believe that is all, except the question of the introduction of this constitution.
page 77 } By the Court: Plaintiff rests?

By Mr. Massey: Yes, sir.

By the Court: All right, Mr. Sheriff, suppose you take the jury up to the Corporation court room, while we take up the question.

Note: The jurors here leave the court room.

By Mr. Read: I want to ask counsel what the purpose was?

By Mr. Massey: All right. This is an action against C. M. Grace. This purports to be the constitution and by-laws of the House of Prayer—United House of Prayer for all people Church on the Rock of the Apostolic Faith, by authority vested in him as such. I want the Bishop to tell me from whence he obtained his authority by which he promulgated the constitution and by-laws for this House of Prayer. I want to show that under this constitution there is absolutely no provision made for the handling of the fiscal affairs of the organization whatsoever; that they are all handled by C. M. Grace personally; that he deposited the money in the account of C. M. Grace, Trustee, and in his name; that nobody can draw a cent of money out of that bank except Bishop Grace. I want to show that he was sole and only Trustee of this organization; that the property is held in his name solely; the deed on record will show the property was conveyed to C. M. Grace, and individually to C. M. Grace trustee; that he holds the property, that he handled the money, there is no provision made in here whatsoever—Taylor was merely appointed by him. I want also to show that under this constitution the Bishop was the whole thing; this
page 78 } is Bishop Grace and his personal following, that it is not a Church, no organization of any kind. And in support of that I want to read your honor Article 6 of

this constitution: (Reading) "The chief executive officer and spiritual advisor of this organization shall be designated as Bishop; and the present Bishop, C. M. Grace, being the founder of the organization, shall hold the office for the period of his natural life. The General Assembly and congregations of this organization shall have no power whatsoever to interfere with his visions, rights or powers in building and making growth in the said organization, neither shall they have power to judge or condemn him, as he is our high power and our general head on earth, and we shall have no power to judge him. According to the words of the Apostle Paul, he is only to be judged by the Almighty God". I want to show that by this constitution, which he has laid down upon these people, that he is the sole and only arbiter of that whole organization; and that Taylor, in this case, was powerless when his controversy was with the Bishop himself; that there was nothing that he could do under it. And I further want to introduce this constitution of this House of Prayer for the purpose of showing to the jury and to the court that the witnesses who will testify here in behalf of this defendant, and who are members of this organization and have subscribed to this constitution, so consider the Bishop, and that anything he does is right—he can't be wrong—and that their evidence is to be considered in the light of this constitution. Furthermore, I think the constitution and by-laws of this organization are admissible because

page 79 } of the fact that the defense here seeks to set up the fact that this controversy arose in and under the Church organization, and that it was settled in accordance with the church organization. I want also to show that the Bishop holds all the property of the congregation, and that all of Section 7, which deals with bishops, has no application to this Bishop at all, but only to Bishops who may be appointed after his death. I also want to show that there can only be an amendment by and with the consent of the Bishop. In other words, I want to show to this jury—I think they have got to pass on this matter between Taylor and Bishop Grace individually—exactly the form of organization he has over there,—that it is all Bishop Grace, he appoints everybody, that he is sole—he is not elected by the congregation, but he is appointed Bishop, and he appoints everybody in the organization; that he holds office for life and that nobody has power to judge him. That is what I want to introduce it for, that is what I want to show by it. I think I could probably arrive at the same thing by asking the Bishop questions on the stand, but I believe this is the simplest and easiest way to get it before the court.

Counsel for defendant renews the objection, and after further remarks, it is stated:

By the Court: I think, gentlemen, it ought to go in. I think there are some questions brought about, as to whether or not he transgressed the rules of the church, to show the presence or lack of regulations in handling the financial matters pertaining to the congregation, and to show, page 80 } in addition, the respective situations of the parties involved. I overrule the objection and admit it in evidence.

By Mr. Walker: Exception.

Note: Said document was then received in evidence, and is filed under separate cover, marked Exhibit 1.

By Mr. Read: If your honor please, I submit respectfully that the language used, or claimed to be used, in this notice of motion, is not *susceptible* of the interpretation placed upon it by—(pause). Now the evidence in this case is that all of these notes that were taken up, were taken up pursuant to a check signed by Bishop Grace, and payable to the First National Bank. There is no human way possible that the plaintiff in this case could use those checks except for that one purpose, whether six notes had been taken out, or nine notes, so far as I can see the language is not susceptible of the interpretation placed upon it, because an *Innuendo* can not make a new charge, or enlarge the charge; that is the law. It can not either enlarge the charge or make a new charge, it can only explain. I don't think that a plaintiff can put any interpretation he chooses on my language, or on that which is perfectly plain. " 'Now you all beat me down last night that you paid nine notes.' Meaning thereby to say that the undersigned had falsely contended he had taken nine notes from the First National Bank of Newport News." What boots it whether he had taken out nine, six, seven or eight.

What difference does it make? He took them all page 81 } out under check signed by Grace. "He told me there were only six notes taken out of the bank." (Referring to notice of motion.) And as a matter of fact the undersigned had only paid six of said notes.

By the Court: Where do you find that? I don't see it.

By Mr. Read: You have the original.

By Mr. Massey: You have the original.

By the Court: I want the one that has been amended. Excuse me, I want to follow you on that. (Documents examined.)

By Mr. Read: Yes, sir. It says "You all beat me down last night that you had nine".

By the Court: Yes.

By Mr. Read: "You all beat me down that you had nine notes." Now he says, in the first place, he was referring to Taylor. Why does he say that "You all beat me down last night that you had nine notes", meaning thereby to say that the undersigned had taken up nine notes from the First National Bank of Newport News, Virginia. "I have been over to the First National Bank and they told me there that there had only been six notes taken out of the bank, and so I believe the teller of the bank rather than believe you." What boots it whether there had been five, six, seven or eight notes taken out of the bank? The checks signed by the Bishop had been left with this man who used the checks to pay for these notes, and yet avers, by *innuendo*, that the money was stolen, when there was no way under heaven he could have withdrawn it from the bank except by checks drawn in favor of
page 82 } the First National Bank. So we say that, while under our statute, and the West Virginia statute (they are identical), that a jury, as a general rule, passes on a question of the interpretation of the language, that it is the duty of the court to determine whether a publication is capable of the meaning ascribed to it by the *innuendo*. And I say the language used by the Bishop is not capable of the conclusion counsel puts on it in the form of *innuendo*; and no *innuendo* can add to that language,—it has to be slanderous itself. So that if there is not sufficient evidence of any slanderous charge, and not sufficient evidence of any insult which would tend to violence and breach of the peace, in the language that is alleged to have been used by the Bishop that night in addressing the congregation,—because that is the evidence, that he was addressing the congregation. "You all" is the language of the charge—"You all beat me down last night that these notes had been paid." He opened his statement, according to the evidence that you are to rely on, in talking about these notes, that "You all beat me down last night that you had taken up nine of the notes", and that the teller of the bank had told him that only six notes had been taken up. I don't think that is a charge of larceny against this man, when the checks were payable to the First National Bank, and the uncontradicted evidence is that they had been paid.

By Mr. Massey: In the first place, I will say there is no motion to strike. The statute says positively that no demurrer shall preclude the jury from passing thereon, and

this amounts to a demurrer, I don't care what you
page 83 } call it, certainly we can't evade the law in that way.

Secondly, I want to say that Mr. Read has entirely overlooked the fact that this is a charge of lying, at the most. It is a charge of lying, that he falsely stated to that congregation he had paid nine notes when he had paid six, and it is actionable *per se* to call a man a liar. Now you can't deny that. And the last charge, that you contend you have paid nine, but the man at the bank tells me you have paid only six, can't carry with it, I submit to the court, to any intelligent man but one conclusion, and that was that Taylor had misappropriated the money with which he should have paid these notes. It is no defense for the defendant to come in and say the plaintiff could not have stolen this money that he had accused him of doing. It would make his crime all the greater, because he would know in his own mind it could not have been done, and so it would not have been a statement made in good faith. It was made alone to him, and because this money could not have been stolen, then, there was absolutely no purpose to what he said,—absolutely none; you can't give the statement any evidential value or logical meaning. This man has testified on the stand positively that he did have opportunities to steal that money, to steal all of it even before it was carried to the bank, that it was turned over to him in cash, and he carried it to the bank; and Taylor testifies, and William Stanley testifies that the people all knew that he was accusing Taylor of lying and stealing; that is the effect of their testimony.

By the Court: Suppose the teller at the bank had told him that?

By Mr. Massey: I don't know what his de-
page 84 } fense is going to show about that.

By the Court (adding): That only Six notes had been paid?

By Mr. Massey: I don't know what his defense will show about that. But it does seem to me that if the teller told him that, or if any one told him that, honestly and in good faith,—that he made such a statement, then it would be different, perhaps. But I am talking now, under the evidence we have now, the jury has a right to say whether, from this language, it is insulting or not. But he called him a Liar, and we contend also, under the evidence, he called him a thief, because that is all it could mean, that is according to the evidence of Taylor and Stanley. And furthermore, it is borne out by the fact that this charge was maliciously made. Taylor says it was made because of differences between him and Taylor; Taylor had been telling the Bishop how he stood,

and the Bishop didn't want them to know it. And furthermore it was brought about, this statement between the Bishop and Taylor, in which the Bishop refused to correct this impression, by stating he didn't want the people to know he was wrong, which is the impression he wanted to leave them under,—the impression that Taylor was wrong. And, as all cases show, such evidence is evidence of Malice. And the subsequent statement which has been testified to by all three witnesses, with reference to Boycotting the business, shows the extent to which his malice led. Now, I submit to the court that under the rule, the jury has the right to say whether this language is insulting or not, page 85 } and the language is susceptible of no other meaning, otherwise he was talking for nothing, and they all say he was talking to Taylor and about Taylor.

By Mr. Read: On the contrary, they all say he was talking to the congregation.

By Mr. Massey: They say he was talking to the congregation, but about Taylor.

By Mr. Read: That is what you allege in your notice of motion: "You all beat me down."

By Mr. Massey: The witnesses say he was talking about Taylor.

By Mr. Read: He first opened his discussion by criticising his congregation for not paying off this indebtedness in the church, and he said "You all beat me down that nine notes had been paid and I was informed that only six had been paid". That is what you allege there, and I say that is not capable of the innuendo that you put on it. Because he didn't say this man had not deposited every cent he had collected in bank, there is no such charge at all.

By Mr. Massey: He said he told him he had paid nine notes, when he had only paid six.

By Mr. Read: I say that is not capable of the interpretation you put on it, and also this is a privileged communication. Malice must be shown. I don't see any evidence of Malice. In fact he said there had been some complaint about the payment of bills, and that the bills ought to be paid.

That is the only language as to Malice, and page 86 } that is a privileged communication, your honor.

But there is nothing to show here that the Bishop stated in his congregation that he was talking about this man; there is nothing there to show it was anything more than a Mistake as well as a charge of Larceny. He left the checks there to take up these notes.

By the Court: I have a grave doubt in my mind that the court would have a right to strike out evidence, where there

is a difference as to the construction of the words used, and their meaning, was in question between the parties, for the court to undertake to strike out the evidence, and do what it could not do on demurrer, and my view of this particular thing that is involved here is that I have no right to strike out the evidence, I will have to hear the witnesses first.

By Mr. Walker: I do want to suggest this, your honor, that a Demurrer comes on before any evidence is taken, and the motion to strike out evidence comes after the plaintiff has proved all he can possibly prove, at the time the motion to strike is made, and the court then having heard the plaintiff's case, it would seem to be the same condition as a motion to set aside a verdict. It does not say you can not set aside a verdict, if anywhere it develops that no case has been made out and that a verdict ought not to stand, and where injustice is done by the verdict of the jury. I can't imagine a court would let a verdict stand under such conditions.

By the Court: I am not prepared to say, that I feel that I should not sustain a motion to strike, but I think
page 87 } it is one of the questions that should be left to the jury, so I shall overrule the motion.

Defendant's counsel notes exception.

Note: The jurors here return to the court room and resume their seats.

R. D. GREVIOUS,
defendant's witness, affirmed and testified.

By Mr. Read:

Q. What is your name?

A. R. D. Grevious.

Q. Where are you employed, if anywhere. Where are you employed?

A. Employed?

Q. Yes.

A. I do general carpenter work everywhere.

Q. Are you a member of the House of Prayer?

A. Yes, sir.

Q. Were you at the services on or about the 2nd day of June, 1932?

A. Yes, sir.

Q. Do you recall that the Bishop made some reference at that meeting to certain notes of the congregation of the church?

A. Yes, sir.

Q. What did he say?

A. He said "Children, it seems as though you are very slow paying those notes, raising money".

Q. Talk louder.

page 88 } A. I beg your pardon.—Or raising the money to pay the notes. He says "I don't think there is but over six been paid". And I spoke then, and I said "Yes, nine". And Taylor spoke second and said "Yes, nine". And the Bishop said to Taylor "Can I get them tonight". He said "Well, I can't get in my safe, because it is dark". He said "I will go with you and get them". And then they didn't go, that was all, they stopped there.

Q. Who was the Bishop addressing?

A. Taylor was seated at his left, like, a little behind him, not right in front of him, but against the wall a little to his left; he addressed the congregation, he didn't address Taylor concerning that.

Q. Told the congregation they were slow—

A. Yes.

Q. In meeting the notes?

A. Yes, sir. He only spoke to Taylor when he told him to get the notes. After that time he spoke to the congregation again.

Q. Were you a member of the Rising Star Grocery company?

A. Yes.

Q. Can you recall when that was first organized, about?

A. It was first founded on the 5th day of May 1931, but I just can't remember the date it was organized, some time in that month, or the next month, I don't know exactly.

Q. Well, when you first opened the business there did you get out a charter of incorporation?

A. It was a little while after that, a few days
page 89 } after we opened we got the charter.

Q. Who was your manager?

A. William Taylor was manager.

Q. All of you contributed so much. did you, to the business?

A. Yes, sir.

Q. Can you give me the names of the other associates, or the incorporators?

A. J. D. Darden, John Little, Arthur Minns, Bennie Jones, a fellow named Shevers, he was president of it, I don't remember his initials; Lee Hawkins and myself.

Q. Was the business a success or failure?

Q. (By Mr. Massey:) Who did he say, Hawkins?

A. Lee Hawkins.

By Mr. Read:

Q. Was the business a success or failure?

A. It was a failure.

Q. Did you ever get any dividends?

A. Never did get a penny.

Q. Now you say you opened in May 1931?

A. Yes, sir.

Q. The first part of the year following, 1932, what was the condition of the business?

A. The business seemed to be going down.

Q. When I say first part of the year, I mean January?

A. January.

Q. Did it go down steadily or—

A. It had gone—Well, it was pretty good in
page 90 } January, but after that it was a—it went to going
down.

Q. Well, what was its condition just prior to the statement claimed to have been made by Bishop Grace there at the church meeting, and just before that statement was supposed to be made at the meeting, as to the financial condition of the Rising Star?

A. Financial condition was very poor, some of the bills had not been paid.

Q. The financial condition was very poor?

A. Yes, sir.

Q. Were you present at a meeting that the Bishop accused Taylor of having reported certain bills paid which had not been paid. Were you present at any such meeting as that?

A. I remember having a meeting in the store, over there in his store, pertaining to some bills were not paid. (Pause.)

Q. Well, what did Taylor say?

By Mr. Massey: Wait a minute, he has not completed his answer.

By Mr. Read: I thought he had finished:—

Q. Had you finished?

A. I am trying to think now exactly what that was. I can't recall everything that was said just then now, but we did have a meeting pertaining to that, and there was some bills that were not paid. The Bishop called the meeting, and the Bishop said "I would not give you ten cents for the business" then because it was practically gone. That is what the Bishop said.

Q. Was that before the church meeting you re-
page 91 } fer to, or after?

A. Yes.

Q. Before the church meeting?

A. Yes.

Q. Well, what did Taylor do then, or say?

A. I can't remember what Taylor said then.

Q. Can you remember whether he left the meeting then—

A. Sir?

Q. In anger?

By Mr. Massey: I object to such leading questions.

By Mr. Read: I don't know how I can ask the question unless I ask whether he left the meeting.

A. I remained until the meeting was over.

Q. Well, did Taylor leave?

A. I can't recollect whether Taylor left the meeting or not.

Q. What explanation did he make with reference to the charges the Bishop made against him?

By Mr. Massey: He has not testified he preferred any charges.

By Mr. Read: Well, in a sense he did.

By the Court: You are correct, he has not stated that.

By Mr. Read:

Q. Well, did the Bishop make any charges against him or not?

A. Not that I know, that I can remember.

Q. Well, what was the object of the meeting?

A. The object of the meeting was to find out how the status of the concern was.

Q. You say you found that out?

page 92 } A. Sir?

Q. You found that out, didn't you?

A. Found out, yes, sir. Bishop said it didn't amount to a penny. But still the thing was going, it was not gone, it was gone practically, but was still going.

Q. Were you on that note for a loan they made?

A. Yes.

Q. For a loan that was made to the company?

A. Yes, sir.

Q. Loan made by Bishop Grace?

A. Yes, sir.

Q. You are still on it, aren't you?

A. Yes, sir.

Q. Taylor on it?

A. Yes, sir.

Q. Well, what was the object of making that loan?

A. Object of making that loan, to start the business, buy such stuff as they needed to start the business.

Q. That was then prior to 1932?

A. Yes, sir. It was in 1931.

Q. Were all of the associates, I mean by that the Incorporators in this business, members of the House of Prayer?

A. All except one.

Q. Who is the exception?

A. (Pause:) I can't recall his name, he lives on 19th street there, he used to work for Alsop and Pearce, pile page 93 } driver.

By Mr. Massey: I have the record here, if you want to see the names.

By the Court: Named in the charter?

By Mr. Massey: Purport to be, I don't know whether any changes were made.

By Mr. Walker: That is a carbon copy?

By Mr. Massey: Yes, that is a carbon copy, there is some variation in the names he named, but I don't think that concerns it.

By Mr. Read:

Q. As I understand, the Bishop asked Taylor to produce the notes, and he said they were home?

A. He said they were home in the safe, yes, sir.

Q. Then the Bishop said "Let's go and get them".

A. Yes, sir. He said he could not get them.

Q. What did Taylor ask. Why didn't they go, that is what I am trying to find out?

A. He said he could not see, it was dark, or something. Then the Bishop said "I will go with you".

Q. Well, they didn't go, did they?

A. No, sir.

Q. Well, who stopped the trip, what terminated it?

A. Well, it just dropped off, right there.

Q. Well, the Bishop said he would have gone with him?

A. He said he would go with him to get them, but he didn't go. Taylor didn't go.

Q. Were you present at the court-meeting where page 94 } these matters were taken up, the church-court?

A. Yes, sir.

By Mr. Massey: He has not testified he went to a church-court.

By the Witness: Yes, sir, I was there.

By Mr. Read:

Q. Well, regardless of what conclusion they reached in the church-court, did they reach any conclusion there?

A. They talked over the same matter, concerning the note, but they didn't reach any conclusion.

Q. Well, did Taylor make any statement at that meeting as to where the notes were?

A. Taylor had—Taylor had already turned the notes over then. I was a little ahead of my story: Now when the Bishop told him to go and get the notes, he didn't go, but a few days after that Ingraham saw Taylor with the notes—Ingraham saw Taylor with the notes, Ingraham claimed, and called the Bishop and myself in the office, in the church office, and told him that Taylor had the notes.

Q. Was Taylor present?

A. No, sir. Then he sent me for Taylor, and I went and brought Taylor. Taylor came in and asked the Bishop—he said "Would you remember your initials". The Bishop said "I think so". So he pulled them out, respectively, one after the other; and he didn't deny it, and he acknowledged his initials on all of them.

Q. Well, what was the further conversation, if page 95 } any?

A. What is that?

Q. Any further conversation about the notes?

A. Well, the Bishop asked Taylor, "Taylor, you ought not to do like that, this is church business", and "This is church business, the church's business, this is church property, and he had to look after it, and he wanted the notes to see how the notes stood". And that is the notes, he got them from Taylor, and there were nine.

Q. How many notes had been paid, as a matter of fact, do you know?

A. Nine, to my knowing.

Q. Had the four been paid previously to that?

A. I was not in position before that, I didn't belong to that board at that time, I don't know anything about that.

Q. Was anything mentioned in this last conversation you mentioned about Fishing?

A. Yes, sir—I beg your pardon.

Q. What did he say?

A. When he turned the notes over to the Bishop, he told the Bishop "I am fishing in your waters". The Bishop said "Well, if you are, you will never catch anything".

Q. "I am fishing in your waters".

A. That is what he told him.

Q. And the Bishop said "If you are, you will never catch anything".

A. Yes, sir.

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CROSS EXAMINATION.

By Mr. Massey:

Q. Did Taylor say anything to the Bishop after he gave him the nine notes, with reference to clarifying the statement before the House of Prayer accusing Taylor of Lying?

A. He didn't say anything to him there, no, sir.

Q. Taylor didn't say anything to him at that time, you are positive of that?

A. I am sure.

Q. Well, when did he say something to him about it?

A. (Pause:) It was in the—it was in the court, I think it was.

Q. All right: What did the Bishop say?

A. The Bishop said he was not going to do that, he said he didn't have to do it, he didn't see it was necessary to do that. I don't know.

Q. You are under oath now, Grevious, tell us exactly what the Bishop said?

A. I can't tell every word direct.

Q. You remember these other things pretty well, telling directly about Taylor saying he was fishing in his water, and all that was said there, why can't you remember the other things?

