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SUPREME COURT

Appellate Division---Second Department.

565

CHARLES T. RUSSELL,

Plaintiff-Appellant,

against

THE BROOKLYN DAILY EAGLE,

Defendant-Respondent.

CASE ON APPEAL.

SPARKS & FULLER,
JOSEPH F. RUTHERFORD,
Attorneys for Plaintiff-Appellant,
44 Court Street,
Brooklyn, N. Y.

DYKMAN, OELAND & KUHN,
Attorneys for Defendant-Respondent,
177 Montague Street,
Brooklyn, N. Y.

THE REPORTER CO., WALTON, N. Y.
New York Office: 253 Broadway, Room 205. 'Phone 6575 Barclay.
Brooklyn Office: 375 Fulton Street, Room 58. 'Phone 2300 Main.
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SUPREME COURT

APPELLATE DIVISION—SECOND DEPARTMENT.

2

CHARLES T. RUSSELL,
Appellant,

vs.

THE BROOKLYN DAILY EAGLE,
Respondent.

Statement Under Rule 41.

This action was commenced by the service of a summons and complaint upon the defendant on the 18th day of October, 1911. The defendant's answer was served herein on the 8th day of December, 1911.

3

The plaintiff appeared by his attorneys, Sparks and Fuller and Joseph F. Rutherford, and the defendant appeared by its attorneys, Dykman, Oeland & Kuhn.

There has been no change of parties or attorneys since the commencement of this action.

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4 **Notice of Appeal.**

SUPREME COURT,

KINGS COUNTY.

CHARLES T. RUSSELL,
Plaintiff,
against
THE BROOKLYN DAILY EAGLE,
Defendant.

5 Please take notice, that the plaintiff, Charles T. Russell, above-named, hereby appeals to the Appellate Division of the Supreme Court for the Second Department, from the judgment of this Court, entered herein in the office of the Clerk of the County of Kings, on or about the third day of February, 1913, in favor of the defendant and against the plaintiff and the said plaintiff hereby appeals from each and every part of said judgment as well as the whole thereof; and also from the order denying the motion made by the plaintiff for a new trial herein and to set aside the verdict rendered herein, which order was made and entered herein in the office of the Clerk of the County of Kings on or about the tenth day of February, 1913,
6 and from each and every part of said order as well as the whole thereof.

Dated, February 25th, 1913.

SPARKS & FULLER,
Attorneys for Plaintiff-Appellant,
Office & P. O. Address,
44 Court Street,
Brooklyn Borough,
New York City.

To:
The County Clerk of Kings County.

To:
Dykman, Oeland & Kuhn,
Attorneys for Defendant.

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Summons.

SUPREME COURT,

KINGS COUNTY.

CHARLES T. RUSSELL,
Plaintiff,

vs.

THE BROOKLYN DAILY EAGLE,
Defendant.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated October 9th, 1911.

SPARKS & FULLER, and
JOSEPH F. RUTHERFORD,
Plaintiff's Attorneys,
Office and Post Office Address,
No. 44 Court Street,
Borough of Brooklyn,
City of New York.

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10 **Complaint.**

SUPREME COURT,

KINGS COUNTY.

CHARLES T. RUSSELL,
Plaintiff,

vs.

THE BROOKLYN DAILY EAGLE,
Defendant.

11 The plaintiff, by his attorneys, complaining of the defendant, respectfully shows and alleges:

FIRST: That at all the times hereinafter mentioned the defendant was and still is, a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, and at all the times hereinafter mentioned was and still is, the publisher and owner of a newspaper published at the Borough of Brooklyn, City and State of New York, known as "The Brooklyn Daily Eagle," having a large general circulation in the State of New York and elsewhere, of at least twenty-five thousand (25,000).

12 SECOND: That at the time of the publication hereinafter mentioned, plaintiff was and still is, a resident of said Borough of Brooklyn, City of New York, and for more than thirty years last past, and at all the times hereinafter mentioned, plaintiff has been and still is, engaged in preaching the Gospel to the people of the United States of America and Europe and elsewhere; that he is now and for some time past has been, the regularly elected pastor of a large congregation of Christians at the Brooklyn Tabernacle, of the Borough of Brooklyn, City of New York, to whom he preaches at regular intervals and whom he

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serves as pastor, having assistants who represent him in his absence; that he is also, and for some time has been, the regularly elected pastor of a large congregation of Christian people at the London Tabernacle, of London, England, whom he serves as pastor, and to whom he preaches at stated intervals, having assistants there to represent him during his absence from said congregation, and that he is and for several years past has been, popularly and favorably known throughout the United States of America and Europe and other countries as "Pastor Russell," and is recognized and addressed by such title, he being the leader, 14
teacher and pastor of thousands of Christian people who reside throughout said countries; that for many years past plaintiff has been and now is, the editor of a religious journal, known as "The Watch Tower," which is published twice each month and circulated throughout the United States, Canada and European countries and is read by thousands of Christian people in said countries; that his sermons are published each week in a large number of newspapers throughout the United States, Canada, Great Britain and Australia, and have been so published for a long space of time, and as such minister of the gospel, at the times hereinafter mentioned, and long prior thereto, plaintiff has 15
borne a high reputation for honesty, integrity, fair dealing and truthfulness, and of being an honest and fearless preacher of the gospel of truth as set forth in the Holy Scriptures, and has always enjoyed the respect and confidence of the people in his own community and in the community at large, wherever his sermons have been heard or read; that he is and for many years past has been, the president of the Watch Tower Bible and Tract Society, a religious corporation, and president of the People's Pulpit Association, also a religious corporation, both of which said corporations are engaged in spreading the gospel and gen-

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erally engaged in religious and philanthropic work for the betterment of mankind, and which said religious corporations receive their support, both moral and financial, from Christian people living throughout the United States and Canada; that for some years past plaintiff has regularly written for periodicals and magazines, religious articles dealing with Biblical questions, which have been published throughout the United States; that plaintiff is the author of a certain series of religious works or books, published in six volumes, and which are known as "Studies in the Scriptures," a large quantity, to wit: Six million volumes of which have been sold and placed in the hands of the people throughout the United States and foreign countries, which books are sold and distributed by the aforesaid religious corporations of which plaintiff is the president; that the good name, reputation and moral standing of plaintiff are absolutely essential to the proper and successful promulgation of the gospel in the manner adopted and used by him as aforesaid; that all of his publications, compositions and writings aforesaid have been devoted exclusively to religious questions and doctrines; that during the period of time herein mentioned he has given, and is now giving, all of his time, energy, influence and strength to the preaching of the Gospel, both orally and by the printed page, and as such preacher, pastor, teacher and author he has the respect, esteem and confidence of many thousands of people.

THIRD: That on, prior and subsequent to the 23rd day of September, 1911, the defendant at divers times, published in its said newspaper, "The Brooklyn Daily Eagle," certain articles concerning the sale of a certain seed wheat then being sold in the Borough of Brooklyn, at the Brooklyn Tabernacle, of which the plaintiff was then pastor, at the price of one dollar

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($1) per pound, in which said articles it was suggested, intimated or charged that said seed wheat which was generally known by and referred to in said articles under the name of "Miracle Wheat," was of no greater value than ordinary wheats which could be procured at a far lower price, and further suggesting, intimating or charging that claims were being advanced by the plaintiff that said wheat had peculiar virtues when used as seed, and further suggesting, intimating or charging that there was no substantial justification for such claims and that the plaintiff was directly interested in the sale of "Miracle Wheat" and derived a personal advantage therefrom.

FOURTH: That prior and subsequent to the 23rd day of September, 1911, the defendant at divers times published in its said newspaper, "The Brooklyn Daily Eagle," certain articles and cartoons or pictures concerning the conduct, management and existing conditions of a certain bank in said City of New York, known as the Union Bank, in which said articles it was charged or intimated that the directors, officers, managers or persons in some way connected with said Union Bank had violated their obligations to the depositors and patrons of said bank and that said directors, officers, managers or persons in some way connected therewith, were guilty of a violation of the laws of the State of New York and were criminally liable to prosecution for such misconduct, and that an investigation into the affairs of said bank was being conducted, and that the District Attorney of the County of Kings would present and had presented the facts concerning said Union Bank to the Grand Jury of Kings County and that it was rumored that said Grand Jury had returned five indictments in connection with the affairs of said bank for some criminal offense connected with the management of said bank and its af-

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22 fairs had become so malodorous that the defendant, in its said newspaper, named and designated said Union Bank as the "Onion Bank."

FIFTH: That on the 23rd day of September, 1911, and in the same issue of its said newspaper which contained an article concerning the official investigation into the affairs of said Union Bank, aforesaid, the defendant, contriving and fraudulently intending to injure the plaintiff in his good name, fame and reputation, maliciously composed, printed, published and circulated of and concerning the plaintiff, a certain pic-
23 ture, drawing, photograph or cartoon, with inscriptions thereon, together with a certain article and words in connection therewith, in its said newspaper, "The Brooklyn Daily Eagle," so published and circulated throughout the Borough of Brooklyn, City and State of New York, and other places throughout the world, a true and correct copy of which is as follows, to wit:

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25

EASY MONEY PUZZLE.



26

27

If Pastor Russell can get a dollar a pound for Miracle wheat, what could he have got for Miracle stocks and bonds as a director in the old Union Bank?

SIXTH: That the building shown in the picture, photograph, drawing or cartoon, aforesaid, is intended to represent and does represent the said Union Bank Building, and the words across the top of the door, to

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wit, "Onion Bank," represent and were intended by defendant to represent said Union Bank; that the figure of the man standing in the door of said building, as represented and shown upon said picture, photograph, drawing or cartoon, represents and was intended by defendant to represent, some director or officer or person connected with said Union Bank calling out to an old man who appears in the street as shown by said cartoon or picture; that the figure of said old man, as shown on said picture, photograph, drawing or cartoon, and which appears therefrom to be in the street in close proximity to said Union Bank, represents and was intended by defendant to represent the plaintiff herein, who, in said picture, photograph, drawing, cartoon and caricature, is represented as going through the streets carrying in his hand a package of "Miracle Wheat," and as a "street hawker" crying out his wares or goods for sale; and the words "You're wasting your time, come on in here," appearing on said picture, photograph, drawing or cartoon, represent and were intended by defendant to represent some officer of said Union Bank, or some person connected with said bank, calling to and inviting plaintiff to cease selling wheat and come on in the bank and join others in defrauding its depositors and patrons, that his, plaintiff's time could be much better employed in said bank and greater returns could be realized by plaintiff in engaging with those in the bank in "fleecing," cheating and defrauding its patrons and depositors; that the words "Easy Money Puzzle," appearing on said picture, photograph, drawing or cartoon, were intended by defendant to represent and do represent that both plaintiff and said Union Bank directors and officers were engaged in an unrighteous and unlawful scheme or business, and that plaintiff by misrepresentations, fraud and deception was obtaining "easy money" or dishonest money or tainted money, from the people; that in connection

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with said picture, photograph, drawing or cartoon appear the following printed article or words: "If Pastor Russell (meaning plaintiff) can get a dollar a pound for Miracle Wheat, what could he (meaning plaintiff) have got for Miracle stocks and bonds as a director of the old Union Bank"; that by said entire drawing, caricature, cartoon, picture and print, and the words printed in connection therewith and as a part thereof, defendant meant and intended to show and charge, and did represent and charge, and it was so understood by those who saw it, that plaintiff as a minister of the gospel, as a pastor of religious congregations of 32
Christian people, was selling said "Miracle Wheat" and as a "street hawker" was going about the streets selling the same at a large price, and was thereby defrauding the people and by the use of a fraudulent scheme, trick or misrepresentation plaintiff was wrongfully obtaining from the people, in an easy, slick, deceptive and fraudulent manner, large sums of money for his own personal gain, and that plaintiff, because of his cunning and ability to manipulate a dishonest scheme enabling him to sell wheat at one dollar per pound, was wasting his time in so selling wheat when he might associate himself with dishonest men and engage in the fraudulent sale of stocks and bonds and 33
thereby reap a far greater amount of dishonest money, and that if he, plaintiff, as the pastor of a congregation of Christian people, could fraudulently induce people to pay one dollar per pound for Miracle wheat, he would succeed much better in engaging himself with a number of criminals in inducing the people to buy fraudulent stocks and bonds.

SEVENTH: That the statements and representations made, and attempted to be made and conveyed by said picture, drawing, caricature, cartoon or print and by various inscriptions that appear thereon, and by said words, article or reading matter published in

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34 connection therewith and as a part thereof, as aforesaid, were and are wholly false and were printed, edited, composed and published by the defendant maliciously and with a wrongful intent of injuring the plaintiff in his good name, fame and reputation and in his professional career as a minister of the gospel, as well as in his career as a teacher of the Scriptures and as an editor and author of religious writings as aforesaid and as president and representative of the religious societies as aforesaid, as well as his reputation among the people at large.

35 EIGHTH: That by reason of the foregoing, the plaintiff has been brought into scandal and reproach and has been held up to odium, scandal, disgrace and contempt among his neighbors, friends and the readers of his journal books and other writings and among his parishioners and members of his congregations, as well as his business and professional reputation as president of the religious societies aforesaid, and has received through the mails, insulting and insinuating letters and writings by reason thereof and has been seriously injured in his peace of mind and has been grievously disturbed and his feelings injured and has been held up to public ridicule and scorn, as a result of

36 all of which plaintiff has suffered injury to his reputation, good name, fame and standing, all to his damage in the sum of one hundred thousand dollars.

Wherefore, the plaintiff demands judgment against the defendant for the sum of one hundred thousand dollars ($100,000) besides the costs of this action.

SPARKS & FULLER, and
JOSEPH F. RUTHERFORD,
Attorneys for Plaintiff,
Office & P. O. Address,
44 Court Street,
Borough of Brooklyn,
City of New York.

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State and City of New York,
County of Kings, } ss.:

Edward W. Brenneisen, being duly sworn, says, that he is the agent of the plaintiff in this action and resides at No. 122 Columbia Heights, in the County of Kings.

That plaintiff's attorneys reside in the Borough of Brooklyn, County of Kings, and have their offices at No. 44 Court Street, in the said County of Kings, City and State of New York.

That all the material allegations of said complaint are within the personal knowledge of deponent and the foregoing complaint is true to the knowledge of deponent.

38

Deponent further says that the reason why this verification is not made by said plaintiff is, that said plaintiff is not within said County of Kings, being at the present time in Great Britain.

EDWARD W. BRENNEISEN.

Sworn to before me this 16
day of October, 1911.

Anthony H. Tuozzo,
Commissioner of Deeds,
for the City of New York.
Residing in the Borough of Brooklyn.

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40 **Answer.**

SUPREME COURT,

KINGS COUNTY.

CHARLES T. RUSSELL,
Plaintiff,
against
THE BROOKLYN DAILY EAGLE,
Defendant.

41 The defendant, by Dykman, Oeland & Kuhn, its attorneys, answers the complaint herein, as follows:

First: It denies each and every allegation contained in the paragraph of the complaint numbered "Second," except that it admits that plaintiff is recognized and addressed by the title of "Pastor Russell"; that the plaintiff has been and is the editor of a journal known as "The Watch Tower"; that the plaintiff is and for many years last past has been the president of The Watch Tower Bible and Tract Society, a corporation, and president of the People's Pulpit Association, a corporation; that the series of books known as "Studies in Scriptures" are sold by the aforesaid corporations,
42 and that said corporations receive their support, be moral or financial, from people living throughout the United States and Canada; and excepting that it denies knowledge or information sufficient to form a belief as to the truth of each and every of the allegations that at the time of the publication alleged in the complaint plaintiff was or still is a resident of the Borough of Brooklyn, City of New York; that he is or has been regularly elected pastor of a congregation of Christians or other persons at the "Brooklyn Tabernacle," of the Borough of Brooklyn, City of New York, or at any other place, whom he serves as pastor;

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that he has assistants who represent him in his absence; that said journal known as "The Watch Tower" is published twice each month or circulated throughout the United States, Canada or European countries, or read by thousands of Christian people in said countries.

Second: It denies each and every allegation contained in the paragraph thereof numbered "Third," except that it admits that on, prior and subsequent to the 23rd day of September, 1911, the defendant, at divers times, published in its said newspaper, The Brooklyn Daily Eagle, certain articles concerning the 44
sale of certain seed wheat then being sold in the Borough of Brooklyn, at the "Brooklyn Tabernacle," of which plaintiff was then "pastor," at the price of One ($1.00) dollar a pound, in which said articles it was suggested, intimated and charged that said seed wheat, which was generally known by and referred to in said articles under the name of "Miracle Wheat" was of no greater value than ordinary seed wheat which could be procured at a far lower price; and further suggesting, intimating and charging that claims were being advanced by the plaintiff that said wheat had peculiar virtues when used as seed; and further suggesting, intimating and charging that there was no substantial 45
justification for such claims.

Third: It denies each and every allegation contained in the paragraph thereof numbered "Fifth," excepting that it admits that on the 23rd day of September, 1911, and in the same issue of its newspaper, which contained an article concerning the official investigation into the affairs of the Union Bank, defendant published a certain picture, drawing, photograph or cartoon, with inscriptions thereof, a copy of which is set forth in the paragraph numbered "Fifth" of said complaint, and that in connection therewith in said

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The Brooklyn Daily Eagle, a newspaper published and circulated throughout the Borough of Brooklyn, City and State of New York, and other places throughout the world, it published the following words:

"If Pastor Russell can get a dollar a pound for Miracle Wheat, what could he get for Miracle stocks and bonds as a director in the old Union Bank?"

Fourth: It denies each and every allegation contained in the paragraph of the complaint numbered "Sixth," excepting that it admits that in connection with said picture, drawing, photograph or cartoon
47 appeared the following printed articles or words:

"If Pastor Russell can get a dollar a pound for Miracle Wheat, what could he have got for Miracle stocks and bonds as a director of the old Union Bank?"

Fifth: It denies each and every allegation contained in the paragraphs thereof numbered "Seventh" and "Eighth."

Sixth: For a separate and further defense, defendant, answering each and every one of the innuendoes set up and set forth by the complaint in the paragraph of the complaint numbered "Sixth," denies the mean-
48 ing attributed by the plaintiff to each and every portion of the article and alleges that the words used by the defendant in said article had not and have not the meaning ascribed to them by the plaintiff.

Seventh: For a further and separate defense, and in justification, defendant alleges, upon information and belief, that each and every of the statements set forth in said article complained of were and are true and that each and every one of the following allegations were and are true:

That the plaintiff is and has been for a long time the controlling and dominating power in certain corpora-

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tions known as the "Watch Tower Bible and Tract Society" and the "People's Pulpit Association." That he dictates, and has for a long time dictated, the actions and conduct of said corporations, and the executive boards thereof do, and for a long time have done, his will. That in said Watch Tower Bible and Tract Society, a business corporation, he holds, dominates or controls, and has for a long time held, dominated or controlled a majority of the voting shares of said corporation.

That through the medium of said corporations by the issuing, publishing and distributing vast quanti- 50
ties of printed matter, arranging for and providing speakers and lecturers on Biblical subjects, and in other ways, plaintiff has denounced and criticized all religions in the interest of a so-called religion or cult claimed to have been invented by himself called the "Millenial Dawn" or "Russelism," the central tenet of the so-called "Millenial Dawn" or "Russelism" being that the world as it is now constituted will come to an end in October, 1914. By reason of the aforesaid great numbers of persons, believing that the end of the material world is near and that only through "sacrifice" of their material substance they can become of what he calls the "elect" under what he calls the
"New Dispensation," have turned over their property 51
to plaintiff and said corporations, in preparation for the end. Many of the said persons have given their property to plaintiff and said corporations, outright, and received assurances from plaintiff that they would receive interest thereon as long as they should live Others have made wills, giving, devising and bequeathing property to him. Others, influenced in the manner aforesaid, have been persuaded by him to pledge and pay money for advertising plaintiff and said so-called religion, and by virtue of a skilfully worded clause in the printed pledge, they have been

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asked by him to sign, the money is made available for any purpose to which plaintiff, the president and controlling influence of said corporations, chooses to apply it. Through the means aforesaid, plaintiff has urged his followers to pay him their money to spread his doctrines and advertise himself, exhorting that "The heavenly things are to be attained only by those who sacrifice earthly things." Much of the money that has been received by plaintiff in this way has been invested in real estate, mining stocks and various speculative enterprises, the investments having been made
53 in the name of dummy corporations, partnerships and associations, or through other persons acting as secret representatives or dummies for plaintiff. Plaintiff's said operations have extended until they cover every state in the United States as well as many countries in Europe.

On or about June 15, 1911, plaintiff caused to be published in a journal known as "The Watch Tower," of which journal plaintiff was editor, and said Watch Tower Bible and Tract Society, publisher—an advertisement in the words following:

"A Donation of Miracle Wheat.

54 Brother Bohnet writes us that he has gradually accumulated a crop of miracle wheat from the few grains he obtained as a start. He prefers that the first opportunity for obtaining this wheat shall go to The Watch Tower readers. He will sell it for $1 per pound, including postage, and give the entire proceeds to our Society. All orders for this wheat should be addressed, Miracle Wheat Bohnet, 17 Hicks Street. Brooklyn, N. Y. This will keep mail on this subject separate from his personal mail and from ours.

Brother Bohnet promises to be ready to ship this wheat by August 1. He says miracle wheat should be sowed one-fourth as thick as common wheat. Or-

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55

dinarily it should produce from ten to fifteen times as much proportionately to the amount sown. To save keeping account, money should accompany the order. Watch Tower readers will have the preference up to August 15, after which orders will be attended to indiscrimately, so long as the supply holds out. This wheat should be sown in the fall."

That said seed wheat was of no greater value than ordinary seed wheat which could be procured for a far lower price and had no peculiar virtue when used as seed. That there was nothing miraculous about said so-called and so advertised "Miracle Wheat."

56

That large quantities of said so-called "Miracle Wheat" were sold with the aid, connivance, consent and procurement of plaintiff and at the "Brooklyn Tabernacle," controlled by plaintiff, in the Borough of Brooklyn, City of New York, during the month of September, 1911, with and because of the understanding on the part of the purchasers of same, that the entire proceeds from such sales would be given to said Watch Tower Bible and Tract Society and that thereby they would be rewarded after death, and also, because of the state of mind into which they had been put through the teachings of plaintiff and said corporations, that said "Miracle Wheat" possessed supernatural qualities.

57

Eighth: As a separate and partial defense and in mitigation of any damage to which plaintiff might otherwise be entitled, defendant re-alleges all and singular the matters stated in paragraph "Seventh" thereof, as if herein set forth at length, and further alleges that it employs expert and well qualified newspaper reporters, cartoonists and writers; that the article complained of was prepared by an expert and well qualified newspaper writer and an expert and well qualified cartoonist; that said article complained of

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was founded upon information which came to the defendant in the ordinary and regular channels of its business; that said article complained of was published by the defendant in the ordinary course of its business without malice on the part of the writer of the article complained of, of the cartoonist or upon the part of the publishers or printers of said article; that the defendant received the information and matter contained in the article complained of from trustworthy and reliable sources and in publishing said article it acted in good faith and not carelessly, maliciously or wantonly and in publishing said article the defendant had reason to and did believe the information received and published it to be true.

Ninth: As a separate and further defense, defendant re-alleges the allegations contained in the paragraph hereof numbered "Seventh," and further alleges that said article complained of was inserted by this defendant in its newspaper as an item of public news, public interest and public concern, without malice, and was and is a fair, honest and true criticism of the conduct of plaintiff and is proper and privileged.

Tenth: And as a separate and further partial defense and in mitigation of any damages to which plaintiff might otherwise be entitled, defendant repeats and reiterates all and singular the matters stated in the paragraphs hereof numbered "Seventh" and "Eighth," and gives notice that it will give evidence thereof as a partial defense in mitigation of damages as well as in justification upon the trial of this action.

Wherefore, defendant demands that the complaint herein be dismissed, with costs.

DYKMAN, OELAND & KUHN,
Attorneys for Defendant,
Office & Post Office Address,
177 Montague Street,
Brooklyn, N. Y.

Verification.

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Extract from Minutes.

61

At a Trial Term of the Supreme Court of the State of New York, held in and for Kings County, at the Court House in the Borough of Brooklyn, on the 20th, 21st, 22nd, 23rd, 24th, 27th and 28th days of January, 1913.

Present: Hon. Charles H. Kelby, Justice.

CHARLES T. RUSSELL, vs BROOKLYN DAILY EAGLE.	#6439. Part Three.

62

This cause having been called for trial in its order on the Calendar, and twelve trial jurors having been duly drawn, empanelled and sworn to try the same, the jury come into court and say that they find a verdict for the defendant.

Motion to set aside verdict and for a new trial upon all the grounds specified in Section 999 of the Code of Civil Procedure made by counsel for plaintiff, and denied.

Thirty days' stay of execution after service of notice of entry of judgment and sixty days in which to prepare and serve a case on appeal granted to plaintiff.

63

February 5th, 1913. Kelby, J. Order denying motion to set aside verdict and for a new trial signed.

An Extract from the Minutes.

CHAS. S. DEVOY,
Clerk.

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64 **Judgment.**

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF KINGS.

CHARLES T. RUSSELL,
Plaintiff,
against
THE BROOKLYN DAILY EAGLE,
Defendant.

65 The above entitled action having duly come on for trial and having been tried at a Trial Term, Part III of this Court, on the 22nd, 23rd, 24th, 25th, 27th and 28th days of January, 1913, before Mr. Justice Char H. Kelby and a jury, and the jury having duly rendered verdict in favor of the defendant and against the plaintiff, and the costs of the defendant having been duly adjusted at the sum of One hundred fifteen and 57/100 Dollars;

Now, on motion of Dykman, Oeland & Kuhn, attorneys for defendant, it is

Adjudged, that the plaintiff recover nothing of the
66 defendant and that the defendant The Brooklyn Daily Eagle recover of the plaintiff Charles T. Russell the sum of One hundred fifteen and 57/100 dollars, its costs as taxed and have execution therefor.

Judgment signed and entered this 3rd day of February, 1913.

CHARLES S. DEVOY,
Clerk.

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Order Denying Motion for New Trial.

At a Trial Term, Part III of the Supreme Court, of the State of New York, held in and for the County of Kings, at the County Court House, in the Borough of Brooklyn, City of New York, on the 10th day of February, 1913.

Present: Hon. Charles H. Kelby, Justice.

CHARLES T. RUSSELL,
Plaintiff,
vs.
THE BROOKLYN DAILY EAGLE,
Defendant.

The issues in this action having come on for trial before the Hon. Charles H. Kelby and a jury, at a Trial Term of this Court, Part III, held at the Court House, in the Borough of Brooklyn, City of New York, on the 22nd day of January, 1913, and continued on the 23rd, 24th, 25th, 27th, 28th days of January 1913, and the jury on the said 28th day of January, 1913, having rendered a verdict in favor of the defendant and against the plaintiff, and the plaintiff having made a motion to set aside the verdict and for a new trial on all the grounds stated in Section 999 of the Code of Civil Procedure, and after hearing Frederick W. Sparks, of counsel, in support of said motion, and Isaac R. Oeland, of counsel, in opposition thereto, and due deliberation having been had thereon;

Now, on motion of Dykman, Oeland & Kuhn, attorneys for the defendant herein, it is

Ordered, that the said motion be and it hereby is in all respects denied.

Enter,

C. H. K.,
J. S. C.

Granted, Feb. 10, 1913.
Charles S. Devoy, Clerk.

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70 **Case.**

NEW YORK SUPREME COURT,

KINGS COUNTY.

CHARLES T. RUSSELL,

vs.

THE BROOKLYN DAILY EAGLE.

Brooklyn, January 20, 1913.

71 Before Hon. C. H. Kelby, J., and a jury.

Appearances:

For plaintiff: Messrs. Sparks & Fuller; Frederick W. Sparks, Esq., Joseph F. Rutherford, Esq., of counsel.

For defendant: Messrs. Dykman, Oeland & Kuhn, Isaac R. Oeland, Esq., of counsel.

A jury is empanelled and sworn.

Adjourned to January 21, 1913, at 10 A. M.

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72 Trial resumed January 21, 1913.

Mr. Sparks opens the case on behalf of the plaintiff.

Mr. Oeland opens the case on behalf of the defendant.

KENT B. STONER, Fincastle, Virginia, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am a resident of Virginia and a veteran of the Civil War, on the Confederate side. I don't know

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that I could say that I have an occupation. I own some land in Virginia. I own in the county seat in which I live seven acres of land. I own a considerable amount of mineral land. I don't own a farm. In the year 1904 my attention was called to a certain plant in my garden which afterwards proved to be wheat. My son called my attention to it first. I examined it. I looked at it. I cannot say that—it was under these circumstances. I have a garden of about an acre. The plowman came to plow the garden and my boy said he saw an unusual plant, which he took to be what is called with us a parlor grass, a coarse 74
grass, an ornamental grass. This boy thought it was a stalk of parlor grass, what is known with us as parlor grass, a coarse ornamental grass; and asked that I direct the plowman not to plow it up. I did so.

Q. Did that plant head out some time in May? A. Yes. It headed out the last of May.

It proved to be a plant of wheat. That original plant had one hundred and forty-two heads. I did not discover that plant in answer to any prayer sent up to discover it. I do not know who circulated the story that the plant was discovered in answer to prayer.

Q. You did not circulate that? A. I did not, sir. 75

I harvested that plant when it ripened and saved the seed of the plant. This plant had one hundred and forty-two heads. It was attacked by sparrows. I don't know whether you people up in this country have English sparrows or not. We have a great many with us. I got from that about twenty-five hundred grains only, because there was about half of it eaten out by sparrows. There was over four thousand grains to the stalk, each particular plant. However, I did not get more than twenty-five hundred. I planted eighteen hundred grains of that seed in the fall of 1904. The other I kept for fear I would lose

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76 it. That eighteen hundred grains made a little bit over forty-five pounds.

Q. How many grains did you get for each of the eighteen hundred grains planted? A. I got about two hundred and fifty.

Q. That is, you got two hundred and fifty grains for each grain that you planted? A. Yes, sir.

Q. What is the ordinary yield of ordinary wheat for one grain, how many grains do you generally get? A. Well, that would be a difficult question to answer. It would depend upon how you planted.

77 Q. Do you know what the average yield of ordinary wheat is? A. Yes, sir.

Q. Will you state what the ordinary proportion is, as the seed is now sown in this country? A. Oh, well—

Mr. Oeland: As Mr. Stoner is not an experienced farmer, I object to it.