A. (Pause:) The Bishop said to Taylor—(pause:) Taylor did ask him something concerning making some statement to the church concerning him, but the Bishop had not done that. It seems as though he wanted the Bishop to make some statement to the church to straighten the controversy he thought the Bishop had done before the people, but the Bishop had not done that, he didn't do it.

Q. You say the Bishop told the people he had been to the bank and only six notes had been taken out?

A. No, I don't remember that.

Q. You don't remember that?

A. I don't remember that.

Q. You didn't say that?

A. No, I don't remember that.

Q. You tell us you didn't get any dividend on your stock?

A. No, sir, I didn't get any dividend.

Q. It was only organized about a year, it was organized in May nineteen—

A. 'Thirty-one.

Q. Organized in May 1931. And this break-up came in June 1932, didn't it?

A. No.

Q. Have you ever paid for your stock?

A. No, sir, I had not finished paying.

Q. Did you expect to get dividends if you had not finished paying for your stock. How much do you owe on this note now, Grevious?

A. Which note.

Q. This stock note?

A. The stock note was about forty dollars, I think.

Q. You owe forty dollars?

A. I think it was about that.

Q. Taylor is now endorser on a note for you, is not he?

A. No, sir.

page 98 } Q. Is not Taylor also on a note for you?

A. No, sir.

Q. Now, Grevious, did you subsequently have a conference with the Bishop about the condition of the Rising Star Store, at the instance of Taylor? Let me show you this paper—

A. No, sir.

Q. It might serve to refresh your memory.

A. No, sir.

By Mr. Read: I want to get clear, what note do you refer to; is that the note of \$500.00?

By Mr. Massey: No, here is the note.

By Mr. Read: I just want to be sure which note you had in mind, because it was more than forty dollars.

(Document examined.)

By Mr. Read: I object to that as immaterial, if your honor please, as a self-serving declaration.

By Mr. Massey: My purpose in introducing this, your honor, is to show the Malice of the Bishop, because I want to show that was presented to him, and you can see what it says, and the words were spoken, and it supports the charge of Boycott against the business, and it supports the charge of Malice.

By the Court: Objection sustained.

By Mr. Massey: Well, I will just ask this witness:

Q. If he did not have a conference with Bishop Grace with reference to this paper, not offering it in evidence.

Did you have a conference with the Bishop with page 99 } reference to that paper?

By Mr. Read: I think the same objection will apply. If the written evidence is not admissible, certainly the oral evidence is not.

By Mr. Massey: You object to the written evidence on the ground it is self-serving?

By the Witness: No, sir.

By the Court: For all purposes.

By Mr. Massey:

Q. Did you sign that paper?

A. My name is not over there.

Q. It is. Did you sign that paper?

A. Yes.

By the Court: Well, you can't go into that, you can show the paper to him to fix the time.

By Mr. Massey: That is all I am asking for: the circumstances under which he consulted, if he did consult, the Bishop.

Q. Did you sign this paper, you say now you did. Can you state now whether you took this paper to the Bishop and had a conference with him or not?

A. I didn't take it to him.

Q. You didn't take that paper to him?

A. No, sir.

Q. Did you go to the Bishop with any one else with this paper? (Pause)

By the Court:

Q. He can't get your Nod, now what is your answer, Yes or No?

A. I said No, because I don't know anything page 100 } about it being taken to the Bishop.

Q. You answer the questions, the reporter will take down the question and answers by sound.

By Mr. Massey:

Q. Was there any question in your mind who the Bishop was talking about when he said "You all said you had taken nine notes out and you have not taken but Six", who he was talking about?

A. Talking to the people.

Q. Well, now, who could have taken out the notes, do you know?

A. Yes.

Q. Who?

A. He was talking to the people who raised the money.

Q. I am asking you now who could have taken up the notes, who could have done that?

A. Only one individual could have taken them up.

Q. What was that one name?

A. That one was Taylor, but he didn't call Taylor's name.

Q. Who was he talking to?

A. He was talking to the church.

Q. Who was he talking about?

A. He was talking about the church, he was talking about the church not taking up the notes.

Q. Was he talking about any person at all?

A. He didn't call anybody's name.

Q. Didn't call anybody's name?

page 101 } A. No, sir.

No further questions. Witness leaves.

Note: The court then, at one o'clock adjourned until 2:30 P. M., and the jury are instructed by the court to permit no one to talk to them about the case; at which last-named hour the trial is resumed.

JOSEPH DARDEN,
defendant's witness, affirmed and testified.

By Mr. Read:

Q. If you can, look at the jury at the same time I am questioning you. What is your name?

A. Joseph Darden.

Q. Just look at the jury now. How long have you lived here in Newport News?

A. 20 years.

Q. And you work where, during that time?

A. Shipyard.

Q. Were you in an any way connected with the Grocery known as the Risen Star?

A. Yes, sir.

Q. Or Rising star.

A. President.

Q. Can you recall when that was first organized?

A. Yes, sir.

Q. When?

A. (Referring to paper:) May 22nd 1931.

page 102 } Q. Well did you get a charter at that time,
or just start up your business there?

A. No, sir, we didn't get our charter, not at that time.

Q. Get it later on?

A. Before we got our charter we was ten in a group, before the organization came about, at that time the president was known as Howard Chevers, but he died before we incorporated, but not before we started our business, and we took our charter out later, and takes around ten dollars and paid his portion.

By the Court: You just answer Mr. Read's questions.

By Mr. Read:

Q. There were ten of you?

A. Yes, sir, when we first started.

Q. Call the names of them?

A. All right: Howard Chevers, W. M. Taylor, Joseph Darden, Charles Ingraham, R. D. Grevious, John Little, Johnnie Nelson and Arthur Minns, Ed. Coles and Bennie Jones.

Q. Well, did they continue as stockholders of the corporation after it was organized. Did all of those whose names you have called continue in the business?

A. All continued, all but one, and that was Johnnie Nelson, he pulled out.

Q. The Taylor you mentioned is the plaintiff in this case. (Pause.) I say the W. M. Taylor you have mentioned is the man who is the plaintiff in this case?

A. Yes, sir, he was the general manager.

Q. Did he look after the affairs of the company?

page 103 } A. He had entire charge over the business, he
was made the general manager, he did all the buying and all the paying-for.

Q. Well, did he have any business personally at the time that the Bishop is supposed to have slandered him?

A. No, sir.

Q. He says in his notice of motion here that this slander caused him to lose a profitable business he was then operating. And the only business he was operating, as I understand you, at that time, was with you and your associates?

A. Sure.

By Mr. Massey: That is admitted.

By Mr. Read: Well, it don't matter whether it is admitted or not, he offered it himself.

By Mr. Massey: All right, we don't admit it, go ahead and prove it.

By Mr. Read:

Q. So he had no business at that time?

A. At that particular time, there was no business, the first business on that Jefferson avenue Taylor and myself was in partnership; we started that business before the House of Prayer was ever built.

Q. Well, you all dissolved your partnership?

A. And we fell out, after we disbanded, we went under, it was quite a while before we started any more business. This group of men, we got together. The way it came about, the boys that put up the ten dollars got together and said we would buy our groceries, not cigarettes, together and that is the way it started, with ten men. It had done
page 104 } grown quite a while; and that is the way the business was started, I mean the new business.

Q. Can you indicate how many, in the grocery business there, were members of the House of Prayer. About how many, I say, of the ten were members of the House of Prayer?

A. That was buying from us?

By the Court: No, he asked you—

By Mr. Read, interposing:

Q. I say how many—I say how many, of the ten you have named were members of the Bishop's House of Prayer?

A. All was members.

Q. So that any slander to that business that he would do would affect you nine as well as Taylor?

A. Sure, all was members.

Q. Well, how did you run the business, did you have weekly meetings, or monthly, or how?

A. Well, we would have meetings—the stockholders was supposed to meet once a month, sometimes twice. I mean to say the stockholders had bills, and they would come in and have a meeting every week, that is; we would conduct our business from week to week, and meet together on Saturday night, to see what we have to pay out and see what we had paid out, through checks, when we started; and brother Taylor there, he would pay out the account, and brother Greivous—

Q. (Interposing:) How long did that continue?

A. It continued until the expiration of a year,
page 105 } all the time, paying it through checks.

Q. Then afterwards he made disbursements?

A. Well, after the first expiration of paying out by checks, he claimed the bills was coming in so forcibly, the check would not be any good unless I signed, and we always had a rule, on Saturday night, to be at the meeting; and we owed so many people, he said it would be right hard to go ahead, and pay out. The secretary kept a record of it.

Q. I suppose you all distribute the profits every Saturday night, didn't you?

A. We had been organized quite a while, I never had a penny profit.

Q. Did anybody else?

A. Not any one in there made profit at all.

Q. In the early part of 1932, did you have a meeting, in January—a business meeting every night, Saturday night?

A. I don't know whether it was exactly Saturday night, but we had one.

Q. You had a meeting in the early part of 1932?

A. Yes, sir.

Q. In January.

A. Yes, sir.

Q. What was the idea and object of that meeting?

A. The object of that meeting was this, I being the president and working, and steady, and we had a manager, and there was a manager, and we had two Files,—one page 106 } was a paid-up file, and when I paid a bill off, I put it on this file, and the balance of it—we had two files, and I had one on this other file, the bills, and so naturally I would go over to the other file, if it was not on this file; and I found business was going behind, and I consulted them and figured how much money we had out and what we owed, and we called a meeting.

Q. Just tell the jury what happened at that meeting?

A. Well, at that meeting, it was investigated, and we were showing the stockholders then how the business was going, and owing so much money. And that was the first meeting, and in that meeting we decided we had so many bills to pay out; so we decided in the first meeting we would tax ourselves, and through—by taxation, may be we would catch up, and so we taxed ourselves a dollar a week,—some paid a dollar and some paid two dollars. And conditions didn't get any better. And the next meeting we called, I found out the business was in such bad shape, in such a bad fix, so I told the brethren I would not give ten cents for the business, that is the words I used, and brother Taylor—

Q. (Interposing:) That was in January 1932?

A. Yes, sir.

Q. What did he do then, or say?

A. He claimed he didn't want any fuss or argument, and he decided to go outside, and I said "No, we don't go outside", those are the words I spoke to brother Taylor. So then I said "Come down and attend to business on a business basis, and

I am telling you you have to make some arrangements whereby we can better our condition". And so after a while we went over it, and he would start over, start off again, and we went along pretty nicely, and finally the business continued to drift and drift, and he himself said "Now, brother, I will do everything I can to build up our work", and at the time he said "The best thing for us to do, if you think I am a hinderer, or I am the cause of your business not prospering the way we should be, I will tell you what I will do, I will get right out and let somebody come and be manager". And we decided that was a mighty good spirit in him, and we tried that for a while, and after they tried it for a considerable while, and after he left the building, naturally, bills would come in, and of course the assistant manager would have to see after it, and after a while he would bring in a bill, and I would look at the bill, and would look over it, and I would see that we owed so much money; and lots of times he would ask (the assistant manager), "What's the matter with brother Darden, you don't seem very well", and naturally I would not feel so well, business going bad, and business continued to drift and continued to drift, and he himself had resolved to get out, and "let you do the best you can". And he said "I am with you", and those are the words he said. And we continued along, and continued like that, and naturally the business got to going from bad to worse, and finally he came and said "I need by building, brothers, I want to rent my building, you will have to get some other place to go". And we moved up to Jefferson avenue and 20th street, and we are yet under the head of the corporation, before we moved.

Q. Were you present at the meeting, or the congregational meeting of the House of Prayer, when the Bishop is supposed to have made this statement to the congregation with reference to the notes of the church in June 1932?

A. No, sir, I was not in the public meeting.

Q. You weren't present at that meeting?

A. I was not in the public meeting.

Q. Well, this transaction you mentioned, and your business going Bad, was that before or after that meeting?

A. This was a little while before that occurred.

Q. The ship had already started on the rocks.

A. Sure, it had sprung a leak the first of the year.

Q. Now were you present at any meeting of any committee of the church wherein the question of these notes were discussed?

A. I was the secretary.

Q. Will you please state whether or not—

By Mr. Massey: Does this witness know what Notes you are speaking of now?

By Mr. Read:

Q. Notes at the First National Bank.

A. Yes.

Q. Will you please state whether or not, at one of these meetings, the Bishop inquired of Taylor as to what had become of the notes he alleged he had paid?

A. Yes, sir, I was in every meeting.

Q. What did Taylor say he had done with the notes?

A. He said these notes, he had torn them up.

page 109 } Q. Taylor said he had torn them up?

A. Torn them up.

Q. When did you next find out whether he had torn those notes up or not?

A. Well, the next I found out, was in the same meeting, and the question was said by Bishop Grace "Are you sure you tore them up, or what notes did you tear up, the first notes or the last notes". He said "The first". He said "Are you sure of that", and the words he said, Bishop Grace said to the board, "You all hear what he said", "Are you positive". "All right." He called the chauffeur, and asked the chauffeur to go bring the notes; and he brought the notes down to the meeting, to that meeting, and when he counted the notes, he counted them one by one—I am giving you the complete interview about that, because I was secretary—he counted one, two, and counted to nine notes. Then the next question was asked after that, he said "Taylor, what is the meaning of this here '0', you put on them". Well, that question was not answered; then he asked "why did you tear them up". Well, he spoke as though it was a rule or custom, and it was no good, so to speak.—

By Mr. Massey:

Q. Wait a minute: You say he tore them up. I thought you just said he counted them over?

By Mr. Read: That is after the Bishop had sent for the notes; Taylor said he destroyed them.

A. Yes, sir.

page 110 } By Mr. Massey:

Q. Now you are going on and saying he produced the notes, and still say he torn them up.

By Mr. Read: The Bishop knew he had not torn them up.

By the Court: Let's clear that for the witness, gentlemen.

By Mr. Massey: Sure, I would like for him to clear it up.

By Mr. Read: You can cross-examine him.

Q. After he first said he had destroyed them, the Bishop went and got them, didn't he?

A. Sent and got them.

Q. He sent and got them.

A. Yes, sir.

Q. Then what explanation did he make then?

A. After the Bishop sent and got them, he counted them out, and the Bishop said "I thought you said you tore them up", and he knew all the time different, at that time, and the objection arose in that same meeting, and he started to go out the meeting. And he said "No, don't go out". He had risen to go, and said the brethren were trying to take advantage of him, or something; and it went from one man to the other, one the question of those notes. (Pause.)

Q. Well, you say that was an Investigating committee, is that what you called it?

A. Yes, Investigating committee.

Q. Suppose I call it a Church-court then.

A. Well.

Q. Did they make any findings with reference to the plaintiff here, Taylor. Did they reach any conclusion about him?

A. Yes, it was an investigating committee.

Q. Well, regardless of what they called the thing, regardless of that, did they make any findings or not that—

A. Yes, sir.

Q. That crowd?

A. Sure.

Q. Well, you say he got angry then?

A. Yes, he seemed to think they tried to take advantage of him.

Q. Well, were you trying to take advantage of him?

A. No, sir, I didn't try, and no man tried, every man did square with him.

Q. All of them tried to be square with him.

A. Yes, sir.

By Mr. Read: Judge, without waiving the objection I have heretofore made as to the ruling on the constitution and bylaws, I am going to ask him this question:

By the Court: All right, sir.

By Mr. Read:

Q. Is there anything, so far as you know, in the conduct as to—In your conduct as a member of the House of Prayer that would in any wise affect your evidence as a witness, so far as you know?

A. Make your statement clear again?

Q. I say is there anything in your religion, at the House of Prayer, that would in any wise affect your oath as to testifying today?

A. No, sir.

page 112 } Q. In other words, if the Bishop would tell you it was raining outside, you would say the sun was shining, is that right?

A. You say he would tell me—

Q. Nothing the Bishop would say would affect you in any way?

A. No, sir, because my faith is great, and I have never give him anything but the truth, and nobody else I deal with; I always believe them until I find out better, in my personal belief.

Q. Well, at this meeting in which you said the business was not worth ten cents, had you found out certain bills supposed to have been paid, were paid or were not paid?

A. Yes, sir, I counted them against the check, every one of the bills, and we have a letter—

By the Court: Just answer his question.

A. (Adding:) I have got a letter.

By the Court: Answer his question.

By Mr. Read:

Q. Just say Yes or No.

A. Yes, sir.

Q. Did you find any?

A. Yes, sir, there were certain bills unpaid.

Q. That Taylor had reported that he had paid?

A. He had paid those bills; and they were not paid.

Q. You all had a meeting how often, once a month or once a week?

A. Once a week.

Q. Saturday night?

A. Saturday night before we closed up, we counted the money. I counted the money myself, we did business in a systematic form when we started, and it started off nice.

Q. What is that paper you have, I have not seen it, what is that paper (Indicating), will you hand it to Mr. Ivy, or some one to pass it over.

(Document examined.)

Q. This letter speaks of—this letter addressed to W. M. Taylor, Rising Star Grocery company and the Utilities Company,

A. That was a corporation, the corporation's account.

Q. Well, it is addressed to both, W. M. Taylor and the Rising Star Grocery company. You were starting to say something after this.

A. I say those bills—we have had every man we owed to be paid—

By the Court:

Q. Wait a minute: Talk to the jurors. (Pause:) All right, now you may finish.

By Mr. Read:

Q. You started to refer to this letter addressed to W. M. Taylor, Rising Star Grocery company, Utilities Company. What did you want to say about that?

A. I wanted to say, in paying these bills, Greivous was Secretary, and as we were paying by checks, we would settle up Saturday night and decide which was the best man to pay, and he said "I will pay this man so much this week", and whatever he said and thought, was going according to the check. And I thought everything was going on all right until that letter came, and I found he had never paid a cent for eight months, to the restaurant, to the man in the building.

Q. How did Taylor explain that, or did he offer any explanation?

A. How is that?

Q. How did Taylor explain that, or did he offer any explanation?

A. Well, he claimed it was so many bills paid, and—Oh, he had lots of bills and just could not get to them, it was time to pay this bill so much and he had taken part of the

money, lots of times, to help keep up. We was taking in around four hundred dollars a week, not counting the change every night, people coming in and buying little confectioneries; but on Friday night, and Saturday, was our real busy night, we had two trucks running, and we never got less than four hundred dollars, and some days—

Q. A week or month?

A. That would be a week; when we started our business was going on nicely.

Q. How much would be paid on this bill a week?

A. We paid it by the month, supposed to be paid by the month.

Q. How much?

A. Twenty-five dollars. All of these bills agree, they are monthly bills.

Q. Were you present at any meeting at any time at the House of Prayer when the Bishop told the congregation to boycott this man's store?

A. No, sir, I was not.

Q. You never heard the Bishop make any such
page 115 } statement anywhere?

A. No, I did not, because at that particular time I was not attending the meetings up here, I was down at Phoebus. I didn't hear that. I didn't hear any statement about him in public.

Q. Now these other nine members, what was their standing with the Bishop, good or bad?

A. Good.

CROSS EXAMINATION.

By Mr. Massey:

Q. Darden, you testified at the first part of June, the time of this trouble, that Taylor had no business other than that of manager of the Rising Star Grocery company. Was he not, at that time, running a cafe and barber shop?

By Mr. Read: I don't know that that is material, there is no allegation of a Barber shop.

By Mr. Massey: He stated that was the only business he had.

By the Court: He said that.

By the Witness: I was referring to the Rising Star Grocery company.

By Mr. Massey:

Q. You were referring to the Rising Star Grocery company?

A. You see, we didn't have any part in that at all, I didn't have anything to do with that.

Q. From whom did they rent?

A. The corporation?

Q. Yes.

A. Brother Taylor.

Q. You rented the place from W. M. Taylor?
page 116 } A. Yes.

Q. That is the business you were talking about?

A. Yes, sir.

Q. And you said you were secretary?

A. I did not say I was secretary.

Q. What did you say?

A. Grevious was secretary.

Q. What was your position?

A. Grevious was the secretary, that is what I said.

Q. What did you have to do with it?

A. I said I was president, and had to do with anything in the building.

Q. I am talking about this Rising Star Grocery company, I am not talking about this investigation in the committee.

A. Sure, I was secretary of that.

Q. Now you were secretary of the committee?

A. Yes.

Q. Now you first said that Taylor said he had torn up the notes, and he dealt out the five hundred dollar notes to the Bishop, what did you mean by that?

A. I didn't say he said he had tore up the five hundred dollar notes.

Q. What did you say about that?

A. My statement was, the lawyer asked me about the first five notes.

Q. As a matter of fact, the notes Taylor said
page 117 } he had torn up were the notes on a deed of trust
on another piece of property entirely, which
Taylor had bought and paid for, and he made the statement
that after the property had been paid for and the title clear,
the old notes were no good and he had torn them up, is not
that what he said?

A. We was not discussng that, we were discussing the five hundred dollars paid for that loan.

Q. They are the ones you are discussing now. Did not he say he had torn up the old notes secured by a deed of

trust on a piece of property he had bought, because they were paid and were no good?

A. I don't know anything about that, yet he had the notes, he counted them off to him.

Q. You say he counted the notes off to him, and counted them off after he had told him he had torn the notes up?

A. Yes, sir.

Q. You were a stockholder in this corporation?

A. (Adding:) I didn't say he tore up the whole nine, I didn't say that.

Q. Well, we will stop and show you what you said.

Note: Letter here handed to and examined by defendant's counsel.