The Witness: I have been on a farm all my life, and on land all my life. I have owned farms. I was born on a farm, and been over sixty years on a farm. I cannot say that either. I mean interested in lands. I have been a merchant also.

78 The Court: Can you tell us from your own experience what the multiplication of grain was in Virginia on your place?

The Witness: Yes, sir. It was about ten.

Q. For one grain? A. That is, a farmer would put in a bushel and a half and get fifteen bushels. That is the average.

Q. That amount in grains. You plant one grain and the return is ten grains? A. Yes, I suppose so. I mean simply, he gets ten grains for each one he sows.

We saved that wheat up until we got eight hundred bushels of it, and we lost the whole of that.

Q. Did you sell any part of the wheat that you raised from this original stalk? A. Oh, no, no, sir.

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Q. Dr. Carlton, didn't you sell some to him? A. Dr. Carlton?

Q. Yes. A. Well, now, when I answered "no," if I sold any from the original stalk, I presumed that you questioned me about whether I sold any of the first grains from the stalk.

Q. No, I mean as it multiplied? A. Oh, the result, yes. Yes, I sold that.

Q. What was your price per pound for the wheat? A. I got one dollar and twenty-five for all I sold.

Q. Excluding the sales in 1911, what was your price for that wheat prior to 1911? A. We had never 80
offered the wheat for sale by the bushel, I think, until 1910.

Q. Prior to issuing the pamphlet which you issued in connection with Mr. Knight, what was— A. That, I think, was in 1910.

Q. Whatever year that was, prior to that time, what was your price for it? A. One dollar and twenty-five per pound.

Q. Always sold it at that price? A. Yes. I have no recollection of selling it at any other price. I don't think I did. I sold some to Dr. Carlton. I think, four pounds. The only reason I remember that distinctly is because we put in our regular wheat book his
certificate. 81

Q. Did you have a government expert come down and investigate this wheat? A. Yes, sir. He was there two years.

Q. Who named this wheat "Miracle Wheat," if you know? A. Well, after raising the wheat, perhaps as much as two years, it was suggested the propriety of giving it a name. A good many names were suggested, and finally I adopted the name "Miracle Wheat." I don't know who first suggested the words, "Miracle Wheat."

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82 *Plaintiff's Witness, Kent B. Stoner, Direct*

Q. Do you know whether Pastor Russell ever suggested that you name it "Miracle Wheat"? A. I never saw Pastor Russell in my life until this morning, and never had any correspondence with him in any way. I had no suggestion from him at all. Whoever named it was some person connected with me who was interested in the wheat. That is my impression.

Q. Did you enter into an agreement with Mr. Knight not to place the wheat on the market until a certain period had elapsed and until you had accumulated a certain amount? A. I had sold a forty-five
83 per cent interest in this wheat, and that forty-five per cent interest was in this wheat which now belongs to Mr. Knight. I had sold the wheat by the pound, you understand, before I had ever met Mr. Knight or before Mr. Knight had become interested in the wheat. I want to make that plain, for fear I will get wrong in the dates. I only want to state what is true, so far as I know what is true, and can remember; but I am not a young man any more, and my memory is not as good as it has been, you understand.

Q. After you sold that forty-five per cent interest, did you have an agreement with Mr. Knight? A. Yes, sir. We had a verbal agreement to that effect, and so far as I know, I kept my part of the agree-
84 ment. I don't think I sold any. That verbal agreement was that we should not sell any of this wheat to any person at any price until this book was printed in 1910.

Q. That period was to extend for a period of three years? A. Well, now, I cannot say just exactly what that period is; I don't remember just when Mr. Knight came in possession of this interest that I sold to Mr. McCormack, a man who had robbed us—who robbed the Knights as well as ourselves. What was done by him, I cannot make any statement of because I don't know.

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85

Q. When was it you first sold the interest, in 1909? A. Well, I am not certain, but my impression is, to answer which year I would have to make a calculation in my book over the sowing. I suppose I sold to McCormack in 1907. However, I will only state that as to the best of my knowledge and belief. I am not sure.

Q. From the time you sold the interest, no matter what year it was in, down to the time that you issued the circular, you did not sell any of that wheat at any— A. No, I cannot say that. You see, there may be an intervening space of time between the sale to McCor-

86

mack and my meeting Mr. Knight, don't you see. I do not suppose I met Mr. Knight until 1908. I presume I met Mr. Knight in 1908. I think so. I am not absolutely certain.

Q. And it was with Mr. Knight you had your agreement not to put the wheat upon the market at any price? A. Yes. Prior to that time, 1908, or the date I first met Mr. Knight and made this agreement, I had been selling wheat for a dollar twenty-five a pound.

Q. And that was the lowest price that you had ever sold it at? A. I think so.

I planted that wheat every year on my own prem-

87

ises in what is termed an experimental plot. My object was to see what spaces of ground would make the best plant, the most productive plant. However, in the meantime it was sowed on farms in my county, people that were raising wheat for me, you understand. That is, I loaned them the seed. I simply would select my man and loan my seed with this understanding or this contract, that he owed me the amount of seed I loaned him, returnable at harvest. That wheat was mine if I paid him the cash price of milling wheat. He planted the wheat for me and I took it off his hands, all that he raised, at a certain price. It was my wheat

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88 if I paid for it, and I paid for it, of course. I continued to take all the wheat that my farmers raised.

Q. What is the difference between this wheat and the ordinary seed wheat? A. Well, we claim that the difference is its productiveness. We claim that a peck of it will seed an acre.

Q. That is, fifteen pounds? A. Yes.

Q. And get what yield? A. Well, that would depend, of course, upon the land.

Q. I am speaking generally of the average land? A. Well, we have made here in New Jersey a peck to the acre over forty bushels.

89 Q. What is the ordinary seeding of wheat to the acre? A. Well, I presume it about from a bushel and a half to two bushels. The average yield in the United States ordinary wheat, bushel and a half to two bushels, never exceeded fifteen bushels to the acre.

Q. So that this wheat will produce forty bushels to the acre sown fifteen—

Mr. Oeland: That is objected to.

Mr. Sparks: Let me finish the question.

Mr. Oeland: But I object to the last question. I should have done it before. He is stating the comparison of the average growth.

90 He says the average yield of the United States. I move to strike out the last answer.

The Court: Yes. I think it is an unfair comparison.

Plaintiff excepts.

Q. Are you speaking of your comparison of land, the ordinary land, where you raise forty bushels to the acre? A. I am speaking of the peck to the acre of wheat made here in New Jersey.

Q. And the character of the land? A. I don't know the character of the land at all. I never saw it. I just heard that on the certificate to that effect.

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91

Mr. Oeland: Then I move to strike that out. He says it is upon what some other person had done.

The Court: I think that is so. He says he knows nothing about it, except from a certificate.

The Witness: That is all I know.

The Court: I will strike out that last testimony, on the ground that it appears that the witness's knowledge is derived from some certificate of someone else, and not his personal knowledge.

92

Plaintiff excepts.

Q. Now, your own personal knowledge, what is the maximum yield that you know of, of your own personal knowledge of this wheat? A. Well, sir, I have grown plants, I suppose, as many as two thousand, possibly three thousand in experimenting, plants that would average twelve hundred grains to the plant.

Q. What does that make an acre? A. Well, I think that would make about eighty bushels.

Q. How much? A. I think about eighty bushels.

Q. Eighty bushels? A. Yes, sir; nine pounds to the acre.

93

Q. What is the stooling quality of this wheat? A. Well—

Q. You might explain to the court and jury, for I assume they do not know what "stooling quality" is, just what it is? A. I will endeavor to explain it in this way, your Honor. We would say that a seed would start there and come up and make one stem, and another seed would come up and make fifty or one hundred stems. One is considered more stools, and the other is not. Do you get that? One wheat will send up, perhaps, one grain, or one stalk, and another will send up one hundred stalks.

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94 Q. And that large stooling quality of this wheat is the cause of its productiveness? A. That is all that we claim.

Q. The ordinary wheat planted one grain, what is the stooling quality of that, the average? A. Well, that would depend upon the space, just as this would.

Q. When I ask these questions, I am asking for the general method of plainting as wheat is generally planted in this country, the ordinary wheat. What is it its stools? A. Well, now, the only way I could answer that question fairly would be this. I think that would depend upon the space. I cannot answer
95 it any other way. No other way would be true.

The Court: What wheat is used in your country?

The Witness: Well, we use our wheat, it is called Red Wonder, we use the Fuldz, and we use the old Mediterranean wheat. Those three, I believe, are the common wheats.

By Mr. Sparks:

Q. Take the best one. Which is the best one, in your judgment? A. I think, perhaps, the Red Wonder is the best.

Q. Take the Red Wonder wheat. What is the best stooling that you have seen in a single grain of that
96 wheat in your country grown under the most favorable circumstances? A. Your question is, what is the biggest plant I ever saw there. To the stool, do you mean, to the plant?

Q. I mean the individual plant? A. A single plant. I have no recollection of ever seeing a plant of that wheat have as much as seven heads.

The Court: What is the largest number you did see, is the question.

The Witness: Well, I don't know that I ever saw over five. The largest that we have grown from Miracle wheat was over three thousand grains to a

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plant. I don't think I have ever seen over five heads from any grown of ordinary wheat. This original plant of Miracle wheat had one hundred and forty-two heads. The largest plant I ever had was one hundred and sixty-seven heads. I have a stub of a plant here with me, all I could put in my valise. This is a stool of our wheat, Miracle wheat. I think there is, perhaps, something over seventy stalks in this plant.

Q. Have you any memorandum of that stool that will refresh your recollection? A. No, sir. That was not brought for the number. That is a four inch square paper. I brought that simply to show that you 98 cannot grow this wheat as other wheat is grown. That is my object. If you set that stool of wheat on that four inch stand—you understand that is perfectly dry and tied together. It was in the valise. That shows you cannot grow that wheat as other wheat is grown. That is our contention.

Q. Then in order to get the maximum yield from this wheat, you must give it more room than you give the ordinary wheat? A. Yes, sir, I have always contended, I have always said to the farmer, "if you intend to sow it as other wheats is sown, it will be a failure and not a success, and I advise you not to buy it." The idea is the more room you give it the greater the stooling qualities you get. We advise this wheat to be 99 sowed with one-half the spouts of drill closed. A drill is made with spouts every seven or eight inches. At least, I never saw any drill spouts unless they were spaced seven or eight inches apart. Now, that wheat comes down and if it is in an eight inch drill, you understand, the rows between this wheat are eight inches wide. Now, in stopping every other spout we get sixteen inches. That is our object in closing it. If we sow in the old way with that wheat it is a failure. We do not claim anything but failure in the result. Room is the essential. And one-fifth or one-

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100 sixth of the amount of our wheat sown to the acre is a success, but if you sow even the amount of it that you sow of other wheat, or sow it in the way other wheat is sown, we do not claim any result for it at all.

Q. What do you advise in reference to how this wheat shall be sown?

Mr. Oeland: That is objected to as immaterial and irrelevant.

Objection overruled. Exception taken.

Q. What were your suggestions as to how this wheat should be sown?

101

Mr. Oeland: That is objected to.

The Court: The only trouble about this is, that apparently the answer you refer to refers to someone else, somebody named Bohnet.

Mr. Oeland: I understand that Mr. Bohnet himself is the one who raised this wheat that was sold, and not Mr. Stoner. Therefore, Mr. Stoner's advice could not have influenced the publication.

The Court: I think I will exclude it.

Plaintiff excepts.

The Court: Unless it can be identified as the same wheat.

102

Mr. Sparks: We propose to do that.

The Court: These instructions were given by someone other than this man.

Mr. Sparks: Received from him.

The Court: I would rather have Mr. Bohnet testify as to his directions as to the planting.

Mr. Sparks: It is conceded that it is the same wheat.

Mr. Oeland: Yes, I concede it is the same wheat.

The Court: I will sustain the objection on the ground that the representations pleaded re-

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103

late to Mr. Bohnet's directions and not to this witness's.

Mr. Sparks: I take an exception.

Q. The idea is, that if you choke this wheat by planting it too close together, too thick in the planting, this will not have a chance to stool out? A. Yes, sir.

Q. This plant (indicating) is a plant raised from a single grain? A. Yes, sir.

Q. And the one where you got one hundred and sixty-eight stalks was a plant from a single grain? A. One hundred and sixty-seven. That was a volunteer stalk of wheat that came up in my garden the same way. My object in bringing that plant was simply to show that it is impossible to grow a plant of that size in a four by four inch space, such as the government uses in their experimental plants. The wider you plant the seed apart, the greater the stooling quality. I have been eight years in the effort to find out what is the smallest amount of space possible to produce the best plant.

104

Q. When you get the correct distance, the appearance of your field is a field of continuous stalks? A. Certainly.

Q. And the advantage of that, the greater yield and the cutting down of the amount of wheat which you sow to the acre? A. Yes, sir. The book shows the print of the standing wheat.

105

Mr. Sparks: I offer this plant in evidence.

Received and marked Exhibit 1.

Q. Are these three heads Miracle wheat? A. Yes, sir.

Q. Coming from this plant? A. No, sir. I cannot say whether they come from this plant or not.

Q. But is this the ordinary size of the heads on Miracle wheat? A. Yes, sir. I have no objection in the world to telling you my reason for bringing it. I

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106 have nothing in the world to conceal, if you want to know it. My reason was simply this. That Mr. Miller, in his report on that wheat, Mr. Miller is a cerealist or specialist from the Agricultural Department at Washington, he spoke of the heads averaging— I brought them to show that they were the average heads according to his report, four and one-half inch heads.

Mr. Oeland: I object to that, and ask to strike it out.

The Court: Strike it out.

Plaintiff excepts.

107 Q. Now, independent of what Mr. Miller said about these heads being the average heads, will you state of your own knowledge, your own experience, whether these are the average heads of Miracle wheat? A. Those are the average heads, so far as I have raised the wheat, yes. I cannot claim that these heads of wheat would show any particular difference between that and any other bearded wheat heads. They might show the straws different; but I don't know that the heads would be very different. Then it is a three mesh head. If it was a two mesh, of course, there would be that difference. The ordinary mesh of ordinary wheat is two grains. This is three. I think, perhaps,
108 some of them is four, I am not sure. You can tell. I think four, maybe. But my object was the length, and not anything else.

Q. In reference to the length of the heads, are these heads not longer than the ordinary head of wheat?

Mr. Oeland: I object to counsel leading his witness. He has said it was the average head of bearded wheat.

The Court: What is the fact as to ordinary wheat grown in your country as compared with this wheat, as to the length of the head?

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109

The Witness: It is smaller.

Q. How much, would you say? A. Well, I cannot see any way in the wide world that I could give a statement that would give any information except upon the ground upon which you have objected to that statement.

Q. I haven't objected. Judge Oeland may, but until he does, will you answer the question? A. Well, we sow down in our country from a bushel and a half to two bushels and over to the acre of ordinary wheat; and we are very thankful if we can get fifteen bushels. Then we know that we do not get over ten to one. That is the only way in the world I see that I can answer it. Now, to say that we would go into that wheat field, we would not find every head of wheat in there, you understand, the same length at all. We could get an average. We could do no more.

110

Mr. Sparks: I offer these three heads of wheat in evidence.

Received and marked Exhibit 2.

CROSS-EXAMINATION by Mr. Oeland:

Q. You have never made any claim at all that this wheat was of miraculous origin, have you? A. Well, let me see now that I understand that question.

111

Q. You understand what a miracle is, don't you? You have read the Bible lots? A. Yes, I think so.

Q. That is what I am talking about, that it came as a result of prayer or something. A. No, no, I have never made that claim.

Q. I want to get from you that you do not claim that this wheat—when I use "miraculous origin" I mean it was the result of prayer or something like that. A. I never made that claim.

Q. And do not now? A. No, sir.

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112 Q. Do you read the Zion Watch Tower and Herald of Christ's Presence? A. I do not; I know nothing about it.

Q. If they published in that paper in March 15, 1908, that "the public press is telling of the origin of miracle wheat in answer to prayer, and the description has all the earmarks of truth to it, in that it gives the address of the man whose prayers are said to have been answered, K. B. Stoner, farmer, Fincastle, Boutetourt County, Virginia," you did not authorize any such publication as that? A. No, sir; but I can tell you who did authorize it, I think, but I did not.

113

Q. Wait a moment. You did not authorize any comment like this: "Taking this account to be but one-half true, it testifies afresh to God's ability to provide things needful for the token of restitution of all things which God has spoken of from the mouth of the Holy Prophet since the world began"? A. Well, now, let me see. If I understand your question, if I believe in the restitution?

Mr. Sparks: I want to have the previous question answered, unless it is withdrawn.

Mr. Oeland: I will withdraw it, and introduce it later.

114

Q. Now, the production of wheat is determined by the soil in which it is raised and fertility of the soil, isn't it, to a large extent? A. Well, I would say that that would apply to every grain of wheat grown or grass, everything, trees and flower.

Q. When you speak of the stooling qualities of this wheat, you simply mean the stalk will produce more branches than what you claim for ordinary wheat? A. More heads, yes, sir.

Q. Each stalk has a head on it, therefore, if it would produce more stalks it has more heads? A. Yes, sir.

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Q. I say those grades of wheat you spoke about down there that you used, some of the ordinary grades A. Do you mean the names of them?

Q. Yes. A. There is a wheat used there that is largely used through the east here, I understand. It is called Red Wonder. It is a bearded wheat.

Q. Do you raise a wheat called the Red Wave? A. No.

Q. What is Fullcastor? A. I don't know. We raise Fults wheat to some extent.

Q. Is that a bearded wheat? A. No.

Q. Take these two, the Red Wonder and Fults. I say, the stooling quality of that wheat depends, to some extent, upon the way it is planted in the ground and the fertility of the soil, doesn't it? A. I could answer that by saying "yes." Everything that we plant would depend upon that.

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Q. Very true. If you take a grain of either one of those grades of wheat, you take and put it eight inches apart in rich soil, it will stool more than if it is sown thick? A. Yes.

Q. Any wheat. I am not saying about this wheat, but any wheat. I am talking about any wheat. Isn't it true that if you give it a fertile soil and give it more room that it will make more stools? A. Yes. My opinion particularly is this, that you can give—

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Q. I am not asking you that. I am asking for it generally. In other words, that is one way you develop the stool from one grain, you give it room and put it in fertile soil, isn't that true, with any wheat? A. It is true that nothing can be brought to its high state of perfection by dwarfing or smothering.

Q. Another way that farmers have to make wheat stool or develop more stalks is to sow it early in the fall, and then pasture it awhile, isn't that true? A. It is not true with us. Really, we are not in a wheat country. My county is a canning county almost exclusively.

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118 Q. The way you plant this wheat to get this large stool quality was to plant it in your garden in a drill about eight or ten inches apart, is that right, or sixteen inches? A. When we looked at the plant, twice as big as that, (referring to Exhibit No. 1), I have had them more than twice as big as that, I could readily see that I could not plant them an inch apart and two inches apart, and grow the plant. It would be impossible.

Q. Because whenever you crowded them, then they do not stool as much as they do when they are separate? A. Now, see if I cannot save you a little trouble. Our claim is on these two things, simply, we claim
119 that you must give it the room for its proper development. We claim if you sow even a bushel to an acre, it is impossible to make a crop, because it has not room. We do not claim anything different from what you want to prove, nothing at all. I do not believe there will be any conflict.

Q. Well, did you take, in comparing this with these fifteen bushels to the acre of ordinary wheat, did you take and plant an acre of it and set it sixteen and eighteen inches apart in order to see what it would yield? A. No. Why? Because I could not get the farmers who grow the wheat to do it. It is new.

The Court: He is speaking about old wheats. Have
120 you made experiments with old wheat by putting seeds further part?

The Witness: No. I have never grown any old wheat. I know what it would do without growing it. I tried that fifty years ago.

Q. So you don't know, you did not give it a chance. You knew what it would do, and therefore you did not give it a chance? A. I knew fifty years ago what it would do, and seen it.

Q. You were a member of the Stoner Seed Wheat Company, weren't you? A. Yes, sir.

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Q. This advertisement occurred in September, 1911, when they were offering it for sale at one dollar a pound. Isn't it true that at that time you were selling wheat in Philadelphia, the Stoner Seed Wheat Company, through William Henry Morle for five dollars a bushel? A. I suppose, now, Mr. Knight could answer that question. I cannot.

Q. Will you look at this circular? A. You mean this was 1911, do I understand you?

Q. Yes, that is my question, 1911. A. Well I suppose nothing different in this from our wheat book; that we were selling and advertising, a copy of which

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I have in my pocket.

Q. I am asking you if it is not true that you and Mr. Knight were selling it through Mr. Morle at Philadelphia in 1911, at the same time that this advertisement appeared, at five dollars a bushel through Morle? A. I was doing it in Virginia. I think Mr. Knight was. But I am not sure of him. This wheat weighs sixty-four pounds to the bushel. It is a very heavy wheat, that is, with us. Sixty pounds is the standard, you understand. If you give a man sixty pounds he has a bushel.

Q. You were selling it in Virginia in 1911 at five dollars a bushel? A. I think so. I had on hand more than I sold. I had on hand more than I could sell at

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five dollars a bushel except in my own county. I believe I could have sold every bushel of that wheat in my county. I never sold an ounce in my county; and I had a reason for it which I think a good one. I did not care for some man to buy a few bushels of wheat and take my chance of bread out of my mouth. There is nothing improper in it.

RE-DIRECT EXAMINATION by Mr. Sparks:

Q. Refreshing your recollection from your pamphlet and the date of it, when was the article which you

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read and which is published in that pamphlet written, referring to the date on the bottom? A. I think 1910.

The Witness: This is June, I see, June 29, 1911.

Q. Isn't that the first article you ever put out in reference to Miracle wheat? A. This is the first article ever I put out.

Q. You wrote that article on the 29th of June, 1911? A. Yes, sir. I do not think that we got the copy from the printer before August. This, however, is just a matter of recollection, you understand.

Q. Your best impression and recollection, you wrote the article on the 29th of June, 1911, and did not get the pamphlet until August, 1911? A. Yes, or even possibly part of them in September.

Q. So the first time that this wheat was offered for sale at five dollars a bushel was two months after it appeared in the Watch Tower in Brooklyn? A. I don't know what that date is in Brooklyn.

Q. It was the 15th of June? A. This was the only offer—this is the first.

Q. This publication was on June 15, 1911, and your offer did not come until some time in August, as I understand it, 1911? A. Yes, sir; that is correct.

Mr. Sparks: I offer this article in evidence.

Mr. Oeland: We object to that as irrelevant, incompetent and immaterial. The advertisement which we referred to here was in the paper in September, 1911.

The Court: Why do you want the publication itself in?

Mr. Sparks: Just to prove the date.

The Court: He identifies the date. He has read the date off and says it was the first one he issued, and none was sold prior to that.

Mr. Sparks: If your Honor considers that sufficient, I will accept it.

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Plaintiff's Witness, Joseph I. Knight, Direct 127

JOSEPH I. KNIGHT, SR., 1078 East Thirty-eighth Street, Brooklyn, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I was connected with Mr. Stoner and interested in the Miracle wheat. First met him and became acquainted with him in the summer of 1909. We entered into an arrangement, in which he had a certain percentage of interest and I had the balance; and that we were to have this seed grown for our individual interests. Each to have a percentage of the results. We 128
had an understanding that we were not to sell any seed in less than two years at any price. That agreement should have come to an end in 1912, really. It would apply only to the following season. It would end probably in 1911. Then we would market the seed in 1912. We anticipated that agreement one year. I sold some seeds in the months of August, September and October, 1911.

Q. That was the first sale of Miracle wheat that had been made since you became connected with Mr. Stoner? A. In America.

Q. Prior to that time, Miracle wheat could not be bought from you or Mr. Stoner under your agreement at any price? A. We refused to sell it at any price, 129
and refused to give it away for experimental purposes. The object of that was to get a stock of wheat on hand, seed wheat on hand, so that we would be able to make a profit out of our investment. And to avoid putting it out so we would have competition, to avoid the natural competition by the sale of the wheat. I took this wheat to Europe. I did not have it grown there. I took a full grown stalk, root, stalk and heads. I took a partially grown stalk, and a young spring stalk. I took seed wheat, the seed wheat itself in the grain.

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130 Q. Where did you sell or try to sell or exhibit those stalks that you took with you to Europe? A. In Italy, Austria, Hungary, Germany, Holland, England and France. I visited most of the Agricultural Departments, and had an interview, if possible, with the Minister of Agriculture in these different countries.

Q. Did any of the countries that you visited make a specialty of grain growing? A. Hungary is considered the greatest wheat country of its size in the world. It grows the finest—they make the finest flour in Hungary in the world. They were the first to introduce the roller process of grinding wheat; so I found that
131 they were, so far as I could judge, experts in wheat.

Q. Did you exhibit what you took there to the government officials? A. I did. And exhibited it to the authorities in control of the museum there. At Budapest they have the finest museum in the world, and have standard stalks of wheat from all over the world. They also have sample grains of wheat almost from all parts of the world. I exhibited what I had to those people, the different professors and those in charge of that museum. I also was taken over to the heads of their Agricultural High School, as they call it, where they made the experimental tests on the wheat, where they grew it, and experimented with it and developed it. I
132 was introduced to those people, and I showed the samples of wheat to those people also. I had a sample vial of the grain, and they asked me if they could have a few grains to test it. They had an instrument there for slicing or splitting the grains so they could examine the interior microscopically. I said certainly. They took some out and put it in this instrument and sliced it, and then looked at it under the miscroscope.

Q. In comparison to the wheat that they had there on exhibition and the wheat you took with you, how did this compare with it? A. Well, I never saw a stalk of wheat that was put on exhibition in Europe

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anywhere that could compare with ours, as regards both the number of stalks from a single grain or the size of the head. The stalks that I saw in all the various countries were small, similar to our wheat that we grow from what we call the ordinary seed wheat. I had this Miracle wheat grown under contract by a number of farmers, distributed in New Jersey, Pennsylvania, Delaware and Maryland, people that I have known a great many years. They planted Miracle wheat, and their own seed side and side in the same field; and I have seen it grown in that way. I walked out into the field and examined the wheat, and examined our own, especially to see whether it would stool out as we claimed it ought to. I examined their own wheat, the wheat grown from their own seed, to see what the stooling properties of that was. I also examined it side by side to see the relative sizes of the heads between the Miracle and ordinary or their own wheat. I found that the Miracle wheat stooled—I counted as high as forty-four to fifty heads from a single grain of the Miracle wheat, and I never was able to find four heads of wheat grown from a single grain of any wheat I have seen planted in competition with ours amongst the farmers where I had dealings.

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Q. What is the largest stool that you have seen? A. One hundred and twenty-five stalks.

135

Q. What is the largest stool that you have seen from the ordinary seed? A. I never saw one having four stalks to it; and in all my talks with my farmers that grew the seed for me—

Q. Your experience with this wheat has extended over a period of how long? A. Since 1909.

Q. And you have traveled in the different countries that you have enumerated and have traveled over the five different states you have enumerated; and the largest stool you have seen of ordinary wheat is four stalks to a single grain? A. I never saw one of more

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136 than four. I don't think I ever saw more than one or two containing four. You often see two, sometimes three; but universally one stalk from a grain.

Q. Your search has been with the idea of determining the different stooling qualities of Miracle wheat and the ordinary wheat? A. Yes. I was interested in seeing whether the Miracle wheat that I was interested in held to the stooling properties that was claimed for it.

CROSS-EXAMINATION by Mr. Oeland:

137 I never claimed that this wheat was of miraculous origin.

Q. Did you sell any wheat to these foreign governments? A. I did not to the government, but to individuals.

Q. Did you sell any to the foreign government representatives that you said that you called on? A. I gave some of it, the seed, to plant in their experimental nurseries. The Ministers of Agriculture in these foreign countries did not buy any wheat from me.

Q. Did you have any complaint from any of them that it was subject peculiarly to black rust? A. No, sir. As you put the question, no.

138 Q. Did you have any complaint that it was susceptible to black rust? A. Well, I don't know how to answer, the way you put it.

Q. Isn't it true that in September, 1911, you were selling this wheat through Henry Morle of Philadelphia, offering it to the public generally at five dollars per bushel?

Mr. Sparks: I object to that on the ground that September, 1911, is after the date of our publication, which is in June.

The Court: Do you mean the publication complained of in this action?

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Mr. Sparks: No. The publication in the Watch Tower that it was offered for sale.

The Court: I will allow it if it appears to be before the article complained of in the Eagle.

Mr. Oeland: The article complained of in the Eagle is the 23rd of September, 1911.

The Court: I will allow it.

Plaintiff excepts.

A. It is true.

I had an interview in 1911, with Mr. Collingsworth of "The Rural New Yorker" in New York about the sale of this wheat.

140

Q. Did you sell some to the Agriculture School over in New Jersey in 1911? A. I did not sell any.

Q. Did you get the names of some people who wanted to buy through the Agricultural School over in New Jersey and ship the wheat? A. I did.

Q. How much did you sell over there? A. Let me qualify that answer, and probably make it clearer to you. Mr. Minkler—

The Witness: Did I sell any wheat in New Jersey in 1911?

Q. Yes? A. I did. I called on Mr. Minkler over there in reference to this wheat. He is in the Agricultural School in New Jersey.

141

Q. Just the same as you called on these foreign agricultural schools? A. Yes, sir.

Q. Didn't you offer to give Mr. Minkler a dollar a bushel for any wheat he would sell for you?

Mr. Sparks: That is objected to as incompetent, immaterial and irrelevant.

The Court: I will allow it as evidence of value at that time.

Exception taken.

Q. Wait a minute and I will show you a letter. I hand you copies of a letter dated June 21, 1911, one

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142 *Plaintiff's Witness, Joseph I. Knight, Cross*

dated July 11, 1911, one dated June 21, 1911 and ask you to read those and refresh your recollection?

Q. I say, is your recollection refreshed, whether or not you made an offer to give a dollar a bushel for wheat that you would sell this man Minkler?

These letters appear to be verbatim copies of letters I wrote or received from Mr. Minkler, as far as my memory is concerned.

Letter dated June 21, 1911, marked Exhibit A for identification.

The letter of August 28, 1911, to J. I. Knight
143 marked Exhibit B for identification.

The letter of Mr. Knight to Professor Minkler, dated July 11, 1911, marked C for identification.

Q. Isn't it true that in 1911, in June and July, 1911, you were offering the wheat for sale in New Jersey at five dollars a bushel? A. It is possible that I might have offered to sell it at that price in July, but I did not sell any.

Q. I am not talking about the sale of it. Isn't it true that you were offering to sell it at five dollars a bushel?

The Witness: In the summer of 1911 in this country.

144 Q. Isn't it true that in June, 1911, you were offering to sell this wheat through Professor Minkler over in New Jersey for five dollars a bushel? A. If so stated in that letter, it is true.

Q. Look at your letter? A. I do not construe it from reading that letter; and my answer to you, on my reading this letter as I construe it, is a correct answer.

Q. Isn't it true that in June, 1911, you were offering to give Professor Minkler of New Jersey, who was in the Agricultural Department over there, one

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dollar a bushel for any wheat he would enable you to sell? A. From this letter, I made the proposition to Mr. Minkler that I would allow him one dollar a bushel commission, if he could sell wheat which I proposed to sell this seeding for the first time, in the fall.

Q. Wasn't that proposition made in June? A. We have to wait until our wheat is grown. I was not suggesting to have any grain to sell until my crop came in, which was after July.

The Court: The question is whether you were offering him a commission at that time or not.

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The Witness: I was, for wheat.

Q. A dollar a bushel? A. For wheat sold after I got my crop, that is true.

Q. Didn't you know it was improper to offer a representative of the State Government there a dollar a bushel interest in this wheat to sell it? A. Why, no.

I did sell some of this Miracle wheat in Jersey in September, 1911.

Q. How much? A. I sold to different parties. I suppose in all I sold one hundred bushels or more probably. I got five dollars a bushel.

Q. Is this a copy of a letter that you wrote Mr. Minkler on August 26, 1910? A. I recognize that as a copy of a letter I wrote to Mr. Minkler.

147

Letter referred to marked Exhibit D for identification.

Q. Did you make a proposition that if you got a favorable report you could use it to your mutual interest? A. Only what is stated in that letter. I made that offer through that letter.

Q. Did you mean there "to your mutual interest" that it was to be a dollar a bushel that you afterwards made him an offer for? A. No, sir.

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148 The names of the people to whom I sold wheat over in New Jersey are Miss Clark and Mr. Redrow. I sold to Mr. Tomlinson, to Mr. Haynes, and to Mr. Hunt and a number of others. That is in September and October, 1911. That is what you asked me? That is the reason I wanted to answer the question correctly, and that is the reason I wanted to get the time and fact together. This wheat was planted with other kinds on Mr. Hunt's place in New Jersey. Mr. Tomlinson's place, the two Tomlinson's; Mr. Cooper in Delaware; several others. I think they used the Fultz wheat.

149 several others. I think they used the Fultz wheat in comparison. There may have been other varieties. Fultz wheat is a bearded wheat. They did not plant their own the same distance apart as the Miracle. They planted with a drill, the same drill, the only difference is the quantity.

Q. Was this other wheat planted the same distance apart in the soil as this wheat? A. It was not.

With their own wheat they put a bushel and a half in the drill.

Q. I asked about this wheat. How far apart was this wheat planted, Miracle wheat? A. It was drilled in, in the row, at half a bushel to the acre. How far each grain was I could not tell you.

150 Q. Then you did not make observations enough to determine how far it was planted apart? A. Yes, sir, with my eyes I could see. I see some grains three inches apart, four inches apart and see two grains together, and all that sort of thing.

The Court: The average he means, what was the average distance between them?

The Witness: The average naturally would be about four to one.

My observations was that the distance between the rows in the Miracle wheat was about one-fourth of what it was in the other. In other words, the Miracle

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wheat would naturally be four times as far apart, distributed as the other.

Q. You are reasoning that out because you planted half a bushel of Miracle and eight pecks of the other? A. It is planted mechanically with an instrument. They plant mechanically. That is what I base it upon. It is not a matter of dropping with the hand.

Q. How much do you plant the other wheat on the acre? A. A bushel and a half to two bushels; some two bushel and some a bushel and a half; and it may be they call it planting two and one-half bushels to the acre.

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I saw it on a number of farms, and I will tell you exactly what it is. Some of these farmers would plant a bushel and a half, and some of these farmers would plant two bushels, and I have had some farmers would plant two bushels and a half. I have seen the seed in all these farms. I am trying to tell you just exactly as it is, and no other way. I am not trying to avoid your question.

Q. Which farm was it that had a bushel and a half planted? A. Mr. Tomlinson's.

Q. How much of the Miracle wheat did he plant? A. Half a bushel.

Q. And you reason out as the difference in space between Miracle wheat in the ground and the other 153
from the amount of wheat planted? A. No. You could see from your eye that there was a great difference. But I could not give you the individual distance between the grains.

Q. If you saw it with your eyes, such as it was, tell us how wide apart the Miracle wheat was planted in the ground and how wide the other? A. I could not answer that question, and no living man could.

Q. Don't you know that wheat planted thick will not stool as much as wheat planted thin, to put it in another way? A. I do.

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154 *Plaintiff's Witness, Joseph I. Knight, Re-direct*

RE-DIRECT EXAMINATION by Mr. Sparks:

Q. When did you first meet Pastor Russell? A. This morning.

Q. You never met any of the people connected with his association or the work he is connected with? A. Never.

Q. I believe that you were interviewed by the Eagle people too before this trial commenced? A. A gentleman was at my house, called to see me, claiming that he came from the Eagle people.

155 I testified as to the observations made in the planting of Miracle wheat and common wheat, I mean the common wheat was sown as it is generally sown throughout this country. The wheat was sown throughout the section of the country I was familiar with. It was sown in the way farmers and agriculturists have decided was the best way to sow the ordinary wheat.

Q. Miracle wheat was sown one-fourth as much as the ordinary wheat? A. That is what we recommended.

These places where I observed common wheat and Miracle wheat growing in competition the Miracle wheat was planted one-fourth as much as the ordinary wheat; in some places a little more and in

156 others a little less. The ordinary wheat was sown as it is generally sown throughout that territory.

Q. Will you examine that stool and see whether you can say that is Miracle wheat? Can you say whether that is Miracle wheat? A. (Examines bunch wheat.) I should say it was.

That is the way I see it growing generally throughout the section where I have seen it growing, except not so large stalks as that, but stooling similar as that does.

Q. This is different in what respect from the Miracle wheat grown in Jersey where you are familiar with

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it? A. I raised stalks that went as high as sixty or more heads to the single grain planted. That I should say was more than that. My heads were fully as large as this. That wheat is taller than mine. In height it is taller than mine. Proportionately I think the stalks are about as strong as mine.

Q. That is grown from one seed? A. I should say from an examination of that, that was grown from one seed.

Mr. Sparks: I offer that in evidence.

Received in evidence, and marked Exhibit 3.

158

When I commenced to offer that seed for sale in August and September, my efforts to sell it were personal solicitations, individuals that I knew.

Q. Will you tell what efforts you made to sell the wheat in August and September, if any? A. I sold through personal solicitations, and I put it in the hands of seed men to sell.

The Court: What seed men?

The Witness: I put it in the hands of Morle of Philadelphia, and I put it in the hands of Mitchell of Philadelphia—four parties in Philadelphia, four seed houses in Philadelphia.

Q. Did you put it in any seed houses in Brooklyn or New York? A. I never had it for sale in any seed houses in Brooklyn or New York.

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I advertised it in, I think it was, three agricultural papers, but not in daily papers. No daily papers published in Brooklyn or in New York. I had never communicated with Pastor Russell about this wheat, nor with any person that I know who was connected with him in his work.

Q. Your original arrangement with Mr. Stoner was to put this wheat on the market in 1912? A. Yes, sir.

Q. Now, you anticipated that a year? A. Yes, sir.

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160 *Plaintiff's Witness, Joseph A. Carlton, Direct*

Q. If you were not to put this wheat on the market until 1912 you would not have seen Mr. Menkler of Jersey in 1911? A. No, sir.

Q. And because you anticipated putting it on the market by a year you saw Mr. Minkler in reference to the matter? A. Yes, sir.

Q. Did you ever offer to Mr. Minkler any money for making a favorable report upon this wheat? A. No, sir.

Q. Have you got the original report from Mr. Minkler? A. Why, I have amongst my papers, yes; but I don't know that I have it with me.

161 I could find it at the house and bring it here tomorrow. I have been offered nothing for my testimony, of course.

JOSEPH A. CARLTON, Palmetto, Georgia, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am a dentist by profession. Practice my profession in the Town of Palmetto. I read Pastor Rus-

162 sell's books and his magazine. I purchased from Mr. Stoner some Miracle wheat in 1908. I am the owner of a farm in Georgia, of two hundred and fifty-six acres. I oversee it, I look after it. I have a farmer that does the managing and we consult. He runs it for me upon a share basis.

Q. Did you take any account or keep any report of the planting of that wheat that you received from Mr. Stoner? A. I did.

I ordered four pounds and paid Mr. Stoner five dollars for it; one dollar and a quarter a pound. When I received the wheat it came in two packages. It came

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by mail, and one of the packages had burst. There was only a pound and three-quarters in that package, sack included, as the mail requires the exact weight. The other two pound package was all right. I planted the pound and three-quarters to about one-fifth of an acre of land and I took accurate account of the yield from that pound and three-quarters. My result was eight bushels and twenty-four pounds; that is five hundred and four pounds. The other two pounds I did not keep track of especially. Georgia is not considered a wheat growing state. Cotton is our staple product.

Q. Did you have any chance to observe or opportunity to observe what ordinary wheat produces in that section? A. Why, yes. We sow some wheat. A great many farmers do not sow any, but a great many do sow some wheat. The ordinary yield is very small in our country. It runs anywhere from four and one-half bushels, you might say, to twenty to the acre. The land is very irregular and considerable wash; and where you find a field of ten acres you might find four acres good and you might find six acres that was very inferior.

The average yield per acre of wheat in our section I could not say exactly. It depends upon the section. I have had an opportunity of comparing the ordinary wheat and Miracle wheat on a farm adjoining mine. The results of a little over two acres of Miracle wheat that I sowed in 1910, I would not be positive, anyhow I sowed it, a little over two acres, and I reaped sixty-two and one-half bushels from those two acres. My neighbor near me had quite a field of wheat. He was going to compete with Miracle wheat, but I don't know for sure what the yield was, only from the thresh record.

Q. What was the thresh record? A. About four and one-half bushels—

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166 Mr. Oeland: That is objected to, what the thresh record was.

The Court: What do you mean by the thresh record? Do you mean what was realized in the threshing out of the wheat made by somebody else?

The Witness: Yes.

Q. But which you know of. Do you know of it yourself, what the record is? A. I did not get the record myself, no.

Q. You did not take the record? A. I did not take it myself, no, sir.

167 Q. But you were growing this wheat in competition with your neighbor? A. Well, not especially competition. He was the one who was going to compete, I think. I did not intend to compete with any one. There was no necessity of competing. They could not compete with me.

Q. What was his report to you of the amount of wheat that he raised from two and one-half acres? A. He did not report to me.

Q. How do you know of the result? A. From the gentleman that did the threshing.

I could not be sure what was the largest stool that I ever had from Miracle wheat. I can come within one or two stalks. Seventy-one stalks from one grain, if

168 I remember correctly; seventy—it would be between seventy and seventy-three. That is taken from a piece of ground I had sown with this Miracle wheat, growing in field conditions; but this was not in the pound and three-quarter lot we had. This was a year after I took special notice of it.

Q. That was ordinary field conditions you planted it under? Now, what was the largest number of stalks that you have seen in your country from ordinary wheat? A. I could not tell you because I never did count them. They were always so thin, so few, I could not say; but I took especial interest in this because there was so many.

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Plaintiff's Witness, Joseph A. Carlton, Direct 169

I did make a specialty of getting special seed for raising purposes on my farm. That is about my business in the farm. The other man does the work.

Q. That is what they call scientific farming that you did there? A. Seed selection.

I was induced to buy Miracle wheat like I am induced to buy all seed that I see advertised that claims value. I wanted to experiment with this new wheat.

Q. Did you consider when you were paying $1.25 a pound for it that you were paying an excessive price?

Objected to. Objection sustained. Exception taken. 170

I gave a peck of the Miracle seed wheat to Mr. Bohnet. That came off the or out of the wheat that was raised from the pound and three-quarters the next year. I have experimented with different kinds of wheat a few times; practically all the kinds that are used in our territory. We use Blue Stem and Fullcastor; one being a slick wheat as we call it, without any beards. The Fullcastor was a bearded wheat. There are other varieties, but I have had no experience with them.

Q. What wheat, in your opinion, is the best productive wheat of those you know of?

171

Mr. Oeland: That is objected to.

Objection overruled. Exception taken.

The Court: It is limited to those two varieties he has experimented with. Which is the best you know of?

Q. Of the three you have named, the Miracle, the Blue Stem and the Fullcastor? A. The Miracle is considered far superior to anything we have in our section.

Q. What superiority has it over the others? A. First, it requires very little seed to seed an acre.

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Q. How much to the acre in your opinion, produces the best results? A. From my experience, if you will multiply a pound and three-quarters on a fifth of an acre, you will find out that eight to ten pounds, I should say ten pounds to twelve pounds, in our section would be the proper amount to seed an acre provided it was correctly put in the ground, rightly fixed.

And that as against the usual custom of sowing from a bushel and a half to two bushels. That in pounds amounts to approximately ninety pounds or one hundred and twenty pounds, a bushel and a half and two bushels respectively being ninety pounds and one hundred and twenty pounds, as against ten pounds. Miracle wheat has a superior stalk. We frequently have hard winds and storms in our section through the spring and in May and June, and very frequently the wheat is blown down, more especially the Blue Stem, broken off; what we call bedded; and this Miracle wheat, the stalk is heavier, it is stronger, and will stand up under conditions that the other wheat will not stand under. It is most everything to wheat in our section —there is no comparison. I could not compare it with anything we can raise. It has the largest stalk and it has a larger head, and has a larger grain; and the flour is superior to anything I can buy. I have been eating it four years.

Q. This wheat when ground in flour, is a superior flour to that which you get from the ordinary wheat? A. According to my judgment I prefer it in preference to anything we can buy.

CROSS-EXAMINATION by Mr. Oeland:

I am a practicing dentist.

Q. But you make your money out of dentistry and spend it on the farm? A. Sometimes I think if I did not have one I would almost starve, and then I think if

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I did not have the other I would almost starve. They come in very nicely, the two together.

I practice my profession. I claim to be a dentist. I own a farm and experiment on that. The farm supports itself all right and supports me too. I live on the farm. I go to and from my business. My farm is one mile from the depot, just outside the incorporated limits of Palmetto. It is a very small town, about twelve or fifteen hundred, I guess. I think they claim two thousand. I would not be sure. Somewhere between twelve hundred and two thousand.

Q. You have long been a follower of the doctrines of Mr. Russell, haven't you? A. A follower? I do not really follow at all any one. I accept a great many of his teachings. I approve of them. I do not claim to follow any one. They are very interesting to me though, I will state.

176

Q. You pay your own expenses to come up here and testify? A. I have, yes.

Q. You are so much interested in the doctrines that he teaches as to be willing to pay your own expenses to testify in this matter? A. Why, I would, yes.

Q. How long have you been reading his literature? A. Oh, about eight years.

Q. Do you take his publication the "Watch Tower"? A. Yes and read it. That is the only use I have for it. I have been reading it closely for years. I read most everything that is in there.

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Q. Do you believe that this wheat was of miraculous origin? A. Why, if you would define "miraculous" for me, I could answer you.

Q. You are a reader of Mr. Russell's doctrines. You know what a miracle is in the Bible, don't you? A. Well, maybe I might be able to know. I don't know whether I do or not.

Q. You cannot answer whether you believe this wheat of miraculous origin or not unless I define a

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178 miracle. I would hate to undertake that. A. From my own judgment, from my best judgment, it is not miraculous.

Q. Your best judgment is that it is not miraculous? A. No, sir.

Q. Did you read the Watch Tower of October 1, 1910, referring to Miracle wheat? A. Yes.

Q. Look at it and see (handing witness paper)? A. Yes, sir, I have read that.

Q. That is headed "Signs of Restitution," isn't it; and then goes on and speaks about the Miracle wheat. What did you understand that to mean? "Signs of
179 Restitution continued," and then goes on and comments on this wheat. A. Restitution means to restore.

Q. But I mean in that connection, what did you understand that to mean, "Signs of Restitution"? A. Why, the signs of restoring of the products of the earth or the fruits of the earth.

Q. By divine intervention? A. Well, it is all divine, all of it.

Q. You wrote a letter to Mr. Russell, didn't you, saying that it was evidence of divine restitution? A. No, sir, I did not.

Q. Will you look at this letter, Doctor, and see if that is not a photographic copy of a letter you wrote to
180 Mr. Russell about this wheat? A. Yes, sir.

Mr. Oeland: Then I will offer the whole letter in evidence.

Letter referred to received in evidence and marked Exhibit E.

Q. Now, you know that the amount of stools you get from any grain of wheat depends upon the distance or space you give it in the ground to some extent? A. Why, I know if you put too much in the ground it will make a failure in our section.

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Q. If you want to get a stool of wheat, if you want to get the very best production, you leave plenty of space around it, don't you? A. I could not say. I could not say that all wheat you would have to do that.

Q. Well, take the commonest kind of wheat. Don't you know that you get better results and stronger wheat, and more grains, if you leave plenty of space around it than you would if you crowded it up? A. When you speak of plenty of space and crowding up, there is quite a difference. What would you mean by plenty of space, six inches or ten inches or four inches?

Q. We want to know what you mean. How much space you gave this Miracle wheat? A. I planted a pound and three-quarters to about one-fifth of an acre. I put it about—dropped it by the hand as near as we could in the drill four to six inches. Of course, it could not be dropped exactly; and the rows were something like twelve or fourteen or sixteen inches wide.

182

Q. Now, this wheat you raised, you prepared the ground especially for it, didn't you? A. Well, prepared the ground very much as we prepared ground for other wheat.

Q. What did you do to this particular ground you put this wheat in? A. We broke it up thoroughly, pulverized it, and fertilized it. I could not say just how much fertilizer we put in it. The ground was laid off in those rows, and the wheat was dropped in the furrow by hand. Twelve to sixteen inches apart, something like that. It was not exact. We put it four inches apart in the furrow. As near as we could, four to six.

183

Q. You did not mix up any two grains in one place, but you were careful to place each grain a space of four inches? A. We could not always do that. As near as we could, we did so.

Q. Did you try any other wheat in that way by the side of it? A. Not by the side of it.

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Q. On the same ground? A. In the same farm.

Q. No. On the same ground, the same plot of ground? A. No, sir.

Q. Did you give the common wheat a chance like that, by getting the ground in good shape, and then planting it a long distance apart? A. Never tried that on common wheat.

RE-DIRECT EXAMINATION by Mr. Sparks:

Q. You know it is generally accepted among farmers as good farming to plant ordinary wheat a bushel
185 and a half to two bushel to the acre? A. We plant from a bushel and a half to a bushed and three pecks as near as we can.

Q. Do you know from experience that the best results are obtained from sowing ordinary wheat from a pound and a half to two pounds—a bushel and a half to two bushels to the acre? A. I do.

Q. Sown any less than that you decrease the amount of wheat you get per acre? A. That is true in our section.

Q. Judge Oeland said that you were paying your expenses. Have you any reason for coming up and paying your own expenses as a witness? A. Why, I
186 came because I am interested.

Q. Just because you are interested in it as a law suit? A. Well, that would be one reason.

Q. Give me all your reasons, Doctor, please, will you, why are you here from Georgia, why have you come all this distance? A. I have come all this distince to testify in the case that I am now offering.

Q. For what reason? A. That we may—that I may give my testimony in this case.

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J. ADAMS BOHNET, residing in Pittsburgh, Pennsylvania, called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

I got from Dr. Carlton a peck of Miracle wheat. I sowed fourteen pounds of it. I didn't measure the land. Perhaps half an acre. I reaped eight bushels and a half. I disposed of those eight bushels and a half. I disposed of it myself to the extent of perhaps one-third of it or one-half of it, the other half was disposed of through M. Kuesthardt of Port Clinton.

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Q. What price did you sell it at in 1910? A. A dollar a pound.

Q. How much money did you get out of your sales? A. I kept no special track of it but perhaps two hundred and fifty or three hundred dollars.

The Court: Did you sell it as seed or what?

Witness: I sold it as seed by the pound. Turned over the proceeds to the Tract Society, as a donation. I kept some for sowing the following year. I sowed between half a bushel and three pecks, the following year. I didn't measure; between half a bushel and three pecks to about an acre and a quarter of ground. The yield was, owing to the conditions of the field and the weather, very small—about perhaps seventeen or eighteen bushels, nearly all grown on one part of the field. Nearly all grown on one small fraction or portion of the field, the rest of it was killed out. I wrote to Pastor Russell with reference to that wheat—

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Q. I show you a letter and ask you if that is the letter you wrote to Pastor Russell in reference to the wheat (hands witness paper)? A. Yes, sir.

Mr. Sparks: I offer it in evidence. (Paper handed to defendant's counsel).

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Letter received and marked Exhibit 4. Read in evidence.

Q. What price—what was the lowest price that you knew Miracle wheat to be selling at the time that you set and fixed the price at a dollar a pound? A. $75 a bushel. That was the lowest price that I had ever heard it sold at. I subsequently sent to the Watch Tower Society about sixteen or seventeen bushels; I don't know just exactly the amount. Approximately sixteen or seventeen bushels, along there somewhere.

Q. And you indicated that the proceeds from the
191 sale of that wheat were to be applied as a donation in your favor? A. Yes, sir—anyway the society would see fit.

The Court: What was the date of the letter?
Mr. Sparks: May 23rd, 1911.

Q. And at that time you had never heard of Miracle wheat being sold for less than $75 a bushel, that is, a dollar and a quarter a pound? A. I never had.

CROSS-EXAMINATION by Mr. Oeland:

I have been associated with Mr. Russell about
192 twenty years. That is not directly associated—about seventeen years. I worked first in the office at Allegheny as a stenographer. Worked there about two years and nine months. That was the first work I did for him, as far as I can recollect. Then I went to another city, Washington, D. C., and went into business there with a proprietary remedy concern; it is what is called Viavi remedies; it is a proprietary remedy, but not a patented remedy. It is medicine in various forms, and salves and capsules. It is principally for female complaints; most especially for that, not altogether. I worked in that line of work seven years—

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about seven years. I had nothing to do with the sale.

Q. While you were working there, were you still doing work for Mr. Russell? A. No, sir. I was seven years in that work. I was reading his literature all the time. Then I went into a commercial line of home supplies. That is an endeavor to deal directly between the producer and the consumer, getting goods at manufacturers rates and supplying them to the consumer. That was at Pittsburgh.

Q. How long were you in that? A. Until it failed.

Q. Then what did you do? A. Then I went into the Tract Society's office.

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Q. That is Mr. Russell? A. Yes. That is where I was at first. It is about six or seven years ago. In Allegheny. That was before he came to Brooklyn.

Q. Your first services were in Allegheny then with him? A. My first services in the east, except in earlier life.

Q. Did you ever have any service for him outside of Allegheny? A. No, sir. Six or seven years ago I went back there. That was about four years before he moved to Brooklyn. I worked at clerical work, and whatever there was to do, sometimes in one department; sometimes in another.

Q. What kind of work was done that you participated in? A. I filled orders, helped to fill orders for 195 books and pamphlets and did some work in the correspondence department. I can't remember all that I did—whatever there was round the office to do.

Q. How long did that work continue? A. Oh, maybe six months or so, and then I went out in the lecture field; travelled and lectured in the lines of Mr. Russell's teaching; followed his teachings in making my lectures.

Q. And you went from place to place? A. Yes.

Q. Spreading his doctrine? A. Doing the best I could to spread it. That continued until about a year

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196 ago. The society paid my expenses. I mean by that the Watch Tower Bible & Tract Society, of which Mr. Russell is the president and manager. I did not lecture on the sale of the books and pamphlets. I went on a farm about a year ago. That was not my first farming experience.

I was reared on a farm, and stayed on a farm until I was about twenty-four years of age. When I went back I started farming on a farm near Pittsburgh, the farm where I raised this wheat. I did go out to Ohio.

197 Q. Was there a farm out there too? A. No.

Out in Ohio I was travelling through there as part of the routing. I don't mean to say I was farming in Ohio. My farm where I raised this wheat was owned by the United Cemeteries Company. The office of the United Cemeteries Society was not in the office of the Bible & Tract Society at Allegheny. I don't know who are the stockholders in this society. I don't know that the Watch Tower Bible & Tract Society was one of the largest stockholders in that corporation. I walked out there to the farm. I was elected by the board as the superintendent of the place. I can't name all of the board. They had their meeting to elect in Pittsburgh, but not in the same house

198 with the Watch Tower Bible & Tract Society. I have been in charge of the farm about six years—five or six years. I commenced to grow wheat on it, Miracle wheat, about four years ago. The first wheat that I sold, I sent the money to the Watch Tower Bible & Tract Society. I did not lease it from the Cemeteries Company. They paid me a salary to run it. Then when I got another crop of some bushels in 1911 I sent that to the Watch Tower Bible & Tract Society, sent the wheat. I did not consult with the Board of Directors about what I was going to do with the wheat I raised there before I sent it to the Watch Tower

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Company. I did try another wheat down there, blue stem, by sowing it in the ground on an adjoining piece of ground to the piece that I sewed Miracle wheat on. I sowed it broadcast. Fourteen pounds on the plot, as I mentioned a moment ago, between half and three-quarters of an acre. Of the other wheat I planted one bushel. The bushel of common wheat or blue stem wheat produced eleven bushels—and the fourteen pounds of Miracle wheat produced eight bushels and a half. I don't think the blue stem was quite as thin sown as the Miracle wheat.

200

Q. Now in this letter that you sent to Mr. Russell you say "Last year I sent you the entire proceeds from the sale of Miracle wheat at one dollar per pound for using in spreading the truth in any way you might see fit." Is that right? A. Yes, sir; I suppose that it there.

That was the year 1910. I sent home all the money that I had gotten, and made arrangements to have the rest of it sent there. I didn't send it all myself. I sent the entire proceeds of the Cemetery Company's wheat to Mr. Russell. I did not get an authorization from the Board of Directors to do that because it was not necessary. "The money spent in procuring a supply of Miracle wheat would be equivalent to a donation to the tract society for the spread of the gospel message of great joy." I meant by that for the spread of the gospel as we understand it.

201

Q. "This Miracle wheat may be a factor to preserve life during troublesome times. It could not well be destroyed while growing in the field when wanton destruction prevailed. The trouble might end just at the time the wheat is ready to harvest." What does that mean?

Mr. Sparks: Objected to as incompetent, irrelevant and immaterial, and not within the issues.

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The Court: How is it incompetent?

You offered it.

Mr. Sparks: Only for the purpose of showing how the wheat came into the hands of the plaintiff.

The Court: It was not limited to that.

Mr. Sparks: What he meant by certain phrases is not material. I can't see under what heading—justification or mitigation of damages—it comes.

Objection overruled. Plaintiff excepts.

Q. "This Miracle wheat may be a factor to preserve life during troublesome times. It could not well be destroyed while growing in the field when wanton destruction prevailed. The trouble might end just at the time when the wheat is ready to harvest the harvest of the Lord. I remain your brother in Christ, J. A. Bohnet." What troublesome times did you refer to? A. The Scriptures speak of a time of trouble such as was not since there was a nation, that will be upon all the world and all mankind.

Q. You say it could not well be destroyed while growing in the field when wanton destruction prevailed. What destruction did you refer to there? A. Destruction of anything. Wheat could not be destroyed like food stuff or anything of that kind. But it does not say there will be, but in case there were destruction the wheat would be in the ground.

Q. "The trouble might end just at the time when wheat is ready to harvest." What did you mean by that? A. Nobody knows when that time will begin or when it will end. It is just a suppositious case. It says the trouble might end.

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Plaintiff's Witness, Samuel Kuesthardt, Direct, Cross 205

SAMUEL KUESTHARDT, residing at Port Clinton, Ohio, called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

I know Pastor Russell. I know Mr. Bohnet. In the year 1910 he turned over to me for sale certain Miracle wheat. I sold that wheat; I sold it generally. I am a publisher of a newspaper, and I advertised it in my paper at the price of one dollar a pound.

Q. Did you get an answer to your advertisement from one Mr. Fleming? A. I do not know whether 206
it came through the advertisement or in what way. I sold Mr. Fleming, if I recollect, about twenty pounds and I received from him $20. The proceeds from the sale of that wheat I turned over to the society, as Mr. Bohnet had instructed me, The Watch Tower Bible & Tract Society, of which Pastor Russell is president. If I recollect right the proceeds, cash proceeds, were $145. I remitted that in check or draft, I don't remember.

CROSS-EXAMINATION by Mr. Oeland:

I live at Port Clinton, Ohio. I am a publisher and editor of the Ottoway County Zeitung, a German county newspaper. I know Mr. Bohnet. I have 207
known him a number of years, I could not recollect how many. I have met him while he was lecturing for the Watch Tower Bible & Tract Society. I have heard him lecture. I am a subscriber to the Watch Tower, edited by Mr. Russell. I have the books which have been written by him, the Millenial Dawn, or Studies in the Scriptures. They were first published under the name of Millenial Dawn. Recently changed to Studies in the Scriptures. I read those. I do not own any stock in the society.

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208 Q. How long have you been following his teachings? A. I don't know that I ever followed the teachings of a man. I never followed the teachings of a man. I have been reading the Millenial Dawn since the year 1890.

In an indirect way, perhaps, I have contributed to the furtherance of those doctrines. I have never been financially situated so that I could do so or I would gladly have done so. I may have at certain times sent Good Hopes funds to the society. I know what Good Hopes funds are. I don't know that it is a method
209 they have of raising money. I don't see it that way. I never have filled out a circular. I have not written any myself on the subject. I didn't raise any of this wheat myself. I am not a practical farmer. Mr. Bohnet asked me if I would handle this wheat for him because he would be away. This was for the year 1910. The wheat was sold at Port Clinton, Ohio, or rather it was mailed from Port Clinton, Ohio. I did not charge anything for advertising the wheat. Mr. Bohnet told me to turn over the proceeds to the Watch Tower Bible & Tract Society.. I understood that Mr. Bohnet had raised the wheat on a farm near Pittsburgh. I did not know whose farm it was; all the proceeds I got I sent to the Watch Tower Bible &
210 Tract Society. I do not know any other place where Mr. Bohnet sold it. I don't know anything about my expenses to come on here to testify. I have made no arrangements, no understanding. I have travelled all the way here without any understanding about my expenses. I have not asked for any expenses.