By Mr. Massey:

Q. You say you were a stockholder in the Rising Star Grocery Company?

A. Yes, sir.

Q. Is this the note you gave in payment of page 118 } stock (Handing)?

A. (Examining:) Yes, sir, we all gave notes.

Q. Have you ever paid off that note, paid that note?

A. No, sir.

Q. You still owe it to the corporation, don't you?

A. There is no corporation.

Q. What is it now?

A. The corporation? It gone down and under, and we were paying the bills, but not the note; we were paying on the stock. We did borrow, under the head of Rising Star Corporation, for two hundred and forty-some dollars, and he led us to believe he was paying so many notes; and we said "We don't want you, when you are paying so many bills".

Q. How many bills did Brother Taylor have to pay?

A. How many bills did he have to pay?

Q. Yes.

A. That is his business, I could not tell you.

Q. As a matter of fact, he had to make himself personally obligated to get credit for this corporation, didn't he?

A. He had to make himself personally obligated?

Q. Yes, Taylor had to make himself personally obligated in order to get credit for this corporation, did he not?

A. He didn't have to do it, he said he would do it.

Q. How did he have to do it. Now, you say this corporation started on, you say the ship had started to leaking by the first of the year 1932. Was not that what you said?

A. Said what?

page 119 } Q. Didn't you say the ship had started to leak-
ing about the first of the year, when talking about
the business?

A. 1932?

Q. Yes.

A. No, sir, I did not.

Q. Well, what did you say?

A. 1931.

Q. Not 1931.

By Mr. Read: He misunderstood you.

By Mr. Massey: I will try to make him understand me.

By the Witness: Yes, I come back to the thought, sure.

By Mr. Massey:

Q. That is right.

A. That is when I discovered it. I don't know, I want to
be straight.

Q. That is when you discovered it?

A. Yes, sir, sure.

Q. That is right?

A. Yes, sir.

Q. What was your position with the corporation?

A. My position was vice-president.

Q. What were you in February 1932?

A. President.

Q. You were president. It was your business to know when
stock certificates were sold?

A. Was it my business to sign them?

page 120 } Q. Yes, it was your business to sign the stock
certificates, you were president of the corpora-
tion, it was your business to sign the stock certi-
ficates?

A. The secretary and the manager and the president.

Q. You signed them. Well, now, I hand you a note dated
February 17th 1932, signed by Arthur Minns, and ask
you what is that for?

A. Signed by Arthur Minns?

Q. Yes, in February 1932.

A. Well, he had stock, all of them had stock.

Q. Well, do you mean you sold him the stock in February
1932 when the ship had started to sinking in January?

A. All the stock was sold—1932—I don't know exactly, I
have the stock book at home, I don't know exactly the date
when we first started to selling, but we was doing business
quite a while before we got the stock.

Q. Now you, sometime in the year 1928 or 1929, had been in some other business with W. R. Taylor, hadn't you?

A. Yes, sir, somewhere around there.

Q. At that time you gave W. R. Taylor a deed of trust for three hundred and eighty-one dollars, that represented what you owed him?

A. Gave Taylor that?

Q. Yes, and that represented what you owed him?

A. Well, practically, I didn't owe him anything, as long as the account is going on. Practically he didn't put up any money, I never got a cent of money out of my business. Lawyer Walker wrote the paper out.

Q. You gave a deed of trust on the property?
page 121 } A. Sure, I gave it.

Q. And the property was sold out under that deed of trust?

A. Yes, sir.

Q. Do you know how much was paid Taylor under the deed of trust?

A. No, he never told me.

Q. Do you know how much you owed him after the sale?

A. How much I owed him after the sale?

Q. Yes.

A. I didn't owe him anything, because I was not responsible.

Q. You weren't responsible for the debts of the business?

A. No, we had a written agreement that if every one who lost out, I would lose.

Q. Well, he stood his part of the loss, didn't he?

A. Well, he was satisfied then, that is why I gave it to him.

Q. I see; You gave him that deed of trust to satisfy him?

A. Sure I did.

Q. That is what I am asking now, Darden: You said that as these bills were paid up, that the secretary made a record of it, didn't you?

A. Sure he made it, he was supposed to make record of everything.

Q. Well, why was it you all didn't know what bills had been paid?

A. This is not made from this, that is his personal affair. (Indicating.)

Q. Why didn't you know it, didn't you have receipted bills where they had been paid?

page 122 } A. Well, I didn't bother it, about it, it didn't bother me at all; I had a secretary to do that,

and what caused me to do that was checking over the January—

Q. Well, one minute. You say it was not your business—

A. No, sir.

Q. Well, one minute: You testified you found bills which Taylor represented as having been paid, which you found weren't paid. Now did you make a call, when he presented to you bills he said he had paid, to produce the checks?

A. No.

Q. When he said he had paid certain bills, didn't he produce checks to you showing they had been paid?

A. Some of the bills, such as groceries (grocery bills) he, did, and some he didn't.

Q. You never called for any of them?

A. Many of them he paid out of his own money, so he said.

Q. When it became so you were in debt, weren't you?

A. All of us was in debt.

Q. Now, Darden, did you call a meeting around at your house, of people who had heard the words spoken over at the House of Prayer on that occasion, that they agreed had been spoken in the House of Prayer?

A. I can't recall that to my memory.

Q. You can not recall that to your memory. You can recall to your memory, can you not, that you did have a meeting of certain people around at your house for the purpose of talking it over and getting together and show-
page 123 } ing what did happen, can you not? (Pause.)

Q. You can answer that question, Yes or No?

A. (Pause) I don't have to answer it.

Q. Well, I think you do have to answer it. I will ask the court to instruct him to answer that.

By the Court: Answer his question.

By Mr. Massey

Q. Did you or not?

A. (Pause.) What do you mean, in regards to the statement—

Q. Yes.

A. That was spoken.

Q. Yes, with regard to the statement the Bishop had made about W. M. Taylor?

A. No, sir, we didn't call it for that purpose.

Q. What did you call it for?

A. We called the meeting to check up, going over our books, and they had gone out and gotten them to check over.

Q. I am not talking about the Rising Star.—

A. I know one meeting there.

Q. I am talking about the House of Prayer.

A. I am talking about the House of Prayer, when this pastor came there, he came there to my house and gone over the loans.

Q. I didn't ask you that.

A. I think we called a meeting.

By Mr. Read: I think he has answered the question.

page 124 } By Mr. Massey:

Q. Did you call a meeting to discuss what had happened there in the House of Prayer?

A. No, sir.

Q. Didn't you call a meeting at your house to discuss the situation that had arisen in the House of Prayer, or that had arisen between Taylor and the Bishop?

A. No, sir, we didn't call meeting for that purpose.

Q. You did not call a meeting for that purpose?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Do you know how many other meetings had been called. You say you weren't present in the House of Prayer at the time this disagreement between the Bishop and Taylor occurred?

A. No, sir.

Q. You don't know how many other meetings had been called?

A. No, sir.

Q. Or how many there were, in reference to that?

A. No, sir.

RE-DIRECT EXAMINATION.

Q. Why did you and Taylor dissolve partnership?

A. Why did we dissolve partnership?

Q. Yes.

A. Well, because conditions got bad, and they could not pay the bills off, and we decided I would go back
page 125 } to my job and go to work. We came out, and it was too much of a burden to carry, and we closed up, and I said "Brother Taylor, I am going back to work, and no misunderstanding at all, never had any.

Q. When was that you all stopped?

A. I think it was in 1928 or 1929.

Q. Was it before the incorporation?

A. Sure.

Q. Of the Rising Star?

A. Sure, a long while.

No further questions. Witness leaves stand.

By Mr. Massey: I beg your pardon, there is something I want to ask this witness.

JOSEPH DARDEN,
recalled, further testified:

By Mr. Massey:

Q. Darden, I understood you to answer a question of Mr. Read that you knew nothing about Bishop Grace, about boycotting the Rising Star. Was that correct?

A. I was not there to hear it, nothing about it. You asked me did I hear that, you used these words—

Q. I didn't ask you about that, Mr. Read did.

A. I never heard him.

Q. You never heard any statement he made about that?

A. No, sir.

Q. Do you know whether he put a boycott on the store or not?

A. No, sir, he didn't. I think bad management is what put the boycott on it.

Q. You think bad management put the boycott page 126 } on it?

A. Yes, sir.

Q. Did you write your name to that paper (handing). You can read it if you like, but I don't ask you to do that, I want you to look at it and see if you signed your name to it?

By Mr. Read: That is indirectly trying to get into the record what your honor has ruled out.

By Mr. Massey: I don't want to get it in the record, I just want the witness to refresh his memory.

Q. Now, Darden, as a matter of fact, don't you recall a meeting of the Rising Star in which Charles Ingraham, John Little, R. D. Greivous and you were present with William Taylor, at which he requested you to interview the Bishop in an effort to get the Bishop to relieve the boycott on the store? Were you at that meeting?

A. Was I at that meeting?

Q. Yes.

A. (Pause.) Yes, I was at the meeting of the three-group of us, and he asked us to go to see the Bishop, to see if we could not get him to say what he said (I use the word like he said it) and call a witness to witness the fact we had been to see him.

Q. Well, did you go?

A. Sure, we went.

Q. What did the Bishop tell you?

A. He did not do anything about it. He had not boycotted the business. It was the bad management, and, in other words, he didn't give us any decision along that line, because he had not did anything to cause the work to go down, and go bad.

page 127 } Q. And he didn't give you any decision?

A. No, not along that line, because he had not did anything to cause the business to go bad.

Q. And you went back and told Taylor—

A. I beg your pardon.

Q. What had occurred. You carried his message to Taylor?

A. I don't know whether we went back together.

Q. Well, did Taylor ever ask you what the Bishop said to you?

(Pause.)

Q. Now, you know that.

A. I am trying to recall that to my memory. He said "It is no time to do business now".

Q. Who said that?

A. The Bishop said it.

Q. What did you go back and tell Taylor the Bishop said?

A. I don't remember if he had repeated it, I will not tell you because I don't have a record.

Q. Didn't the Bishop tell you that he would not even consent to continue to let you all continue to rent the place from Taylor, because to do that would be to help Taylor?

A. Didn't the Bishop tell me that?

Q. Yes, didn't the Bishop tell you that he would not consent to let you all continue to rent the place from Taylor, because to do so would help Taylor?

A. I don't remember—

Q. You don't remember whether he told you that or not.

A. Him telling me that.

page 128 } Q. You don't remember.

A. That would be prejudice, and I never known him to use that.

No further questions. Witness leaves stand.

B. T. COTTON,
defendant's witness, affirmed and testified:

By Mr. Read:

Q. What is your name?

A. B. T. Cotton.

Q. In 1932 were you a member of the House of Prayer?

A. Yes, I was.

Q. Were you at the meeting in which the Bishop was supposed to have made certain remarks to the congregation about the payment of his indebtedness?

A. Yes, sir.

Q. You were at that meeting, and what did the Bishop say in his remarks?

A. Well, the Bishop said this: "Children, how are you getting along with your notes". And somebody said, I don't know who it was, said it was six paid, and brother Grevious said it is nine. The Bishop said—

Q. Talk louder.

A. Brother Taylor got up and said there was nine paid. The Bishop asked him where they was. He said "They are home in my safe". He said "Will you get them?" "Will you get them for me, please". He said "No, I can't work the combination on my safe at night, I can't see page 129 } how to work it". The Bishop then said "I will go along with you". And he said no, and then he sat down.

Q. Now who was the Bishop addressing at that time?

A. He was addressing the congregation.

Q. He was addressing the congregation?

A. Yes.

Q. Where was Taylor sitting, can you illustrate in any way, in the room—

A. Yes.

Q. Say you are occupying the rostrum where you sit, where would Taylor be?

A. Well, the Bishop, he was something like in front of this table here, and Taylor, and Taylor was back there. (Indicating.)

Q. About the distance where the Clerk is sitting here?

A. Yes, sir, just about that distance.

Q. Was he parallel with the Bishop or in front of him, or behind him?

A. He was kind of on the opposite side of the Bishop, speaking to the house.

Q. Where was he, in front of him, or in the rear of the Bishop?

A. Kind of on the rear. (Indicating.)

By Mr. Read: Can we agree, Mr. Massey, about 12 feet?

By Mr. Massey: Yes, sir, that is all right.

By the Witness: Yes, that is right.

By Mr. Read: I just want to get it in the record.

By Mr. Massey: Yes. I said that is all right.

page 130 } By Mr. Read:

Q. You say at the time he said the notes were at home in his safe, did Taylor make any remark as to whether he had the notes or had destroyed them, or part of them?

A. Well, he told the Bishop a few days before then, that the first three notes he had paid, that he had torn up. So then the Bishop asked him why he had torn them up. He said he didn't think they would ever be any good, they was nothing to him. He said "No, you ought to keep those notes, you ought never to tear them up".

Q. Do you recall going over to the bank with Taylor, at the request of the Bishop, about these notes?

A. Yes.

Q. Did the Bishop indicate to you and Taylor why he wanted you to go over there?

A. No, sir, he did not to me; he just asked me to go over to the bank with him.

Q. What did you understand you were to go there for?

A. I understood the banker, when the Bishop first went into the bank, he said "I came over to find out about the notes that were paid, will you please tell me how many were paid"—

By Mr. Massey:

Q. Did you hear that?

A. Yes, sir, I heard it.

By Mr. Read:

Q. How far were you standing from the officer in the bank?

A. A little closer than—closer than I am standing page 131 } to the Judge here. I was listening to the conversation, and I heard the banker say, when he got back, he looked in the book, and he said "I can't find but six have been taken up". Well, the Bishop didn't say nothing yet, and the banker said "Wait a minute", and went over it again, and he said the second time "No, the six is all I can find".

Q. Did Taylor hear him make that statement?

A. Yes, sir, he heard it.

Q. What did he say, what did Taylor say?

A. He didn't say a word.

CROSS EXAMINATION.

By Mr. Massey:

Q. You say that Taylor said he had torn up the three first notes?

A. Yes, sir.

Q. What notes was he talking about, do you know?

A. Talking about the notes that they had in the bank, and was taken out the bank.

Q. As a matter of fact, Taylor told you he had torn up six old notes on some other property that he had sold to the Bishop and had nothing to do with this at all, did he not?

A. Well, I don't have anything to do with that, all I know is what I have said.

Q. Well, you do have something to do with it, you are testifying to this jury.

A. They was talking about old notes.

page 132 } Q. Are you trying to make this jury believe Taylor said he had torn up three of these \$500.00 notes which were secured by deed of trust on the property?

A. He didn't say anything about \$500.00 note. He said he had torn up the three first notes he had paid.

Q. You say Taylor went over there and heard the cashier at the bank say only six of those notes had been taken out?

A. Yes, sir, brother Taylor did.

Q. The note teller.

A. Sir?

Q. The man in the bank.

A. Yes, sir.

Q. Somebody in the bank told him that only six notes had been taken out?

A. Yes, sir.

Q. Who was the man in the bank told you so, told the Bishop so?

A. I don't know his name.

Q. Where did he stand in the bank?

A. He was the second one at the lower end as you go in the First National Bank here (indicating), and you go straight down to your right, it is the second window from this way.

Q. You know Mr. Rowell, the small man who wears eye-glasses?

A. I do not.

Q. Some other young man there.

A. He seemed to be very young.

Q. He was not the young man who had a scar
page 133 } on the side of his face?

A. I didn't notice that.

Q. You say the man told him in the presence of Taylor
that only six of these notes had been paid?

A. That is what he said.

No further questions. Witness leaves stand.

SARAH FURBUSH,
affirmed and testified:

By Mr. Read:

Q. What is your name?

A. Sarah E. Furbush.

Q. Were you formerly secretary of the House of Prayer?

A. Yes, sir.

Q. In June, 1932?

A. Yes, sir, up until April 10th of 1932.

Q. You weren't there then in June?

A. No, sir.

Q. Were you at the meeting wherein reference was made by
the Bishop to the notes, or the indebtedness of the church, at
the June meeting?

A. What, after April 10th?

Q. Yes, in June, 1932.

A. No, sir, I was sick in bed at that time.

Q. Just before you were taken ill did Taylor come to your
house and make any statement as to how many notes he had
taken up?

A. Yes, sir.

page 134 } Q. How many did he say?

A. One morning, I don't remember the month,
Brother Taylor came there and said "Sarah"—I was sick in
bed at that time—he came up to my bed room and said "Sa-
rah, how do you feel this morning". I said "All right, brother
Taylor, how are you". He said "I came for business", and
I said "Brother Taylor, you know my nerves are not good and
I can not talk about business". He said "Sarah, do you
know about the notes". I said "Why, brother Taylor, what
do you want to know about the notes". He said "Well, they
are trying to tell me three is only six notes, and I know
seven". I said "Brother Taylor, you should have more than
seven notes". He said "I have seven". I said "Well, look
on the cedar chest and bring me the little black book, I will

show you". And he got the book and brought me, and I said "Why, it is thirteen notes taken out". He said "I have only nine". I said "You should have more than nine, because you have taken them all out", and I gave him the date, that is the date the note he had taken up. I said "This is the date they authorized you to take the note out the bank". He said "All right, Sarah, good-bye". And he left.

Q. You say "they authorized you", who do you mean by "they"?

A. Every Monday night, brother Greivous, Joseph—Brother Greivous, brother Ingraham and brother Perry and Brother Banks, and the person who was the treasurer at this time, Mrs. Joyner, and myself, have business meetings, before we go to the church—before we go before the congregation, to make our report. At this meeting we discuss what bills we are going to pay. The money is brought
page 135 } to to the church on this night that has been taken up during the whole week, it is counted by these men; I, being the secretary, take on the records—I don't count the money on this night; this money is kept in the First National Bank envelope, so much money is placed there by the men who have it, and the money is counted and placed in the envelope, it is so much in quarters, and so much in dimes—Five dollars in dimes, and ten dollars in quarters, and a dollar in pennies, and so on like the envelope shows. These envelopes are filled with these amounts of money. Then these brothers say "We are going to pay Fergusson this week so much money", and I take note of that. "Tomorrow we are going to pay Mr. Gamble so much money", and I taken note of that". And after that they had so much money to pay on this bill, then we totalled up the amount for the week, and we take this amount for the expenses we are going to pay tomorrow, and if we have a balance we would tell him "Brother Taylor"—sister Joyner would bank this money tomorrow—"Brother Taylor, you pay these bills", then we are satisfied these bills are going to be paid, by brother Taylor's mark, I being the secretary only take a note. Then I go back to the congregation after an offering, for the list that night, I tell the congregation "We raised last night so much money", then they had say last Tuesday so much money, then they had so much, and Sunday night we had so much, and the total for the week. I said "Now tonight"—"Tomorrow we will pay such-and-such a bill, and such-and-such a bill," and the total for the week is so much. The total for expenses is so much, and if we have one dollar, I say "We have one dollar in the treasury, we are not bank-

ing anything this week. If we have anything
 page 136 { over five dollars, I say "We are banking tomorrow so-much", and so-much. And that is the way we are keeping our records. I am a just woman, and I wanted the officials of the church to work together, and I called the officials together every Monday night, to make our report before the meeting, and to make this report. And that is the way it was done. Then when the Bishop comes, he asks us, the congregation, "Children, what are you reports". If I am there I get up and give out my report, if I am not there, then the assistant secretary will give a report as clear as she has any idea.

Q. Well, I don't clearly understand, the night he came to see you. I don't understand why he came to see you, when he said the notes were paid. Did he state the purpose of his visit?

A. Brother Taylor said—he told me this: That there is some talk that only six notes was taken out, but there was seven, Sarah. I said "Brother Taylor, it is more than seven, it is thirteen notes taken out". He said "Well, it is nine". I said "It is more than nine, look on my cedar chest and get that black loose leaf in the book, and I will show you the number of notes that have been taken out". I said "During the time Mrs. Joyner was treasurer four notes were taken out, during the time you were trustee of the board nine were taken out, and you have the privilege of taking them up, because from the first time the first note was taken out, it was the 28th day of January—the first note that was taken out was the date of January 28th, 1930".

Q. Where were the notes at that time, do you know?

A. The notes at that time was in brother Taylor's possession.
 page 137 {

Q. Did you ask him for them, as secretary, for the notes?

A. I didn't ask him for them, I asked him to let me see the notes. He said "These notes are good for my protection, they are at home in my safe, and I will show them to the Bishop when he comes". And whenever we asked him for the bills, for the notes, he says "I will show them to the Bishop when he comes", and as Secretary I didn't keep the notes, because I had no special place to keep them.

CROSS EXAMINATION.

By Mr. Massey:

Q. I don't exactly get you on this, you say the first he told

you, he had six notes, then he told you he had seven, and then he told you he had nine, is that it?

A. Repeat your statement.

Q. You just stated this, on direct examination, he first told you he had seven notes?

A. Yes.

Q. Then he told you he had nine?

A. First he said he had seven, and I contradicted his statement, I said "You are wrong, brother Taylor". He said "All right, may be I am wrong". I said "Brother Taylor, it is thirteen notes".

Q. All right, we know that four had been taken out before you became treasurer.

A. Listen, I beg your pardon please: He said it is seven notes taken out, I said it is thirteen notes taken out—

Q. Well, don't go over all that, all I am asking you is what he first said.

page 138 } A. He said there was some talk about only six notes had been taken up.

Q. And right there, before you entered into conversation—

A. Yes, sir.

Q. He said seven?

A. Yes, sir.

Q. Then he changed to nine.

A. Yes.

Q. Why did he tell you he was holding those notes?

A. Why he was holding the notes?

Q. Yes.

A. He didn't tell me why he was holding those notes.

Q. You just said he told you, he told you he was holding those notes, he said, for protection and he was going to show them to the Bishop when the Bishop came.

A. I beg your pardon: I didn't tell you what time I had asked him for those notes. I told you there was a time I asked him concerning these notes, and whenever I got to tell him about them, he would tell me he was saving them for his protection. But not at this particular time.

Q. All right. Now, Sarah, you also had some trouble over there with somebody in the House of Prayer, didn't you?

A. Did I have trouble in the church?

Q. Yes, did you not have some trouble in the House of Prayer?

A. No, I did not have any trouble.

By Mr. Walker: We object to the question.

page 139 } A. (Adding:) I will tell you what the occasion
was—

By Mr. Massey:

Q. I don't care about the occasion, I just asked you if you didn't have some trouble in the House of Prayer?

A. I will have to give you the beginning of it, to answer your question.

By Mr. Walker: We object.

By the Court: What is the materiality of that.

By Mr. Massey: I was coming to another question—

By Mr. Walker: Let the court rule.

By the Court: If it is not material to the issue. I shall hold it has no place in this case.

By Mr. Massey: I just want to show the attitude of this witness, to show she has gone back to that House of Prayer and her attitude is entirely different from what it was.

Objection sustained.

By Mr. Massey:

Q. Do you know W. M. Taylor?

A. I know W. M. Taylor.

Q. You knew him while he was in the House of Prayer?

A. Yes, sir.

Q. You have been a member of the House of Prayer all the time?

A. You say what?

Q. Have you been a member of the House of Prayer all the time?

A. Yes, sir, since it began.

Q. And you still are?

A. Yes, sir.

RE-DIRECT EXAMINATION.

page 140 } By Mr. Read:

Q. Did I understand you, when Taylor said seven notes, you said there are nine?

A. Yes, sir. No, sir, I didn't say nine, I said it was more than nine.

Q. What did you say?

A. When Brother Taylor said it was seven notes—

Q. You told him it was nine?

A. I said "You are wrong, it is more than nine".

Q. And it was seven?

A. Yes, sir.

Q. He has not sued you for slander, has he?

A. No, sir.

By Mr. Massey:

Q. Just a second: You say you are a member of this House of Prayer. Aren't you a member of Rev. Jones's Church, or have you left there?

A. Am I a member of Rev. Jones's church?

Q. Yes.

A. Well—

Q. I ask you this question: Are you still a member of this House of Prayer, and are you a member of Rev. Jones's church, or have you left it?

By the Court: You need not answer that. She has told you she was a member of the House of Prayer from the time it began until now.

By the Witness: Yes, sir.

By Mr. Massey:

Q. Aren't you now a member of Rev. Jones's page 141 } church?

A. I was a member of Rev. Jones's church before the House of Prayer came, and I am a member of the House of Prayer now.

Q. You have never gone back to Rev. Jones's church?

A. I visit all the churches whenever they ask me to visit them.

No further questions. Witness leaves stand.

RICHARD COLES,
affirmed and testified:

By Mr. Walker:

Q. What is your name?

A. Richard Coles.

Q. How long have you lived in Newport News?

A. About thirty-five years.

Q. Where do you work?

A. I work at the C. and O.

Q. How long have you worked there?

A. I have been working at the C. and O. about 20 years.

Q. Are you a member of the House of Prayer?

A. Do I remember it?

Q. Are you a member of it, member of the House of Prayer?

A. Yes, sir.

Q. Were you a member of the House of Prayer in June, 1932?

A. Yes.

Q. Are you an officer there?

A. Yes, sir, I was.

Q. What was your office?

page 142 } A. I was one of the trustees at the time.

Q. One of the trustees?

A. Yes, sir.

Q. Were you at a meeting in June, 1932, when a discussion arose concerning the notes of \$500.00 that was paid to the First National Bank?

A. Yes, sir.

Q. Do you remember the conversation at that meeting?

A. Yes, sir.

Q. Will you state what that conversation was?

By the Court: Tell Mr. Phillips over there.

A. The Bishop—

By the Court: A little louder, so counsel can hear you.

A. (Continued:) The Bishop, when he came on the platform, he asked the congregation, as always, generally asks "How are you getting along". And they answer him. Well, then, he said "Is all well", and they tell him, they answer him, and then he said again "Well, I don't believe you all is doing much on your financial part", he says "You are not paying up on your notes as you ought to". And then he asked the question "How many notes has been taken up", and brother Grevious he spoke and said nine, then brother Taylor spoke afterwards and said nine. Then he asked brother Taylor to get them, but he was not talking to brother Taylor at the time, but he asked him to get them. Brother Taylor said he could not get them, he said they was at home locked up in his safe. And he said to him "Well,

page 143 } I will take you over there and see that you get them". And brother Taylor said "No, I don't want to get them now". But then he turned right around there, facing brother Taylor, and said to the congregation, and generally always talks on preliminaries, as he generally says, and he said no more about the notes.

By the Court:

Q. He said no more about the notes?

A. He said no more about the notes.

By Mr. Walker:

Q. As trustee and officer of the House of Prayer, would it or would it not be the officer's duty to inquire into the payment of the notes, and so forth?

A. Yes, sir.

Q. That was part of your duty?

A. Sir?

Q. That was part of your duty, as officer?

A. Yes, sir.

Q. And the Bishop's duty, what was his duty? Was it his duty to find out, as supervising officer of the House of Prayer, or as Bishop of the House of Prayer, the financial condition of the house?

A. Well, that was his business, to find out about the financial part.

Q. It was his duty to find out about the financial condition of the House of Prayer?

A. Yes, sir, that was his business.

page 144 } Q. Had you and the other officers made any effort prior to this night to find out from W. M. Taylor—to find out the number of notes that had been paid at the First National Bank?

A. Well, they had not made any inquiry about how many had been paid, but I inquired as to how many had been paid.

Q. Who did you inquire from?

A. From Taylor. He said he was paying on his personal money, he loaned the House of Prayer, and the bank didn't give him receipts, on his own personal money.

Q. Did not give you any further information concerning these notes?

A. No, sir.

Q. Were you a member of the Rising Star corporation, grocery store?

A. Yes, sir.

Q. Stockholder there?

A. Yes, sir.

Q. Do you know whether or not, at any time, the Bishop made any attempt to injure that store or boycott that store?

A. No, sir, never has.

Q. Before or after—

A. No, sir.

Q. This conversation?

A. Never has, no time. He was in partner with us, it was as much his as it was ours.

Q. What do you mean by that?

A. He had some money in it.

page 145 } Q. Loaned money?

A. Loaned money in there.

Q. How much had he loaned for the business?

A. It was five hundred and fifty dollars.

Q. Was that before the controversy?

A. Yes.

Q. Was that \$550.00 owing at this time?

A. Yes, sir, owing now.

Q. Has it been paid back?

A. No, sir.

Q. Were you at any other meeting where these things were discussed, these \$500.00 notes?

A. Well, I was at the court meeting, officials, in the officials concern of it.

Q. Was Taylor there?

A. Yes, sir.

Q. The Bishop there?

A. Yes.

Q. What, if anything, was said at this—

By Mr. Massey, interposing:

Q. You said Taylor was not there?

A. He was there.

Q. He was there?

A. Yes.

By Mr. Walker:

Q. What, if anything, was said about these notes, \$500.00 notes, at that time?

page 146 } A. Well, Brother Taylor, said that he had torn the notes up, four of them, I think he said four notes he had tared up, and then afterwards the Bishop sends him down to the house and got the notes, and he brought them back to the office, and as he got back with the notes he counted them out to him, one, two, three, just as they was when paying them; he told us "We will see, the first note is, here, and the second note is here, and the third notes is here and four notes is all". "Now, what notes did you tear up?" And I could not exactly explain all as it was, but any how, he said the second one had been torn up; but he found out that none of them had been done away with.

Q. Then what—Did W. M. Taylor make any answer to that, or make any statement at that time?

A. Well, he made a statement that he had paid nine notes.

Q. Did you have any trouble in getting the information from W. M. Taylor—you, as an officer, have any trouble getting information from W. M. Taylor as to the business of the church?

A. Well, I asked him about some of the notes after he told me he put his personal money in. I told him, I believe, if it was his own personal money he ought to give the house a receipt for it, for paying the money, that the House of Prayer was paying his money back; and there was some bundles up in there, and he grabbed one and made a threat at me; and Brother Greivous, he talked between him, and also brother Banks, at that time.

Q. You had nothing against Brother Taylor?

A. Not any in the world.

page 147 } Q. Have you anything against him now?

A. No, sir, we have always been friends.

Q. No reason you should come up here and tell anything but the truth, the true facts?

A. None at all, we have always been good friends always.

Q. You said you were a member of the Rising Star Grocery Company?

A. Yes.

Q. How was that business getting on just prior to this controversy, financially?

A. It had practically gone down.

Q. It had practically gone down before this conversation?

A. Before the conversation, yes, practically gone out of existence. We had a meeting concerning of it, and at that time, the president, Brother Darden, he stated—he was down there—he said he would not give five cents for the business.

Q. Was that said after Darden had investigated the books and so forth?

A. Yes, after investigating his books, he said he would not give five cents for the business.

Q. And it was after the business had—

A. Had gone down.

Q. They owed considerable debts?

A. Sir?

Q. Owed more than they could pay?

A. Yes.

Q. Was that before this statement that the Bishop is being sued for now?

page 148 } A. Yes.

Q. Before any such statement or claim had been made?

A. Yes.

CROSS EXAMINATION.

By Mr. Massey:

Q. Now as a matter of fact, the notes which Taylor told you he had lost, or had torn up, were notes on another piece of property entirely which he and his wife had conveyed to Bishop Grace, and he told you that they had been paid—that the property had been paid for and clear, and they were worth nothing, and that he had lost them or destroyed them, is not that correct?

A. No, sir, that was a note of the House of Prayer.

Q. Was not this the same note his wife was on, and he told you all you had no business with them, that he should keep them?

A. No, sir, they was not the notes; they was notes of the House of Prayer.

Q. All right. You know he told you he was paying his own personal money?

A. Yes, sir.

Q. Well, was not that on a seven hundred dollar note which he had borrowed money on for Bishop Grace, and not a church loan?

A. No, sir, what I was asking concerning was the church loan.

Q. Which church loan are you talking about now, the one—

A. The note.

Q. Well, there were two of them, the one being paid on each month through Mr. West. Didn't he tell
page 149 } you the House of Prayer didn't have that money to pay it off, and that he had paid it out of his own personal money and took receipts for it?

A. Yes, he said that was his personal money.

Q. And didn't he tell you he was going to hold those notes until the House of Prayer had paid him for them and then he would give them to the Bishop?

A. No, sir, he didn't tell that.

Q. The money he was paying to Mr. West was money which the Building and Loan Association had to be paid?

A. Yes, sir.

Q. It was money due the Building and Loan association?

A. Yes, sir.

Q. Now you say when he told them he thought he had torn up four notes, that he came in and counted them out and gave nine notes, is that right?

A. They had nine.

Q. He brought the nine notes in, there was not any four of them?

A. No, sir.

By Mr. Walker:

Q. Did you say he brought the nine notes there?

A. No, I don't say he brought the nine notes there, but I saw they had the nine notes.

By Mr. Massey:

Q. Where did they come from at that time?

A. I think the nine notes, the Bishop had the page 150 } nine notes.

Q. That was after the meeting, after the investigation at the House of Prayer?

A. Yes.

Q. The notes had been turned over to the Bishop at that time?

A. Yes.

Q. And the inquiry was as to the other four notes?

A. Yes.

Q. That he claimed had been torn up.

A. That he claimed had been torn up, and the Bishop sent for the notes that he had and showed him—

Q. Wait a minute—

By Mr. Walker: The notes he had.

By the Court: Both sides have gone over that once or twice.

By Mr. Walker:

Q. And the Bishop had sent for the notes he had, and showed them identically one after the other.

A. Yes, sir.

Q. And found the notes he claimed had been torn up had not been torn up?

A. They had not been torn up.

No further questions. Witness leaves stand.

LEE HAWKINS,
defendant's witness, affirmed and testified:

By Mr. Read:

Q. What is your name?

A. Lee Hawkins.

page 151 } Q. And your trade or profession or business,
where do you work?

A. Where do I work? I work at the shipyard.

Q. How many years have you been working there?

A. Been there eleven years.

Q. Are you a member of the House of Prayer?

A. Yes, sir.

Q. Were you such a member in June, 1932, about two and a half years ago?

A. I joined the House of Prayer when they first put up here, when they put the tent up.

Q. When they first put the tent up? I don't understand you.

A. I have been going to it ever since they built the tent there, I went to it the first thing they put up, when they first put the tent up over there, sir.

Q. Were you present at the meeting in June, 1932, where-in the plaintiff claims here that the Bishop slandered him?

A. I can't tell you the dates, sir.

Q. Well, in June, there is no dispute about the month, June, 1932?

A. I was there when he asked the children how was they getting along paying on the notes.

Q. All right.

A. And somebody answered and said that they have paid about six, then somebody else says it has been about nine paid.

Q. Who was the Bishop addressing at that page 152 } time?

A. He was talking to the crowd, it seemed to me like, he was standing up on his platform, and was talking to the crowd something like this (indicating).

Q. Well, what statement did he make about it, if anything, about the notes?

A. (Pause.) He made a statement to the children, he says "I don't think you all is doing so well", somebody said "Yes, there had been about nine paid.

Q. Nine notes, you mean?

A. Yes, sir.

Q. You are speaking now of the notes at the First National Bank?

A. I don't know what kind of notes they was, but they was talking about the House of Prayer notes, I reckon.

Q. Well, did the Bishop make any further statement about it?

A. I don't know what sort of notes they was, don't know anything about them, I am just stating what he said in his statement to the children.

Q. Did you see Taylor there that night?

A. See Taylor?

Q. Yes. Or do you recall?

A. Yes, Taylor spoke over there afterwards, some time over there, about them.

Q. Well, what did he say?

A. He says that there was nine notes paid.

Q. Well, did the Bishop make any response to page 153 } that?

A. He said "Go and get them ad let me see them". It seemed that Taylor could not go, didn't want to go, it was in the night, may be, he said, he could not get in his safe. The Bishop said he would go with him, and he could get in there, or something like that.

Q. Now are you a member of the Rising Star Grocery company?

A. Yes, sir, I was a member of it.

Q. From start to finish?

A. Well, I was not in there when they started.

Q. Were you in there when the Star set?

A. After they started into business, they taken me in, I can't tell—

Q. (Interposing.) You were a stranger and they took you in.

A. Was I a stranger?

Q. That is all right, that is just a little pleasantry of mine.

A. I don't think I was a stranger.

Q. Did you get any dividends at all from the Rising Star?

A. Did I get any dividends from it?

Q. Yes.

A. Not yet, sir.

Q. Well, it is closed now, the business is closed now, shut up?

A. Well, it went down, it looked like. Paid my stock in there, it was one hundred dollars, and it was getting along right well, paid in there, may be I had paid somewhere about fifty dollars. I went to pay some more money page 154 } and Taylor says to me, he says to me "Don't you pay so fast", he says "You are a little ways ahead of me now, I want to pay out my stock, to pay one more, and I am going to sink everything".

Q. What did he mean by everything?

A. I don't know what he meant by he was going to sink them; that is the words he said, and didn't say no more about it.

Q. What did you understand him to mean by that, that he was going to sink? What did you understand he meant by it?

A. Well, the way it sounded to me, I understood, may be

he was going to take all the money, or something, and put it in his pocket. That is the way I took it.

Q. Now was the business a success or failure? I mean from the beginning to the end, was it ever a successful business?

A. Well, when it started off it looked like it seemed he done pretty well. I done my trading there, and lots more; it looked like they was doing good business, and so finally it commenced going down, and we would chip in a little money Saturday nights at times along, trying to hold it up. May be I would put in twenty-some dollars, where I chipped in, outside of my stock; so it still got down, and finally it went clean down; I have never got anything.

CROSS EXAMINATION.

By Mr. Massey:

Q. After he stopped, you had a boy working in that store, didn't you?

A. Yes, sir, I think a boy worked in there.

Q. All right. Now, W. M. Taylor told you when page 155 { you had paid fifty dollars in there, that you had paid more than any of the others had paid in there, and he thought it was only fair to you to stop paying until they got paid up, didn't he, was not that what he told you?

A. (Pause.) How did you say that, boss?

Q. It is strange that all of these witnesses seem to have great difficulty when you ask them questions that might embarrass them.

By Mr. Read: He was very clear in his statement, I thought.

By Mr. Massey:

Q. Here is the question I asked you: I asked you if it was not a fact you had been paying your note regularly, and Taylor told you that the others were not paying up on their notes, and that he didn't think it fair to you for you to pay up while the others were behind, was not that what he told you?

A. He told me to hold on and not pay so fast.

Q. Why did he tell you that now?

A. I don't know why he said that.

Q. And he didn't tell you he was doing that in your interest, or he didn't think you ought to pay more than anybody else, he didn't tell you that?

A. I don't remember him telling me all that.

Q. You don't remember.

A. I don't remember him telling me all that.

No further questions. Witness leaves stand.

page 156 } JOHN LITTLE,
defendant's witness, affirmed and testified:

By Mr. Read:

Q. What is your name?

A. John Little.

Q. Where do you work, John?

A. I work at Fort Monroe now.

Q. Were you a member of the House of Prayer in June, 1932?

A. Yes, sir.

Q. Were you present at a meeting when the Bishop was present in which the question of the payment of certain notes came up before the congregation?

A. Yes, sir.

Q. Can you recall what statement the Bishop made at that time?

A. I understood him to say, he said "Children, how is you getting along with your"—"With the notes". He says "Has you collected any money to pay on the notes, it seems like you are slow about paying the notes". He said "I don't believe you have paid but six". And Brother Greivous got up and said there had been nine paid. And then Brother Taylor got up, after brother Greivous got up, and said nine. And the Bishop said "Where is they". He said "They are at his home "in my safe". He said "Go get them". Brother Taylor said "I can't see how to work the combination". Bishop said "If you tell me the combination I will go over there and work it for you". Well, he didn't go, he refused to go.

Q. Now where was Taylor seated—Who was the Bishop addressing his remarks to, who was he talking to?

A. To the congregation; he generally did that.

page 157 } Q. Where was Taylor seated?

A. He was on the rostrum, on the further side from the pulpit, over in the corner.

Q. Corner?

A. Yes, sir, Brother Greivous was seated in front the Bishop.

Q. Were you a member of the Rising Star Grocery Company, Incorporated?

A. Yes, sir.

Q. Were you a charter member, or did you come in afterwards?

A. I was a charter member.

Q. Was it a successful venture or failure?

A. Well, it was a failure.

Q. You never got any dividends from it, or any returns from the money you paid in at all?

A. No, sir.

Q. Were you present at a meeting, in the House of Prayer, at which Darden was-elder?

A. Yes, sir, I remember he called a meeting that night.

Q. Did he make any statement to Taylor as to the condition of the bills of the company?

A. Yes, he checked over some. I think it was some bills that was supposed to have been shown Paid, and when a row came in over this bill, I don't remember, I think it was Mr. Holt, a bill we owed him, and it came in, and brother Darden saw it, and he said "Them bills should have been paid"; and that night when he came in he checked up. Darden checked up so much, checked over the lot of them, and then he said "You all ain't got no business", he said page 158 } "I would not give five cents for it".

Q. Ain't got no bills?

A. Business. "You all ain't got no business," that is what he said, and he said "I would not give five cents for it".

Q. What did Taylor say?

A. He didn't say anything.

Q. Well, did he get angry or offended in any way?

A. No, sir, he didn't get offended.

Q. That meeting was held before or after the meeting at the church you have referred to, when the Bishop said "You are a little slow in paying the notes"?

A. It was held before then.

Q. It was held before then?

A. Yes, sir.

Q. Were you a regular attendant at the House of Prayer?

A. Yes, sir.

Q. Did you ever hear the Bishop say, or suggest, in any way to the House to boycott this man's business?

A. I did not; I have heard him make two statements, and here is what it was: After he found out we was over there in business, he was buying stuff that he was eating from Mrs. Bostwick on Madison avenue; and he told the people to patronize it, and he stopped buying over there and started to buying from the Rising Star.

Q. He started to buying from the Rising Star?

A. Yes, sir.

Q. And told others to patronize it?

A. Yes, sir.

page 159 } Q. Did you—There was a loan made by the
Bishop, in an effort to tide the ship across the
bar, was there not?

A. Yes, sir.

Q. Were you on that note?

A. No, sir, I was not on that.

CROSS EXAMINATION.

By Mr. Massey:

Q. Taylor was on that note, was not he?

A. Yes, sir.

Q. Taylor had to pay many bills the Rising Star owed when
it failed, has not he, that you know of?

A. Not as I know of, he has not paid them.

Q. You know he stood for that very bill you are talking
about here, S. W. Holt, because he guaranteed it, and had it
to pay?

A. I don't know what he stood for.

Q. The Rising Star could not get any credit unless Tay-
lor guaranteed it personally, could it?

A. No, I don't think so.

Q. Is this your note to the Rising Star Grocery Company
for ninety dollars? (Handing.)

A. Yes, sir.

Q. Did you ever pay it?

A. No, sir, I didn't pay all of it, I paid on it; there was
not but two, I don't think, that did pay up.

Q. And that was these men, Hawkins and Coles, was not
it?

A. The three, and brother Taylor.

page 160 } Q. Taylor paid his up?