Q. Do you expect to ask them for any? A. I could not answer that question.

By Mr. Sparks:

Prior to editing this paper I have been a minister of the German Lutheran Church at different places.

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The last place was in the same county in a little village named Rocky Ridge. I had been a German Lutheran minister for fifteen years. The first time I came in contact with any book that Pastor Russell had written I believe was in May, 1890. The reading of his book was the inducing cause to give up preaching as I had been doing before. It was the direct result of it. I compared the writings of Pastor Russell very critically with the Scriptures, with the Bible and came to the conclusion that I had been teaching and preaching certain things that had no foundation in the Bible. Thereupon I gave it up and went into the publishing and editing work.

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Q. As a Bible student how do you regard Pastor Russell?

Mr. Oeland: Objected to.

The Court: I don't think that is material here.

Mr. Sparks: I think that it is very material. We allege in the complaint—

The Court: The point is, what do the jury think about it. There is nothing here at all to show what his teachings are. The only thing you have proved is that he gave up preaching himself.

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Mr. Sparks: Certainly no person is better qualified to testify on that subject than ministers. We could call a dozen ministers down here just the same as you call doctors.

The Court: I exclude the question.

Plaintiff excepts.

I have been lecturing upon this work. I have been lecturing in 1902 for three months; and in 1903, six months, and during the past five years now and then, occasionally, whenever I have been asked by a class of friends to come and address them I gladly have

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done so. I do not do that every week; only recently I had occasion to speak three times a week for a number of weeks in succession. On Sunday I occasionally lead a Bible study, a class in Bible study.

Q. In what esteem and respect is Pastor Russell held in your community?

Mr. Oeland: Objected to, uuless it is couched in the proper form.

Mr. Sparks: I submit that is the proper form. There is a difference between that question and the question as to general truth and veracity. We plead it in our complaint.

The Court: Is there any issue on that?

Mr. Oeland: I object to the form of the question. I understand he can prove his general reputation for honesty and integrity in the proper way, but I don't think that question is in the proper form.

Mr. Sparks: There are three different subdivisions of that question: General reputation for truth and veracity; general reputation for honesty and integrity; and general esteem and respect that a person is held in, in the community,—three separate and distinct questions.

The Court: I suppose he has first to swear that he knows it.

Q. Are you familiar with the esteem and respect in which Pastor Russell is held in your community?

Objected to.

The Court: Yes or no.

I do not know that Pastor Russell is generally known. I don't think so. I lecture to people not in my town.

Q. In the towns that you visit don't you visit the classes? A. Yes, wherever I have been visiting with classes—

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Mr. Oeland: I object to what happens there.

Q. Get down to some specific place where you have lectured, where there is a class, and name some town? A. I will say Detroit, Michigan. How large a class there was I don't know, but it is over a hundred, may be several hundred.

Q. Are you familiar with the respect and esteem that Pastor Russell is held in, in Detroit, in that class?

Objected to.

A. I am.

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Mr. Oeland: Objected to as irrelevant.

The Court: What issue is there as to his reputation with classes? (Reads from complaint).

Mr. Sparks: At the bottom of page three you find: Preaching the gospel both orally and by the printed page, and as such preacher, pastor and teacher he has the respect, esteem and confidence of many thousands of people.

Mr. Oeland: That is a conclusion from the facts, that his reputation for integrity is good and the only way to prove it is to prove the general reputation.

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The Court: I will confine it to the general reputation in the community.

Mr. Sparks: It is put in issue by the answer, that that fact is true.

The Court: The question calls for his reputation, not generally but within a restricted class.

Mr. Sparks: We allege in general terms that he has the respect and confidence of many thousands of people. We are going to show there are fourteen hundred different classes of this society—

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The Court: Generally speaking we assume that a man's reputation is good, and the burden is on the other side to show that it is not good.

Mr. Sparks: The rule is that a man's reputation is fair, but if you wish to go beyond that you are at liberty to do so.

The Court: I am not acquainted with any such cases, I say it frankly.

Mr. Sparks: (Cites authority.) Any general allegation in your complaint which is covered by a denial you are entitled to prove.

221

The Court: I don't think you can go into that, except as to the general reputation in the various communities in which he has lived.

Plaintiff excepts.

The Court: I will not interfere with you in proving his general reputation for good character, honesty and fair dealing, and his reputation as a preacher in those communities.

Q. What is Pastor Russell's reputation as a preacher of the gospel at Detroit, Michigan.

Objected to.

222

The Court: Are you acquainted with his reputation in Detroit, as a preacher and honest man and what his dealings are?

Witness: Yes, sir.

Q. What is it?

Mr. Oeland: I object to that. I submit he should give a broad question.

Q. I mean his general reputation as a preacher and a man?

The Court: I will allow that.

Defendant excepts.

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Q. What is it? A. It is very good. He stands very high.

Q. In how many towns have you preached? A. I could not answer; it would take some computation.

Approximately, the towns, villages and cities of this country I have preached in are, I would say, several hundred, perhaps over three hundred.

Q. What is Pastor Russell's general reputation as a preacher of the gospel in all those communities, if you know?

Mr. Oeland: Objected to on the same ground.

224

The Court: The same ruling.

Defendant excepts.

Q. What is it? A. It is very good.

Those three hundred towns cover the Atlantic states as far as Florida; they cover the states of Ohio, Indiana, Illinois, northern part of Illinois, Wisconsin, Minnesota, and the northern part of Iowa and some parts of Michigan. I was lecturing for the society at the time that I speak of. I did not receive any compensation for my work on the first trip, the trip of three months, I received no compensation. I bore all the expenses. On the second trip I received travelling expenses from the society. I received no salary. I

225

do not know whether that is true of all the preachers on the road. On that six months' trip I would say that approximately two hundred dollars covered my expenses; maybe a little over two hundred dollars. That is I put down my actual expenses, and sent in a memorandum of it to the society and they sent me a check for that amount. As I went on I received a check whenever I needed money. And that was an average of about $35 a month for travelling expenses. That included everything. And that is all I got out of six months' work.

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By the Court:

The states I traveled in were Atlantic coast states one year, from Virginia, North Carolina, South Carolina, Georgia, Florida, and the following year, Ohio. That sum included my railroad fares. I have reference to the second year. The first trip of three months' duration down south I paid the expenses.

By Mr. Sparks:

On my second trip I was allowed my expenses. In all the years I have been connected with this work I
227 have never received any compensation for the work that I have done.

By Mr. Oeland:

I was a preacher. I have known the pastor since 1891. Before that time I have read of him in the year 1890. Not prior to that. I was preaching then in the Lutheran Church. And then I read his books. And I quit preaching and went into the newspaper business.

By Mr. Sparks:

I still continue to lecture or preach upon the Bible
228 at the present time whenever I find sufficient time. How often that is I could not state exactly.

Q. Can you state your expectation? A. I expect in the near future to devote—

Mr. Oeland: I object to what he expects to do. It may not happen.

Objection sustained. Plaintiff excepts.

During the past year I have been conducting Bible classes. In that sense I have been conducting Bible study. I conduct these Bible studies every Sunday. During the week I have Bible study, but I am not conducting then. One Sunday in the forenoon and

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the next Sunday in the evening. And I attend to Bible classes during the week. And if called upon to give instruction I do so. And that I have always done since I left the Lutheran ministry.

SAMUEL JOHN FLEMING, residing at Wabash, Indiana, called on behalf of the plaintiff, sworn and examined, testified as follows:

Direct-examination by Mr. Sparks:

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I am acquainted with Pastor Russell, I have known of him for about eight years.

I did not purchase some Miracle wheat directly from Mr. Kuesthardt. I gave the order to Mr. Bohnet; Mr. Bohnet filled part of the order. I gave him an order in two different orders, first gave an order for five pounds, and then reconsidered that five pounds would be—

I just gave Mr. Bohnet an order for five pounds; then the idea occurred to me that would be a nuisance about getting it threshed; you might either have to tramp it out or flail it out, and I didn't want that job. So I concluded, why not get about enough to seed an acre, and I can have it threshed with an ordinary ma- 231 chine? And I went and saw him the next day probably, I don't remember just in regard to that, but anyhow I saw him after this first order, and gave him an order for twenty pounds more, making twenty-five pounds. Mr. Bohnet sent the five pounds that I first ordered by express, the last twenty pounds I received from Mr. Kuesthardt of Port Clinton, Ohio.

I sowed that but I didn't measure the land. To my best judgment something near an acre. I am a farmer, been all my life.

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232 From the twenty-five pounds that I purchased my yield was thirty-four bushels. I want to state to the jury that I don't consider that his wheat had a fair chance, because it was sown too late, and not being accustomed to sowing so little seed to the acre it is hard to get the drill adjusted to put on the proper amount therefore we got it too thick, the first we sowed and had to mix the wheat with oats in order to get it to cover the ground I wanted to cover. And the last seed to my judgment, it was too thin; therefore the late sowing and not getting the seed evenly distributed, I considered that it didn't have a
233 fair chance. I planted this in October. Our season there for sowing wheat is about September 15th.

The forepart of October, probably about the fifth of October. I sowed the wheat, late planting is detrimental to the yield of wheat. The plant does not get a proper development before cold weather comes on, therefore it can't stand the winter so good. If you get an early planting the wheat has a chance to set its roots and stand the cold. The ordinary yield of wheat in our section of the country, to my best judgment for the term of ten years, would be twenty bushels. And I got thirty-four bushels from twenty-five pounds of seed. The ordinary seeding of wheat
234 in my section of the country is ninety pounds to the acre—a bushel and a half.

The pecularity of this Miracle wheat is that it takes so much less seed per acre; it stools so much more to the grain sown and yields more per acre. I noticed in the Watch Tower that Mr. Bohnet had contributed some Miracle wheat that he had raised to the society, and I wrote and asked whether the wheat that I had raised would be accepted under the same terms.

Q. I show you a letter and ask you if that is the letter that you sent (hands witness paper)? A. Yes, sir; that is my letter, that is my handwriting.

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Plaintiff's Witness, Samuel John Fleming, Cross 235

Mr. Sparks: I offer the letter in evidence.

Letter received and marked Exhibit 5, read in evidence.

I subsequently shipped to the Watch Tower my wheat. As far as my mind serves me, I sent in the neighborhood of twenty-six bushels, that was a voluntary donation on my part. Up to the time that I sent this wheat the lowest price at which I knew Miracle wheat had been sold was one dollar a pound.

CROSS-EXAMINATION by Mr. Oeland:

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I knew Mr. Bohnet a year before I got this wheat off of him, I judge, something like that. As I have already stated, I hadn't met Mr. Russell personally, but I knew of him for about eight years, that is, eight years now, not eight years before this wheat business. I was reading his literature and his books and pamphlets.

Q. You say you want this donation to go to the In. B. S. A. What does that mean? A. International Bible Students Association. I understood Mr. Russell was president of the society, there were offices in Brooklyn.

Mr. Bohnet made no condition when he let me have the wheat that I should turn it over to the Tract Society. I regarded Miracle wheat as abnormal; it was not ordinary wheat. 237

I had no agreement at all to donate it to Mr. Russell's society. As I have already stated when I got the seed I had in mind that if it was as good wheat as I had reason to believe it was that I would give the proceeds of it into the work into the society to further the work.

I planted other wheat in an adjoining field to try them. My farm is practically level. I put the same grade of fertilizer on both fields. I did not put the same amount of wheat in both places.

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238 I don't know as a practical farmer that the stooling proclivities of wheat depend on whether it is planted thick or thin. I don't understand it that way.

It has been demonstrated by experiment stations and practical farmers that ordinary wheat will do no good if sowed twenty-five pounds to the acre, it is too thin, it won't make a good berry, and you won't get more than five or six bushels of trash to the acre, that is the practical experience. I never tried it.

By Mr. Sparks:

239 Q. Do you regard the experience of farmers for a hundred years past as the best evidence of the proper and best method of planting common ordinary wheat?

Mr. Oeland: Objected to.

A. I certainly do.

Mr. Oeland: Objected to and I move to strike out the answer.

Objection sustained and answer stricken out. Plaintiff excepts.

I have seen and know the practice in my community of sowing ordinary wheat in the neighborhood of thirty-two years. The invariable rule with reference
240 to sowing wheat in my section is a bushel and a half per acre—that don't say that every farmer in the state sows that, but that is the ordinary amount sown.

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MENTAS STURGEON, 124 Columbia Heights, Brooklyn, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am a superintendent of the Bethel. It is an aggregation of Bible students, connected with Pastor Russell, that is the Home where the different people connected with the work and employed in Brooklyn live. Prior to going there as superintendent, my occupation was lecturing all through the country in this same work. Prior to becoming connected with this

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work, my occupation was a minister of the Gospel in the Baptist denomination in the City of St. Louis. I had a regular congregation there. I first come in contact with the writings of Pastor Russell about the year 1892.

Q. After becoming acquainted with his work, did you give up preaching in the Baptist Church? A. No, sir.

Q. Will you just state how you came to give that up, and go into this work? A. A doctor handed me a little book that was written by Mr. Russell. I read that book about that time, while reading a great many other religious books, and I was impressed with its fairness, the logical presentation of the Bible and so it im-

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pressed me as one of the best books on the Bible I had read up to that time. That is about all that there was to it in my first connection with it. I went after that all through the seminary, and then was located as a minister in Kentucky, and then in Missouri. I think it was about fourteen years after that that I made further investigation of his teachings. I did so for the reason that in applying what I already saw to be the teachings of the Bible from the Baptist standpoint, I saw that they would not work out in practical living just exactly what I was looking for. I thought they

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244 fell short, and being in a frame of mind where I desired to receive any further light on the Bible from any one who could give it to me, why, I then took up the investigation of these six books called "Scripture Studies of Pastor Russell." In them I found just what I was looking for, a little more harmonious presentation of the Bible than I had had previous to that time; and on account of that I thought I would search into the matter just as deeply as I could, to try to find out all I could about the author of that book.

I wanted to try to find out and look into the life
245 of the author of the book. I wanted to find out everything about the author of those books. To that end I made a trip to Pittsburgh, Pennsylvania, and quietly attended the meetings that he was holding there in the Bible Chapel on Arch Street; and neither he nor any one in the congregation, so far as I knew, knew I was there or what I was there for. I was very careful about it, because I could see that there was some difference between the views I held and the ones he held, and I wanted to make sure so as not to make a mistake. So I attended those meetings for quite a little while, and by and by I spoke to him as to why I was there, and told him that I would like to have a private conversa-
246 tion with him. So by engagement I met one night in his study.

I did not take the work up until I had made a thorough investigation, after having made that thorough investigation, I did take up this work, in the way of public lecturing through the country.

In that lecturing course I traveled all the way from what they call Sunshine, Texas—that is way down in southern Texas—all the way up through the states to the northermost point of Nova Scotia, North Sydney, the last point before you reach Newfoundland and all up and down the coast and all through those places;

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and as far west as Detroit, Michigan, and St. Louis. Missouri, and within that boundary. The different towns and cities I visited, I did talk to the Bible classes everywhere. And the Bible classes were connected with this work.

Q. How was Pastor Russell held, in what esteem, by the classes?

Mr. Oeland: That is objected to as too general.

Objection sustained. Plaintiff excepts.

Q. Do you know, did you hear? A. Yes, sir, I heard. 248

Q. What was his general reputation as a Bible scholar and writer? A. Good.

I would say that I lectured in seven hundred towns.

Q. And to how many thousands of people, if you can approximate it? A. That would be difficult. I should say twenty-five hundred or three thousand.

By the Court:

Q. How long were you in any of those towns at a time? A. About two days.

Q. How many people would you meet personally? A. I would meet personally from fifty to one hundred.

By Mr. Sparks: 249

Q. Among those people that you met was he well and favorably known as Pastor Russell?

Objected to. Objection sustained.
Plaintiff excepts.

Q. How many years did you follow in this preaching? A. About two years.

And during that time I was not compensated for my work, all expenses were covered. After that period I did connect myself with the Home here. My duties down there are kind of a general super-

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250 vision of the work of the Home. The buying of supplies and a general supervision of that character. And in addition to that, I conduct Bible studies in New York, and vicinity during the week, and on every Saturday and Sunday I go out just as far as I can and get back on Monday. I preach at the Academy of Music here in Brooklyn. For this work I receive no compensation. We have a rule down there as to what each person engaged in the work receives per month for their individual expenses. It is ten dollars a month. In addition to that I get my board and my
251 room in the Home. All the people engaged in that house are in some way connected with this work. For instance the chef is connected with it. He does not receive any salary, not one cent. He gets the same allowance of ten dollars a month. And the man who attends the furnace, the rule applies to him. And Pastor Russell, just the same, as I understand it. He gets ten dollars a month for his expenses and his room and board at the house, so far as I know.

My wife is at the Home too, and our one boy.

CROSS-EXAMINATION by Mr. Oeland:

252 I was connected with the Tower Grove Baptist Church of St. Louis. I was preaching there seven years and ceased to preach there about 1904, I then went, in the course of events, to Pittsburgh, I left there voluntarily, I went direct from there to England. In England, I investigated Jewish questions and was studying the Bible, and seeking to get more light upon it in any way that I could.

I did not quit preaching. I was preaching while I was over in England, as I had opportunity. I got the opportunity by coming in contact with some person and talking to him. I preached to the man as I talked to him.

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Q. Mr. Sparks corrects me and says that is the way Christ taught or preached. You call that preaching? A. I understand that is the way he did preach.

Q. Then as you caught a man on the street that would hear you, you talked with him? A. If he seemed favorably inclined and wanted to converse, why, I gladly talked with him, yes, sir.

Q. Was that all the preaching you were doing in England? A. At that time, yes.

Q. And where did you go to find men to talk with, just wherever you would meet one? A. Yes.

I did not have my family with me, they were in 254
Pittsburgh, Pennsylvania, in Hazelwood. They came from St. Louis.

Q. Why did you send them to Pittsburgh before you went to England? A. Because they desired—she desired to visit her parents who lived there at Pittsburgh. She was not connected then with Mr. Russell.

I stayed in England a few months. I did not preach in any church or lecture in any church at all while I was in England. While I was abroad there I went to some Y. M. C. A. associations and other reading rooms; and I called on different ministers that I wanted to see, especially F. B. Meyer of the Westminster Chapel. I discussed the Jewish question with him principally. I was studying up the Jewish question 255
because I had always been interested in the Jews, as any Bible student would be, and I had worked with them in St Louis and some in Pittsburgh also, and they had been in the pulpit which I occupied in St. Louis, and so I was interested in it in that way as a prophetical study. Then I returned from England and I went to Pittsburgh. I had read Pastor Russell's first volume, that is all, in 1892. I went to Pittsburgh in 1905. I was then a missionary. I did not have any church to preach in. I did not want any.

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Mr. Oeland: I ask to strike the latter part of the answer out.

Motion granted. Plaintiff excepts.

I quit preaching in St. Louis in the year 1904. I had read one of his books fourteen years before that about. Between 1904 or 1905 I was, during that time, talking of course to people as usual; but I was employed by the Westinghouse Electric Manufacturing Company while there. When I reached Pittsburgh I went to work for them as a stenographer. That is part of the way I was a missionary the same
257 as Paul. They do not deal in religious works directly.

Q. Do they indirectly? A. Not the Westinghouse.

Q. Except by furnishing light under which you can read the Bible? A. No.

I went to work for them the year 1905. I procured a position with them by answering an ad in the newspaper for a stenographer. I worked with the Westinghouse people about ten months, they were dealing in general electrical supplies.

Q. What did you mean by saying indirectly, as I understood you to say, I may be quoting you wrongly? A. In relation to our former question, you were ask-
258 ing me how I was engaged in missionary work while connected with them; and my idea is that while I was there I was still doing missionary work among the employees of the Westinghouse plant.

When I finished with the Westinghouse people I then returned to St. Louis. And there I gathered together quite a number of Christian people with whom I had formerly associated and tried to help them in the manner of Bible study as I had been helped. When I left St. Louis I did so for the purpose of getting a more satisfactory interpretation of the Bible, and during my absence I had procured that. The satisfactory

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interpretation I had obtained was the help I received through Pastor Russell's preaching and writings and conversations.

I attended meetings and things like that at Pittsburgh. I attended meetings over at the Arch Street Chapel, the Bible Chapel on Arch Street, and also at the Carnegie Hall in Allegheny. There was no one teaching there except Mr. Russell and his followers.

I was studying Pastor Russell's doctrines while I was working for the Westinghouse people. It was during that time that I had the interview with Mr. Russell. I had only one real interview with him. At several different times, of course, after hearing a lecture, which is common, I spoke to him and perhaps asked him a question or two or made a remark upon what I had heard. At that time I don't think I had yet subscribed for The Watch Tower. I was then reading everything I could get hold of that he had written. So then when I left Pittsburgh, I left there to begin his teachings, practically.

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I went back to St. Louis—having been a teacher in St. Louis for eight years—seven years in the Baptist Church exclusively and about one year independently—I went back there for the purpose, after having received the help I wanted on the Bible, I went back there to give them that help which I had received and which I felt under obligation to them to give.

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I preached in a church there for a while and then went out in an independent body. That was the closing year. I was in St. Louis.

After I gave up my church there, during the intervening year, I was an independent preacher. For that year I preached in missions and I preached in homes. The occasion of my starting an independent doctrine there was this: That I had discovered in the Scriptures that there was more truth than that which was taught by the Baptists. As I received additional light from

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the Scriptures I tried to be true to it and I would teach that. I would give that out until of course in time, some of the congregation would say, "Well, of course that is in the Bible but then that is not strictly Baptist." Until I discovered, of course, that spirit growing among the people, and that would necessitate any time a withdrawal from them.

Q. Why didn't you tell me that when I asked if you voluntarily quit the church there? Didn't you understand I was trying to get at the cause for your leaving the church? A. No. I gave you, I thought, a pretty direct answer to your question.

263 Q. The real cause of it was dissension in your own church? A. What?

Q. Dissensions and differences between you and your congregation, and you left on that account, isn't that true? A. I left on account of not being permitted to teach all that was in the Bible, as I understood it. That is the reason.

Q. Then you started an independent movement of your own? A. Of my own? I simply continued to teach the Scriptures to those dear people who were willing to listen; and that lasted for about a year.

Q. Then after you spent a year with the Westinghouse people taking instructions from Mr. Russell you

264 returned there to renew your efforts in an independent line? A. To give them a larger blessing than they had received before from me if I could.

Q. Was this dissension or trouble you had in your church due to your preaching the doctrine of Pastor Russell before you left there? A. It was not. I had read one of his books, fourteen years before that.

When I got back to St. Louis, the work I was doing there was not under the direction of The Watch Tower Bible and Tract Society of Pennsylvania. I was absolutely independent in what I was doing. I was teaching the same doctrine so far as I understood

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it. I did not report to him from time to time. I took his literature. I was taking the Tower then. Somewhere in there I had subscribed for it. In that independent movement there, I simply held meetings during the week, and on Sunday for the purpose of studying the Scriptures, and doing missionary work in general. We held them in about seventeen Locust Street. That is not exact. I do not remember the number, but it was on Locust Street. That lasted about seven months. At the end of seven months, I had become thoroughly satisfied and so had the congregation who was attending the meetings.

266

What I did was to visit, to meet all the people that were meeting in a hall on Olive Street, who were students of the Bible, and who were connected with Pastor Russell of Allegheny. There I listened to what their lecturers and ministers had to say on the Scriptures, and mingled with the people in general to find out what they believed. I attended those meetings, and found out whether they believed exactly as I thought in reference to the Scriptures and when I had found that out I made arrangements then for the ones who had been attending our meetings previous to that time to come and attend those meetings.

I brought these people with whom I first affiliated to the meetings of those who were called the Ecclesia of St. Louis. They were teaching the Bible.

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Q. Was it as taught by Mr. Russell?

The Court: Was it according to the interpretation that you had gotten from Mr. Russell, in harmony with that?

The Witness: It was in harmony, yes, sir. At that place we merged into that assembly of Christians. I did not become the teacher or preacher. At that point desiring to be thoroughly independent and free in the matter of Bible study and Bible teaching, I secured work with the Blackmar & Post Pipe

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268 Company. That was the first work of that kind I had done since I left the Westinghouse people. I did, first of all, work with them as a stenographer. Afterwards I became associated with the superintendent of their large factory there in St. Louis and handled all their money and paid off all their men. That position lasted about three years and a half.

Q. Then all the time you were attending this hall, or whatever you style it, were you preaching there? A. When they requested me to preach for them, I did.

That lasted altogether about three years and a half.
269 Then I went directly from there into this public lecturing work. That was done under the supervision of Mr. Russell. That is, I reported to him and went to wherever I was directed. From that time, on. We had met there, as I said previously in Pittsburgh, and then had met him at several conventions and had perhaps had some little correspondence, letters, occasionally. We did not have considerable correspondence. I received a letter to the effect that if the way was opened, I would enter into this lecturing work. My answer was in the affirmative. I left my position to go into that work. I began the lecture tour in October, 1909, that lasted about two years, then I went to where I am now.

270 Q. How many houses do you own here in Brooklyn? A. I don't know.

My position is simply that of superintendent of things, the bookkeeper and secretary is Mr. Brenneisen, Mr. Van Amburg is treasurer. So since that time, I have been right here with Mr. Russell in Brooklyn.

Q. You spoke about his or your doctrine in the Baptist Church and his doctrine. What did you find that you were so radically wrong about and that he put you straight on? A. Well, the Baptists taught that you are already born again, and he pointed out the distinc-

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271 tion in the Greek word "*gennao*" on that point, to show that the Greek word "*gennao*" had several ideas in it. It had the idea of begotten, quickening and birth. Those distinctions are not made by the Baptists and so they have it all birth; birth just at once in a moment; and when he pointed out the meaning of that Greek word and I had studied Greek quite a little, and I was ready for it. I saw he had the truth on it. When I saw he had the truth on that point that when one was consecrated and received the Holy Spirit he is only begotten to a new life, I saw that they were radically wrong in this particular. That all Bap- 272 tists know that one of the fundamental teachings of the Bible is the new birth—the new birth —and they believe that you are already born again; and he pointed out that it is not true; that we are here below, we have only had one birth, a natural birth, and that is all we have had. Now, when in one's mind and heart there comes to be a change through consecration to God in Christ, and the reception of the Holy Spirit, why, he pointed out that that was the exact meaning of that Greek word in its initiatory stage where you are simply begotten to a new life. You are not born to a new life until the Resurrection morning. When I saw that, it began to open up things in my mind, and I saw that the Baptists were mistaken on 273 that.

Q. That was the root of the trouble, was it, that Greek word, that was the Greek root that was the root of the trouble? A. No. It was part of it. Another part I can tell you if you want me to.

Q. What else was it that you differed with the Baptists on other than that Greek word? A. The wages of sin.

Q. I believe the Bible says that the wages of sin is death? A. Yes. They do not believe that.

Q. Who don't? A. The Baptists. That is the Scriptures.

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274 Q. I got it right, didn't I? A. Yes, you did. You would make a pretty good preacher.

Q. What is the difference? A. In this view, you mean?

Q. Yes, the Russell view about that and the Baptist's? A. Why, his view is that which you have just said and just what the Scriptures say, that the wages of sin is death. Now, with the Baptist's view is that the wages of sin is preservation of life in torment forever and forever without any cessation.

Q. That is worse than death, isn't it? A. Oh, a mil-
275 lion times worse.

Q. Then you differ about the degree of punishment then and there? A. A question of justice.

Q. You think that the sinner ought to be put to death, or that he ought to suffer torment always? Is that your doctrine or the Baptists? A. That is the Baptist's doctrine the doctrine of injustice.

Q. You believe that the wages of sin is death, and that a man just dies and that ends it? A. That is a just punishment for sin, yes, sir.

Q. Does he have another chance? A. He ought to have one chance.

Q. I know, but which chance are you talking about? A. We all had one chance in one man. We were all
276 tried before the Court of Divine Justice in the person of Adam, the whole human race; and in his transgression we all became transgressors and came under the death penalty as transgressors with the penalty of death attached thereto.

Q. Do you think that if it had not been for Adam's sin he would be still living? A. Oh, yes. I am pretty sure of that.

Q. Then you also believe that the Prophets like David and Elisha and Elijah are all going to come back and live and rule the world? A. I believe in the resurrection of the dead based upon the Scriptures.

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Q. There are a lot of those fellows that you call ancient worthies in your doctrines? A. The Bible speaks of them as worthies, yes, sir.

Q. You call them ancient worthies in your works? A. Ancient worthies.

Q. And when you speak of those, you refer to David and Elisha and Elijah and Hezekiah? A. All those good old men.

Q. And don't you teach that after 1914 they are to return and to rule the world as rulers of the world? A. We teach that there will be a resurrection of the dead and they are among the dead, and they will, therefore, be raised from the dead by the time of the Kingdom of God's dear Son Jesus Christ. That is what we teach.

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Q. Don't you teach that they are to be the rulers of the physical world as distinguished from the spiritual world? A. Yes, we believe that the Scriptures say that.

Q. I don't want what the Scriptures say, but what is your belief. When we get to quoting Scriptures we will get mixed up. Don't you believe that those people are to be resurrected and to rule the world as our rulers? A. Yes. They will be the leaders among the people.

279

Q. You mean by that rulers, don't you? A. Yes, sir.

Q. And that event is to take place in 1914, in October? A. I don't know that. I don't believe that.

Q. You do not believe that? A. No.

Q. What date have you set for that time? A. I have not set any.

Q. You know that Mr. Russell fixed October first, 1914, as the time of the ending of this age don't you? A. Not as the time for what you said there awhile ago.

Q. But don't he fix that date as the ending of this age, or what do you tell us? A. He fixes that as the time of the end of the Gentiles.

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280 Q. That is an age, isn't it, in his doctrine?

The Court: You use the word "Gentiles" as an unbeliever?

The Witness: Gentile as distinguished from the Jews. Jews and Gentiles and the Church of God, are the three terms, and all outside of Jews we speak of as Gentiles. We have had a Gentile dominion of the world now for quite awhile and he teaches that the dominion of the Gentiles in the world will cease about that time.

281 Q. Don't he fix it as the exact date of October 1st, 1914, and so he is certain about it? A. Well not dogmatically, no, sir.

Q. Well, we will see about that. You have read this book "The Time is at Hand, Studies in Scriptures, series 2 haven't you? A. I have.

Q. Did you read on page 99: "In view of the strong Biblical evidence concerning the time of the Gentiles, we consider it an established truth that the final end of the kingdoms of the world and the full establishment of the Kingdom of God will be accomplished at the end of A. D. 1914." Did you ever read that? A. I have.

282 Q. Is that your belief? A. You will find that there are a great many things said in that same connection. That is only one of them.

Q. There is no doubt but what he says so, is there? Let me read it again. "In view of the strong"—

Mr. Sparks: I object, on the ground that he has not had a chance to answer this question.

The Court: If the witness recollects the question and wants another opportunity to answer it, I will allow it. Is the extract from the book which is read to you part of the doctrine in which you believe and which you expound?

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The Witness: I believe that.

Q. The Baptists do not believe that though? A. Not quite that far along, I do not think.

Q. They want a little more time? A. I think so.

Q. I did not get it fixed at October, 1914. Now, what do you understand is going to happen then? A. Well, I understand or I mean that I know very little about it.

I understand that from present conditions that one would conclude that there is some great change taking place in the world along financial, social, industrial, religious and political lines, and in trying to understand what that means there is some restlessness and dissatisfaction among the people everywhere. There seems to be some change going on of some kind; and in trying to find out just what that all means, why, studying in the light of the Scriptures it seems to me to indicate that there is going to be a great change for the betterment of the whole race of mankind shortly; and that we now have the beginnings of that change, which will ultimately mean good for all the people.

284

Q. That day is described, isn't it by Mr. Russell, in volume four as follows: It is called the Day of Vengeance? A. Yes, sir.

Q. That is what is going to happen in 1914, isn't it, the Day of Vengeance? A. That is what you are talking about.

285

Q. What do you understand by "The Day of Vengeance"? A. I understand by "The Day of Vengeance" which is spoken of, the words which are used by the Prophet to be the same thing as the words that were spoken by Daniel, the Prophet, when he foretold the time of tribulation such as was not seen since the beginning of the world up to this time, nor ever shall be and to which the Lord Jesus the great teacher referred in the 24th chapter of Matthew; and that time has not yet come, as we all know.

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286. Q. But it is going to come before 1914, or about that time, isn't it? A. Yes, sir.

Q. That time of tribulation? A. Now, I think that is inferential. In other words, I mean this. The Scriptures do not say in so many words that is going to be the time; but taking up the study of all the Scriptures the chronology and everything together, the inference is that there will be a change about that time.

Q. 1914? A. Yes.

Q. That is the time of tribulation that the Prophets speak about? A. I think it will be somewhere about
287. there.

Q. What do you think is going to happen then? A. I cannot tell you. How could I tell before hand?

Q. You know it is going to be a great time of tribulation? A. Yes. I thing there will be trouble, because we are pretty sure there will be, because we have so much now.

Q. Yes. We have been having it ever since we started? A. Yes, and I think it is getting worse.

Q. Do you ever read the profane history of the world? A. Yes, sir.

Q. They have been having trouble ever since history has begun? A. That is right; and that is, I believe,
288. what Christ says.

Q. Wait. Let us get through with the profane end of it before we take up Christ's end of it. You say that you read in the history way back in the old Roman Empire, where they used to exterminate a nation over night, something about those ancient worthies Caeser, Herodotus, Alexander the Great, and all those ancient worthies, who used to smite them hip and thigh, isn't that right? Those were times of trouble too, weren't they? A. Oh, yes.

Q. Do you believe that this is a proper description of what is going to take place in 1914: "That the swelling

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waves of social and political commotion will quickly spread and involve and engulf them all, referring to the nation; and thus the whole earth will be swept by the besom of destruction and the haughtiness of man will be brought low. While it is written vengeance is mine I will repay saith the Lord, the judgment of the Lord both upon Christendom and heathendom will be on the strictest lines of equity." Is that your idea of just how it is going to come about? A. Is that spoken by the author or a quotation from some one else?

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Q. No. This appears to be a statement. Do you want to look at it? A. No. Well, I think that is about what the Scriptures teach it is. I believe that.

Q. What does he mean by "besom"? A. He means —he uses the term "besom of destruction"?

Q. Yes. A. He means a sweeping over or destruction.

Q. You know what it means? A. The power of destruction.

Q. You know what "besom" means? A. You tell me and I will.

Q. No. You are a Biblical student and I am not. What does "besom" mean? A. Wave or power or destructive thing.

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Q. It means a big broom, don't it? A. Yes. A sweeping over of destruction.

Q. A broom of destruction is going to sweep them all off? A. Yes. That I think would be a good instrument, a broom to sweep things with.

Q. Did you read what Mr. Russell—or do you believe in his doctrine about the reincarnation of the fallen angels?

Mr. Sparks: I object, if he believes in that proposition. I object to it as not material.

Objection overruled. Exception by plaintiff.

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292 A. I believe that just as the angels have had power in the past to assume human form so it might be reasonable to infer that they shall have that power again.

Q. Did you read his reference to the fallen angel—you read his "Watch Tower" carefully don't you? A. I aim to, yes.

Q. January 1st, where he refers to the materialization of evil spirits under a head which says: "How few of mankind know of the fallen angels." A. Yes, sir.

Q. "For some two years we heard practically nothing along these lines. We had about concluded that
293 the Adversary had misled our attention to this direction, in order that he might make the more serious attack upon the minds and hearts of the consecrated. Now, however, after two years of silence, we have a report from far off Australia which seems to confirm our worst fears as respects the course that will be pursued in the time of trouble by the demons, the fallen angels. Brother Nicholson, of the Australian Branch, writes us of an astounding circumstance. One of the Austrialian Brethern has a wife"—

Mr. Sparks: I object to his reading from an article, which is a record, until it is offered in
294 evidence.

Mr. Oeland: I will offer it, but I want to get it before him now.

Mr. Sparks: Offer it first.

Mr. Oeland: I do not have to. I am examining him on his views.

The Court: I will allow it.

Plaintiff excepts.

Q. (Continued.) "Brother Nicholson, of the Australian Branch, writes us of an astounding circumstance. One of the Australian Brethern has a wife who is neither for nor against the truth and who pro-

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fesses no sympathy for Spiritism. Quite recently the Brother, returning to his home, had a harrowing tale related to him by his wife. She declared that Brother Russell had appeared to her (possibly she had seen his photograph). She declared that he made improper proposals to which she yielded.

"At such a distance it is easy enough to prove an alibi—to prove that the editor was not there. But suppose the materialization in all of its particulars had transpired in Brooklyn, or in the Bethel Home, or in any of the various cities which the editor visits in the preaching of the Gospel, or in a Pullman sleeping

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car, in which he frequently travels—it is easily seen than an alibi might be very difficult to prove in such cases. And what would be true in this respect of the editor might be true in some respects of many of the Pilgrim brethern yea; true of all of the Lord's people everywhere." Do you believe that? A. I do.

RE-DIRECT EXAMINATION by Mr. Sparks:

Q. Will you just answer that question a little more fully, and give any authority that you have for your belief? A. Yes. We have the Scriptural statements to the effect that there are fallen spirits under Satan, the great ruler, and that in times past previous to the

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flood they did use human bodies and human instrumentalities. It even says they married and had offspring, and the offspring were the giants and they caused the trouble in those days previous to the flood. The Scriptures teach that these fallen spirits have been reserved in chains of darkness until the Judgment of the Great Day which would clearly teach to my mind that when the Judgment of the Great Day comes that they are going to have all the freedom and powers that they had previous to the flood; and it seems to me that we are approaching that time now.

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Q. From what book of the Bible or in what book of the Bible do you find that authority? A. You will find it in St. Peter's writings and in Jude.

Q. Will you give us the book of the Bible and the chapter and verse and read it from the Bible your authority for that? Will you give the Genesis account first, giving the chapter and verse also? A. From Genesis, the sixth chapter, I read this, beginning at the first verse and reading the first two verses. Genesis 6, 1-2: "And it came to pass when men began to multiply on the face of the earth, and daughters were born unto them, that the sons of God saw the daughters of men that they were fair and they took them as wives of all which they choose. They were giants in the earth in those days."

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Q. The sons of God, that refers to the angels?

Mr. Oeland: Oh, no. Is that all? Is that the whole quotation?

The Witness: That is sixth Genesis 1-2. As showing the result in verse four, "They were giants on the earth in those days." Then I will read further in that fourth verse: "Also after that when the Sons of God came unto the daughters of men and they bare children to them, and some become mighty men, which were all men of renown; and God seeing that the wickedness of man was great in the earth and through imagination of the thoughts in his heart was only evil continually."

300

Q. Your interpretation of that is what? A. My interpretation is this, that at that time some of these spirits that had fallen, they came into the flesh of human beings, just like the Lord himself did and the two angels when they approached Abraham—he saw them approaching, and he thought they were simply three men but he found out afterwards they were two of them, two holy angels and one was the Lord.

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Just so I think these fallen spirits have also assumed human flesh that way, and then they were married to these daughters of men and their offspring were these giants these great ones, that caused trouble in the earth at that time principally.

The Court: You interpret the Sons of God as meaning the fallen spirits?

The Witness: Yes.

Q. What Scripture authority have you for your statement of the Lord appearing with two fallen angels or two angels not fallen angels? A. The verse in Genesis would be where Abraham saw the angels coming. He was sitting under the tree and in front of his tent when he saw these three men coming. I will find the reference. I have the account here in eighteen Genesis if you want me to read it.

302

Q. Yes, if you will? A. Speaking about Abraham: "And the Lord appeared to him in the vale of Mamre, and he sat in the tent door in the heat of the day and he lifted up his eyes and looked and lo, three men stood by him; and when he saw them he ran to meet them from the tent door and bowed himself towards the ground and said, My Lord, if now I have found favor in thy sight pass not away from thy servant.

"Let a little water, I pray you be fetched and wash ye your feet, and rest yourselves under the tree.

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"And I will fetch a morsel of bread and strengthen ye your heart afterwards you shall pass on; for therefore are you come aside to your servant." And it shows about Abraham going and preparing the food. Then it says "The men raised up their eyes and looked towards Sodom and Abraham went with them to bring them on the way."

Q. What other Biblical authority have you for the statement in reference or the belief in reference to the spirits. You said Peter and Jude, I believe? A. Yes, St. Peter and Jude. It says so in Jude, sixth verse:

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304 "And the angels which kept not their first estate but left their own habitation, he has reserved in ever lasting chains under darkness into the judgment of the Great Day, even as Sodom and Gomorrha, and the cities about them in like manner, giving themselves over to fornication, and going after strange flesh are set forth for an example suffering the vengeance of eternal fire." That is Jude, verses six and seven. Now, Second Peter, second chapter, fourth verse. Do you want this reference read in Second Peter, second chapter, and fourth verse?

305 Q. Yes? A. "For if God spared not the angels that sinned, but cast them down to hell, and delivered them into chains of darkness, to be reserved into judgment."

Q. Will you explain that in your own way? A. The word translated: Hell here is not the Greek word Hades nor the Greek word Gehenna, but is the Greek word *tartaroo*.

Q. Meaning what? A. Meaning probably the surrounding atmosphere of the earth. Now, God did not spare these angels that sinned that transgressed against the law which they had in their being following after Satan and materializing to beget children and bringing all the trouble so much of the trouble before the

306 flood. That is, God simply restrained them. He confined them to the atmosphere of this earth and they had no power to appear in the daylight. Their operations seemed to have been confined very largely to that darkness, just as we see at the present time that these spirits will appear frequently in what we call seances, which are conducted in the dark rooms. That is where they make their manifestations. They have been themselves restrained as a result of the work that they did back there in that world and also thus restrained until the judgment time shall come. Then it is combined with Jude who said that they will have

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their former freedom given them about the time of judgment.

Q. Now, what is your interpretation of that reference in Genesis to the angels, where the Sons of God took unto themselves these human wives? A. The sixth chapter: "And it came to pass when men began to multiply on the face of the earth, and daughters were born unto these men, these sons of God."

Q. In that reference do those Sons of God mean fallen angels, or did that take place when they had the intercourse with the women of the earth? What is your interpretation of that? A. Yes, I think the angels all had power there to assume human form or these did, and then in marrying with these fair daughters of men here, and taking to them wives all of all which they chose, that is where they were going beyond their proper limits. They were transgressing there. 308

Q. Do you regard that the angels were forbidden to have intercourse with women or are there any female angels, so to speak? A. Among the angels there is no sex distinction.

Q. Consequently, they could have no intercourse with one another, and when they come into intercourse with human beings, that was a violation of the law or of their heavenly kingdom? A. I think it is. 309

Q. Is that right? A. Yes, sir.

Q. Is that your interpretation of that? A. Yes, sir.

Q. Now in speaking of the Sons of God, is that phrase generally accepted by all Bible students as referring to spirit beings and not to human beings? A. I think it has given them a great deal of trouble to understand it either one way or the other.

Q. I show you here the book of the Rev. Dr. W. Brookman, and call your attention to page 71, and ask you if he interprets that phrase that way?

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310 Mr. Oeland: I object to Dr. Brookman's interpretation.

Objection sustained. Exception taken.

Q. Do you know whether it is generally accepted among Bible students that that is the correc' interpretation of that phrase?

Mr. Oeland: That is objected to.

The Court: I do not see how it is relevant, but if he can answer that, what the great bulk of the people think, and state that he knows what the prevailing opinion is, I will allow it if he can state it. Defendant excepts.

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A. I have read a lot of different books, especially do I remember C. H. Pember of England, and the interpretation of these Sons of God—

The Court: That is not the question. You are asked if the generally accepted—if there be such a thing—interpretation of what the Sons of God mean —including all denominations, including the whole world's interpretation, different denominations, as to what generally is accepted as the meaning if you know. Is there one belief on it, or are there many?

The Witnes: Two general views.

312 Q. State both views?

Mr. Oeland: Objected to as immaterial, irrelevant and incompetent.

Objection sustained. Plaintiff excepts.

Q. I am requested to ask you to look at First Peter third chapter 17 to 20, and see if there is any corroboration there? A. Yes. There is reference to the same thing, where Christ preached to the spirits in prison.

Q. Will you read that? A. "17. For it is better, if the Will of God be so, that ye suffer for well doing than for evil doing.

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"18. For Christ also hath suffered for sins, the just for the unjust that he might bring us to God, being put to death in the flesh but quickened by the spirit.

"19. By which also he went and preached unto the spirits in prison.

"20. Which sometimes were disobedient when once the long suffering of God waited in the days of Noah, while the Ark was a preparing wherein few, that is, eight souls were saved by water."

Q. Will you interpret that First Peter that you just read? A. Well, the passage is clearly referring there to the death, the sufferings of Christ and afterwards of course, the Resurrection taking place. That part about the suffering of the Lord Jesus until on the cross he died. Now, by means of that he preached to the spirits that were in prison. Now, how could he be suffering and dying on the cross and preach to the spirits in prison? None otherwise, it seems to me. than by these spirits who were in tartaroo around the earth, and can see the actions of men, and by their observing the action of Jesus Christ in his suffering and in his death. He thereby preached to them by means of his death.

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Q. Now, give them an explanation of the Noah part of that, and the eight spirits he mentions there? A. Speaking about the flood and all except the eight souls that perished.

315

Q. Go ahead.

The Court: That is the 20th verse?

The Witness: Yes, 17, 18, 19 and 20. I think referring to the flood there it would show that every soul that was on the earth perished by means of the flood except the eight souls. That would be Noah and his wife, his three sons and their wives.

Q. Does that refer to the destruction of these angels who came to earth and disobeyed the terrestrial law or the heavenly law? A. Yes. I think that involved

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then at the time of that flood; and that by means of the flood they were all taken away from the earth here and they have been limited or chained or imprisoned from that time until this.

Q. And have not had the power since that time to come to the earth in human form? A. No.

Q. Now, coming down to the Millenial Dawn in 1914, or the Millenial Age. Does Pastor Russell teach in any of his writings that there is going to be any physical change in the world? Is there going to be any great upheaval and throwing down of buildings, and
317 drying up of rivers or any such doctrine as that? A. I don't remember reading anything like that.

Q. And that is not your belief? A. No, no.

Q. As far as you know that is not Pastor Russell's belief in any sense of the word. There will be no destruction of life in 1914? A. I might say this, to know the rules of the Master, which I believe they speak about this time of trouble that it says "Except those days were shortened no one would be saved." He does say that. This is in the teachings of Jesus.

The Court: What was that, unless their days be shortened?

The Witness: Except those days were shortened, speaking about the time of tribulation referred to
318 by Daniel, the prophet and in which he has also referred he says, "Now, except those days were shortened, those troublous days no flesh would be saved."

The Court: Then you think they are going to be shortened?

The Witness: I believe they will be shortened, yes, by God.

Q. In order to avoid that destruction of the flesh? A. In order to avoid any undue destruction, anything that is unnecessary.

Q. You do not believe that in November, 1914, that you will pass out of this earth or away from this earth, in the physical form do you? A. No, sir.

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Q. Or that any one of us in this court room today will do that? A. I do not.

Q. You think we will continue on this earth all through October of 1914, 1915 and 1916, doing the same business as we are now? A. I think in general that is true; but now, that does not refer particularly to the church.

Q. According to your interpretation, there are certain people who, being consecrated will not carry on the ordinary business matters of the day? A. I think that those who are faithful as Christ's followers who are promised a change of nature from human to divine nature, the same as passed through—I think that any of those will either have a resurrection or have a translation—I believe that they will be changed into the divine nature.

320

Q. But the great majority of the world as it is constituted, we sinners, will stay here in our ordinary forms and go on about our ordinary business in the same way. Maybe there will be better times, or something of that kind? A. I believe that there will be a great deal better times, and they are so good and so grand and glorious as to almost minimize this matter of trouble about which we seldom speak.

Q. And this court will be in existence the same as it is now, and we trust that Judge Kelby will serve out his full term—

321

The Court: Do not use me as example.

Q. Well, if you can just give to the court and jury your belief in reference to the physical change, if any, that will take place in 1914, or for any considerable period thereafter? A. Well, now you see you are asking me to do something that the Scriptures do not make clear. The only thing I could do would simply be to reason on it. That I would say that one man, I will say now, that there are gradual changes

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taking place everywhere, and that those changes are going to bring about more difficulties than we are having now. For instance, if one would cite or make a brief reference to the conditions such as this you take the condition of the financial world in comparison with the condition of the great masses of the people, and what they are writing and what they are doing and what they are saying, it would lead one to conclude that unless some remarkable readjustment could take place in affairs that there would ultimately be some clash between these great parties.

323 Q. That is, you mean this dispute between labor and capital that is constantly going on at the present time? Is that what you have in mind? A. Yes, sir.

Q. You think that there has to be some readjustment of the warring interests between capital and labor, that is one of the things? A. I think so, yes, sir.

Q. And the condition of the poor. You believe that we will have banks going on, the railroad cars and steamships and all these things all through 1915, 1916? A. I just think that they have come to stay.

Q. And stay for a great many years? A. They will probably be here until something better takes their place in the way of advancement.

324 Q. And Pastor Russell does not teach anything to the contrary? A. Not that I know of.

The Court: What was the name of this place where they say the angels materialized?

The Witness: That is in the 18th chapter of Genesis, and the three were going to Abraham, and he saw them.

The Court: What was the place you named?

The Witness: Mamre, 18th Genesis.

RE-CROSS EXAMINATION by Mr. Oeland:

Q. You say Mr. Russell did not teach the general destruction and upsetting of things in 1914? A. I

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said that I did not understand him to say that the rivers would be dried up and certain other things there, that Mr. Sparks referred to. 325

Q. But he does teach that the people will all be raised from the dead, don't he? A. During one thousand years.

Q. And that all these ancient worthies like Jacob, Isaac, Esau and David and Elias, and Elijah and Hezekiah and Uriah—I don't know whether that is right— A. He has the scriptures on that.

Q. That they are all coming back and will be the physical rulers in the world—don't you know that he teaches that? A. I will tell you just what he does teach. He teaches that the scriptures say: Thy judges shall be restored as at the first. 326

Q. Don't he construe that to mean the ancient worthies, some of whom I have referred to? A. Yes, sir.

Q. That they are to rule the earth—is that right? A. They are to be the judges and rulers in the earth, yes, sir.

By the Court:

Q. Is that to happen in 1914? Was this restoration of old judges to happen in 1914? A. I say that is inferentially so. 327

By the Court:

Q. You used the word ancient judges? A. Yes, sir—"Thy judges shall be restored."

Q. There is no time limit on that as to when it begins? A. I say that it does seem that somewhere in connection with that date—I say that the date is inferential—not dogmatic.

Q. Didn't you read from his book where he says it is certainly established? A. I did. But I said he makes a great many other statements qualifying that statement.

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328 *Plaintiff's Witness, Mentas Sturgeon, Re-cross*

Q. Does he give what you call advice prayer, or prayer advice, to people who write to him, Mr. Russell? A. What is that?

Q. That is what I am asking you about? A. What do you mean by prayer advice?

Q. People write to him about investing or going into business, and does he give them prayer advice or something under that name? A. Nothing that I know of; not a thing.

Q. Don't you know he teaches the destruction of the insurance companies in 1914? A. I would say
329 that there would not be anything surprising if there is some dissolution of those somewhere about that time.

Q. Didn't he teach—when somebody asked him about insurance—didn't he teach that these insurance companies are going to be destroyed in 1914? A. If he said that, that the insurance companies will be destroyed in 1914, if he says that I don't know where he says it.

Q. And you would not believe him if he did say it? A. I am not saying that.

Q. You would not go that far? You talk about him not talking about the rivers drying up. Don't he describe things worse than that even. Let me read to you
330 an extract from Day of Vengeance, page 594, "On the contrary, the scriptures everywhere hold out the promise that the faithful, humble, lamp-light shiners of this present time shall by and by with Christ be the glorious and honored seed of Abraham, as the stars of heaven." You understand he refers to his followers there? A. No, I don't understand that.

Q. As the lamp-light shiners of the present day? A. The present day extends all the way from Calvary cross and Pentecost clear down to where we are.

Q. Don't you understand that he refers that he is embracing himself and his followers in that class? He simply states a certain class, what the class is there.

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Q. Don't you understand that you are included in the class of the lamp-light shiners who are to be by and by with Christ with the glorious and honored seed of Abraham—don't you understand that that is what is going to be your lot as a follower of Mr. Russell, because you are good people? A. I understand that all who are of that class shall share with Christ in His glory, whoever they may be, and whensoever they may have lived during the gospel age.

Q. To be by and by with Christ with the glorious and honored seed of Abraham, as the stars of heaven, but not in the present heavens, which shall shortly pass away with great commotion— You understand what he means there by the heavens passing away with great commotion, don't you? A. I think I do. He is referring to the Apostle Peter's statement to that effect, and the inspired apostle says that.

332

Q. You believe that, the present heavens will pass away? A. I believe anything that the inspired Bible teaches.

Q. That is a good deal worse than drying up the rivers, don't you think that is even worse? A. Well, they will roll together as a scroll.

Q. The heavens will roll together as a scroll? A. That is what the scriptures say.

333

Q. And they are going to roll together because of the intense heat, which is going to be so hot, if it lasts long enough, that no flesh can stand it. Is that right? A. It says that they will melt with fervent heat. That is what the inspired word says.

Q. And that is coming off in 1914? A. That is inferential.

Q. You believe that, that is about the time? A. Approximately.

By the Court:

Q. Do you take the Old Testament as inspired also? A. Yes, sir, from Genesis to Revelations.

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334 Q. The whole book? A. The whole book.

By Mr. Oeland:

Q. On page 70, where he says the time is at hand, he speaks about the establishment of God's kingdom. Do you think that means the establishment of these ancient worthies ruling the earth with Christ and the bride class in the spiritual world? A. I understand that in Christ's kingdom there are two phases or features of it. One is a heavenly phase or feature, which will be composed of Christ and the glorified church, and that church is composed of all people taken out
335 through the gospel age, whoever they are.

Q. Whoever is good enough? A. According to the scriptural qualifications, whoever qualifies, according to where it says, Make your calling and election sure. Those who have received the election will be crowned kings with Christ, and shall reign with Christ a thousand years, but they will be in heavenly glory. But the earthly phase of the kingdom will be down here, and that will be with the rulers here on earth, as you have stated, they will be these ancient worthies, the natural seed of Abraham.

Q. Let me get back—I may not use the proper words, but I don't mean to do it irreverently—to
336 where you say about the elect, those who make their calling and election sure—do I quote the Bible rightly? A. Yes.

Q. That they shall dwell with Christ, they shall be translated from earth and become a part of the heavenly kingdom? A. Yes, sir.

Q. And that is going to take place in 1914? A. You are making more of 1914 than I ever do.

Q. Are we going to have an extension of time? A. I never preach 1914 anywhere, never did.

Q. Don't you believe in it? A. I believe it as I have stated it, qualifying it. I am not preaching it to the people.

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The Court: You have adopted some theory of chronology?

Witness: 1914 is an approximation, that is all.

Q. Here is another description of what is going to happen at that time, referring to the bride class, Christ's followers, that you describe as going to be translated. It goes on and says, it will be established gradually, during a great time of trouble, with which the gospel age will close, and in the midst of which present dominion shall be utterly consumed, passing away with great confusion— Can you think of anything worse than that? A. No, I cannot very much. 338
That is what the Bible says about it.

Q. You are going to give us a little longer than 1914, you think; you are not so sure about that? A. I think we had better let the Lord arrange that.

Q. Because the Bible says He cometh as a thief in the night and no man shall know of His coming? A. Cometh as a thief in the night.

Q. And the man who sets up here and tells us exactly what is going to take place, and how everything is going to be consumed, and what is going to come after what he speaks of as the second coming of the kingdom— A. Let me say about the coming of that kingdom—quoting the scriptures—

Q. Did I quote them rightly? A. The kingdom 339
cometh not with outward observation. If you are going to try to look for things with your natural eyes, and see this kingdom coming in 1914—no one will ever see it that way.

Q. Then the Bible is wrong, is it not? A. The Bible is right. There must be somebody else wrong.

Q. Didn't I quote it correctly? A. At it.

Q. If I don't, you quote it right? A. Referring to this kingdom?

Q. Yes. A. That it will not come with outward observation.

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340 Q. Leaving that for a minute, and going back to your doctrine here, I understood you to say there was no sex among the angels—that you understand to be Biblical doctrine? A. Yes, no sexes among the angels.

Q. How did you understand that these sons of God come down here and co-habit with the females? A. They would have to appear like human beings just like the others that we referred to.

Q. "And the sons of God saw the daughters of men, that they were fair, and they took them wives of all which they chose." Do you find any reference there to fallen angels at all in that Bible that I am reading?
341 A. I am saying that there are two general views of that term sons of God, and the most reasonable one, and the one which harmonizes with the rest of the scriptures, is that which refers the sons of God there to spiritual or heavenly beings.

Q. Of course any man can put an interpretation on the Bible, but what I am talking about is the Bible straight? You don't find any reference here to these sons of God being fallen angels, do you?

By the Court:

Q. In that chapter of Genesis, is there anything which says that the term sons of God is used inter-
342 changeably with fallen angels? A. The term sons of God—that would show—would make a distinction between them and, strictly speaking, the sons of men. It does not say sons of men, it says sons of God.

By Mr. Oeland:

Q. You talked about the daughters of men and the sons of God? A. And it refers to men too—when men had multiplied and the daughters of men were multiplied—also these sons of God as distinguished from them.

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Q. You don't see any reference to where this treated these fellows as fallen angels, do you? I am not talking about discussion on the outside, I am talking about the Biblical writing itself? A. That is what I am talking about.

Q. Do you see any reference there to fallen angels at all, by words? A. In the term sons of God as referred to in that passage, as distinguished from men, daughters of men, wives, I say there is a marked distinction between people here on the earth and these people.

Q. I know—but where do you find any reference that they are fallen angels?

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Mr. Sparks: Objected to. He has not said they were fallen angels. He said that their fall took place when the angels had intercourse with the daughters of men. That is where he said the fall took place.

Q. I don't see any reference to that even. I am trying to get the Bible pure and simple.

Mr. Sparks: You are asking him where it says that these were fallen angels. He didn't say they were fallen angels.

The Court: I will let the witness state—

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chapter six of Genesis.

Witness: And it came to pass when men—that is one term—began to multiply on the face of the earth, and daughters were born unto these men—the sons of God—who are they? They are distinguished from these men and the daughters of men.

A. I think these sons of God were—

Q. Not what you think. Can you find any Biblical doctrine there that they were the fallen angels—not you think. I might think differently. A. Yes, I think the reference there, that the apostle made, that I referred to in—

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346 Q. Now, Mr. Sturgeon, it is a simple question. Is there any reference in that page, by word, to these people being fallen angels? A. Read in the context, and find out what the offspring was and what they did.

Q. Did you read the six first verses? A. Yes, sir.

Q. Now, is there any reference there to these sons of God being the fallen angels, in that page? It is an easy matter to read it, if there is.

By the Court:

347 Q. By express words? A. That is not a correct way to interpret the Bible. You have to take the whole Bible.

Q. The question is only with reference as to whether there are any express terms in that chapter as to the sons of God being fallen angels. Your method of interpretation may be all right, but that is another question. Counsel can bring out the method of interpretation.

The Witness: There is no express statement in that chapter.

By Mr. Oeland:

Q. That is an answer to my question.

348 The Court: He is not inquiring as to your interpretation.

Q. The sons of God—in the Bible, in the Old Testament and the New Testament, refers, in all expressions where they refer to those who follow the teachings of the Lord as sons of God, to them as separate from those who are the heathen? A. No, they are not spoken of as sons of God until in becoming Christians they are then spoken of as the children of God.

Q. Is not that all through the Bible, where the distinction is made of followers as separate from the

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heathen, that he speaks of them as the sons of God and children of God? A. Children of God—that runs through the New Testament.