A. Yes, sir.

Q. They had to sue Coles to make him pay up his, didn't
they?

A. Yes, they sued him.

Q. Now you say the Bishop didn't boycott the business?

A. Not as I know of, I have not heard him say anything
about boycotting.

Q. Now just—

A. (Adding:) No, he didn't boycott it.

Q. You say instead of boycotting it he told people to go
there and trade?

A. Yes.

Q. Now will you look at that and see if it has your signature. (Handing.) You need not look at the whole paper, look at it and see if you didn't sign it?

A. Yes, that is my signature.

Q. Weren't you present at a meeting Taylor called there in the Rising Star to try to get the Bishop to lift the boycott, so the business could go on?

A. It was not any boycott.

Q. Well, what was it for?

A. We just had the Bishop over there, invited him there to talk to him.

Q. What did the Bishop say, did he agree to lift the boycott?

A. No.

Q. So the business could go on?

A. No. It was no boycott on it.

page 161 } Q. What did the Bishop say when he came there?

A. Well, when he came there, the Bishop didn't know what it was about.

Q. He didn't know what it was about, and what you men wanted, and you told him it was about boycotting the business, didn't you?

A. No, there was no boycott, and I didn't know nothing about that, and brother Grevious up and told him what it was.

Q. How did Grevious know?

A. He know'd what it was, but the Bishop didn't know what they meant. He said I have not told anybody to stop coming to your place, after brother Grevious told him.

Q. Right after the time this trouble arose in the House of Prayer about these notes, all the people stopped trading over there, didn't they?

A. No, sir.

Q. They did not?

A. No, sir.

No further questions. Witness leaves the stand.

ARTHUR MINNS,
defendant's witness, affirmed and testified:

By Mr. Walker:

Q. What is your name?

A. Arthur Minns.

Q. You live here in Newport News?

A. Yes, sir.

- page 162 } Q. Where do you work?
 A. Shipyard.
 Q. How long have you worked at the shipyard?
 A. About eleven years.
 Q. Are you now, and were you in June, 1932, a member of the House of Prayer?
 A. Yes, sir.
 Q. At a meeting at the House of Prayer in the first part of June, 1932, in which a disussion arose concerning a five hundred dollar note, or the payment of a five hundred dollar note, at the First National Bank, were you present?
 A. Yes, I was present.
 Q. Was W. M. Taylor present?
 A. Yes, he was present.
 Q. Bishop C. M. Grace present?
 A. Yes.
 Q. State, as near as you can recall, what was said at the meeting with reference to the payment of these notes?
 A. He asked the congregation, the members of the House of Prayer—
 Q. Who asked?
 A. The Bishop.
 Q. All right.
 A. (Continued.) He said "You all are mighty slow paying your notes", he didn't believe "You had paid over six", and brother Grevious said nine had been paid, and brother Taylor rose on his feet and said it was nine taken out. And he asked him to go home and get them for him, and he said he could not see to get in the safe, to get the notes, and he offered to go and get the notes; and nothing further
 page 163 } was said.
 Q. Are you a member of the House of Prayer?
 A. Yes.
 Q. Was anything said in previous meetings of the House of Prayer?
 A. No.
 Q. Anything in subsequent meetings?
 A. No, I didn't hear.
 Q. I believe you are one of the incorporators and directors of the Rising Star grocery company, too, were you not?
 A. Yes, sir.
 Q. What was the condition of that business just prior to June, 1932?
 A. It was about gone.
 Q. Did it ever come back?
 A. It has not come back yet.

Q. Did you ever hear Bishop Grace say anything about that business?

A. Never heard him say anything about it.

Q. Did you ever hear him say anything about boycotting it?

A. No, sir.

Q. Either in or outside the House of Prayer?

A. Never have.

Q. You were a director of that business, did you contribute its failing—Did either of the board of directors contribute the failing of the business to anything that was said by Bishop Grace, to Taylor or otherwise?

A. No, sir, I did not.

CROSS EXAMINATION.

By Mr. Massey:

page 164 } Q. You have never gotten any dividends?
A. Never got any.

Q. Never got one.

A. I have never got any.

Q. Did you pay for your stock?

A. I didn't finish paying.

Q. You didn't finish paying for it. How much do you owe on it? I hand you that note, did you sign that note?

A. (Examining.) Yes, I signed that note.

Q. The back of this note shows you paid four dollars on it, is that right?

A. On what note?

Q. On this note.

A. On the stock, you mean?

Q. Yes.

A. I paid more than that.

Q. Have you got any receipt for it?

A. No, he has got it in the book. He is sitting right over there, he has got it in his book.

Q. But at any rate, you never paid for the stock?

A. I never finished paying for it.

Q. Did you owe the place any bill for groceries?

A. No, I don't owe them a penny.

Q. You don't owe them a penny. You say you weren't present on any night except the night on which the Bishop and Taylor finally passed it off, when Taylor said he could not see to work the combination of the safe, that
page 165 } is the only time?

A. Yes, that is the only time.

Q. You weren't back there later?

A. Yes, I was back there, but I never heard anything.

Q. You never heard anything later. And you testify you never heard anything about any boycott?

A. Yes, I testify to it.

Q. Did you attend a meeting at the house of Joseph Darden in connection with this matter?

A. No.

Q. You weren't present?

A. No.

Q. At that meeting?

A. No.

RE-DIRECT EXAMINATION.

By Mr. Walker:

Q. These stock-notes were given some time after you subscribed to the payment of your stock, is that correct; it was for a balance that was then due?

A. Sir?

Q. As to the balance that was then due on the stock?

A. Yes, sir.

Q. You were one of the directors, too?

A. Yes, sir.

Q. How much stock did W. M. Taylor have in there?

A. How much stock did Taylor have?

Q. Yes.

page 166 } A. We all had a hundred dollars at the starting, each man was supposed to put up a hundred dollars.

Q. And that is the maximum amount they put in?

A. Yes.

Q. You only had a hundred dollars of stock in this?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Massey:

Q. You mean you had paid nineteen dollars then before you gave this note of eighty-one dollars?

A. The \$81.00, you mean balance?

Q. Yes. And the \$4.00 paid, the \$100.00 would be reduced to \$77.00, is that right?

A. Yes, sir.

Q. The four dollars indicated here, then it would be reduced to seventy-seven dollars?

A. Yes, sir.

No further questions. Witness leaves stand.

ELDER — McMILLEN,
defendant's witness, affirmed and testified:

By Mr Walker:

Q. Your name, please?

A. Elder McMillen.

Q. You are pastor of the House of Prayer?

A. Yes, sir.

page 167 } Q. Were you such pastor in June, 1932?

A. Yes, sir.

Q. Were you present at the meeting that the Bishop was accused of slandering W. M. Taylor?

A. Yes, sir.

Q. You were there at that meeting?

A. Yes, sir.

Q. If you will, tell the jurors, please, in your own words exactly what happened. Were you in the pulpit or in the congregation?

A. I was on the platform with Bishop C. M. Grace.

Q. So you were in good position to hear exactly what happened?

A. Yes, sir.

Q. Well, what happened?

A. On that night, the Bishop came in, and speaking to the children, he says "Children, how are you all getting along, are you getting along, feeling good". The next he says "How are you getting along in raising your money on paying your notes" (I am a little hoarse today, I had a congregation last night), he says "I don't believe—I think you have paid six", talking to the congregation, directly facing the congregation, and there was an answer came, I heard "We have paid nine". That called my attention, and that response was from Richard Grevious. Secondly, the response came from Brother Taylor "Nine". The Bishop says to Taylor "Where are they?" "They are in my safe." "Go get them." He said "Well, I can't get in the safe tonight, I don't know the combination". "I will go with you". And that was the conversation.

Q. Where was Taylor seated with reference to page 168 } the Bishop?

A. At that time—At that time, we have a box on the side, and the position in which the Bishop was standing, it was to the left of Bishop C. M. Grace's side.

Q. Who was he addressing, when you said "Children", you mean the congregation, of course?

A. He means entirely the congregation, as he usually did. "Children," there was no personalities at all.

Q. Were you present at this church-court to investigate certain matters with reference to the notes?

A. Yes, sir.

Q. Without telling me what your finding was, there was a finding, was not there?

A. Yes, sir.

Q. Of that court?

A. Yes, sir.

Q. Of whom was it composed?

A. It was concerning some notes that was spoken of from the rostrum through Bishop C. M. Grace, Nine—Five—I mean five hundred dollar notes had been signed, and the statement came up at this hearing.—

By the Court: Well, he just asked you who the court was composed of.

A. Oh.—The court was composed of myself, R. D. Grevious, Darden—My mind is not clear as to the others, along that line.

By Mr. Walker:

Q. How long after—

A. (Adding:) And Bishop Grace were present and brother Taylor.

page 169 } By Mr. Walker:

Q. How long after June, 1932, was the church-court held?

A. Oh, possibly two or three days, not longer than that, because the Bishop didn't stay very long at a time.

Q. Was the question of these notes at any time thereafter brought up in the congregation or meeting?

A. No, sir.

Q. Did you ever hear the Bishop say anything or advise the congregation to boycott the business in which ten of your brethren were interested, known as the Rising Star?

A. No, sir, it would not look natural that he would boycott a business that he was concerned in, and put five hundred dollars in.

Q. You are referring to a loan that he made them?

A. Yes, sir.

Q. Well, after the finding was announced, what action did Taylor take, or say he was going to take?

A. Concerning—

Q. The finding, yes.

A. Now after the notes—

Q. Just answer my question, if you will.

A. Yes.

Q. I don't care what the finding was, they made a finding, didn't they?

A. Yes.

Q. What action did Taylor say he was going to take with reference to the findings, if any?

A. Oh—His action was he will not stop here, page 170 } with your decision "I will appeal from your decision to Bishop C. M. Grace".

Q. Do you know whether he ever effected that appeal or not?

A. He did not. After he left that council he left the House of Prayer, and the next thing happened was the suit against Bishop C. M. Grace for ten thousand dollars.

Q. You weren't a member of the Rising Star?

A. No, sir.

Q. You belong to that corporation?

A. No, sir.

Q. Had you, previously to the congregational meeting of June, 1932, had you previously approached Taylor to ascertain what the condition of the finances was, I mean particularly with reference to these notes?

A. No, sir.

Q. You had not asked him for any information?

A. No, sir.

Q. What statement, if any, did Taylor make in that court meeting with reference to these notes?

A. Why, Taylor's statement was, concerning the thirteen notes is "I have nine". The Bishop says to Taylor "what became of the first four, I see the stubs here calls for thirteen". His reply was "I have disposed of them, I tore them up". And his answer was, from the Bishop was "Now, Taylor"—He says "I have tore up the first four", the first, "Until you told me to discontinue". He says "Now, did you tear up one, two, three, four, five". He says "Yes". He said "Johnnie, go get me nine notes, and bring them over here. Brother, do you hear what Taylor says. He said 'Nine notes were drawn' ". They were opened, and he said "Taylor, page 171 } lor, you say you tore up the first notes", he said, "Here is number one, here is number two, number three and number four. Now you stated you tore up the first four notes".

Q. What explanation, if any, did Taylor give then?

A. Taylor said "I tore them up because I knew they would not be of any service after they were paid, in this country it was, naturally, after the notes were paid they would be no more good, and of no account, and I tore them up".

Q. Now at that meeting was the deposit book at the bank called for?

A. Yes.

Q. And produced?

A. Produced? I think so.

Q. Were any leaves missing in the book?

A. There was.

Q. How many?

A. Now, to my best recollection, it was one torn from the bank book.

Q. Did Taylor make any explanation of the fact it had been detached, or could you tell from the looks of the book?

A. Yes, sir, it had been detached.

Q. What explanation did he make?

A. He says "I tore that leaf out for my protection".

Q. How did he explain it, for his protection?

A. Well, it seems he rested there. He said "I simply tore it out for my protection, as when I shall have surrendered my officialship as treasurer I would hold this, and it will speak for itself".

page 172 } Q. Was the leaf at any time thereafter produced?

A. I—No, sir, no, sir, not to my remembrance.

Q. Did you ever hear the Bishop at any time after June, 1932, indicate by suggestion, or in conjunction with the congregation, not to deal with the Rising Star people?

A. No, sir, not to deal with the Rising Star people?

Q. Well, I mean the grocery store.

A. Well, after they moved on Jefferson avenue, he didn't make any suggestion not to deal with them.

Q. Did you hear him make any suggestion to that effect—

A. No, sir.

Q. Out of the meeting?

A. No, sir.

Q. I don't understand you about Jefferson avenue, I didn't know the store ever moved, I thought it just closed.

A. Well, it is a street just across the bridge, turning down to go to the boat—

Q. Yes, I know that, there was a boat before at both Jefferson and Ivy avenue. I say I didn't know the store had ever moved.

A. It had.

Q. It had moved?

A. They had moved from Ivy over to Jefferson avenue.

Q. Was Taylor in it then?

A. No, sir, he had discontinued.

CROSS EXAMINATION.

By Mr. Massey:

Q. You are *you are* Elder McMillen?

A. Yes, sir.

page 173 } Q. Who appoints you?

A. Bishop C. M. Grace.

Q. Who has the power to remove you?

A. Bishop C. M. Grace.

Q. You say that Taylor stated he had nine notes?

A. Yes, sir, on that night.

Q. Now when the question came up before the Bishop at this so-called investigating committee, who composed that committee. You say you remember R. D. Grevious and Darden?

A. Yes, and Bishop C. M. Grace.

Q. Was the Bishop on that?

A. He was in that meeting.

Q. Was he on that committee?

A. He was in that meeting.

Q. Well, did he have any voice in that meeting?

A. Sure, he was investigating. Here is where it came in at. He had Taylor there, brother Taylor looking after his financial affairs, and this meeting was called for checking up and so on.

Q. All I want to get now, the constitution of the investigating committee—

A. Yes.

Q. I just want to find out whether it is in accord with your constitution and by-laws or not. What office did Grevious hold in the Church. You are elder?

A. Yes, sir.

Q. Was Grevious deacon or elder?

A. No, sir, he was trustee.

page 174 } Q. Grevious was trustee?

A. Yes, sir.

Q. Was Darden a deacon?

A. He is Sunday School superintendent and Secretary of the Trustee board.

Q. All I asked, Was he a deacon?

A. No, sir.

Q. So he was not tried before the deacons?

A. He was composed as secretary of this board of deacons.

Q. You say he stated he had nine notes, and then stated he had torn up four of them?

A. Yes, sir.

Q. Well, that would have given him thirteen in all?

A. Well, it was thirteen.

Q. Well, didn't he say he had nothing to do with the other four, they were taken up by the other treasurer, and he never had the other four notes, did he?

A. Who?

Q. Taylor?

A. I don't know what he said, he said he had torn them up.

Q. How could he tear them up unless he had them?

A. That is what I am talking about, you see.

Q. He stated he had nine notes and tore up four, in the presence of Darden and Grevious, and how could he tear up the first four when the other treasurer had taken them up?

A. His answer was he had torn up the first page 175 } four.

Q. I am asking you why he should say he had torn up something he never had?

A. You are asking me?

Q. Yes, I am asking you why he should say he had torn up something he never had?

A. He will have to answer that.

Q. All right: Now you say he had torn this sheet out of the bank book for his protection?

A. Yes.

Q. And was going to keep it until he separated from the House of Prayer?

A. No, he didn't say that he was going to keep it until he separated from the House of Prayer. He said "For his protection".

Q. The bank statement showed what deposit had been made?

A. He didn't go into that.

Q. Did Bishop Grace look?

A. He said he was going to keep it for his protection.

Q. Bishop Grace took nine. But it was the one on which he had made deposits?

A. Yes, sir.

Q. Now you say the business had moved?

A. Yes, sir.

Q. Why did it move?

A. Why did it move?

Q. Yes.

A. Now to come directly, it was because the business had gone to the bad.
page 176 } Q. All right, let me ask you this: Is not it true it was moved because it was in Taylor's prop-

erty and the Bishop refused to remove the boycott as long as it staid in Taylor's property?

A. No, sir.

Q. It is not?

A. No, sir.

Q. You are sure of that?

A. I am sure, because a man could not boycott himself and would not do it.

Q. Not even if he wanted to get another man out of the house?

A. No, sir, a man is not going to boycott his own money.

No further questions. Witness leaves stand.

The court then, at 4:45 o'clock, adjourned until September 25th, 1934, at ten o'clock A. M., at which time the trial is resumed.

C. M. GRACE,
defendant, was sworn and testified:

By Mr. Read:

Q. Your name is C. M. Grace?

A. Yes.

Q. You are the defendant in this case?

A. Yes, sir.

Q. And the head of the House of Prayer?

A. Yes, sir.

Q. Have you other churches in your diocese outside of the church here?

A. Yes, sir.

Q. How long have you been a minister?

page 177 } A. Since 1916.

Q. I want to ask you first about your membership: Do you compel any member to contribute any amount, or other contributions, or are they borne voluntarily?

A. Borne voluntarily, no compulsion.

Q. The defendant in this case has testified that you require your membership to pay not less than 25 cents a week; is that true?

A. It is not true. I have thousands who will testify against that.

Q. Now in the meetings that you have when you come to Newport News, do you discuss the business problems of the church as well as the religious end of it?

A. Yes, sir.

Q. With the congregation?

A. Yes, sir.

Q. On the night that the plaintiff complains that you slandered him, will you tell us in your own language exactly what occurred. I will ask you first, had you had any conversations with the plaintiff in this case relative to the number of notes that had been paid?

A. Yes, sir.

Q. Prior?

A. Yes, sir.

Q. To this meeting?

A. Yes, sir.

Q. Just state what those conversations were?

A. I usually ask the secretary and some member page 178 } bers of the board about the business; and they were not able to inform me of these particular notes that Taylor was to look after in the bank. So one afternoon, I stopped at the front of the House of Prayer, and brother Cotton was with me, and Taylor came to my car and we started talking about business. I asked him "How are you getting along with these \$500.00 notes in the bank". Well, so-and-so. He could not give me a correct statement of how he was getting along. I thought if he can tell me how many notes, then I can see myself. So I asked him "How many notes have you taken up". "I don't know," he said. I said "Taylor, you don't know. you are a business man in this town, you don't know how many notes you have paid". "No, I can't remember." "Well, suppose you give me these notes." He answered back "I destroyed them". I said "Taylor, you don't mean to tell me you destroyed those receipts, that is what they mean to me". "You don't mean to tell me you destroyed those notes." "Well, in this country we don't bother with these notes, after we pay the bills, they are paid." Well, we stopped there.

Q. He did not at that time tell you how many notes—

A. No.

Q. Had been taken up?

A. No, sir, he said he had destroyed them all. So at that night in the congregation—I didn't even know Taylor was there, as he sat about half-way behind me, on the left-hand side of the box there, somewhere as my pastor said,—I admonished the children in both the financial line and the spiritual line. I want to ask them how they are getting along spiritually. "All right."—(Pause.)

page 179 } Q. All right, go ahead.

A. Then I asked them financially. "Not so well." I says "You are mighty slow in raising money to take care of these notes in the bank, and the interest is run-

ning pretty heavy, and I don't believe you have been doing very much, I don't believe you have taken up any more than six notes," not knowing, I could not get any information from Taylor; Taylor was the biggest man I had in the House of Prayer. I trusted him with all my business.

Q. Well, right there, he says his sole office in the church was to keep peace among the members.

A. No, sir; he made more trouble than peace.

Q. What office did he hold?

A. He was a judge in the court, he was chairman of the trustee-board, and he was treasurer and paymaster. He took care of all my business, I trusted him, I treated him as a brother, or even better than my own brother.

Q. Do you know what he meant by saying he wanted to keep peace in the church?

A. Maybe he meant making trouble, I don't know.

Q. Well, you don't know?

A. I don't know.

Q. He testified his sole office in the church was to keep peace in the church.

A. That is what he says.

Q. Well, there had been no trouble, as far as you are concerned and Taylor was concerned up to this time, had it?

A. Not a bit in the world, because after I had
page 180 } the dispute with Taylor, and had no animosity
against him, I could take him down any time I
got ready to; I and Taylor was in perfect peace, I trusted
him with everything. And on this night when I said I did
not believe more than six notes have been paid—

Q. Is that the language you used, "I do not believe"?

A. That is right. I did not make it affirmative, because I didn't know, only by the fact that he didn't tell me; he didn't tell the officers and the secretary; therefore I could not get any information, so I said that, not talking to him, to my people. That was the only idea, was to get them to hurry up and get the money and let's pay the notes. I could not have in my mind that Taylor was stealing money, because I knew that the checks was not payable to anybody but the First National Bank of Newport News, and nobody could draw the money out of the bank on those checks except the First National Bank. I had nothing like that in my mind. I was only encouraging the children to hurry up and pay these bills, because—

Q. (Interposing.) How are the obligations secured, by deed of trust on the property. How are the obligations secured, by deed of trust?

A. Deed of trust.

Q. 20 notes of \$500.00 each?

A. That is all.

Q. All right, proceed.

A. And I allowed the church to pay all local bills, as they had many bills in town, and I allowed them to pay all local bills first, and then hurry up on them and take care of these notes, as it was my duty to encourage them to go page 181 } ahead in doing the right. When I said "I don't believe there was any more than six notes", then brother Grevious said nine notes had been paid. Then Taylor, for the first time, he repeated Grevious's words, "Yes, that is right, nine notes". That was because I said it was six. I asked brother Taylor where are the notes. He said "They are in my safe". I said "Will you please go bring them, because I want to make report to the church at a private meeting", this business belonging to the congregation, not to me or Taylor or any one man, and he said "I can't see to open the safe tonight". I said "I will go with you". He says "No, not tonight". So we dropped that off. I went on and preached that night, and as soon as I saw that I could not get information from Taylor, I came to the bank the next day, I believe, and got up my statements and got my council-check and took them home and figured. I found there were thirteen \$500.00 notes in the bank. Of course the statement did not say what it was for, but nevertheless I took it for granted that it must have been the notes have been paid, and I found also thirteen checks that I signed to pay off these notes.