Q. In Second Peter—: For if God spared not the angels that sinned, but cast them down to hell, and delivered them into chains of darkness to be reserved unto judgment—that is Second Peter. It is said there he cast them down to hell and delivered them into chains of darkness to be reserved unto judgment. There is nothing there referring to them returning to the earth, materializing, and representing themselves as somebody seducing a woman. A. This has reference to the passage read in the Sixth of Genesis. 350

Q. It says that they were cast down to hell and he delivered them into chains of darkness. Do you find complaint with the meaning of the word hell? Do you differ with the Bible on that? A. I agree with the Bible in everything, so far as I understand it.

Q. Then if you understand this verse, which says they are tied up in chains of darkness and are going to be kept there until judgment— A. I think that clearly signifies some restraint of their powers and activities.

Q. Could you make it any worse than by putting them in hell and getting them into chains of darkness —don't that mean tied up. A. I tell you hell is not so hot as some people think. 351

Q. That is consoling. You understand what "chains" means—into chains of darkness? A. I would understand that to be a figure of speech.

Q. You understand they are not going to be let loose until 1914 on the day of judgment? A. I understand from this that they will not be liberated or freed until the judgment—yes, sir.

Q. And you understand that the judgment is coming off in 1914 or about that time? A. I never preach 1914.

Q. You don't stand for 1914? A. I don't preach it, I don't think that is the thing to do.

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The Court: Do you believe it? That is the question.

The Witness: I believe it, but not the way it is put here. I don't believe it so strongly that I am going to preach it. I think inferentially about that time these things will take place.

By Mr. Sparks:

Q. The word hell in the original, does it mean hell? A. In this passage?

Q. In the original, in the Greek? A. The Greek word for Hades is ——— from ——— and ———. That means, not seen, something that is not seen.

353 Q. So that it does not mean the same as hell, as we understand the word, a burning pit? A. The Greek word does not have any such idea in it, any more than the corresponding word in the Hebrew sheol has. Those are synonyms, Hebrew sheol and the Greek Hades, they are practically synonymous, and they mean an unseen state.

Q. And not a burning place? A. No, no.

Q. In the Old Testament do you find the phrase sons of God referring to human beings in any passage? A. Not that I recall.

Q. It is only in the New Testament they are spoken of as children of God? A. Children of God.

354 Q. And you make a distinction between the two phrases—as used in the Old and as used in the New Testament. In the Old Testament how do you interpret it? A. The Old Testament phrase son of God?

Q. Yes. A. I would understand that to refer to some spiritual or heavenly being.

Q. In interpreting any passage of the Bible of course you take the context, the entire work, and read it together? A. Take the context and take all other passages that throw any light upon that single passage.

Q. And make it a complete picture? A. Thus getting the entire Bible view of the subject in hand.

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Q. Will you give me the scriptural quotation for your belief that these judges that you speak of will rule the land? A. Well, that is a quotation: "Thy judges shall be restored as at the first."

Q. What quotation is that? A. I don't recall the reference, but I know that is the correct quotation.

Q. Any others? A. Yes. You will find that the prophets all through speak of the particular position and work of Israel as God's people. Take the general tenor of all the Old Testament scriptures, it is to the effect that this natural seed of Abraham or Israel in the flesh are spoken of sometimes as Jews or 356
Hebrews, that their purpose is—God's purpose for them is—that they shall be the leading nation of the earth and become the channel for the blessings of all the families of the earth. You remember the promise made to Abraham: "In Thee and in Thy seed shall all the families of the earth be blessed."

Q. Refer to the 45th Psalm, verse 16, and see if that has a reference to that? A. "Instead of thy fathers shall be thy children, whom thou mayest make princes in all the earth.

Q. That is not the passage you refer to, is it? A. That is one of the passages.

The Court: Where is that?

The Witness: Psalm 45, verse 16: "Instead of thy, 357
fathers shall be thy children." These fathers, or ancient ones, in place of them will be the children "Whom thou mayest make princes in all the earth." They shall be the princes in all the earth.

Q. Will you turn to the first chapter of Isaiah, verse 26?

The Court: In that Psalm 45, I see they use the term "The king's daughters." Whom do you understand by that?

The Witness: You will find: "The king's daughter is all glorious within. Her clothing is of wrought gold."

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358 I think that that king referred to is King Immanuel, and refers to one whose clothing is wrought gold, I think that refers to those who shall be with him, members of his bride, under the figure of bridegroom and bride— What is the reference there Mr. Sparks?

Q. Isaiah, chapter 1, verse 26. Isaiah, 1, 26. That is the one I referred to: "And I will restore thy judges as at the first, and thy counsellors as at the beginning."

Q. How do you interpret that? A. I interpret that to mean—in the Jewish law they had certain judges.

359 Q. And Moses was one of them? A. Under the Jewish arrangement, in connection with the Mosaic law and the covenant based thereon they had certain judges among the people, and those judges of course passed away with the passing away of this earthly kingdom. Now they are going to be restored again in the time of the Messiah's kingdom.

Q. I want you to explain if you will this rolling away of the heavens? A. The heavens rolling together as a scroll?

Q. Yes? A. In the scripture the heavens and the earth are two terms frequently used, and the word heaven itself refers to higher things, and the higher things in connection with the present arrangement of

360 things will figuratively speaking, like a scroll, they will roll together.

Q. It does not mean that in 1914 the heavens as we understand the term are going to roll together like a scroll? A. No.

Q. You don't believe that? A. No.

Q. And you didn't intend to so testify? A. No.

Q. You don't believe that a great wall or cloud of fire will pass over this earth in 1914 and entirely destroy it? A. I believe they are symbolisms, figurative ways of expressing the truth.

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Plaintiff's Witness, Alfred J. Ritchie, Direct 361

ALFRED J. RITCHIE, residing at 124 Columbia Heights, Brooklyn, called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

I hold the position of vice president of the Watch Tower Bible and Tract Society, and manager of the correspondence department. The proceeds of the sale of the wheat sold at the Tabernacle were held in a separate fund to the account of Mr. Bohnet and Mr. Fleming for a certain length of time and then passed to the general funds of the association, and were credited to them as a contribution. 362 I met Pastor Russell personally in 1905 I think for the first time. The number of Bible classes in this country is approximately, I should say about twelve hundred, in this country and Canada. Bible classes affiliated with this particular movement I know how the Bible study classes are governed. As to printed rules as to them, there is nothing aside from what is contained in "studies in the Scriptures, the six volumes of the Studies in the Scriptures."

Q. Do you know how many classes have elected him and designated him as their pastor? A. This is always changing more or less, new ones coming in.

The Court: How many classes, was the question. 363

Witness: There are about one hundred forty now I should say.

And they extend practically all over the United States and Canada. There are some in foreign countries as well.

Q. You said there were 1200 altogether. As a matter of fact are there not fourteen hundred? A. I would not be positive.

Pastor Russell has not preached to these different classes exactly at stated intervals. He preaches as he is requested and is able to respond. That is, requests

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come in from the different classes to have him address them, and as he can make those engagements he does so and those engagements carry him to the coast and to the extreme north of the United States and the extreme south; and all the states of the union practically. That is his entire work—he gives his entire time to that. Every Sunday preaching some place, and holding meetings during the week; yes, sir.

Q. His books—can you state the circulation of his books? Does that come under your department, Mr. Ritchie? A. No, sir, not directly.

365 Pastor Russell is the duly elected pastor of the Brooklyn Tabernacle I think during the past year he has preached in Brooklyn probably twelve or fifteen times. He preaches principally in the Academy of Music. I have attended several of the meetings there. The academy is usually crowded and numbers are turned away. That is so whenever he preaches, I understand. That is so on all the occasions when I have heard him preach.

Pastor Russell is editor of the Watch Tower. That is a paper circulated semi-monthly. He writes most of the articles in that paper. It has a circulation of about thirty-five thousand, semi-monthly. Subscriptions to the Watch Tower go to the Watch Tower fund, and

366 then into the tract fund. None of it personally goes to Pastor Russell. I live at the Bethel Home. I know of my own knowledge that Pastor Russell's entire time is engaged in religious work. I receive no salary. I receive an allowance each month of ten dollars. I live at the home and get my room and table board. I know of my own knowledge that is true of all the other persons engaged in this work. I might say that is true of the men. The women receive five dollars—about a hundred is approximately the number there. The women employes there get ten dollars. My wife gets ten dollars. She works there.

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Q. Do you know Pastor Russell's general reputation in the community as a Bible scholar?

The Court: Which community?

Q. This community? A. I am not very well acquainted in Brooklyn.

Q. You have lived here for two years? A. Yes, sir.

Q. You have talked with numbers of people since you have been here? A. Yes, sir.

Q. And according to the speech of the people that you have talked with, what is his reputation as a general Bible scholar?

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Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff excepts.

I know that Pastor Russell comes under that same rule as to the allowance of ten dollars. That is the only sum he draws for personal expenses, or for his personal use. Pastor Russell writes for other journals besides the Watch Tower. He writes for the Overland Monthly, articles of a religious nature. He supplies a weekly sermon to a great number of newspapers in Canada and the United States, about 1425 different newspapers.

369

He supplies the copy free of charge. And these fourteen hundred different newspapers publish them from the copy which he supplies to them. And that is a weekly sermon.

I know Pastor Russell did not directly receive any of the proceeds of the Miracle wheat of the wheat that was sold at the Tabernacle in 1911. I designated a man to take charge of the wheat. The matter came to me in the first instance. I received the letters written by Mr. Fleming and Mr. Bohnet and designated Mr. Dockey to sell the wheat. Pastor Russell had nothing to do with that.

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370 *Plaintiff's Witness, Alfred J. Ritchie, Cross*

CROSS-EXAMINATION by Mr. Oeland:

His sermons are published in something over fourteen hundred. I receive the reports each week from the sermons department, who check off these sermons. Mr. Mockridge is in charge of the sermons department. G. C. Driscol has nothing to do with the sermons department directly. He arranges for Pastor Russell's public meetings in a way with the newspapers. He supplies the newspapers with writeups for Pastor Russell, in advance of Pastor Russell's public meetings. That includes a good deal.

371 Q. In other words, is not Mr. Driscol the press agent for Mr. Russell? A. I guess that would be a proper expression. I know in a general way the duties of Mr. Driscol.

I have seen advertisements, but I only know inferentially that Mr. Driscol placed them in the papers. I was not with him. I was not there when these publications of sermons in the newspapers were put out. I don't know as much about Mr. Driscol's duties as I do about these publications, because the reports of these publications come to me every week. The reports of these advertisements don't come. They are not paid for by the Bible & Tract Society, not to me. I know

372 nothing about that branch of the business.

Mr. Van Amburg is the treasurer. He will know what is paid out. He is the treasurer of the Watch Tower Bible & Tract Society. I don't know just how his books are kept, but I expect he keeps them completely and competently. I don't see the books very often.

I do not know where Mr. Driscol is now. I saw him last about two weeks ago I should say. He was at the Tabernacle on Hicks Street. I have not seen him since. Don't know where he has gone. Do not know when he is coming back.

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We have a sermons department to check off the sermons that come in.

By the Court:

We get copies of papers that publish the sermons, and I check up the names of the papers to see that the sermons are in those issues.

By Mr. Oeland:

I understand the sermons are published in the Brooklyn Times. I expect that is included as one of the list. I did not say I checked up the papers. I said the report of the sermons department was handed to me each week. That is all I know about the publication. 374

By the Court:

I do not know whether anything is paid or not to the Brooklyn Times. I suppose Mr. Van Amburg would know. I am not sure Mr. Driscol would know about that.

By Mr. Oeland:

Q. How many people have you got around there in the Bible House, Bethal, whatever you call it? A. In the neighborhood of a hundred. 375

Q. How many women? A. I guess about forty perhaps; I am not positive of the exact number.

Q. What did you mean this morning by saying they got five dollars a month and you got ten? A. I explained afterwards that that was a mistake, that they received ten dollars a month. Each Christmas the society presents each one who has been regularly in the employment for a year with a little Christmas present. The men get ten dollars and the women get five dollars. That is what I had in mind.

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376 I can't say definitely how much property the society owns. The Miracle wheat contribution went into the regular funds of the society. And the regular funds of the society are used to pay the expenses of the society. And one of the expenses is the ten dollars that Mr. Russell gets and the ten dollars I get. That is part of the expenses. It was held separate for a year, and then put into the regular funds of the society. We held it separate for a year because of charges made in the Eagle, that there was something crooked in connection with the sale of the wheat, and this fund was kept separate until there
377 would be an opportunity for any one to receive their money back who would ask for it. It was advertised in the papers. If that had not been charged it would have gone right into the regular channel of the society with any other funds, I presume. That is the only reason I know for keeping it separate for a while.

About September 23rd, 1911, I expect there was about thirty bushels sold at that time. I don't know exactly the total amount received from this source. I had charge of it but I don't know exactly how much was received. The money was turned in regularly to the treasurer, what came in. It was turned in to the regular channel, but a sep-
378 arate account kept for it, and it was not included in our tract fund. We keep a separate account of every source from which we get money. With this difference, that the money from this sale was quite separate, in a different way from the other—not used. I said it went directly to the treasurer of the society. Mr. Amburg was treasurer. Mr. Brenneisen is superintendent over the whole works. The bookkeeper is Mr. Van Amburg. As to the stock books, showing the amount of stock, and who holds it, Mr. Brenneisen looks after that.

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The Court: How many corporations are there? Is the Tract Society a special one, if so, what is the other?

Mr. Sparks: The Watch Tower Bible Society is a Pennsylvania corporation; the People's Pulpit is in New York.

We have no other corporations around there that I know of.

Q. The newspaper syndicate, is that incorporated? A. I have nothing to do with that. I do not know that it is incorporated. Do not know who composes the newspaper syndicate. I have heard of the Cemetery 380
Company; I know nothing about it definitely.

By Mr. Sparks:

Q. You say that the fund from the wheat was kept for a year so that if any person was dissatisfied the money could be returned. At the end of the year did you send out a letter to all those who had sent in and purchased the wheat, and inquire whether they were satisfied, and notify them that they could have their money back if they were not? A. Yes, sir. There was a letter, such a letter sent out, asking for a report on the wheat, and if they were satisfied what results they had. And if they were not satisfied that 381
they could have their money back. That was published broadcast, that any one who was not satisfied could have their money back. I know it was published in the secular papers. Not sure that it was published in Watch Tower. There was no request for the money to be refunded. I remember one instance, I think that is all, where a man had misfortune with his wheat, and the money was refunded without his asking it.

Q. Outside of that one exception, every purchaser of the wheat returned an answer that he was satisfied, or words to that effect? A. Apparently so.

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382 *Plaintiff's Witness, Isaac L. Frey, Direct*

By Mr. Oeland:

I didn't read the reports. That notice was sent out a week after the article appeared in the Eagle. I can't state what the reason was.

ISAAC L. FREY, residing at Lower Mount Bethel, Pennsylvania, called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

383 My business is a farmer, and so on, a little of everything, in Pennsylvania. I have a farm of my own.

Q. Did you plant for yourself or for any other person any Miracle wheat during the past three years? A. I planted for myself in combination with a hardware man. Fred Widenor, of Belvidere. I got the seed from him. I do not know whether that is Stoner wheat. I got it from him. I planted that wheat. I started with one quart.

Q. And you sowed that to how much land? A. I would suppose it was about sixty paces in length, and I closed every other tube in an eight tube drill. You
384 can reckon that out for yourself. That will sow about —every other tube—I closed every other because I only had a quart, and I wanted it to go as far as it would go. I went as far as it would go; I didn't go through the field.

Q. Sixty paces—30 inches to the pace? A. Something like that. I only planted four rows—I shut every other one in the eight hole drill. I had four rows of sixty paces long; about that. But I left this run—some of it ran out before the other. I sowed this on a separate space, and some ran out before the other. Some was closed. Any farmer knows you can't regulate it with that small quantity.

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By Mr. Sparks:

I got about a bushel and a half out of that quart—understand I saved that—I was not so very particular as this was only an experiment. I got about a bushel and a half out of that quart, but I didn't save it all, I just saved the best of it, because some got mixed up with some of the other. I took the best out. I mowed that with a cradle and I know it was pure. There was some wasted. After I had assorted it, I had about a bushel left, I would suppose. That I considered good. The following year I didn't plant it all. I planted I suppose about an acre. I sowed a peck of it, that is 386
fifteen pounds, to an acre. I sowed about a peck of it to the acre, and I sowed about an acre of it. I got about twelve bushels out of that. I planted some in the following year. I sowed—the field is supposed to be three acres and I only drilled two and three-quarter acres. I sowed about from six to eight quarts on the acre the following year. In weight that would be—I should have to figure it out.

By the Court:

Q. How many quarts to the bushel? A. Thirty-two.

Q. The bushel weighed how many pounds? A. 387
Your drill varies sometimes. I set it to seven quarts.

By Mr. Sparks:

I got forty-two bags full, but not measured or weighed; but they were grain bags, and we filled them all full. We calculated we had about one hundred and eight bushels all told. The field measures two and three-quarters—it drills—yes—two and three-quarters. I planted to the acre about eight quarts, little less than a quarter of a bushel. Fifteen pounds of this wheat to the acre. I planted

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388 *Plaintiff's Witness, Isaac L. Frey, Cross*

two and three-quarter acres and got one hundred and eight bushels.

Q. You didn't quite plant the whole field? A. Yes, but a drill will vary. It is supposed to be a three acre field. I got about one hundred and eight bushels, but without measuring. We estimated that.

Q. And altogether how much seed did you plant in that field? A. Well, now, that I can't tell you, because I didn't measure it accurately—I could not tell you. I set the drill, and when we drill we generally set the drill to a certain amount, and sometimes it will
389 do that and sometimes it will do more. Any farmer knows that different drills vary. But approximately it was eight quarts to the acre. I would say eight quarts to the acre is what I supposed to be put on. Of that one hundred and eight bushels, Mr. Widener got one hundred and one bushels, and the rest I kept for my own use.

CROSS-EXAMINATION by Mr. Oeland:

You couldn't sow an acre with a quart unless you would drop it. That would be pretty bad. The first year that I sowed any considerable sum, I didn't plant about an acre. The ground I sowed the next
390 year after I planted the quart, I estimated—I suppose probably three-quarters of an acre. That was an estimation, not measured. I only raised twelve bushels that time. I did not fertilize pretty well. I did use fertilizer.

Q. How many inches apart did you plant it? A. That would depend on the drill. I sowed every tube in the eight tube drill, I left every tube run at that time. I closed it up before.

The Court: How far would that drill ordinarily drop the seed apart?

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Witness: Ordinarily I would suppose it would be from three to four inches, and sometimes it varied. A drill sometimes will take two seeds in, and then it will not be—it is hard to say how far apart. I did not stop up every other tube of the drill the second year. That is what I should have done, but I didn't. I only got twelve bushels off about three-quarters of an acre. The next year I sowed as near as I could—I varied—I started for seven quarts as near as I could, but it varied from six to eight quarts, as any farmer will know. I started for seven quarts. Sowed about two and three-quarter acres. Did not stop up every other drill then. Planted it the same way as the year before. And then off nearly three acres or two and three-quarter acres I estimated one hundred and eight bushels. I did not measure it, only by grain bags. We had regular grain bags, and we estimated it that way, and that is the way I paid for the threshing too, so much a bushel. I never did try the ordinary wheat, planting it that thin on the ground.

392

By Mr. Sparks:

Q. Why not? A. Because I wouldn't get none.

Q. When did you get this yield of one hundred and eight bushels—last year? A. 1911.

393

Q. Do you know whether most of the farmers in your neighborhood have bought the seed? A. The majority of them have.

Objected to.

The Court: I don't think that is relevant. Answer stricken out.

Plaintiff excepts.

Mr. Sparks: There is a special issue tendered by the answer, that this wheat is no better than ordinary wheat.

The Court: I have allowed you to prove the yield from this wheat, not only in actual prac-

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394 *Plaintiff's Witness, Frederick S. Widener, Direct*

tice but in experimental stations. I don't think the fact that in one community in Pennsylvania they use it would be evidence of its value all over.

Mr. Sparks: It would be in that particular portion.

The Court: I exclude it, Mr. Sparks.

Plaintiff excepts.

The Court: It is excluded on the further ground that it is subsequent to the libel complained of.

395

FREDERICK S. WIDENER, residing at Belvidere, New Jersey, called on behalf of the plaintiff, sworn and examined, testified as follows:

Direct-examination by Mr. Sparks:

I know Mr. Frey; he lives in my section. I bought the wheat that I gave to him to plant of H. B. Stoner, Fincastle, Virginia. I think it was 1910—no—1909 I think. I bought two pounds. I am at a little of a loss to tell you just what price I paid for it. It was two dollars or five dollars for the two pounds. I have
396 some of Mr. Stoner's letters, but I could not find the one where I bought the wheat, referring to that. I have seen the wheat growing in the field. I have noticed its stooling qualities.

Q. What are they? A. How many to the stool, do you mean how many stalks?

Q. Yes. A. I counted twenty-two, twenty-three, twenty-four, in the field. Growing right in the field. Right as I sowed it. And if you wish me to tell about a gentleman who came to my place and wanted to see the field—he wanted to buy some wheat and he took a stool along back to Belvidere, and I cut them

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off so they were convenient for him to carry home, and I counted twenty-eight stalks with that stool. That was Mr. Brown of Bethlehem, Pennsylvania. He afterwards bought some wheat. I am in no way connected with Pastor Russell. I don't know him. I heard of him through the New York World, that is all. I never met him. Am not connected with him in any way. And Mr. Frey, not that I know of.

CROSS-EXAMINATION by Mr. Oeland:

The highest stool I saw was twenty-eight.

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ISAAC L. FREY, recalled, testified as follows:

By Mr. Sparks:

Q. What is the average yield in your section, of grain to the acre of wheat? A. About fifteen to twenty bushels under good circumstances.

Q. Under ordinary circumstances? A. It has got to be good for twenty, ordinary for fifteen.

399

HENRY D. AYRE, called on behalf of the plaintiff, residing at Cleveland, Tennessee, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

My business is farming. Have been a farmer about thirty-five years and made a specialty of growing wheat and corn. I am growing wheat and corn for seed purposes, making a specialty of wheat and corn for seed purposes. I have not been growing special seed for wheat until I have got hold of this Stoner

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400 wheat. At times I would sell a good deal of wheat for seed, when I got a good article, but I have not made a specialty for growing wheat for seed purposes until I got the Stoner wheat. I can't say for certain whether it was in the fall of 1909 or 1910 that I first bought Stoner wheat.

I got half a bushel and planted it on my farm in Tennessee. I set the drill to sow a bushel to the acre. I have an Oswego drill made in New York, tubes eight inches apart. I stopped up every other tube and sowed it, but it run out a scant seven-eighths of an acre, according to the acre measure on the drill. From that
401 I got twenty-three bushels and a few pounds. The number of pounds I disremember. Making to the acre a fraction over twenty-six bushels. We are considered in a poor wheat section, not near as good as either east or west of us. The average yield of wheat in my section is seven and a half to eight bushels per acre, and from this I got twenty-six.

Q. What peculiarities did you notice in this wheat over ordinary wheat? A. It is much hardier. It stands our winters better than ordinary wheat. The winter before this last I sowed seven eighths of an acre to experiment with. If I am selling seed I don't want to sell anything but what I can recommend. I
402 sowed it on a piece of land that I had in rye the winter before. The rye froze out. I sowed this Stoner wheat on the same land, and the last was a much harder winter than the winter before, and the Stoner wheat stood, and made a pretty fair yield, of course not what it would on upland; and it stools much more than any other wheat I ever saw. I never saw anything to compare with it.

It has the largest heads I ever saw except this fall I did see some heads—from Colorado—a neighbor of mine had some heads of smooth wheat from Colorado that had a few grains more in them than any of the

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Stoner heads I have seen. He had half a dozen heads his daughter sent him and we counted one of them running about eighty. Sixty-four to sixty-eight is the most I have found in Stoner wheat.

Q. Do you know of an experiment that was made down in your section between the ordinary wheat and the Stoner wheat planted late in the fall or winter, in the early winter? A. Yes, sir. Since I have been in the business I have had several farmers around me to grow this wheat for me under contract. I would pay them the market price for their wheat. One man came to me in the fall of 1910, in the latter part of

404

November, and wanted two bushels of wheat, and I let him have it—it was too late to sow any wheat at all.

Q. What time was that? A. Latter part of November, I think the 28th. I have his contract, but I haven't it with me.

Wheat seeding is from about the 5th of October until the 4th of November, which is considered late seeding. He sowed this—he got it home that evening and it rained on him before he got home, and he didn't get to sow it until the 4th of December. He told me he had already sown eleven bushels of ordinary wheat, which I suppose, without being certain, that it was Fullcastor wheat. That is the wheat we sow mostly in that neighborhood.

405

Q. What was the yield of the eleven bushels, what was the yield of the Stoner wheat? A. I only know the result from what the man told me; from what he told me.

By Mr. Sparks:

This wheat has the largest stooling qualities of any wheat I ever experimented with or ever saw. Has the largest heads of any that I ever saw, with the exception of the six heads that came from Colorado. The largest number of stools that I ever grew from

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406 *Plaintiff's Witness, Henry D. Ayre, Cross*

Stoner wheat is sixty-four. I have some stools with me. I have a couple I just picked up. They are not near as good as some we have. I sent some once to the fair, and I took first prize on this wheat in the fall of 1910 at the Appalachian Exposition, that took in Tennessee and Georgia and North Carolina. I exhibited my wheat at the State Fair in Tennessee and the Appalachian, too. That is the experiment station in Knoxville. I took first prize wherever it has been shown; took first prize at our county fair. And I sent it to the tri-state fair, too, but it was not delivered. In some way it got miscarried in
407 the express. The secretary wrote me he never got it. I called this wheat to the attention of the secretary of the agricultural department of the United States. In August, 1911, I was in Washington City with some stools and some of the wheat, threshed wheat. And I got the late Senator Robert L. Taylor to go with me. He went to Secretary Wilson, the secretary of agriculture for the government, and he had me undo it, and he examined it. These are some of the stools I picked up from my field. They grew right in the field. One of these, I think, has forty-nine. I have not counted the smaller bunch. The larger one has forty-nine.

408

Mr. Sparks: I offer both in evidence.
Both received as Exhibit 6.

CROSS-EXAMINATION by Mr. Oeland:

I raised wheat as a specialty—I have raised wheat for thirty-five years, and sold a good deal of seed wheat, but now I am engaged in making a specialty of seed wheat and seed corn. This was my first effort in making a specialty of seed wheat.

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FRANCIS H. McGEE, Trenton, N. J., sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am a member of the New Jersey bar and connected with the Attorney General's office of the State of New Jersey. I know Pastor Russell; I have read his books and am a member of the Bible class in Trenton. I have attended meetings and public addresses that Pastor Russell has given in Trenton. He preached in the Opera House and in the Republican Club Hall.

410

The meetings were attended largely, and by a representative audience of intelligent, educated people of Trenton. There were two hundred people turned away from the Opera House. There were, I think, about thirteen hundred and fifty people at the meeting in the afternoon. He did not lecture in the evening. In the morning and afternoon. I think he spoke in Philadelphia that evening, and so he could not stay.

I shall qualify my statement in regard to the Opera House, in so far as to say that the two hundred who were turned away went away partially because they would not sit in the top gallery. They did not care to sit up there. The rest of the house was full and standing room, and the rest were turned away because they did not want to go up there, because it was not very nice.

411

Q. Have you heard people in Trenton speak of the articles that the Eagle published in its paper about Pastor Russell in connection with Miracle wheat?

Objected to as immaterial, irrelevant and incompetent. Objection sustained. Plaintiff excepts.

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412 *Plaintiff's Witness, Francis H. McGee, Cross*

CROSS-EXAMINATION by Mr. Oeland:

I am employed in the office of the Attorney General of the State of New Jersey. I appear in courts and try cases occasionally, arguments, take testimony. I have appeared—my particular and principal work is starting proceedings in chancery to restrain corporations in the exercise of their franchises because they have failed to pay the tax due the state Also I have charge of work for the State Hospital for the Insane, in the way of collecting unpaid accounts, suing on bonds, getting orders of commitments of patients who are put in
413 there, who have been sent there temporarily. Also any other work—I have to look up the law and authority, or anything else that I may be requested to do.

I have been in the office—the Attorney General's office—I went there in June, 1902; eleven years ago nearly. I am in the classified civil service, but not in competitive class. Before that I was head clerk in my father's law business in Jersey City, the firm of McGee & Beadle, which was afterwards Beadle, Edwards & Lawrence; after my father died.

I began reading the doctrines of Pastor Russell in July, 1903. I read the books, and subscribed for the Watch Tower. Well, I have only given one or two
414 explanations in the way of a lecture. I am the leader on Sundays of the class of Bible students in Trenton. I don't remember when the time was that I lectured. I have spoken with the aid of a chart, trying to outline what I believed to be God's purposes as given in the authorities. It is a chart that is published in the books. You will find it in the first one there, only it is enlarged so as to hang on the wall, and used with a pointer so as to aid the eye in understanding the different dispensational doctrines as made in the Bible and history. I do not understand that Mr. Russell prepared the chart. He published it in his book. I have

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415

given lectures in my own house, and in a dwelling in Morrisville, across the river. Those are the only two places I ever did that. Then I have got a Bible class over there where I teach his doctrines. We use his books. We use the Bible principally. I get a great deal better understanding of the Bible with the aid of those books than I could—

Q. Do you know that he teaches that if you study the Bible without his books that you will land in utter darkness? A. I don't understand that he teaches that in that way at all. I am familiar with what you refer to.

416

I read it in the Watch Tower. I don't remember when it was published. At the time it was published.

There were announcements put out in the neighborhood, saying that he was going to speak there. We distributed literature with advertisements of the meeting on it, announcements of the meeting that he would hold, and the subject. "The Hereafter" was the name of it, the public lecture.

Q. Did you ever hear his lecture where he says he lectures on "To Hell and Back"? A. Yes, sir.

Not there though; in Philadelphia. I heard his lecture on "Where Are the Dead," in Philadelphia at another time. I have heard him speak in Brooklyn at the Academy of Music.

417

Q. Before we leave that for a minute, was this advertised in the papers there with his picture, weeks before? A. No, sir, not weeks before.

There was an announcement the week ahead in the Trenton Evening Times, that he was going to speak there, a news item on the front page. That article did not have his picture with it. His picture appeared in one or two morning papers. I think once before he spoke there in the State Gazette. They had his picture in it and the Trenton Sunday Advertiser. I haven't got that advertisement. I have not kept any

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advertisements. I don't know who prepared it. I just saw the picture in the paper, and the announcements.

I know Mr. Driscoll. Mr. Driscoll was there the day before, and I saw him, but he put no advertisement in the paper, to my knowledge personally. He got there, and I met him shortly after he came off the train. He was eating his lunch, and I went with him to the office of the Trenton Times at Trenton. It was too late to put an advertisement in that paper, or any announcement, and was only—I think he had Mr. Russell's picture along then, to put in. I am not sure
419 whether he had the plate or not. The Times did not print it, any how, at that time; that is, not before the talk, and there was nothing in it before the talk in the Times of that afternoon, whenever it was, Saturday. The circulars I printed did not have his picture on them. They had a picture of Dante, some picture of Dante's Inferno, on the back page. He was going to talk about "The Hereafter."

Q. And used the picture of Dante's Inferno, you understood that to mean Hell, Dante's Inferno? A. I understood it to mean the popular conception of hell as it has been held.

The picture was printed on the announcement that
420 he was going to speak on "The Hereafter," at the Opera House on Sunday. It was one of those pictures drawn by Dante, or drawn by Dore, which was printed in the Dante book, showing men in torment. That picture was not put on the billboards; no, sir. It was part of a tract which contained sermons. His picture was on the billboards, his own personal picture was printed on the billboards. It was a large poster. I don't know how large. It was larger than life size, I guess. I think there were eight large posters and fifty small ones. I don't remember which was which, which was large and which was the small ones. I hired the

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bill poster to do that job. I notified, as representing the class, I invited Brother Russell to come to Trenton to speak, and I received the material by express from —I don't know where it came from, but it was to be— I understand from the Watch Tower Bible & Tract Society. I notified no other society. I think the literature came from Brooklyn, but I don't remember. It came to Trenton by express. I employed the theatre bill poster to put them up. I think I heard him speak here in Brooklyn, lectures which have been published. There was a series of sermons on the subject of church federation, and also I have heard him speak on the

422

subject of baptism, a scriptural exposition of those subjects. I have read his lecture, "Preaching to the Dead." Did not hear him deliver it. I have read something else in that line. Most everything that is printed in the way of sermons I have read, and I have been up here in Brooklyn every time he spoke, as near as I can recollect. I like to come up and hear him. I come up here from Trenton on Sundays, to hear him preach.

JAMES D. ROGERS, Johnstown, Fulton County,

423

N. Y., sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am an attorney and counselor-at-law of the State of New York. I know Pastor Russell. I have known him by reputation since 1906; and personally for about four years. Have not heard him preach in my city. Have heard him preach in other towns. I heard him preach in Albany, in Schenectady and Glens Falls. In Albany, I should think the audience was about two thousand, with about two or three hundred people

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424 turned away. In Glens Falls, I should think there was about eighteen hundred, with some turned away. In Schenectady, about the same number as last given. I should think it was a representative character for the community or for the city. I am a member of the Bible class in Johnstown. Pastor Russell has not lectured to our class. We have elected him pastor.

CROSS-EXAMINATION by Mr. Oeland:

We elected him pastor according to the directions
425 in the Bible, by the stretching forth of the hand. By the stretching forth of the hand, by a vote taken.

Q. Do you mean that some one got up and proposed his name, and then you voted on it? A. I will accept that.

There was no other candidate. I think Mr. Joseph Wiltse proposed his name at the last annual meeting. He is the pastor and he has never been there. The pastor of the Bible Class, and has never been near the Bible class.

Q. That is sort of an honorary position you have bestowed on him, then? A. We are glad to do that, and so consider it.

I commenced reading his doctrine in 1906, July. I
426 first read "The Plan of Ages," first volume in the Scripture Studies. The next was, "The Time is at Hand," in the same series. The first lecture I attended was at Glens Falls. As I recollect it, it was 1910. It was advertised. I think the subject was "Where are the Dead?" I don't think I saw his picture in the papers before that lecture. I did see it on the bill posters. I saw some in front of the Opera House where the lecture was given. Approximately two by three feet, I should think they were. Pictures of Mr. Russell. He did not have a picture of the Inferno there somewhere with the lecture. The next lecture I attended was at Schenectady.

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I think the following year, 1911. I do not recall just now just what time of the year it was. That was advertised. I would not say for certain what the lecture was. I think it might have been on "The Resurrection."

Q. Did it have a picture of the Tomb, did you see a bill poster there with a picture with the Tomb of Lazarus coming out of it? A. No, sir.

Q. Did you see any bill posters at that time? A. I think his picture with the subject on which he lectured or of the lecture.

428

Q. What kind of a picture was this, how large was it? A. I think it was, perhaps, larger than the other one. It was not life size, but perhaps it might be a cut twenty inches square. I did not see them put up.

Q. Did you see that announcement in the press, with his picture before that? A. I may have, I would not say for certain. I did not live in Schenectady.

The next one was in Albany. That was, I think, in November last year; November or December. I don't just remember now the subject. I saw his bill posters then. I saw them in front of the Opera House, and I saw them generally on the billboards in the city of Albany. I did not see them on the fences. I mean the billboards, where the bills are posted.

429

Q. What was on those pictures? A. The advertisement of the meeting and Pastor Russell's picture.

I do not recollect just now the subject. He had the largest crowd I saw at any time of the three places.

Q. And this libel they claim has ruined him was in 1911, and this was in 1912, where he had the largest crowd you saw. I say, in 1912 when you saw him, he had the largest crowd of any, is that right? A. That is correct.

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430 *Plaintiff's Witness, Harry J. Aldrich, Direct, Cross*

HARRY J. ALDRICH, Buffalo, N. Y., sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am bookkeeper in The Fidelity Trust Company of Buffalo. Have been employed there in the neighborhood of eight years. I know Pastor Russell; been acquainted with him between seven and eight years.

Prior to my present occupation my vocation was ministry. The denomination was The Disciples. I
431 gave that up and engaged in preaching independently. I read Pastor Russell's books. I am a member of the Bible class in Buffalo; class of about one hundred at the present time. I have been elected one of the elders of that class. I preach to them regularly, every other Sunday; sometimes two or three Sundays in succession, and then maybe it will vary. On Sundays that I do not preach to that class there, I usually go into the neighboring towns and preach. During the week I lecture classes. Usually once a week, and sometimes two or three times. I receive no compensation for this. It is a voluntary act of mine. I have never been requested by Pastor Russell to solicit subscriptions from any member of that class nor any person,
432 or any denomination I ever preached to. I have never received any instructions not to do that.

CROSS-EXAMINATION by Mr. Oeland:

I began preaching at Hiram, Ohio. I studied for the ministry at Hiram. I filled there the Student Church at what is called Hiram Rapids. I preached there about six months. I went from there to Ricksland, New York. There I preached at The Disciples Church, sometimes called the Christian Denomination. I preached there a little over a year Then I went to Oswego,

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Kansas, to The Disciples Church there. Stayed there a year and three months. Then back to Ricksland, New York. There about a year and some months, preaching in the same church. Then went to Buffalo. I took a church there, the Dearborn Street Christian Church or Disciples. Preached there about a year and a half. Then I quit the ministry of that denominition, and commenced to work for the Fidelity Trust Company.

For quitting the ministry there I had two reasons. I had come to the conclusion, upon the study of the Scriptures, that I could not conscientiously preach for 434
a salary, and I decided to go into business life and make my own salary. The other reason, because I could not subscribe to the doctrines that the Disciples Church held. Then I went to work for the trust company, bookkeeping. I am with them at the present time, making my living with them.

Q. You find that more remunerative than preaching? A. That is not what I made the change for.

Q. I did not ask you that. I asked you if it was more remunerative than preaching, working for the trust company? A. A trifle better, yes, sir.

Q. Then when did you take up Mr. Russell's teachings? A. Why, if I remember correctly, it was in the spring of 1903. 435

That was not while I was in the trust company. It was when I was in Ricksland, New York. I read a pamphlet on the subject, "Do You Know." That pamphlet contained a number of descriptions pertinent to the Scriptures.

Q. Did that refer to the judgment in 1914? A. 1914 is mentioned in the pamphlet, yes, sir; that is one of the questions contained in the pamphlet, yes.

Q. And refers to 1914? A. I will have to see the pamphlet before I can say as to the wording of it.

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1914 is mentioned in the pamphlet, yes, sir. It was not after reading about 1914 that I took up his other works. I read the four volumes of "Scripture Studies" at that time entitled "Millenial Dawn." I had been a Bible teacher for a number of years previous to that. I do not consider that I am lecturing on Mr. Russell's subjects. I am lecturing upon the Bible. I use his books. I have read his books and used them. Usually I lecture now in Buffalo; sometimes Rochester, and various towns where I am invited to lecture. I go and lecture to Mr. Russell's fol-
437 lowers, wherever I am invited. I will verify that statement. These classes where I go do not consider themselves as Pastor Russell's followers. They are classes that hold doctrines that Mr. Russell holds. They agree with him on those doctrines. But we do not consider those as his doctrines, necessarily. The last time I lectured was a week ago last Sunday, Rochester, New York. And the time before that at Buffalo.

By the Court:

Q. Is there any regular name in those various Bible classes in different parts of the country? A. Why, no. They usually call themselves Bible students. If
438 we want to advertise anything we use the name International Bible Students' Association, in order to have something to advertise by. There is such an association. Mr. Russell is an officer of it.

By Mr. Oeland:

Q. And have headquarters in Brooklyn? A. Now, I would not be positive about that. I do not think that is an American corporation.

Q. I know, but it is just called the International Bible Association, with headquarters herein Brooklyn? A. They have an office in Brooklyn, yes.

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Q. Is that the only office that you know anything about? A. No. Well, now, I am not competent to answer on that subject, because I am not connected with their society in a business way. The American headquarters I infer is here in Brooklyn. But, now, that is a matter of inference on my part, so far as I know.

RE-DIRECT EXAMINATION by Mr. Sparks:

Each class is an independent class and has no connection with any other class in an adjourning city.

440

By the Court:

Q. Is your particular class at your residence? Did you elect anybody pastor there? A. Yes, sir

Q. Who? A. Pastor Russell.

Mr. Rutherford: I offer in evidence the issue of Zion's Watch Tower, under date of July 15, 1908, page 214, under the title "Miracle Wheat."

Objected to. Objection sustained. Plaintiff excepts.

Mr. Rutherford: We next desire to offer in evidence the issue of the Watch Tower, dated June 15, 1911, giving a notice of the wheat involved in this case.

441

Paper referred to received in evidence, and marked Exhibit 7.

Mr. Rutherford: I next desire to put in evidence the issue of the Brooklyn Eagle, dated September 22, 1911, first column on the front page.

Mr. Oeland: That is objected to as irrelevant, incompetent and immaterial, and as not being embraced within the pleadings.

Objection overruled. Defendant excepts.

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442 Paper referred to received in evidence and marked Exhibit 9.

Mr. Rutherford. We next offer in evidence the issue of the Eagle of the 23rd, containing the libel sued on.

Paper referred to received in evidence and marked Exhibit 10.

Mr. Sparks: You have no objection to the article in the same issue, have you, Mr. Oeland?

Mr. Rutherford: We offer this article. It is in the same issue of the paper, but in the last column.

Mr. Oeland: In view of the fact that it is in the same issue, we will waive the objection.

443 Article referred to received in evidence, and marked Exhibit 11.

Mr. Rutherford: In this connection we offer the issue of the Brooklyn Eagle dated September 25, 1911, second column, under the heading, "Miracle Wheat in Demand."

Mr. Oeland: That is objected to as incompetent, irrelevant and immaterial, and as being published after the alleged libel, and therefore could not be considered a part of it.

Decision reserved.

Paper referred to marked Exhibit 12 for identification.

444 Mr. Rutherford: I offer in evidence the issue of the Brooklyn Eagle dated September 26, the editorial, under the heading "Wise as a Serpent."

Mr. Oeland: That is objected to for the same reasons.

Decision reserved.

Paper referred to marked Exhibit 13 for identification.

Mr. Rutherford: We offer next the issue of September 27th, page 5, first column.

Same objection.

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Decision reserved. 445

Paper referred to marked Exhibit 14 for identification.

Mr. Rutherford: I next offer in evidence the issue of the Brooklyn Eagle, dated October 19th, 1911, front page, fifth column, under the heading "Pastor Russell sues Eagle for $100,000."

Mr. Oeland: We certainly object to that. It publishes nothing more than the complaint. We certainly had a right to do that.

The Court: Was the complaint filed at that time?

Mr. Oeland: Yes, and served.

Mr. Rutherford: But it is admissible for the purpose of proving malice. That is the only purpose we offer it for. 446

Decision reserved.

Paper referred to marked Exhibit 15 for identification.

Mr. Rutherford: We offer in evidence issue of the Eagle dated December 9, 1911, page 18, next to the last column, under the head line. "Eagle files its answer in Pastor Russell's suit."

Objected to.

Decision reserved.

Paper referred to marked Exhibit 16 for identification. 447

Mr. Rutherford: I offer in evidence issue of the Eagle dated September 11, 1911, first page, last column, "Worthless note was bank's asset."

Objected to as immaterial, irrelevant and incompetent.

Decision reserved.

Paper referred to marked Exhibit 17 for identification.

Mr. Rutherford: I next offer in evidence issue of September 13, 1911, page 3, cartoon under the title "Rots and Spots."

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448 Same objection.

Decision reserved.

Paper referred to marked Exhibit 18 for identification.

Mr. Rutherford: The next is September 13, 1911, first page, last column, which says, "Elliot dictated full bank minutes."

Same objection.

Decision reserved.

Paper referred to marked Exihibt 19 for identification.

Mr. Rutherford: The next is September 14, 1911, first page, first column, under the head line "Four bank witnesses being vainly
449 sought."

Same objection.

Decision reserved.

Paper referred to marked Exhibit 20 for identification.

Mr. Rutherford: The next is the issue of September 15, 1911, front page, first column, "Bank note secured by dummy mortgage."

Same objection.

Decision reserved.

Paper referred to marked Exhibit 21 for identification.

Mr. Rutherford: Issue of September 17,
450 1911, front page, cartoon.

Same objection.

Decision reserved.

Paper referred to marked Exhibit 22 for identification.

Mr. Rutherford: Issue of September 18, 1911, page 2, column 4, "Directors aid bank."

Same objection.

Decision reserved.

Paper referred to marked Exhibit 23 for identification.

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Mr. Rutherford: Issue of September 19, 1911, page 2, last column, "Dix expected to issue subpoenaes." 451

Same objection.

Decision reserved.

Paper referred to marked Exhibit 24 for identification.

Mr. Rutherford: Issue of September 20, 1911, page 3, column 3, headed "No action in Grout case."

Same objection.

Decision reserved.

Paper referred to marked Exhibit 25 for identification.

Mr. Rutherford: And the issue of September 21, 1911, page 3, the cartoon. 452

Same objection.

Decision reserved.

Paper referred to marked Exhibit 26 for identification.

Mr. Rutherford: Issue of September 23, 1911, page 16, last column, under the column headed "Union Bank probe to go on."

Same objection.

Decision reserved.

Paper referred to marked Exhibit 27 for identification.

Mr. Rutherford: Issue of September 25, 1911, front page, first column, under the heading "Big figures entered in Union Bank books." 453

Same objection.

Decision reserved.

Paper referred to marked Exhibit 28 for identification.

Adjourned to January 23, 1913, at 10 A. M.

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454 Trial resumed January 23, 1913.

The Court: I will admit in evidence the publications of similar defamatory matter as alleged prior to the commencement of the action, and will exclude any subsequent to the commencement of the action.

Mr. Kuhn: I except. Does your Honor include in the ruling the articles setting forth the complaint and the answer?

The Court: Yes. I think they are subsequent publications. I will exclude subsequent publications of the complaint and answer.

Mr. Sparks: We will not offer them at this
455 time.

Mr. Rutherford: I offer the issue of September 25, 1911, of the Brooklyn Eagle.

The Court: Is this objected to?

Mr. Kuhn: Yes. We object to all of these. We object to it as incompetent, immaterial and irrelevant.

Objection overruled. Defendant excepts.

Paper heretofore marked Exhibit 12 for identification is received and marked in evidence.

Mr. Rutherford: We offer the editorial under the head "Wise as a serpent," appearing in
456 the issue of September 26, 1911.

Mr. Kuhn: The same objection.

Objection overruled. Defendant excepts.

Paper referred to heretofore marked Exhibit 13 for identification is received and marked in evidence.

Mr. Rutherford: We next offer the issue of September 27, 1911.

Same objection and ruling.

Defendant excepts.

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Paper referred to heretofore marked Exhibit 14 for identification is received and marked in evidence. 457

Mr. Rutherford: The next offer is of the issue of the Eagle of September 11, 1911, the front page, right-hand column, in reference to the Union Bank; the headline being "Worthless note was bank asset."

The Court: That is prior to the date of the publication complained of?

Mr. Rutherford: Yes. This is September 11, 1911.

Mr. Kuhn: There is no objection.

Paper referred to heretofore marked Exhibit 17 for identification is received and marked in evidence. 458

Mr. Rutherford: We next offer in evidence issue of September 13, 1911, the cartoon on page 3.

Mr. Kuhn: No objection.

Paper referred to heretofore marked Exhibit 18 for identification is received and marked in evidence.

Mr. Rutherford: We next offer the issue of the same date, September 13, 1911, first page, last column, concerning the Union Bank.

Mr. Kuhn: No objection.

Paper referred to heretofore marked Exhibit 19 for identification is received and marked in evidence. 459

Mr. Rutherford: We next offer issue of September 14, 1911, front page, first column, in reference to the Union Bank.

Mr. Kuhn: No objection.

Paper heretofore marked Exhibit 20 for identification is received and marked in evidence.

Mr. Rutherford: We next offer the issue of the Eagle, September 15, 1911, front page, first column, in relation to the Union Bank.

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460 Mr. Kuhn: No objection.

Paper referred to heretofore marked Exhibit 21 for identification is received and marked in evidence.

Mr. Rutherford: We next offer the cartoon appearing in the issue of September 17, 1911, of the Brooklyn Eagle, in the second column at the top of the page.

Paper referred to heretofore marked Exhibit 22 for identification is received and marked in evidence.

Mr. Rutherford: On the same date there is an article I want to offer. At page 6 in the right-hand column we offer an article headed

461 "Indictments reported in Union Bank case."

Article referred to received in evidence and marked Exhibit 29.

Mr. Rutherford: I next offer in evidence issue of September 18, 1911, page 2, column 4.

Paper referred to heretofore marked Exhibit 23 for identification is received and marked in evidence.

Mr. Rutherford: We next offer the issue of September 19, 1911, page 2, the right-hand column, in reference to the Union Bank.

Paper referred to heretofore marked Exhibit 24 for identification is received and marked

462 in evidence.

Mr. Rutherford: We next offer the issue of September 20, 1911, page 3, column 3, relating to the Union Bank.

Paper referred to heretofore marked Exhibit 25 for identification is received and marked in evidence.

Mr. Rutherford: We next offer in evidence the issue of September 21, 1911, page 3, the cartoon under the head of "Securities."

Paper referred to heretofore marked Exhibit 26 for identification is received and marked in evidence.

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Mr. Rutherford: We offer in evidence the issue of September 23, the same issue in which the libel occurred at page 16, right-hand column, relative to the Union Bank.

Paper referred to heretofore marked Exhibit 27 for identification is received and marked in evidence.

WILLIAM PRAY, Mansfield township, N. J., sworn and examined as a witness on behalf of the plaintiff, testified as follows:

464

By Mr. Sparks:

I am a farmer; am not acquainted with Pastor Russell in any way. I have been raising Stoner or Miracle wheat for three years, growing it for three years. I have some samples of that with me. These are the samples of the wheat as I have pulled them from my farm. I have not counted the number of stalks in this plant but I counted them in November and there was about eighty on one smaller than that. That is one seed only. This plant is grown from one seed (witness produces plant). I just picked this off at random in my field.

465

Mr. Sparks: I offer them in evidence.

Two plants referred to received in evidence and marked Exhibit 30.

In that larger plant there are over eighty stalks.

I have been a farmer for twenty-five years. I have planted ordinary wheat in competition with this wheat. The first year I tried it was one acre of this Miracle wheat against the result of ordinary wheat. Against an acre of ordinary wheat. Of the ordinary wheat I planted two bushels to the acre and of this Miracle

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466 wheat to the acre I planted half a bushel. From my ordinary wheat I got seventeen bushels and from the Miracle wheat twenty-five bushels. I got twenty-five from the Miracle, seventeen from the ordinary, and planted the Miracle wheat only one-fourth as thick. The peculiar qualities I have noted in the Miracle wheat over the ordinary wheat were only in producing qualities. The superior qualities are the producing qualities. I never saw wheat stool that way as the sample I have shown here. I never have seen any other wheat in anything like that.

467 *CROSS-EXAMINATION by Mr. Oeland.*

I believe that one grain of wheat stuck down in the ground in an open space will stool more and do better than where it is stuck in close proximity to other wheat. If you crowd seed it don't have a chance to stool. And if I seed this half an acre or half a bushel to the acre, I seeded the other wheat two bushels to the acre. The other wheat we call the Mediterranean Red. That is a bearded wheat and I sowed it two bushels to the acre. Always been the custom to sow that way, I believe. Whether it was so thick that it was impossible for it to stool I could not tell you be-
468 cause I have never sown any other way until I got hold of this Miracle wheat.

RE-DIRECT-EXAMINATION by Mr. Sparks:

I have been a farmer for twenty-five years and the farmers in my section have always planted ordinary wheat two bushels to the acre. And I know of no other way of getting better results than by planting it two bushels to the acre.

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Plaintiff's Witness, Williamson I. Tomlinson, Direct, Cross

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RE-CROSS EXAMINATION by Mr. Oeland:

Where did I get my Miracle wheat? From Mr. Knight. I paid him $6 a bushel, three years ago.

WILLIAMSON I. TOMLINSON, Kirkwood, N. J., affirmed and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

470

I am a farmer. I have been a farmer for myself for nine years. I have experimented or raised Miracle wheat. I planted it in competition with ordinary wheat one year. I planted sixteen acres of Miracle wheat. Half a bushel to the acre. And the yield from that planting was thirty-two bushels.

The Court: You plant half a bushel of seed to the acre in the sixteen acres?

The Witness: Per acre.

Of the ordinary wheat in competition with that I planted twenty acres and planted it one bushel and a half to the acre. Nearly twenty-one bushels per 471
acre was the yield of ordinary wheat sown a bushel and a half to the acre as against thirty-two bushels of Miracle wheat planted one-half bushel to the acre.

CROSS-EXAMINATION by Mr. Oeland:

I live in Kirkwood, New Jersey. I got my wheat from Mr. J. I. Knight. Paid him $6 a bushel. This was in 1909. I got it then for $6 a bushel, and planted sixteen acres. I am not one of Mr. Russell's

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472 *Plaintiff's Witness, Williamson I. Tomlinson, Redirect*

followers or a believer in his doctrines. I planted sixteen acres. And I planted the common wheat in the same field. The field contained thirty-six acres. I used the same kind of fertilizer. I tried the common wheat planting it thin, a few years prior to that. Not at the same time. I know as a practical farmer that if you take one grain of wheat and put it in your garden and fertilize it well and keep hoeing around it, that it will stool and branch out more than if sown in the field, very little more.

473 *RE-DIRECT EXAMINATION by Mr. Sparks:*

I did not hoe around this sixteen acres of Miracle wheat. I just planted it and let it grow as it ordinarily does. I treated it the same as I do ordinary wheat. When I tried planting ordinary wheat thin in the field it was not as good as where it was planted thicker. I did not get as good results from my ordinary wheat when I planted it thin as I did by following the usual custom of planting it a bushel and a half to an acre. I was under contract with Knight to turn over all this wheat to him so that what I raised I turned the seed of it back to Mr. Knight and he paid
474 me for what I raised at the market rate. The wheat belonged to him. It was his wheat after I raised it.

By Mr. Oeland:

To get the wheat back I think he paid me one dollar a bushel.

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WILLIAM P. PRAY, recalled:

By Mr. Sparks:

I raised this wheat under contract with Mr. Knight for three years. The wheat did not belong to me but belonged to him after it was paid for. My contract was that I should not dispose of this wheat to anybody but Mr. Knight, and he was to pay me so much for every bushel I raised. I could not sell the wheat myself.

By Mr. Oeland:

476

He paid me the full market price; one dollar and one dollar and ten cents.

By Mr. Sparks:

That was the market price for ordinary wheat.

By Mr. Oeland:

For Miracle wheat he paid me ten cents over the market price for ordinary wheat.

EDWARD W. HUNT, Stratford, N. J., sworn and examined as a witness on behalf of the plaintiff, tes- 477
tified as follows:

By Mr. Sparks:

My occupation is farming, and has been for many years. I am not connected in any way with Pastor Russell, the plaintiff in this action. I don't know him. I did experiment with this Miracle Wheat. The first sowing was a bushel of seed in an acre and a half, and I got fifty-six bushels off the land, but a lot I did not get because it was down. It was sowed too thick, and I did not get a lot of it, because it was

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478 tumbled down so. Some of it was destroyed. But I actually got fifty-six bushels from an acre and a half, or at the rate of thirty-seven bushels to an acre. My yield was fifty-six bushels to the acre and a half, or thirty-seven and one-third bushels to the acre. In 1911 and 1912 I planted this wheat in competition with other wheat. With Amber wheat. That is called special seed wheat. It was a very nice wheat that I had bought of Taylor Brothers, seed men in Camden. I planted ten acres of Miracle wheat and my yield per acre was thirty-four bushels and a half.
479 I planted about three pecks. I planted eighteen acres of Amber wheat, a bushel and a half to the acre; that is what we plant all the time. My yield in the eighteen acres of Amber wheat was three hundred and twenty-five bushels.

Q. The entire yield for the eighteen acres of Amber wheat was three hundred and twenty-five pounds. And the yield from ten acres of Miracle wheat was three hundred and forty-five bushels? More off the ten than off the eighteen acres? A. Both fields alike, right side by side, and only a fence between them.

Q. Under the same conditions, the same fertilization? A. The same conditions as the other. I raised this wheat under contract with Mr. Knight. The first
480 season I did. This last year I did not. This last season the wheat belonged to me.

CROSS-EXAMINATION by Mr. Oeland:

I paid $6.00 a bushel for the first two bushels I got. I sold it back to Mr. Knight at a dollar and ten cents a bushel.

Q. And you were growing this wheat to give a testimonial to Mr. Knight, were you? A. No, I was not. Was not growing it under his directions. I growed it to suit myself. I know I sold it back to him but I

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sowed it just the same as I would sow any other wheat. I gave him a testimonial.

RE-DIRECT EXAMINATION by Mr. Sparks:

I gave him a correct testimonial.

Q. You gave him a testimonial of the conditions or the results you obtained? A. That is just what I gave him, because it was of no interest to me. I did not give him any false testimonial.

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PAUL S. L. JOHNSON, 490 East Rich Street, Columbus, Ohio, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

I am connected with Pastor Russell, in his work, and have been for ten years about the first of May. Prior to that time I was a minister in the Lutheran Church.

Q. What was your preliminary education prior to going into the ministry? A. I went through the common schools, then went to a preparatory school for college, then I took the regular classical course of four years in college, and followed that by three years' 483 course in theology. The last two years, or a little over the last two years, the custom was for each theologian, as we call the students who studied theology, to preach a sermon towards the end of their last year in theology. So I preached my first sermon in March of the year following the September in which I began the study of theology. I preached seven years and was a minister in the Lutheran Church five. I became connected with Pastor Russell and his work in 1903. I gave up my ministry in the Lutheran Church before I sympathized at all with Pastor Russell's works.

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484 Q. When did you first take up the study of his works? A. About May, I think, the time that I first began to read his books in a sympathetic way, was on the 8th of May, 1903. I had read for the purpose of refuting and overthrowing his doctrines in connection with my work about fifty pages of the first volume, but looking through the—or at the book with the spectacles of the Lutheran Church, I simply thought it nonsense.

After I began to read his books, and being satisfied that what I was reading was correct, I began to as-
485 sociate myself with the Columbus Bible Class, a class of Bible students there that held affiliation with the "Watch Tower Bible and Tract Society." About three or four weeks after attending the first meeting, or two weeks after attending the first meeting, they elected me as one of their elders or pastors—we use the name as a rule "elder," though they called me pastor on account of my having had a pastorate in the Lutheran Church—I was elected as a public speaker for them, and preached my first sermon publicly along the lines of the teachings that Pastor Russell presents, four weeks after having first attended one of these meetings, that is, on the 7th of June, 1903. I subsequently went on the road as a preacher. While remaining at
486 Columbus, I suppose it was, in this work as official of the Columbus Bible Class, I would take trips to surrounding classes to deliver lectures at their invitation; and then on the first day of May, 1904, at the request of Pastor Russell—or rather, I might say this, that I offered my services six months before, and he forgot all about it, and then at this time, about May first, 1904, he asked me to deliver lectures under the auspices of "The Watch Tower Bible and Tract Society;" and I was very glad indeed for the privilege of entering into the service. I started out then May 1st, 1904, upon the road to lecture. My first tour I covered territory

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in Ohio, New York and Pennsylvania. The first trip was a short one, of about two months, and I wound it up at Allegheny where I began on the first of May—I wound it up about the first of July, at Allegheny, having visited some of the main towns in Ohio, a few of the towns of New York, and a few in Western Pennsylvania. Subsequently I went to the coast on a trip. I have traveled in every one of the states west of the Mississippi, lecturing in every one except one, Montana. I have made three—four trips through the western coast; three through the whole western coast, and over a portion of the western coast I have had a fourth trip. I have also visited, in addition to every state west of the Mississippi, every state east of the Mississippi except eight. It will be nine years the first of this coming May that I have traveled continuously with the exception, of course, of a little rest. A man is human, you know, and cannot keep at it all the time, delivering about an average of thirty-one or thirty-two lectures in fourteen days. A man has to have a little rest. For the first four years I probably averaged—five years I probably averaged a month off the road the year. The first four years, I have had about thirty-two to thirty-three lectures in fourteen days. That is, it was my custom to offer an extra service on the second day of the visit—our ordinary program was two meetings a day—it was my regular custom, in fact, to offer an extra service on the second day, the day I did not travel. So that I think I averaged for the first four years and a half about thirty-two, between thirty-two and thirty-three lectures in fourteen days.