Q. I want at this time to hand you the checks and have you identify them. I will show them to Judge Massey. (Examined.) Now, while the Judge is examining them, all these checks were payable to the First National Bank, weren't they?

A. Yes, sir.

Q. So that, by no possibility, could anybody use those checks without the consent of the First National Bank?

A. Of course not.

Q. Or the endorser.

A. No, sir; and I had the bank in charge of these checks—notes.

page 182 } Q. Are they the checks?

A. Yes, sir, they are.

By Mr. Read: I want to introduce them in evidence as Exhibit A.

Note: Thirteen checks are here filed in evidence as part

of this witness's testimony, 5 in the sum of \$500.00, 1 for \$500.50; 1 for \$517.50; 1 for \$525.00; 1 for \$527.50; 1 for \$530.00; 1 for \$532.50, 1 for \$535.00; 1 for \$502.50, all signed "C. M. Grace, trustee for the House of Prayer", payable to 1st National Bank, Newport News, Va., marked Exhibit A, under separate cover.

By the Witness: May I proceed?

By Mr. Read:

Q. I want to ask you about the checks: You had left those with Taylor, had you?

A. Yes.

Q. To take up?

A. Yes, sir.

Q. Well, you can proceed now, then.

A. And after I found that the story was all wrong, from the beginning, I felt that he would not tell it; then he was compelled to say nine; then I thought I better find out for myself from the bank, that was my only hope, and next morning after I had made this remark about these notes, in the church, before I got out of bed, he was in my bed room, Mr. Taylor was, in the way of compromising. "Last night, I said nine notes, but it is only seven", yet he would not show me the notes. He said "It is only seven notes been paid". And he left my home and went to the Secretary's home and told the Secretary it was only seven notes, and the se-

page 183 } retary—

Q. That is Sarah Furbush?

A. Yes, sir.

Q. Who has testified.

A. And she testified yesterday to the same thing. Now he left Furbush's home, and came to the House of Prayer, or to his home, and at the same time I came to the House of Prayer, when brother Ingraham said to me "Now, Bishop Grace, you know Taylor has nine notes, he showed me nine notes". I says "All right", I called on Mr. Grevious, I says "You go and bring Taylor to the office". So he brought Taylor to the office between three of us—four of us, me, Taylor, Grevious and Ingraham, were in the office, I said "Taylor, do you have any notes". "Yes," had them in his pocket, when he told me seven (I believe he knew all about this business), he pulled them out and said "Bishop, do you know your signature". "Most sure." So he pulled them out and showed them to me, and one, two, three, up to nine notes. I said "Taylor, what are you doing, why didn't you tell me that before, and show them to me". He said "I am fishing

in your waters". I said "Why, Taylor, I am sorry, but you can't catch any fish in my water". Then I told him my opinion as to what he meant, and I called for an official meeting, that I might satisfy the church about the business. I called about ten or twelve men, including myself, the pastor and also Mr. Cotton was there, and we called Taylor in, asking him about these notes, that I might make a true report to the church, because I didn't want to come back there and tell them different things every time I came before them, and he said "Well, that is all was paid, was nine notes, that is all I paid, was nine notes taken up". I said "Taylor, how come you told me you had destroyed all the notes, page 184 } and now you produce nine notes". He said "I destroyed all the first ones". And I says "Well, Taylor, did you destroy every one, you say the first ones". He said "Yes", he said "I destroyed all the first ones until you told me I ought not to destroy them, then I am saving them and I have got them". I said "Taylor"—I called the board's attention, I said "You all look and listen, did you destroy number one, number two, number three, number four", and so on until I counted up with all of them. "I did." I said "Did you all hear what he said". "Yes." So I sent the boy to the house to bring me those notes, I had them all lined up. He brought the notes. I took them. I said "Taylor, you remember what you said a few minutes ago. Now, here is number one, number two (because they are all numbered), number three, number four, five, up to nine, you have not destroyed them, have you". "Oh, well." I says "Furthermore, here is the stub here in my check book, shows that thirteen checks had been taken up, taken out of this book, what became of the four notes? You only produced nine. The checks that you hold shows thirteen checks taken out of this book, what became of the nine". "I don't know." Well, we had some more to do there with a different line of business, I don't believe you care to hear that. However, he misrepresented the thing so bad until the church the board—trustees and them, found him guilty; and he said "Well, I won't be judged by your brethren, I will appeal to Bishop Grace's court". I says "All right then, you make up your brief and come to my court". You see, I deal with them and encourage them to do so, not to hurt anybody, it is just a matter, spiritually, of getting along the best way we can. After that he quit the House of Prayer. I never took him down. I never said one slight word to him, page 185 } or about him in my congregation, I haven't said a thing to hurt his business, because I had more money involved in that business than any of them; they had

a hundred dollars a piece, and I had five hundred and fifty dollars that I loaned them.

Q. That was a loan?

A. That was a loan to them.

Q. That is the loan that has been referred to here?

A. Yes, sir, a loan I made them for \$550.00, expecting that the business will work so that they will soon pay me, therefore I won't try to hurt my own self, and finally pay, but now I have not got my money.

Q. How much of that \$550.00 do they now owe you?

A. They owe me \$500.00, they paid only fifty dollars. It is all right in the Crown Savings Bank on Jefferson avenue, these notes are there, in twos and threes.

Q. Going back, after you went to the First National Bank, after he refused to give you the information as to the number of notes, did you go over to the First National Bank and inquire?

A. Yes, after he would not give me anything, then I had to deal straight with the bank to get the information. I don't know the person, but I went to the window and asked "Will you kindly tell me how many of certain notes are taken up". He looked and said six. All right, I went back, I said—I have got Mr. Taylor and Mr. Cotton. I says "Now, I have some information in the bank, and I want you to just come with me and stand by me, and let me ask the question there, and you hear the conversation".

Q. Well, did you tell Taylor the object in asking him to come over to the bank?

page 186 } A. Sure, I told Taylor.

Q. He said he didn't know what he was going over there for.

A. Oh, he knew all about it, Taylor knew, just as good as he can look at me now, and he came and stood there, and Mr. Cotton stood there within reach of my voice and heard us talking about these notes. The teller said six. I looked at them to see that they heard the statement, and the teller went around again and looked and said six, and we were satisfied and came out, and I said "Did you hear". And "All right". And then we went and got in the car and went home.

Q. You don't know the name of the officer?

A. I don't.

Q. The teller?

A. I don't.

Q. Taylor says he don't know the name either.

A. I don't, but what I am saying is the truth.

Q. That is the sole object in taking Taylor and Cotton there?

A. That is the truth, I am telling the truth before the Great God in Heaven.

Q. That is what you swore to do when you took the stand.

A. Yes, sir.

Q. Was the sole object in telling him to go over there, to endorse a note for you, or not to make a note, or anything for the church?

A. No.

Q. The sole object was to let him hear what the officer of the bank had to say?

A. That is all.

page 187 } Q. About the notes that had been paid?

A. That is all.

Q. Had you any reason to doubt the officer's statement?

A. No, I could not doubt him, when I knew in advance when—after I had got the notes.

Q. I mean at that time.

A. But at that time, I didn't know anything, and I just had to believe what he said until I found different.

Q. But I mean you can not imagine any reason why the officer should not have told you what he honestly believed the facts to be about it?

A. No, sir, I could not doubt him, except he just made a mistake, like all of us do, but I could not doubt him.

Q. Well, did Taylor say anything then?

A. No, sir.

Q. He said the officer said "nine notes".

A. No, sir.

Q. Had been paid?

A. If he said that it is still wrong, because it was thirteen.

Q. He would still be wrong, because there are thirteen. Are there thirteen checks there, I did not count them?

By Mr. Massey: Yes, thirteen.

By Mr. Read:

Q. Well, then what happened?

A. Well, after this inquiry meeting that we had, then Taylor appealed to the high court, and we never had a court because he quit the House of Prayer then and—No, page 188 } I knew he had a suit against me, and I was surprised to know it, but he had one against me.

Q. Well, about this business now, the Rising Star, you say you loaned them \$550.00?

A. Yes, sir.

Q. Did Taylor make any representations to you as to why he needed that money?

A. He is the president, the big man, the manager; he is the first one that came to me and approached me for this loan. Then he got his other brethren with him, to come to me, him being the big man with me, and these other brethren belonging to my house, the House of Prayer, helping around, I could not see how I could deny them, but I advised them, at least I said to them "Boys, it is a bad time to open up a business, and rich men failing in business, what can you boys do down here among these folks, among the poor folks at this time".

Q. That was in 1931?

A. Yes, sir, along in 1931, and after that. And they insisted and told me Taylor had done business there, and was a big man, and had plenty of property, and lost that money down there, and—"Well, we can make it up, all right". Well, I hated to deny them, and I said "Yes, I would let them have the money", and I thought it was \$500.00, and so he went to write the check, and when the check got to me it was \$550.00. I think it was Brother Grevious brought it to me, if I am not mistaken, and I said "We only talked about \$500.00, and this is for \$550.00. "Oh, well, Taylor asked us, and we decided to have \$550.00", and I signed the check and sent it back to Taylor, but really Taylor was the man and it was to help them in business because they could not get
 page 189 } along without making a loan; they could not get
 along without making a loan, I did that to help them; it was all right.

Q. We subpoenaed a member of your congregation by the name of Ingraham, is he ill or is he here?

A. He is sick.

Q. In bed?

A. He is sick in bed, but I believe if you send a car we will bring him.

Q. Well, if he is sick I don't suppose he wants to come. He has been duly summoned, I just want to show to the jury why he is not here, and why we did not introduce him, that is all. The officer told me he would not be able to be here.

A. He is not. I didn't think he was.

Q. Now the plaintiff in this case says, in a conversation had with him, you stated to him that you were going to boycott his business?

A. Who said that?

Q. The plaintiff here, Taylor, said that you were going to boycott his business on account of the statement that you made in the church on June 2nd.

A. Never did say that to him and nobody else, if they will tell the truth.

Q. All the ten members.

A. I don't even know what that word means, I don't know, never heard it before until yesterday in court.

Q. Well, it means you will tell your members not to deal with Read or Walker or Massey, that is what boy-page 190 } cott means, of course.

A. I never told anybody to not go there and trade with him because—

Q. (Interposing.) Now of the ten members of the Rising Star Grocery Company how many were members of your organization?

A. All of them were.

Q. And you had loaned them this \$550.00?

A. Yes, sir, on friendly terms.

Q. And you were supposed to have told your folks not to deal with them. How about that?

A. I would be foolish if I had done that.

Q. When the deposit book was produced, or was it produced by Taylor in the bank?

A. The deposit book was brought there.

Q. To the First National?

A. Sir?

Q. The deposit book in the First National Bank was produced?

A. It was produced.

Q. It was produced?

A. Yes, sir, some time.

Q. It don't make any difference what time, say at any time, or had there been any leaf detached?

A. One leaf was missing, and in this inquiry meeting we thrashed that out too. I thought it was a criminal thing to go to work and detach a leaf from a man's bank book; then really we did not know how much he could have in the bank, and we asked him about it there, "Why did he do it". He said "For my protection". So we were unprotected, but he was well protected.

page 191 } Q. Well, can you imagine any reason now, you being the head of the church, why he should have torn that slip out of that book?

A. I can imagine but I don't know that I am allowed to say.

By Mr. Massey: I don't think he can.

A. (Adding:) I have very strong reasons, but I won't say.

By Mr. Read:

Q. Has there ever been, Bishop, any question—Has there ever arisen any question between you and Taylor, that he failed to deposit the money that was collected from the church in the First National Bank?

A. Not as I can remember now.

Q. You have never charged him with failure to deposit all the money, have you?

A. Taylor was never before charged with—

Q. (Interposing.) Just answer that question, please: Have you ever charged Taylor with failing to deposit all the money he collected for the church in the First National Bank?

A. No, sir.

Q. Money that had been contributed to the church?

A. No, sir.

Q. That question has never arisen either in the church-court or elsewhere?

A. Nowhere, as I know of.

Q. Now, then, how could the monies be withdrawn that were in the bank? How could they be withdrawn?

A. They could not be withdrawn except to the credit of the First National Bank.

page 192 } Q. Those checks?

A. Those checks.

Q. The only way on earth?

A. That is all.

Q. It could be done.

A. That was all.

Q. I see. All checks signed by you?

A. Well, you have other checks too, but they are all signed by me.

Q. The only way the First National Bank would permit a withdrawal of any funds there would be on your check?

A. That is right.

Q. And as I understand you—I want to be clear on this—that you have never at any time—

By Mr. Massey: The witness has testified—

Q. (Continued:) You have never at any time—

By Mr. Massey: I object to the form of the question.

By Mr. Read: Well, suppose I let you complete the question.

By the Court: Don't answer the question until I tell you.

By Mr. Read:

Q. Have you at any time charged him with misappropriation of any funds, and failure to deposit same in the First National Bank?

By the Court: You may answer that.

A. I never.

By Mr. Read:

Q. So that the sole issue in this case is whether six or nine notes. I submit the witness certainly can answer page 193 } that.

By the Court: The witness can't answer the questions until you propound them.

By the Witness: No, sir.

By Mr. Read:

Q. So that the sole issue between you and Taylor in this controversy has been whether six notes or seven notes or nine notes or thirteen notes have been paid, is not that a fact?

By the Court: You may answer that.

A. That was the only issue. The question was not the money. The question was the notes: How many notes were paid. It could have been a million dollars in bank, that was not the question, it was these notes.

By Mr. Read:

Q. Is it part of your duties to keep your congregation advised of the financial status of the congregation?

A. Yes, sir.

Q. And in your meetings that you have there do you advise them on not only the religious end but the financial end?

A. Yes, sir.

Q. When he came to your house, and before you had gotten out of bed, the following morning after that church meeting, and you say that he came to compromise, did he explain what he meant by he came to compromise?

A. He didn't explain, only the night before he said nine and now he came to say seven.

Q. I don't know whether the jury is very much interested, but I would like to know what he meant by saying "I am fishing in your water", if you know?

Q. (By the Court:) Do you know what he meant
page 194 } by that?

A. I don't know what he meant, but I have my
opinion.

By Mr. Read:

Q. Well, you don't know what he meant?

A. No, sir, I practically know, but I would not. The way
the thing ran, it indicated that is what he meant, but then I
didn't take it up on that.

Q. How many checks did you give Taylor to take up the
notes, I believe you stated there were twenty notes secured
by deed of trust on the property. How many checks did you
leave with him?

A. I believe I left him with the book, the bank book with
twenty checks signed by me, to the First National Bank.

Q. Well, where are the other seven?

A. The other seven? They are still in—

Q. (Interposing.) Aren't there thirteen produced here to-
day?

A. The other seven are in the check book.

Q. Only thirteen missing?

A. As far as I can remember.

Q. When did you get those checks from the bank, did you
get these checks that I have introduced in evidence. When
did you get them?

A. I got—

Q. (Interposing.) Was that before or after the contro-
versy at the church?

A. I had a few, once in a while, of the statements, but after
this I went and collected them all.

Q. That was after the controversy at the church?

(Pause.)

Q. I say that was after the controversy at the church?

A. Yes, sir, I went and collected them all.

page 195 } Q. That was after the controversy at the
church?

A. Yes, sir, then I got the balance.

Q. You got all the checks?

A. Yes, sir.

Q. That have been introduced?

A. Yes, sir.

Q. Where was Taylor? You say that your remarks you
made on that evening, you were addressing the congrega-
tion. Where was Taylor sitting?

A. He was sitting, like I be sitting, right here. (Indicating), and he was—

Q. (Interposing.) Suppose that is the rostrum.

A. This is the rostrum: I was sitting right here (indicating), and he was not sitting in the same direction, he was sitting about, may be say a few feet back from where I was sitting, on my left-hand side.

Q. It is alleged here in the notice of motion that he asked you to retract the language that you used about him, whereupon you replied that you would not do so, that the congregation—that you didn't want the congregation to know that you were lying. Is that a fact?

A. No such thing, no, sir.

Q. Did he ever ask you to make any retraction?

A. No, sir.

Q. If he had asked you, would you have made it?

A. No, I would not do it, because I didn't do him any harm. And I had to wait until he gave me the final statement, so I could come out with the truth before my people.

Q. You thought you had nothing to retract?

A. Yes.

page 196 } (Pause.)

Q. I am handing you this letter which has been introduced in evidence by the plaintiff, and I have noticed for the first time that the endorsement on the back of that letter, which I will ask you to examine, a short endorsement of four lines—Is it four, Walker or—

By Mr. Walker: Five.

By Mr. Read:

Q. On the back of the letter. Is that your handwriting?

A. Yes, sir.

Q. That is your handwriting?

A. That is my handwriting.

Q. I notice in the body of the letter business is spelled with one "S", and the endorsement with two "S's".

A. Yes, I believe that is my handwriting. But this is why I wrote him, may I—

Q. Well, I just want to know whether you had noticed that or not?

A. Yes, sir, I would like to state the reasons.

Q. All right, go ahead.

A. The reason I wrote him that letter was because, I have witnesses, saying that Taylor is not treating him right and

treating the House of Prayer right, so I advised him as one of my sons in the Gospel (as he called me Dad), to be careful how he talked and how he treated the members, so that they might treat him right in his business. I have witness I believe will testify that he mistreat him in selling—will say he charged more for his milk and for his meat, and I wanted him to run the business well, and I advised him to be careful with the members, that they might patronize him. That is all the meaning of that.

page 197 } By Mr. Massey: The letter speaks for itself.

By Mr. Read:

Q. He said, Bishop, that when you went over to the Bank that Cotton was not near enough to hear what the teller said. Is that a fact?

A. Cotton was near enough, and Cotton testified so, that he was.

By Mr. Massey: I don't recall the witness saying that, the witness said he was, as I understood it.

By the Witness: He said he was.

By Mr. Read: Well, that is admitted, he was near enough?

By Mr. Massey: Yes.

By Mr. Read: I am very clear, he said the man was standing—he indicated the distance, that he could not possibly have heard.

By Mr. Massey: All right, if you want to, go back to the record and see.

By Mr. Read: I am not going back to the record. I think that is the record.

Q. Anyhow, he was near enough to hear?

A. Yes.

Q. The teller was there, the officer, and said six notes paid?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Massey:

Q. Let me have this letter. You say there were twenty notes of \$500.00 each in the bank?

A. Yes, sir.

Q. To whom were those notes payable?

A. First National Bank of Newport News.

page 198 } Q. Were the notes payable to the First National Bank?

A. Yes.

Q. I don't mean the checks, I mean the notes?

A. Yes.

Q. To whom were the notes payable, do you know?

A. The notes were payable to C. M. Grace.

Q. The notes were payable to you?

A. The notes.

Q. Now those notes were notes secured by deed of trust on the property of the House of Prayer, to secure the sum of \$10,000.00 and interest to you?

A. Yes, sir.

Q. That is right, is it not?

A. That is right; I believe it is right.

Q. And those 20 notes were put in the bank for collection?

A. Yes, sir.

Q. Now those 20 checks which you gave and put in Taylor's possession either all at one time, or as they were necessary, that is immaterial, were made payable to whom?

A. These checks?

Q. Yes.

A. Were made payable to the First National Bank.

Q. They were made payable to the First National Bank, and when one of those checks was paid to the Bank, the Bank charged that against what account?

A. Church account.

page 199 } Q. Against—Well, how was the church account carried?

A. C. M. Grace, Trustee for the House of Prayer.

Q. C. M. Grace, Trustee. Who had the right to check on that account?

A. You mean to write these checks?

Q. Yes.

A. I did. I did.

Q. Did anyone else ever write them?

A. No, sir.

Q. And when one of those checks was presented to the bank in payment of one of these notes what did the bank do with it?

A. Deposited it, account of C. M. Grace.

Q. They transferred then the \$500.00 and interest, whatever the check was for?

A. Yes, sir.

Q. From the trustee account to your personal account?

A. Yes.

Q. And they would then deliver the note to whom?

A. To Taylor.

Q. The bank would deliver the note to Taylor, who was then the treasurer of the church?

A. That is right.

Q. Who was entitled to that note then, the note that had been paid, who was entitled to that note?

A. I am entitled, between me and the church, but I have power from the church and also from the court, to use the church fund in building churches, what we call the House of Prayer, anywhere that I see fit.

Q. All right. What I am asking you is: After page 200 { that note was paid, that note which was given by this Newport News House of Prayer, after that note became paid, who was entitled to that note?

By Mr Walker: We object to the question. As a matter of fact, it is a question of Law as to who was entitled to the note. In Virginia, the trustee is entitled to the notes, and that is a matter of law.

By the Court: What is the materiality of that?

By Mr. Massey: I just want to bring out the manner of handling that account. If he objects to that as a matter of Law, all right, I withdraw the question.

Q. Now this money that was transferred to your personal account, what was done with the note, was that your Note?

A. No, sir, that was put back to the church treasury, in another set, that I had loaned.

Q. It was put back in another account, that you had loaned, for \$10,000.00, and took notes in your own name?

A. Yes. Because this here Church didn't know anything about it, this church didn't, and I stand between them all and make my report originally to them.

Q. That is all I want to know. Now you say that you had a controversy with Taylor about these notes some time before it came up in the House of Prayer?

A. Yes, sir.

Q. At that time, you said that he told you he had nine notes, and torn them up?

page 201 { A. No, sir, he didn't tell the number.

Q. He didn't tell you the number?

A. No, sir.

Q. What did he tell you had become of them?

A. Sir?

Q. What did Taylor tell you had become of the notes?

A. That he had torn them up.

Q. He told you he had torn the notes up?

A. Yes, sir.

Q. Now let's get these notes, there were 20 notes to begin with, how many notes were paid in all?

A. Thirteen, as far as the statements from the bank, and also the council checks.

Q. Well, they would show all that had been paid, would not they?

A. They showed, but I know it.

Q. The checks or the notes showed what had been paid?

A. Yes, sir.

Q. And you know it also?

A. That is right.

Q. Now who paid those 13 notes, do you know?

A. Taylor is supposed to have paid them.

Q. All 13 notes?

A. All of them.

Q. As a matter of fact, don't you know that Taylor paid only nine of them, and that then he was removed as treasurer, and that Sarah Furbush or some one else—

A. No, sir.

page 202 } Q. Paid the other notes?

A. No, sir, Taylor is the only man that handled that business.

Q. Well, who handled those other four notes?

A. That is for Taylor to tell you.

Q. I am asking you: Where did you get them from?

A. I have not got them yet.

Q. How do you know they have been paid?

A. Because the bank's statement and the council's statement tells, but I am looking for Taylor to give me those notes.

Q. You are looking for Taylor to give them to you?

A. Yes, sir.

Q. You say Taylor paid all of them?

A. He had my checks—

Q. All right—

A. To pay them.

Q. When did you check up at the bank and find out that those 13 notes had been paid?

A. When?

Q. Yes.

A. After I could not get nothing out of him, the secretary of the church could not get nothing out of him, and the trustees, then I went to the bank and called for the balance of my statement, and he council checks, and put them together.

Q. All I am asking: When did you check up and find out those 13 notes had been paid, before the contro-
page 203 } versy in the House of Prayer or—

A. After.

Q. Or after that?

A. After.

Q. After you had learned that the 13 notes had been paid, did you go back and tell the House of Prayer you had discovered they had been paid?

A. No, because still in the meeting he would not confess he had paid thirteen; I could not clarify his statement until he came with the final report, that he wished to be tried in the higher court, and he appealed, and he quit the church, therefore, everything stopped right there.

Q. Now the controversy about which this trouble arose, as you say, were the other notes on the property that he had bought in East End, were they not?

A. That was never mentioned to me.

Q. That was never mentioned to you?

A. No, sir and that was not our idea at all, but this transaction.

Q. All right: Now then, as I understand from you, you did not know how many notes had been paid when this controversy came up in June of 1932?

A. No, sir.

Q. Although that money was there deposited to your account?

A. The notes.

Q. And you now know it had been deposited there?

A. Sir?

Q. You now know that it had been deposited there?

A. Yes, sir.

Q. And the thirteenth note had been paid on page 204 } December 4th. That was six months before this thing happened, and yet you had never discovered these thirteen notes had been paid?

A. Yes, sir.

Q. That is what you are telling this jury?

A. Yes.

Q. Did not you tell Taylor that by checking with your checks you would find out how many checks had been paid, but somebody had broken into your room and stolen the receipts?

A. Nobody ever broke into my room.

Q. They did not?

A. No, sir.

Q. You did not tell Taylor that?

A. No, sir.

Q. When you went with Cotton and Taylor over to the bank, you say the man in the bank told you Six notes had

been paid, when Cotton and Taylor were present, is that your testimony?

A. Yes, between all three.

Q. All three of you were there?

A. Yes.

Q. And he didn't get his book at all and show you the loans on the book?

A. Who?

Q. The teller.

A. No.

Q. But he told you there had been six notes paid?

A. Yes, sir.

Q. He told you six notes had been paid?
page 205 } A. Yes, sir.

Q. Didn't you know that was incorrect?

A. I didn't know then.

Q. You had not kept up with this business really enough to know whether \$3,000.00 had been paid or not?

A. No, sir, because I had him to tell me, and the secretaries. I come here one night, and two nights in a hurry, and do my spiritual work, and ask how they are getting on in the business. He was the man in charge, he was supposed to know.

Q. I am asking you, Bishop, did you know enough about the business to know whether there had been \$3,500.00 paid or not?

A. I did not.

Q. You didn't know enough about this business to know whether \$3,000.00 or \$3,500.00 had been paid, or how any of the notes had been paid?

A. No, sir.

Q. Do you not know that instead of there being six notes which had been paid, that the teller told you there were six notes which had not been paid?

A. He said six notes have been paid.

Q. Are you certain of that?

A. That is what I understood, and Cotton understood and Taylor understood, because I talked to him about it, as we were coming out, he says "Yes".

Q. Taylor told you yes, there were six notes that had been paid?

A. Yes, sir, he admitted that he heard what the
page 206 } man in the bank had said.

Q. Now Bishop, before we leave that I want to ask you this question: Didn't you go to that bank last Saturday and try to get the teller in that bank to come down here and say that he had told you that only six notes had been paid, and he would not do it?

A. I didn't go there to get him to come here, no, sir.

Q. What did you try to get him to do?

A. I just tried to get—to find out who it was that had had this conversation before, of these six notes, in order to clear that question.

Q. Didn't he tell you that there in his book, at one place, it was shown there were six notes that were not paid, didn't the teller tell you that?

A. At this time, he said that Saturday.

Q. He told you that Saturday. So the teller told you there were six notes that were not paid?

A. Saturday.

Q. He told you on Saturday that there were six notes that had not been paid?

A. That is this last Saturday. Yes, sir. And I also question that. But I just went there to see if he remembered about some conversation; but as for the knowledge I had—

Q. (Interposing:) All right: After you found out that you had erred so grievously in this matter—

By Mr. Read: I object to that. Six against 19 does not make 20.

By Mr. Massey: There are seven notes, aren't page 207 } there?

By Mr. Read: But you said Six notes, awhile ago.

By Mr. Massey: I did not. I am asking him, at one place in the book (if you want me to testify) and in another place on the book another note shows. I will have the teller down with the book and let the jury see it;—

Q. Now, I believe you say that Taylor asked—and when he dealt you out the nine notes, one by one, in the presence of Grevious and Ingraham—Who was it that asked you to apologize to the House of Prayer because of the damage you had done him?

A. Nobody.

Q. Did Taylor ask you?

A. No, sir.

Q. Did Ingraham do it?

A. No, sir.

Q. What took place there?

A. Nothing took place.

Q. What did Ingraham say there at that time?

A. I can't remember what he said. But that matter was

over with; we talked different things, I can't remember all that was said.

Q. Charles Ingraham.

A. Yes, I know him.

Q. I understood you to say something about Ingraham in your direct examination. What was it you said, I didn't get it clearly?

A. I say he came to me and asked me if I knew that Taylor had nine notes. Then when he said that to me, I sent

Grevious to go and bring Taylor in the office, and page 208 } he did; and there were four of us there, then

I asked Taylor if he had those notes. Taylor said "Do you know your signature". I said Yes. Then he gave me the nine notes with my signature on it.

Q. Then what did you do?

A. I said "Why do you do like this, Taylor, you told me you had destroyed the notes". He told me "I was fishing in your waters".

Q. I think you said just now that he made the statement about Fishing in your waters, too.

A. Yes.

Q. That all that was said?

A. No, sir. I beg your pardon.

Q. Is that all that was said?

A. That is all at that time, in the office.

Q. That is all that was said in the office?

A. Yes.

Q. And at that time Ingraham did not ask you to apologize to Taylor?

A. No—No.

(Document handed by plaintiff's counsel to defendant's counsel.)

By Mr. Read: You know that is not admissible. Why do you hand me a paper that you know is not admissible.

By Mr. Massey: Now, if your honor please. I do not want to introduce this writing in evidence—

By Mr. Read: Why bring it up then, if you don't want to introduce it in evidence. I object to that as improper.

By Mr. Massey: I just want to ask this witness whether, after reading this, he will change his mind with reference to the statement he just made.

By the Witness: I will never change my mind.

By the Court: It is not your intention to introduce the paper in evidence?

By Mr. Massey: Not at all.

By Mr. Read: That is an indirect way of putting before the jury what he knows is not admissible.

By the Court: The paper will not go to the jury.

By Mr. Massey: Not at all, I don't want it to go to the jury.

By Mr. Head: I don't think it ought to go in the record, ought not to go in at all.

By Mr. Massey: I am not undertaking to get it before the jury directly or indirectly, I don't want the jury to know a thing in it. I just want the jury to know whether, after reading this paper, he will change that statement or not. I think the witness is entitled, in a case of this kind—

By the Court, interposing: The contents of that paper, gentlemen, no matter what it is, is not admissible as evidence, and we ought not to speculate as to its contents.

By Mr. Read: So that my objection—

By Mr. Walker, interposing: That is why we object. He can't ask him anything about the paper.

By Mr. Massey: The thing I wanted to show was the the thing the gentlemen objected to,—was re-
page 210 } peating this statement.

By the Court: I don't know what it is in there, because the statement does not say, but it is a piece of paper, and just the piece of paper is not proper as evidence. I will sustain the objection.

By Mr. Massey, continuing:

Q. Now, Bishop, you have stated that on this first night, you spoke to the congregation in this general way. You deny that you made the further statement, on the second night, "That you all beat me down last night"?

A. I deny that.

Q. "I have been over to the bank and the man over there told me there had only been six notes paid, and I believe the man"?

A. I deny that.

Q. You deny you made that statement?

A. Yes.

Q. Now you say you loaned the Rising Star Grocery Company, incorporated, \$500.00?

A. \$550.00.

Q. \$550.00, that is right.

A. Yes, sir.

Q. Did you lend them a cent?

A. Sir?

Q. Did you ever lend the Rising Star a cent of money. Did you ever lend them a single penny?

A. \$550.00, more than one cent.

Q. Did you lend them your money?

A. Yes, sir.

Q. As a matter of fact, you endorsed a note, page 211 } which Taylor endorsed, and which is still in bank, is not that true?

A. Yes.

Q. Well, what do you mean by saying that you loaned them that money?

A. I lent them the money to use in the business.

Q. Did you lend it any more than Taylor did. Taylor endorsed the note, didn't he?

A. That may be true, but I don't know nothing about that part of the business, but I took the note and I gave them a check.

Q. I don't care anything about that; I just want to know whether you loaned them anything?

A. I loaned them five hundred and fifty dollars. Whether it is a legal side of it or not, they got the money.

Q. They got that money?

A. Yes, sir.

Q. Is not it still owing the bank? He pays the bank?

A. Sure, he owes it to me.

Q. Does not he owe it to the bank?

A. He paid it to the bank and the bank paid me.

Q. You mean you loaned money to the Bank?

A. No, I loaned it to that man you see there, Taylor, or whatever you call him, that man back there.

Q. You loaned it to Taylor?

A. Yes, sir.

Q. Would you explain to me how you loaned him the money and you made the note and took the note to the page 212 } bank, I will appreciate it?

A. Well, they asked for the money. They wrote a check, it is on the First National Bank—I can probably produce that council check—they wrote the check then for \$550.00, and I signed my name to it, so they can get the money.

Q. Well, what did they put the note in bank for, Bishop?

A. To collect. I put it in bank to collect this money for me.

Q. Oh you put your own note in bank for collection?

A. I think that is the way it is done.

Q. Taylor endorsed that note, didn't he?

A. He endorsed it.

Q. Who else endorsed it?

A. Greivous—four or five of them.

Q. Four or five of them endorsed the note?

A. Yes, sir.

Q. Now this other transaction that Taylor talked to you about, you say it never came up. (Examining papers:) Bishop, I hand you here a note of \$3,131.00, signed by C. M. Grace, payable to the order of the Waterfront Lumber Company—

By Mr. Walker: We object to that as being entirely immaterial, and it is a different transaction, happened long before this transaction, and it would make an entirely different matter.

By the Court: What is the purpose of it?

By Mr. Massey: The purpose, may it please your honor, is to show that the so-called meeting, or hearing or trial they had, was with reference to the payment of notes of Taylor's that grew out of this transaction, had nothing to page 213 } do with these nine \$500.00 notes.

By the Court: Well, why not ask him that direct question.

By Mr. Massey: Well, I only wanted to give him the information:—

Q. Now, Bishop, I will ask you this question: Is not it true the House of Prayer had a transaction with the Waterfront Lumber Company?

A. Yes.

Q. Which was paid up by W. M. Taylor and certain other members of the House of Prayer?

A. Yes, sir.

Q. Giving deeds of trust on their own real estate, borrowing the money from the Newport News Building & Loan Association. Is that not true?

A. That is true.

Q. And those payments on that loan were being made by whom?

A. By Taylor.

Q. For whom?

A. For the House of Prayer.

Q. For the House of Prayer. Now was not this transaction about which this controversy arose, a question over that loan, and Taylor insisting that something ought to be done to secure this loan from him, rather than about these \$500.00 notes?

A. No, sir. You remember a few minutes ago I said there was another business in this meeting, a transaction I didn't want to talk about. Since it has come up, let me talk about it,

I will explain it, and I will answer you, on the same night we had this inquiry meeting, this business also came up, aside from the five hundred dollar notes; and Taylor was also in charge of paying this Building and Loan bill, page 214 } which is thirty-eight dollars and a half a month.
Q. I don't care about that.

By Mr. Read: I care very much about it.

Q. Go ahead.

A. Taylor was also in charge of that, he had charge of seeing to the payment of the money due the Building and Loan Company, and this has never—

By Mr. Massey, interposing:

Q. That is not in response to my question: I only asked you whether or not the controversy at the meeting in the House of Prayer—

By the Court, interposing: It is not necessary to go into all of that: Just whether it had reference to that transaction or not?

By the Witness: It had no reference to that.

By Mr. Massey:

Q. It had no reference to the Nine hundred dollar notes.

A. It had no reference to the nine notes.

Q. You say it had no reference to the nine notes. Taylor says it had reference to them—all right: Now, you wrote Taylor this letter, can you tell us the date of this letter, Bishop?

A. I don't know, I could not say, sir.

Q. As near as I can make out, it is January 20th 1933. I don't know whether it is "1933" or not, it has been handled in the pocket so much and the stamp seems to be bad.

By Mr. Read: I object to that language, "It has been handled in the pocket so much". The date is perfectly clear, the year has been changed by some one.

By the Court: Counsel will not make any comment. page 215 }

By Mr. Massey: I don't know whether it is clear or not.

By the Witness: Maybe I can see.

By Mr. Read: Suppose you find out where it came from, it came from your client's possession.

By Mr. Massey: Well, I don't know who did it, I have no idea:—

Q. Now, in this letter you state: "I had a chance to hurt your business, but I have not exposed you"—"Your deeds with the people"—You say "Caught doing wrong, in the House of Prayer". Now, to what did that letter refer?

A. It referred to more than four or five reports about him not having a straight deal with the payments.

Q. And that is what you are talking about in that connection. What did you mean by calling to his attention to "Remember Doctor Moore in North Carolina"?

A. I will be glad to explain. Dr. Moore treated me just like he is trying to treat me now, and I treated him as a brother, and after a while he got in trouble, and in the penitentiary, him and his wife both—

Q. And then what?

A. And I was showing him—and he knew it—and I was showing him it does no good to mistreat a man who is trying to treat him right; and that is only to warn him to not interfere with God's work, which he knew I was trying to do down in that country there.

Q. What do you mean by this writing, which you say is in your handwriting, "Your business could have page 216 } been running nicely had you tried to get things straight". What did you mean by that language?

A. Just for—mainly, get things straight about the people, that they were fussing about—may be they had more patronage—to deal with him. And I was advising him as one of my mmmbers, and my son in the gospel, as he called me Daddy. And also I had my money that was involved in his business, and I wanted him to have smooth sail with the business; and I wanted him to be careful how he treated the business.

Q. Did Darden or Grevious ever come to you with reference to a propstal that you lift the boycott on the store, and Taylor's agreement to get out of it and get away, if you would agree to that?

A. I never heard anything about such language.

Q. You don't know?

A. I don't know.

RE-DIRECT EXAMINATION.

By Mr. Read:

Q. I would like to ask you about the note which counsel has asked you about, that came up at the same time as the notes in the First National Bank: Was there any question at that time about the number of notes that Taylor had paid—

A. It was.

Q. To the Waterfront?

A. Yes, sir.

Q. How many did he say he had paid?

A. Taylor, a few days before that, I asked him, he said eighteen notes were paid positively, and I went over to Mr. West, and checked up with him, and he said twenty-eight notes were paid—28 payments, not the notes—28 pay-
page 217 } ments were made to him. I came back to town—

I came back from there, and got the pastor, Mr. McMillen, who testified here yesterday, and took him over town, and I said to him, "You come and hear from Mr. West is saying about these payments"—

Q. Well, that would not be evidence: What explanation did Taylor make?

A. Taylor said it was not so, and it was only eighteen payments were made, not twenty-eight.

Q. Did you afterwards get the book and ascertain how many had been paid?

A. He had the book in his pocket, that says twenty-eight, but he would not show that; he said verbally it is eighteen. And we have witness, taken in with me.

RE-CROSS EXAMINATION.

By Mr. Massey:

Q. Did he not tell you that the difference between the eighteen and the number that had been paid, were payments he made out of his own pocket to keep the property from being sold under the deed of trust?

A. No, sir.

Q. And that he was held responsible until they were paid?

A. He did not pay them, the secretary got so much money every time they were paid, to pay them.

No further questions. Witness leaves stand.

By Mr. Read: We rest here.

page 218 } WILLIAM STANLEY,
plaintiff's witness, in rebuttal, testified as follows:

By Mr. Massey:

Q. Stanley—

A. Yes, sir.

Q. You have heretofore testified on direct-examination?

A. Yes, sir.

Q. Were you requested to attend a meeting at the house of Joseph Darden—

A. Yes, sir.

Q. Subsequent to this trouble in the House of Prayer?

A. Yes, sir.

Q. What was the purpose of that meeting?

A. Well, they said he wanted to get together, that we could all say the same thing.

By Mr. Read: That is hearsay. I don't think that is proper rebuttal.

By Mr. Massey: This is only to contradict the witness Darden, he said there didn't any such meeting take place.

By Mr. Read: He didn't say the meeting didn't take place, he said it didn't take place for the purpose which—

By the Court, interposing: My impression is he said the meeting did take place.

By Mr. Massey: Just to contradict him.

By the Court: Well, just confine yourself to if he said he was present at the meeting at Darden's house.

page 219 } Last answer of witness is read.

By Mr. Massey:

Q. What were they talking about, was the same thing, about what?

A. Well, about this case, like brother Ingraham said, if we told it like it is it will give Bishop Gracc—

By Mr. Massey: Well, I don't think that is proper, I don't want to go into that:

Q. I just want to know what the purpose was, you were present?

A. Yes, sir.

Q. And heard it discussed?

A. Yes.

Q. What was that discussion?

A. Well, they will say we get together, and all say the same thing.

By Mr. Walker: We object.

By the Court: You can not tell the jury what they said.

By Mr. Read:

Q. I would like to see whether he was asleep at that time or not.

A. No, sir, this was Sunday morning, they came up there.

No further questions. Witness leaves stand.

W. M. TAYLOR,
plaintiff, recalled in rebuttal, testified as follows:

By Mr. Massey:

Q. Taylor, Bishop Grace says you took up the thirteen of these notes, did you take up the thirteen notes?
page 220 } A. No, sir, I never have said I did.

Q. How many did you take up?

A. Nine.

Q. Who took up the other four?

A. That was between Mrs. Furbush and Mrs. Joynes.

By the Court: He has already testified to that.

By Mr. Massey:

Q. Sarah Furbush testified on her examination that you told her Seven notes had been paid, then told her nine notes had been paid, what did you tell her?

A. I told her nine, I told her I had taken up nine notes.

Q. Did you tell her anything about seven notes?

A. I never spoke of seven.

CROSS EXAMINATION.

By Mr. Read:

Q. Regardless of who took them up, the treasurer of the church holds all papers relating to the church affairs, does not he, including the notes?

A. I don't know whether they do or not, perhaps they did at the completion.

Q. You had the thirteen notes paid?

A. No, I didn't either.

Q. No matter whether the former officer paid it or not, the man whose business it was to take care of the corporation—

By Mr. Massey: Well, let's don't argue with him, he said that he only had nine.

By the Court: He said they only had nine.

page 221 } No further questions. Witness leaves.

Note: Counsel for plaintiff states he has called another witness who has not arrived.

By direction of the court, the jurors leave the court-room.

Instructions are handed to the court.

By the Court: All right, gentlemen, Mr. Massey is not offering number 5.

By Mr. Massey: No, sir.

By the Court: Very well, gentlemen, we are ready to take up the Instructions requested by the plaintiff first; is there any objection to number 1?

By Mr. Read: Just a moment, before we consider the Instructions I renew my motion to strike, and also that you direct a verdict for the defendant on the ground that no Malice is shown in this case. The only evidence of Malice being that he said he had an argument with the Bishop as to whether or not certain bills of the church ought to be paid, and that they ought to be paid.

By the Court: What is your motion, to strike and what?

By Mr. Read: First, to renew my motion to strike the evidence of the plaintiff, and second, to direct a verdict for the defendant. Just before the death of the lamented Judge Prentiss, he rendered an opinion, probably the last one he rendered, which reads as follows:

page 222 } (Cases cited and further remarks made.)

By the Court (to Mr. Massey): Before you reply, I will hear the rest of the evidence.

(Jurors return to court-room.)

..... SHIELD,
plaintiff's witness, in rebuttal, was affirmed and testified.

By the Court: This is still in rebuttal?

By Mr. Massey: Yes, sir.

By the Court: Confine yourself to rebuttal.

By Mr. Massey:

Q. Mr. Shield, you are the note teller, one of the note tellers at the First National Bank?

A. Collection teller.

Q. Deposit for collection notes?

A. Yes, sir.

Q. Did you have a series of notes in the bank during the years 1929, 1930, 1931 and on until this date, placed there by Bishop Grace?

A. (Referring to papers:) Our records show that.

Q. How many notes were they in all?

A. (Referring to papers:) Our records show there were twenty notes placed there.

Q. And how many notes have been paid?

By Mr. Read: I don't think that is rebuttal, the sole question is the statement of the Bishop.

By the Court: There is no question of the Number that has been paid.

By Mr. Massey: I was just leading up to it.

page 223 } Q. Did Bishop Grace come into the First National Bank on last Saturday and question you with reference to these notes?

A. It was either Friday or Saturday.

By Mr. Read: That is not rebuttal, Judge, the Bishop admitted he was there.

By Mr. Massey: I am coming to that.

By the Court: That is one thing he should not testify about.

By Mr. Massey:

Q. Well, what did the Bishop say to you on this occasion?

By Mr. Read: What occasion?

By Mr. Massey:

Q. On this last occasion you have mentioned.

By Mr. Read: I don't think that is rebuttal.

By Mr. Massey: I asked the Bishop if he didn't go there and get—I don't want to tell this witness—

By the Court: I know what it is: And try to persuade him to come here and testify. You may ask him that.

By the Witness: He came in the bank and wanted to know if I made a statement to him that six notes were paid, several years ago when he came in inquiring about the notes, and I told him I didn't know of any statement of that, because I would have to look at my records to find that out, and at that time;—

By Mr. Read: Well, don't say what your records show; the witness don't remember whether he made any such statement.

By Mr. Massey: He has not said what his records show.

By the Court: Don't tell what your records show. page 224 }

By Mr. Read: I think everything the young man has said is immaterial.

By the Court: I understand you called this witness to show whether or not he had tried to induce this witness to come down here, and notwithstanding the true facts, he made a direct statement to him that only six notes had been paid?

By Mr. Massey: I am trying now to ask him what he did want him to testify to.

By the Witness: He asked me did I remember making a statement to him that six notes were paid, that the trial was coming up here on Monday, and I told him just as I have said that I didn't recall the statement of that occasion, I would have to look at my records.

By Mr. Read: Objected to. He says now he can't remember without looking at his records.

Q. Is that a fact?

By the Court: Let him finish, Mr. Read.

By Mr. Massey:

Q. Did you, on the occasion when he was in the bank several years ago, show him a record?

A. No, sir, the records were not looked at the time he came in several years ago.

CROSS EXAMINATION.

By Mr. Read:

Q. Have you any independent recollection of the statement you made to the Bishop. Can you remember, after two and a half years, what you stated to him about the notes?

A. I can not remember exactly, but I would
page 225 } not make a statement that six notes were paid
without looking at my records.

Q. Well, you have said you didn't look at them. You have just said you did not look at your records?

A. I did not look at the records.

Q. So you don't know whether you made that statement or not. You can't say, on your oath, whether you made that statement to him or not, that six notes had been paid, or can you?

A. As I say, I would not make a statement of that kind unless I did look at my records.

Q. Well, you didn't look at them, did you?

A. No, sir.

Q. Well, I ask you did you make that statement to the Bishop that he says you made?

A. I should say I did not.

Q. What did you bring your records here today for. Did you bring your records here with the idea of examining them to see whether or not you made the statement to him that six notes had been paid?

A. I brought the records because I didn't recall whether I made the statement or not.

Q. So the record is entirely the thing you go by. What is your position in the bank?

A. I am collection-teller there.

Q. You understand the questions when I ask them?

A. Yes.

Q. You understand the English language?

A. Yes.

Q. Did you state to Bishop Grace or did you—
page 226 } Have you any recollection on the subject what-
ever independently of your records, that you
stated to him that six notes had been paid. Have you any
recollection whatever independent of your records?

A. I haven't any recollection of telling him six notes were paid.

Q. Either one way or the other?

A. Either one way or the other.

By the Court:

Q. Do you recollect his coming in there formerly?

A. Yes, sir, he came in there.

Q. But you don't recall what took place?

A. He came inquiring about the notes. I could not find the records at the time, and I told him I would have to look into the records before I could tell him how many notes had been paid.

By Mr. Read:

Q. Do you recall his coming in there at a subsequent date about the same matter and asking you about them?

A. He came in there.

Q. The second time?

A. Yes, sir.

Q. Do you recollect what you told him then?

A. No, sir.

Q. The records were not shown.

(No response.)

By Mr. Read: I move to strike this out, Judge, as wholly immaterial.

By the Court: I think so myself. I sustain the motion.

page 227 } No further questions. Witness leaves stand.

By Mr. Read: I wish to make a motion in the absence of the jury.

By the Court: All right, gentlemen.

By Mr. Read: I wish to renew my motion made at the conclusion of the plaintiff's evidence to strike out all of the evidence of the plaintiff as insufficient to justify a verdict for the plaintiff. (Here counsel for the defendant extended his argument but no record of same appears to have been made.)

Note: The jurors here leave the courtroom.

By Mr. Massey: Your honor, I don't care to go into any extended argument. The statute says, and says plainly, that in actions of this kind, no demurrer can prevent a jury from passing on it. There is not but one thing, and that is the character of the words alleged, and if you prove the allegation of the words, and prove those words were uttered it then becomes a question for the jury as to whether they were slanderous or not, under the statute of insulting words, and you can't take that privilege away from the jury. Now, furthermore, probably the whole matter goes to the question of Mr. Read's instructions as to whether or not this is a Privileged case or not. In that connection I have found one case, and only one case that was directly, it seemed to me, on the point, and that is the case of *Hassar v. Carroll*, Connecticut Supreme Court of Errors, December 9th, 1911, reported in Annotated Cases 1913-A, at page 333. (After reading Cases and further remarks by counsel, it is stated):

By the Court: I am prepared to rule on this matter, gentlemen: I have given careful thought to the evidence, all the way through, and at the time this motion was made, at the time the plaintiff's evidence was first in, I hesitated to grant the motion, although there was some question in my mind but that I ought to grant it. In this particular
page 228 } case, I think it would be proper to hold that it was a Privileged communication, wherein the Bishop of this church, irregularly organized and constituted, as it appears to be, was talking to his Congregation about matters of financial interest in which every single one of the members of the church had an interest together with the defendant and the plaintiff; and that there is an entire lack of evidence to show Malice, and if the jury were to render a verdict against the Bishop (the defendant), upon the whole

evidence in the case, I would feel I would be constrained to set it aside. And feeling that way about it, it does seem due to me to say there is no duty on me to continue the case. I shall instruct the jury that there is not sufficient evidence to sustain a verdict, and if they bring in a verdict there can be only one result. Bring the jury in, Sheriff.

By Mr. Massey: We except to the ruling of the court for the reasons stated.

By the Court: Yes, sir.

(Note: The jurors here return and resume their seats.)

By the Court: Gentlemen of the jury, in every instance where one man brings a suit against another, the burden of proof is on the man who brings the suit to establish his claim by evidence that is sufficient in law to justify a verdict in his favor. In the absence, or failure of a plaintiff to produce sufficient evidence to justify his claim or sustain a verdict, only one verdict can be rendered by the jury, and that is for the defendant. If you have no evidence on the part of the plaintiff to sustain his claim, you can not render a verdict in favor of the plaintiff. In this court—in page 229 } this case, the court instructs you—The court strikes all of the evidence introduced to sustain the claim of the plaintiff, and instructs you that the evidence is insufficient to sustain a verdict in favor of the plaintiff. You may retire and write your verdict, if you care to retire, or you may write it at the bar. Do you understand, you have no evidence to consider, none to sustain the plaintiff's claim, the court striking it out as being insufficient to justify a verdict in his favor? Is that clear to you, gentlemen? (Pause:) All right.

Note: The jury leaves the court room.

By Mr. Massey: I want to except to the action of the court in refusing to give the Instructions requested by the plaintiff, and to the action of the court in giving—in striking out the evidence, and giving the Charge to the jury, which was given by the court, for the reasons heretofore stated.

By the Court: Do you wish the record to show you tendered all of these Instructions?

By Mr. Massey: Yes, sir, I wish the record to show that I tendered all of these Instructions, except number 5.

By Mr. Read: My motion precedes that.

By the Court: Yes, sir. Let the record show that the

question of the Instructions did not arise, and that there was no consideration given to the giving of any instructions.

By Mr. Massey: You are refusing my instructions when you instruct the jury they have no evidence.

By Mr. Read: We didn't get to that point.

By Mr. Massey: I know, but when the court page 230 } instructs the jury there is no evidence, and strikes out the evidence, he is refusing to give my instructions.

By the Court: The court refused to give any instructions for the plaintiff, and any other instructions, other than that given to the jury by the court. Let the record show that.

By Mr. Massey: But I do want the record to show my instructions were refused.

By Mr. Read: But they weren't, though, at the time this motion was made. The motion was made, and then renewed.

By the Court: I will make a note on them, Mr. Massey, that they are refused. That will take care of it. I have not read them.

By Mr. Read: They weren't tendered at the time the motion was made, your honor.

By the Court: He gave them to me down there.

(Note: The court having previously left the bench.)

Note: Here the jury return to court with the following verdict:

"We the jury find for the defendant.

T. L. WILLETT, Foreman."

By Mr. Massey: I want to make a motion to set aside the verdict as being contrary to the law and the evidence, being without any evidence to support it; against the evidence, and for misdirection of the jury, and the action of the court in instructing—in striking out all of the evidence offered on behalf of the plaintiff.

By the Court: The motion is overruled.

By Mr. Massey: And except for the reason stated. Do you want me to state these reasons again?

By Mr. Read: You better state them. I think the court is already advised.

By Mr. Massey: For the reason that the court, in any case where a notice of motion is brought under the statute of Insulting words, has no right to take away from the jury the question of the slanderous quality of the words alleged to

have been spoken. That statute specifically declared that no demurrer shall preclude a jury from passing thereon; and the sustaining of a motion to strike the evidence is, to all intents and purposes, a demurrer; that the action of the court in this case is equivalent to sustaining a demurrer to the evidence of the plaintiff; that the action under which the words spoken in this case, was not a privilege communication, and no evidence of malice was required, but that, under the evidence, even had the same been a privileged communication, the privilege was exceeded and actual malice was shown, and the verdict in behalf of the plaintiff could not have been set aside, had such a verdict been rendered.

page 232 } In the Circuit Court for the City of Newport
News, Virginia.

W. M. Taylor, Plaintiff,

v.

C. M. Grace, Defendant.

PLAINTIFF'S INSTRUCTIONS TENDERED AND REFUSED.

On the trial of this case, counsel for the plaintiff offered the court the following Instructions which he stated he would ask the court to grant:

1.

The court instructs the jury that the law presumes damages result from the utterance of insulting words and it is not necessary for the plaintiff to prove either actual or pecuniary loss in order to recover.

2.

The court instructs the jury that in determining whether or not the language complained of in the notice
page 233 } of motion is insulting and tending to violence
and preach of the peace, the words and sentences must be construed in the plain and popular sense in which the rest of the world would naturally understand them, that is, they are to be construed according to their usual construction and common acceptance. The charge or insult need not be in expressed terms. It may be insinuation.

3.

The court instructs the jury that if, from the evidence, they believe that the words contained in the declaration, were used by the defendant and were untrue, and if they further believe that the defendant has reiterated the said words, then this is a circumstance to show malice on the part of the defendant.

4.

The court instructs the jury that while malice is the gist of this action and proof that the defendant was actuated by malice in making said publication, is necessary in order to recover against him, yet this does not necessarily mean hatred or ill will towards the plaintiff.

6.

The court instructs the jury that the law presumes damages from the publication of slanderous matter and that upon the proof of such publication, the plaintiff may recover damages without proving actual pecuniary loss, therefore if you believe from the evidence in this case, that the defendant published of and concerning the plaintiff, the page 234 { matter complained of in his declaration, and if you further believe that such matter was slanderous and untrue, you may award the plaintiff such damages as will reasonably and substantially compensate him.

7.

The court instructs the jury that in determining the amount of damages to which the plaintiff may be entitled if they should find for the plaintiff under other instructions of the court, they shall take into consideration all the facts and circumstances of the case as disclosed by the evidence; the nature and character of the charges; the language in which they were expressed and its tendency; the occasion on which they were published; the probable effect upon those to whose attention they came, and their natural and probable effect upon the plaintiff's business, personal feelings, and his standing in the community in which he lives, and if under the other instructions herein given, he is entitled to recover, they ought to award him such sum by way of damages as will fairly and adequately compensate him:

- (1) for any loss or injury to his business, and
- (2) for the insult to him including any pain and mortification and mental suffering inflicted on him, and
- (3) for any injury to his reputation as a man and citizen.

And if the jury further believes from all the evidence in the case that the acts complained of were influenced by actual malice or a design to injure or oppress the plaintiff, he may recover in this action in addition to such damages as those mentioned above, punitive or *exemplary* damages, that is to say that the jury will not be limited in the page 235 } amount of its verdict for the plaintiff to compensate him for the actual damages sustained as above *indicted* they may give him such further damages as they may think right in view of all the circumstances of the case as a punishment to the defendant and as a salutary example to others to deter from offending in a like manner.

In determining whether the defendant, in publishing and circulating the charges complained of, was influenced by actual malice or a design to injure or oppress the plaintiff, the jury should consider the relation of the parties to each other, the acts of the defendant before and after the publication in question and all circumstances surrounding it.

8.

The court instructs the jury that they are the sole judges of the weight and credibility of evidence and the jury has the right to discard or accept the testimony or any part thereof of any witness, which the jury regards proper to discard or accept when considered in connection with the whole evidence in the case.

9.

The court instructs the jury that by preponderance of evidence is meant that evidence which is most convincing and satisfactory to the minds of the jurors. In determining upon which side the preponderance of the evidence is, the jury may take into consideration the opportunities of the several witnesses for seeing and knowing the things to which they testify, their interest (if any), or want of interest (if any),

in the result of the suit, the probability or improb-
 page 236 } ability of the truth of their several statements, in
 view of all other evidence, and the facts and cir-
 cumstances upon the trial; and from all the circumstances
 determine the weight or preponderance of the evidence. The
 jury are the sole judges of the weight of the evidence and
 credibility of the witnesses.

10.

The court instructs the jury that, although the plaintiff
 must prove his case by a preponderance of evidence, yet this
 does not necessarily mean that he must prove it by the greater
 number of witnesses. In ascertaining upon which side is the
 preponderance of evidence the jury should consider not only
 the number of witnesses, but also their credibility and the
 reasonableness of their testimony when taken in connection
 with all the facts and circumstances of the case.

Note: On the back of the foregoing instruction 10, ap-
 pears the following endorsement:

“Instructions which plaintiff stated he intended to offer,
 after court had sustained motion to strike out evidence of
 plaintiff.

C. V. S.

9/25/34.”

By the Court: Mr. Massey, I have marked on the back of
 these instructions which you wish to make part of the record—

page 237 } I think that is a correct statement, because you
 handed some to me before your last witness tes-
 tified, and some after I came back on the bench.
 The notation will show the instructions were tendered, how-
 ever, after the court sustained the motion to strike out the
 evidence of the plaintiff.

By Mr. Massey: Well, those last ones were just as to Credi-
 bility of witnesses.

By Mr. Read: I had not discussed my objections. I will
 not do that.

By Mr. Massey: If I do go to the Court of Appeals in
 this case, I want to show the Instructions were tendered.

By the Court: I shall be glad to put them in there for you, sir, and you can go there.

To the action of the court, in refusing to give the foregoing instructions, numbered 1, 2, 3, 4, 6, 7, 8, 9, 10, to the jury, counsel for the plaintiff excepted, and stated his reason as follows: That the court erred in striking out the evidence and instructing the jury there was no evidence upon which they could find for the plaintiff; that the instructions tendered by the plaintiff were a correct statement of the law and should have been given.

On the 13th day of October, 1934, the parties again appeared in court and the plaintiff renewed his motion that the court set aside the verdict of the jury and grant him a new trial stating his reasons therefor as follows:

page 238 } 1—The court erred in striking the evidence presented on behalf of the plaintiff and instructing the jury that there was no evidence before it upon which to find for the plaintiff; that such instruction amounted to sustaining a demurrer to the evidence which is forbidden in actions under the statute of insulting words, Section 5781, Code of Va., and that there was evidence presented on behalf of the plaintiff sufficient to sustain a verdict in his favor.

2—The court erred in holding that the occasion upon which the alleged insulting words were spoken was privileged.

3—The court erred in holding that there was no evidence in the case to show that the words had been spoken maliciously.

4—The court erred in refusing to set aside the verdict of the jury as being contrary to the law and the evidence; that under the statute the court had no right to strike the evidence which was equivalent to sustaining a demurrer; that the occasion upon which the words were spoken was not privileged; that even if the occasion had been held to be privileged, yet the question of malice would have been for the jury and that there was evidence to show malice; that the action of the court operated to deprive the plaintiff of his right to a trial by jury.

That said motion was fully argued by counsel for the plaintiff; that said motion was overruled by the court, to

which action of the court in overruling said motion to set aside the verdict of the jury and award the plaintiff a new trial, the plaintiff by counsel excepted and assigned his reasons therefore as follows:

1—The court erred in striking the evidence presented on behalf of the plaintiff and instructing the jury that there was no evidence before it upon which to find for
page 239 } the plaintiff; that such instruction amounted to sustaining a demurrer to the evidence which is forbidden in actions under the statute of insulting words, Section 5781, Code of Va., and that there was evidence presented on behalf of the plaintiff sufficient to sustain a verdict in his favor.

2—The court erred in holding that the occasion upon which the alleged insulting words were spoken was privileged.

3—The court erred in holding that there was no evidence in the case to show that the words had been spoken maliciously.

4—The court erred in refusing to set aside the verdict of the jury as being contrary to the law and the evidence; that under the statute the court had no right to strike the evidence which was equivalent to sustaining a demurrer; that the occasion upon which the words were spoken was not privileged; that even if the occasion had been held to be privileged, yet the question of malice would have been for the jury and that there was evidence to show malice; that the action of the court operated to deprive the plaintiff of his right to a trial by jury.

STIPULATION.

It is stipulated and agreed by counsel that "Exhibit 1", being the constitution and by-laws, etc., of the "House of Prayer", and "Exhibit A", being thirteen cancelled checks, may be used in the original in the Court of Appeals as provided by law without setting out the same in full in this transcript.

page 240 } I, C. Vernon Spratley, Judge of the Circuit Court of the City of Newport News, Virginia, who presided over the foregoing trial, do hereby certify that the foregoing, to the best of my knowledge and belief, is a

true and correct copy of the report of the testimony, the instructions offered and refused and the exceptions to the refusing of instructions, the motion on behalf of the defendant to strike out all of the evidence of the plaintiff and to direct a verdict for the defendant, the motion to set aside the verdict on the grounds that the verdict was contrary to the law and the evidence and without evidence to support it, the exceptions to the court's ruling in sustaining the motion to strike out all of the plaintiff's evidence and the exceptions to the court's ruling in overruling the motion to set aside the verdict and grant the defendant a new trial; and other incidents of the trial in the case of W. M. Taylor, plaintiff, v. C. M. Grace, defendant, tried in the Circuit Court of the City of Newport News on the 24th and 25th of September, 1934; and that the attorney for the defendant had reasonable notice in writing of the time and place when said record and the testimony and other incidents of the trial would be tendered and presented as the plaintiff's certificate of exceptions to the undersigned for verification and the same is signed, sealed and certified as part of the record in this case, being the plaintiff's certificate of exceptions No. 1, which is done within the time prescribed by law.

Given under my hand and seal this 22nd day of November, 1934.

C. VERNON SPRATLEY,
Judge of the Circuit Court for the City of
Newport News.

page 241 } Virginia:

In the Clerk's Office of the Circuit Court of the City of Newport News, Virginia, on Tuesday, the 18th day of December, 1934.

I, F. B. Barham, Clerk of the Circuit Court of the City of Newport News, do hereby certify that the foregoing transcript includes the papers filed and the proceeding had thereon in the case of W. M. Taylor, plaintiff, v. C. M. Grace, defendant, lately pending in our said court.

I further certify that the same was not made up and completed and delivered until the plaintiff had received due notice in writing thereof and of the intention of the defendant to apply to the Supreme Court of Appeals of Virginia, for a writ of error and *supersedeas* to the judgment herein; and that

said notice has been filed in the Clerk's Office of said court with the papers in said cause.

Given under my hand this 18 day of December, 1934.

F. B. BARHAM,
Clerk of the Circuit Court of the City of
Newport News, Virginia.

Fee of clerk of Circuit Court, \$5.00
Binding this record, \$. 75

Total.....\$5.75

A Copy—Teste:

M. B. WATTS, C.C.

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