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Q. Were you paid for your services as a lecturer? A. Oh, no. I paid for the opportunity of it. Or rather, I better say, I am paying my own expenses, and have done it ever since I have been in the work, and deem it a great privilege to do so.

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490 *Plaintiff's Witness, Paul S. L. Johnson, Cross*

Q. Have you received one cent of compensation since you have been connected with this work? A. I have neither received it, nor would I accept it. During my travels through the country, I lectured to different Bible classes connected with this work, and also to large public gatherings arranged for by the Bible classes, but attended by the public, those not in the Bible classes, though the Bible class students likewise attended, but they were especially intended for the public in general.

Q. Do you know whether Pastor Russell was well
491 and favorably known during all those—in all those towns and cities you visited? A. I know the following, that he was—

The Court: No. The only question asked you was whether you knew that Pastor Russell was well and favorably known.

The Witness: Yes, indeed; I would answer.

CROSS-EXAMINATION by Mr. Oeland:

Q. Mr. Johnson, did you have a press agent?

Mr. Sparks: That is objected to as immaterial, irrelevant and incompetent, as not with-
492 in the issues, and as improper cross-examination.

Objection overruled. Exception taken.

Ans. No, sir, I did not. I paid my own way. I have myself enough to provide my expenses. I am not a rich man. I am not even well to do; but I have myself enough economically used to provide for my expenses. I have had a very thorough theological training. I studied theology from my fourteenth year, and I was ordained in the Lutheran ministry in my twenty-fourth year. It was my pet study from my fourteenth or rather fifteenth year—I was fourteen

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493

years old when I began, until I was twenty-four, when I was ordained in the Lutheran ministry; and I have studied it ever since, and I have prosecuted it with all the vigor I could put into it. I took a regular three year theological course at the Capitol University, Columbus, Ohio. That is a Lutheran training school for ministers.

Q. Tell me when you began to preach as a Lutheran minister? After you got through with your theological course? A. Yes, sir. Though I preached, as I said before, two years before I was ordained. That was part of my training. I preached for the Lutheran Church seven years. Two years before I was ordained, and five years after I was ordained, at Columbus, Ohio, the city where I was educated. I quit before I had any sympathy whatever with Pastor Russell's views on the Bible. A few days before I thought that his main doctrine was true, the doctrine that to my mind seemed the main doctrine.

494

Q. You quit the ministry before you concluded that this doctrine was true? A. Yes, sir, decidedly. In the meantime I was studying my Bible very diligently. Nothing except eating, sleeping and studying my Bible.

Q. How long after you quit your ministry was it that you looked with sympathy on one of his doctrines? A. A couple of days after.

495

Q. It came suddenly to you there? A. Yes, sir. I believe the Lord was giving me some very especial help at that time.

Q. What was the immediate cause of you leaving your church? A. The Lutheran Church, the branch to which I belonged, and that is the position of the Lutheran Creed as given in their published official records, denies that the Bible teaches the Millenial Reign of Jesus Christ over the earth. For about a year before I left the Lutheran Church my attention

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496 was called to this particular doctrine of the Millenium, not as Pastor Russell teaches it, but as many people—many ministers hold to the matter, that there will be a Millenial Reign of Christ through which all of the then living will get great blessings from God, but the dead are to have no opportunity at all; none of the dead are to have any opportunity at all at that time. Now, in my studying of that question, I came to the conclusion that the Lutheran Church was wrong on the point of denying that Jesus and his saints were going to reign over this earth. When I felt sure of my
497 ground, I stepped before my Church and told them that I could not keep my ordination oath any longer, because I felt I had made a mistake when I made it; that in honesty before God and in honesty to them, I had to tell them that I was no more a Lutheran minister, because I could not subscribe to the Lutheran book of confession any longer. Therefore, I repudiated the Lutheran Church.

Q. Then you had Mr. Russell's doctrine in your mind before that time? A. Yes, sir; but I had it with a violent antagonism in my mind. I did not believe it was true.

I knew of it, as a theologian I know of a great many
498 doctrines, practically all of the doctrines of Christendom.

Q. You spoke of his reputation as a minister all through where you had been, that he was well and favorably known. Was that what your answer was? A. That is my answer, yes, sir.

Q. Did you discuss his reputation as a minister with people as you went around? A. Yes, sir. I did, very frequently, have conversations with people, both in our classes and those not of our classes, in reference to Pastor Russell as a Bible student, writer on Bible studies, and a minister.

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Q. You discussed that at various places where you went? A. Permit me now to say that your question is ambiguous. I cannot answer the question the way you put it. You said "various places." I did not do it everywhere. If I answered that question "Yes," I would tell a lie. I will say this, that at many places where I have been in my public lecture work, I have spoken both to members of the Bible classes in respect to Pastor Russell's ability and his reputation as a Bible scholar, both with members of the classes in affiliation, and with large numbers of people not in affiliation with this work.

500

Q. Then you discussed various matters about his life with them, did you? A. I did not on your question—your question asks about his reputation as a Bible student and scholar. I spoke about those things, not about his life. I did not preach Pastor Russell. I preached Christ.

Q. I want to know what views you had in your mind. A. But you slide in a question about his private life, and I did not say anything about that.

Q. Do you want to keep away from that? A. No. I don't want to keep away from it, but I want to say this. I want to answer your question directly, but I do not want you to throw things into your question and then put them into my answers a meaning that I do not intend to be there. When you change the question, I expect to watch you.

501

The Court: I understood the question when it was first asked, was whether you knew that the plaintiff was well and favorably known as Pastor Russell in the various communities that you preached?

The Witness: Yes, sir. I answered to that question, yes.

Q. To be well and favorably known as a preacher involves his private life to some extent, don't it? A. It may where it is known; but where it is not known, it would not.

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502 Q. Did you take the trouble to look it up before you discussed it? A. I did not discuss his private life. I was not getting away from it. That is not my custom.

Q. How do you separate a man's private life from his teachings as a follower of Christ? A. My dear sir, they are as widely distinct as the east is from the west. I would separate them in this way.

Q. Will you tell the jury how you distinguish a man's private life and character from his reputation as a minister of the gospel? A. As a teacher. I dis-
503 tinguish it in this way. Let us take a case, suppose I would be in a town where his writings are well known, but he himself is not favorably known at all. I could speak of his ability as a scholar with these people. They could talk about his ability as a scholar. I could thus discuss his doctrine without saying one word in reference to his private life.

Q. Don't the teachings of your life teach you that a man's private life is one of the main elements of his character as a minister of the gospel?

Objected to as immaterial, irrelevant, incompetent, improper cross-examination and as already answered.

504 Objection overruled. Plaintiff excepts.

Ans. Will you kindly ask your question again?

Q. (Read) Don't the teachings of your life teach you that a man's private life is one of the main elements of his character as a minister of the gospel? A. I would say yes, under certain circumstances. Where he is known personally, and his influence personally is under question, of course, that will have a great deal of influence on what he says. Where he is not known personally, but known through publications and the only thing known of him is what he says, he may be very favorably known even if his private life were not as it should be.

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Q. Did you ever discuss his private life with any of these people where you say you learned his reputation?

Mr. Sparks: That is objected to as incompetent, immaterial, irrelevant, as improper cross-examination, as not matter in justification or mitigation of damages.

Objection overruled. Plaintiff excepts.

Ans. Some places I did, and some places I did not.

Q. Where was it you discussed it? A. I would say, for example, give Seattle, Washington, for one.

Q. Who did you discuss it with there? A. I discussed it with—

506

Objected to as immaterial, irrelevant and incompetent.

Objection overruled. Plaintiff excepts.

The Witness: I would say I have spoken of his private life with the pastor of the Seattle class. I have also spoken of his private life with others who have asked me questions as to what kind of a man Pastor Russell was, those not members of the classes.

Q. Did you tell them the facts? A. Yes, sir.

Q. Did you discuss his reputation in Allegheny where he lived before he came to Brooklyn?

507

Mr. Sparks: That I object to.

The Court: I will allow it.

Plaintiff excepts.

A. Yes, I have.

Q. When was that? A. I was there recently, just came in fact from there last Sunday, and during that visit I spoke of Pastor Russell.

By Mr. Sparks:

As a Bible student I do agree with the main tenets preached by Pastor Russell, and that after acquaintance with the scriptures of about twenty-five years.

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508 *Plaintiff's Witness, Alexander H. Macmillan, Direct*

ALEXANDER H. MACMILLAN, residing at 122 Columbia Heights, Brooklyn, called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

I am acquainted with the work in which Pastor Russell is engaged and have been for about eleven years, as nearly as I can remember. Prior to that time I was a salesman in a commission house in Boston, Massachusetts. I gave up that work to engage in part of this work; that is, the selling of the books written by
509 Pastor Russell. I engaged in that work altogether, I believe, about five or six years; from 1902, I believe, until 1906, as near as I can remember; I can't be sure of the dates, but pretty nearly that time. In that work I was not paid any salary. There was a small profit on the sale of the books, and the balance of my expenses I made up from my own resources. I bought the books from the tract society; I paid sixteen cents a volume for them, and the freight, and sold them for thirty-five; a single volume for thirty-five, three for ninety-five cents or a dollar is the price, I believe. And the difference between the sixteen and the thirty-five, or between the forty-eight and the ninety-five, was for my service and on that I supported myself, minus
510 the freight on the books. The profit on my work was not sufficient to support me, and I had to draw from my private funds. After my private funds were gone I gave up this work to go back and take a position with the M., K. & T. Railroad of Texas. I worked for them there, as near as I can remember, now about nine or ten months perhaps, about ten months I should say. I went back upon the road selling these books after I left the railroad company. I was then employed in that field, I believe, about one or two years after I left the railroad company. I became directly connected with the work in Brooklyn

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in the office, in 1909, I believe, when the office moved here; I was connected with them for a time in Allegheny, and maintained my connection while we moved. I was with what we call the pilgrim department or the travelling brethren; the lecturing department. I was connected with that department one year. During that time I was not paid a salary, only my expenses were paid, that is ten dollars a month. While I was in the office I received ten dollars a month. On the road I did not receive any compensation. I got when on the road, my travelling expenses. As I needed money and expended money I sent a memo-

512

randum to the office and they sent me a check. I am now connected with the lecturing department, been in that department three years now. Now, I am travelling continually; usually hold two services each day while on the road; generally three on Sunday. All I have ever got from this work is my expenses.

CROSS-EXAMINATION by Mr. Oeland:

I am now living here in Brooklyn, when not on the road. Brooklyn is my home during the winter, that is my wife and boy. I live in Brooklyn at 122 Columbia Heights. That is the headquarters of Mr. Russell, the Bethel Home. He lives there too whenever he

513

is here, I presume. I have not any doubt about that, certainly not.

I have been living there since the Home moved from Allegheny. I lived in the Home in Allegheny. I believe it was in the spring of 1909 we moved here. No, I don't know why we moved any more than what was—no, I would say, I don't know why they moved, only what I learned by reading. I can't just remember how long I was connected with the office in Allegheny before they moved. According to what you mean by being connected with them, I considered my-

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self in connection with the society from the time I commenced selling their books, in the sense that if I sold a book for any publishing house I would consider I was connected with the house. I lived then in the various cities that I worked in. My family was usually with me in the work; my wife worked with me. After I discontinued the work of selling the books I moved to Allegheny.

There I was connected with one of the departments, the lecturing department. I kept books, records of my department; the lecturing department did not in-
515 clude Mr. Russell's, not in my department. My books consisted of records of the gentlemen who were travelling, and the cities they were going to, and their expenses, and other matters connected with the work. I was selling the various volumes of scripture studies.

Q. What do you call them, Scripture Studies or Millenial Dawn? A. We didn't call them either. The first volume I called the Divine Plan of the Ages; the second volume The Times at Hand; the third volume, Thy Kingdom Come, and so on. As near as I can recall now I remained on the road out selling the books from 1902 until 1906, I believe.

I attended some of the conventions of this body. I did not attend the one up at Chautauqua, New York
516 State. I was in the west then. I have attended conventions where I got instructions how to proceed in selling the books—discussed the plans to get the people interested. I have been at conventions where that was discussed. I remember one in Des Moines, Iowa. No orders or instructions were given to me as to the method of making sales. I listened to others getting instructions, but I didn't accept them to myself. I felt I knew how to do that without instructions.

Q. Look at the places I have marked on these books and see if you had those instructions, before I read them to the jury; that is on page 267 there, that ques-

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tion; and this one over here on the right-hand side of page 267, and the one down here headed Heart Book Marks (hands witness book)? A. I never had those instructions given to me.

I never had those instructions given to me at all; never heard of them until I read them in that book. I recognize that book, that is not sent out by our society.

Q. Sent out by the Watch Tower Bible & Tract Society? A. No, sir.

Objected to.

518

By the Court:

Q. Do you know who gets it out? A. Yes.

The Court: I will allow the question.
Plaintiff excepts.

By Mr. Oeland:

Q. (Repeated.) A. The preface of the book tells you who gets it out.

I have no independent knowledge aside from the preface. I am acquainted with the gentleman that sends it out. I know who publishes it. I know that of my own knowledge, outside of the preface. I know outside of the preface who publishes the book.

519

By Mr. Sparks:

I never saw this book printed. All I know about it is what somebody else told me other than the plaintiff.

By Mr. Oeland:

That instruction I saw in that book; never saw it anywhere else to my knowledge. The plaintiff never gave me similar instructions to that. I was not at the convention at Chautauqua.

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520 *Plaintiff's Witness, Mentas Sturgeon, Direct*

By Mr. Sparks:

My wife and child lived down here at the Bethel Home during the winter months and while I am absent on the road.

Q. From the books that you kept in your department of the other lecturers upon the road—did you pay their expenses—did you sign the check for their expenses while they were on the road? A. No, sir.

I had nothing to do with that. I kept a record of their expenses.

521 By the Court:

The records were sent in by the travelling gentlemen to the society.

By Mr. Sparks:

They came under my charge in my department. I kept a record of them and filed them. The society sells Bibles and Young's Concordance and the Diaglot; those are all Biblical works.

MENTAS STURGEON, recalled, testifies as fol-

522 lows:

Direct-examination by Mr. Sparks:

There are at the Bethel Home, I would say, one family. That would be Pastor Russell's family.

The Court: Counsel means the ordinary human family, not in any special sense. I don't say that in a spirit of levity. I mean in the ordinary acceptance of the term—how many families?

Q. Wives and husbands, and children I mean. That is what I had in mind. Name them as you think of them. A. Mr. and Mrs. McGregor and daughter.

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Mr. and Mrs. Schuler; Mr. and Mrs. Cook and two daughters, they are all engaged in the work. Mr. Cook is one of the public lecturers. Mr. and Mrs. Wright; Mr. and Mrs. Peterson; Mr. and Mrs. Rockwell; Mr. and Mrs. Mockridge; Mr. and Mrs. Nicholson; Mr. and Mrs. H. F. Keene; Mr. A. H. Macmillan and wife and one child; Mr. and Mrs. Isaac Hoskins; Mr. and Mrs. A. Burgess; Mr. and Mrs. John Keene with three daughters, all engaged in the work. Mr. and Mrs. Ritchie; Mr. and Mrs. F. Detweiler; Mr. and Mrs. Glendon, and one son; Mr. and Mrs. Bain with one son; Mr. and Mrs. Raymond and one daughter; and I might include our family, with one son.

524

Q. Your own family with a son? A. Yes, sir That is what you mean, just the families, I understand.

CROSS-EXAMINATION by Mr. Oeland:

I have not omitted any families.

Q. Tell me about some of the others? A. I only know good things. What do you want to know?

Q. I want to know some of the good things.

The Court: What other people are living there?

525

Q. That is what I mean. A. You want me to name all who are there regularly? Of course there would be some little differences, there might be some there just occasionally.

You want those that are there regularly? Mr. Shearer, Mr. Davidson, Mr. Dockey, Mr. Houdgings, Mr. Heck, Mr. Thompson, Mr. Myers, Mr. Edwards, Mr. Totten, Mr. Stamball, Mr. Emmerly, Mr. Mayer, Mr. Cohen, Mr. Stevenson, Mr. Seary, then the Misses Hamilton and Niland; Mrs. Cole, Miss Douglas, Miss

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Darlington, Miss Bourquin, Mrs. Ambler, Miss Allen, Miss Virginia Noble, and Miss Blanche Noble; Miss Elizabeth Hoskins and Miss Edith Hoskins; Miss Bebout and Miss Wieland; Miss Taft; Miss Fitch, Mrs. Wakefield, Mr. and Mrs. A. G. Wakefield; Miss Gillet; Mrs. James; Miss Alexander; Mr. Brenneisen, and there is one other family, Mr. and Mrs. William T. Baker and one son.

Mr. Sparks: Did you name Mr. Brenneisen's family?

The Witness. Mr. Brenneisen, wife and child.

527 Mr. John Dececca, Mr. John Perry, Mr. Ferris, Mr. W. Obert, Mr. Plaenker, Mr. Drey, Mr. William Miller, Mr. Gaylord, Mr. Knox, Mr. Woodley, Mr. Woodworth, Mr. Howells, Mr. Jansen, Mrs. Hartsell, and Mrs. Nation, Mr. and Mrs. Robinson, Mr. Holmes, Miss Tomlins, Pastor Russell; I think that is all.

By Mr. Sparks:

My wife has charge of the young ladies of the Home; she works in general all through the house in connection with the room.

Q. I show you four cards, and ask you if those are cards of some of your different lecturers, other than
528 Pastor Russell (hands witness cards)? A. This is Mr. Johnson, I think I have seen him before. This is Mr. Cook, and there is Mr. Raymond in addition to the other three.

When these different lecturers are lecturing through the country these posters are distributed the same as Pastor Russell's posters are.

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Plaintiff's Witness, Frank F. Cook, Direct 529

FRANK F. COOK, residing at 122 Columbia Heights, Brooklyn, called on behalf of the plaintiff, sworn and examined, testified as follows:

Direct-examination by Mr. Sparks:

I am acquainted with the work carried on by Pastor Russell and have been for a little over two years.

Q. Prior to becoming connected with this work were you a minister of the gospel?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff excepts. 530

Q. Have you any family? A. I have; wife and two daughters.

Q. And where do they live?

Objected to as incompetent, irrelevant and immaterial.

The Court: Was he not among the names just enumerated?

Mr. Oeland: Yes, sir. There is no dispute about that. I don't object to any light he can throw on Mr. Russell's standing or reputation, but the work he does is not an issue for this jury to pass on.

Objection sustained. Plaintiff excepts. 531

I am engaged in lecturing at the present time and have been regularly with the society two years last December. I lecture in Brooklyn this coming Sunday at the Academy of Music.

Q. Your appearance at the Academy is announced by circulars and photographs?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff excepts.

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532 *Plaintiff's Witness, Walter E. Spill, Direct, Cross*

Q. During the two years service that you have been connected with the work have you received any salary?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Plaintiff excepts.

WALTER E. SPILL, residing at Pittsburgh, Pennsylvania, makes affirmation and is examined and testifies as follows:

533 *Direct-examination by Mr. Sparks.*

I am osteopathic physician practicing my profession. I know Mr. Bohnet. I am president of the United Cemeteries Company. As president of that company I authorized Mr. Bohnet to plant and use such part of the grounds of the cemetery as were not in use for cemetery purposes. I have been president, I believe, about four years, maybe a little more or a little less. Mr. Bohnet had had that right and privilege during all the time I have been president.

CROSS-EXAMINATION by Mr. Oeland:

534 I have been on the cemetery board about four years I believe. I have never had a patient buried there.

Q. What interest does the United States Investment Company own in the cemetery?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

The Court: What is the name?

Q. United States Investment Company—do you know the name?

Mr. Sparks: Objected to.

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The Court: It may be connected.

Plaintiff excepts.

Q. What is the name of that cemetery? A. It is known as the United Cemeteries.

I believe that the full name would be the Evergreen Mount Hope Rosemount United Cemeteries Company.

Q. What interest does Mr. Russell own in it?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

The Court: I will take what interest, if any, he owned at the time this wheat was planted by Mr. Bohnet.

536

Plaintiff excepts.

A. I don't know.

Q. Do you know his handwriting when you see it? A. I have seen letters that he wrote. I believe I would recognize his handwriting.

I believe he is a trustee. I don't know whether a trustee owns shares in the company or not. I should have hunted up the proper definition of trustee.

By the Court:

I believe that he was a trustee of the United Cemeteries Corporation, I don't absolutely know it, in the corporation of which I am president. I know that he was at one time a trustee; when I was elected as president about four years ago.

537

By Mr. Oeland:

He was not the man that elected me.

By the Court:

I do not know whether this corporation is a stock corporation or a non-stock corporation.

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538 *Plaintiff's Witness, Eliot H. Thomson, Direct*

Mr. Sparks: Objected to as incompetent, irrelevant and immaterial, not within the issues, not proper cross-examination.

Objection overruled. Plaintiff excepts.

By Mr. Oeland:

I am president of it. I came here as a witness.

By the Court:

The Board of Directors have meetings, I preside at the meetings.

539 By Mr. Sparks:

Q. Do you know who some of the trustees are that you have met with personally at meetings? A. No, sir; not as you put the question.

The Court: You don't know who is on the board?

The Witness: I know who is on the Board of Directors.

Q. Is there a difference between the Board of Directors and the Board of Trustees? A. Yes, sir; I understand that there is

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540 Afternoon session.

ELIOT H. THOMSON, residing at Washington, D. C., called on behalf of the plaintiff, sworn and examined, testifies as follows:

Direct-examination by Mr. Sparks:

My business is banking, with Washington Loan & Trust Company of Washington, D. C. I hold a position in the bank. I fill the place recently filled by the late Hon. J. A. Swope, Vice President. I have not yet been appointed vice president; I am filling the

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541

place. I am a member of the Bible Class in Washington, and an elder of it. My father is a minister, stationed at Shanghai, China. He is the Venerable Archdeacon of the Episcopal Church. The class at Washington elected Pastor Russell pastor of that class. Not honary—regular pastor. He has lectured to us in Washington very frequently. The congregation there will average from about four hundred to about twelve hundred.

542

CHARLES OWENS, residing at Chattanooga, Tennessee, called on behalf of the plaintiff, sworn and examined, testified as follows:

Direct-examination by Mr. Sparks:

I am interested in the manufacturing business, mailing machinery. I am the patentee of a patented mailing machine. The "Montague" Mailing Machinery Company. We manufacture the most diversified line of mailing machinery in the world. My home is at Chattanooga. I am a member of the Bible Class of Chattanooga. Pastor Russell has lectured at Chattanooga; he has been elected pastor of the Bible Class there. We have a class of about forty.

543

CROSS-EXAMINATION by Mr. Oeland:

We hold our elections twice a year. We had the election electing Pastor Russell in January. We elect him every year. When the first year was that we elected him I am not certain, because my business keeps me away from Chattanooga sometimes for a year at a time. I presume it was about three years ago, I think. He has been elected ever since then. I think it was at the January meeting that he was elected.

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544 *Defendants' Witness, Carlton R. Ball, Direct*

I was not present. I was present at this last election. I was present at the last election; not present at any other time. I don't think in the last eight years that I have been there at more than half a dozen elections, and not more than one January election, if my memory serves me right. We elect by stretching forth of the hand; no other candidates. He was not a candidate, it was a voluntary selection.

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

545

CARLTON R. BALL, residing at Washington, D. C., called on behalf of the defendant, sworn and examined, testifies as follows:

Direct-examination by Mr. Oeland:

My business is agronomist and acting cerealist, in charge of the cereal investigations of the United States Department of Agriculture. I have been in the department since 1898—I have been agronomist in the department since about 1901 or 1902. I will not be certain of the date. I have held the position of acting cerealist since the fifteenth of June, 1912. My
546 duties are to investigate the cereal crops of the United States, the methods of their production and anything else of interest in connection with cereal work. We have places where we make tests of different grains and their growing qualities. We have an experimental farm across the river from Washington, D. C., in Virginia. That is called the Arlington Farm. We have something like twenty in the west, one in Nephi, Utah. It is at those places we grow and test the growth of various grains and their qualities. They are tested on these experimental farms. I wish to qualify the previous statement by saying that some of these farms are conducted co-operatively with state

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agencies or other agencies in the states where they are located. I don't mean they are wholly government farms. I have tested the so-called Miracle wheat.

Q. From whom did you obtain the grain you tested?

A. K. B. Stoner of Fincastle, Virginia. Beginning in the fall of 1907, we tested it continuously until the present time; made tests of that at this Utah station too.

Q. Tell the jury how you made the tests and the results? Take up the Arlington farm first? A. In the fall of 1907, the Stoner or so-called miracle wheat was first planted on the Arlington farm, in what we

548

call nursery head rows, only the grains taken from a single head or several single heads of this wheat were planted, the grains from each individual head in a single row at a certain specified distance apart; the distances in this case being, I think, four inches apart in the row, and the rows twelve inches apart.

By a Juror:

Q. Is that the way you plant ordinary wheat? A. That is the way they always plant all varieties of wheat in the nursery head rows where we wish to study the individual plants. The experimental agencies, scientific men who are experimenting with cereals, always plant in the nursery. The nursery is

549

the technical name given to the planting of crop seeds of any kind, in this case wheat, where they are planted at specified distances apart, in order that we may study the individual plants. When we make tests, what we call field tests, we plant in a different way.

Q. What do you call your field tests—how do you plant in your field tests? A. With an ordinary grain drill. The dropping spouts or drill spouts of grain drills are usually either seven or eight inches apart.

Q. And the other is four? A. No, sir. Those are planted by hand. They are not planted with a ma-

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550 chine. There is no machine made that plants them that way—the nursery planting. I mentioned only one wheat, so far. We sowed all the other wheats in the nursery in the same way. Stoner wheat was sowed in the row by hand, as I described, the rows being twelve inches apart, and the seeds in the rows being four inches apart, and all the other wheats in the nursery were planted in exactly the same way.

By Mr. Oeland:

551 That is what we call the nursery test rather than the field test. I could not say in the fall of 1907, how many kinds of wheat were planted, probably about seventy-five or a hundred, that is at that point, at Arlington. The test in 1907 was planted in the way mentioned in comparison with all the other wheats which we were growing that season in the nursery tests. These wheats were allowed to grow, and during the year various notes regarding their condition, size, color, and so forth were taken, and they were harvested at the period of ripening, the yields determined, and the records made.

Q. How did this miracle wheat yield with reference to the other wheats—how was its yield compared with the others?

552 Mr. Sparks: If he is going to give his conclusion, I object. If he is going to give the number of grains and stalks I have no objection.

The Court: I take it, he is asking for the actual yield as made by these tests.

A. The figures I give will be the actual yields. I am not prepared to give the figures for all those varieties.

The Court: For the Miracle wheat.

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Witness: The Miracle wheat yielded in one of the head rows—in the lowest yield it yielded ten and a half ounces, I think, and in the highest, it yielded—May I refresh my memory with the figures which I have?

Mr. Sparks: Unless he made the memorandum himself I object.

Mr. Oeland: They were all done under his supervision.

Mr. Sparks: Does he so state?

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The Court: Can you refresh your recollection by looking at the memorandum and then testify of your own knowledge?

Witness: Yes, sir.

Mr. Sparks: May I find out whether the memorandum is his own memorandum?

The Court: You may cross-examine him.

By Mr. Sparks:

Q. Did you, when you harvested this miracle wheat, did you personally gather the grains? A. No, sir, I did not personally gather the grains.

Q. Some person in the department, other than yourself, did that? A. An employee of the office gathered them.

555

Q. You only know the amount of grain that was delivered to you? A. I know the amount of grain that was delivered, and the character of crop as it grew in the field.

Q. But it was delivered to you by some other person? A. Yes.

Q. You don't know the date that that other person or persons picked it from the plants? A. Not without reference to the records.

Q. And the records you did not make yourself? A. The original record would be made by the man who actually did the work.

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556 Q. So that all your information as to this will depend upon the record that some other person made? A. In some cases.

Mr. Sparks: I object to his testimony.

By Mr. Oeland:

Q. You are in charge of that work? A. I am.

Q. And the work is done under your general direction there? A. Yes.

Q. And the reports are made to you? A. They are.

557 Mr. Oeland: I submit that the testimony is competent.

Mr. Sparks: I submit that the testimony is wholly hearsay.

The Court: Is there any statute about government agricultural work?

Mr. Oeland: Yes. He can tabulate it and certify to it.

The Court: I think there is a state law on the subject.

Mr. Oeland: There is a United States law which says the certificate of an executive department of the United States, properly made
558 out by them, is admissible in any state court or in the United States.

Mr. Sparks: That would preclude us from cross-examination, and it is contrary to the laws of evidence.

By the Court:

Q. Are you familiar with the act that organized your department? A. No, sir, not so that I could quote it.

Q. I mean as to where it is, the particular department in which you are, the agricultural department?

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A. I am familiar with the act repeated from year to year, which directs and governs this particular work, which directs the continuation of such work.

Q. Are these records which you have in your hand original records of your department? A. No, sir. They are copies of those records.

Q. Are they the statements made up from the original notes? A. Yes, sir.

Q. Are they on file in your office, these papers? A. Yes.

Q. A public record? A. Yes, sir.

560

By Mr. Sparks:

Q. Have you got a copy even of the record, or is it a summary? A. I have copies of parts of the record.

By the Court:

Q. Are these all papers on file in your office that you have got? A. They are extracts from the original records.

Mr. Sparks: I submit that this is not the best evidence.

The Court: I will give them an opportunity to get it certified under the law.

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562 *Defendants' Witness, William E. Van Amburg, Direct*

January 24, 1913.

Trial resumed.

WILLIAM E. VAN AMBURG, 74 Columbia Heights, sworn and examined as a witness on behalf of the defendant, testified as follows:

By Mr. Oeland:

I am connected with "The Watch Tower Bible and Tract Society." I am secretary and treasurer. I have held that position since about March, 1903. Just
563 prior to that I was working as an assistant in the office, as a clerk, clerical work. I held that position about a year and a half, I guess. No—I went there in April, 1901. Before that I was in the railroad business. I had no connection with the society prior to 1901, particularly—only correspondence. As I would with any association from whom I ordered books. I was selling their books—not for them, but for myself. Not selling books as a business, just ordered them for myself. I sold a few, as I had occasion. Why, Bibles and a few other odds and ends that I would buy from any publishing house. They were my own property, and I was getting them
564 for myself.

Q. What books do you keep in the "Watch Tower Bible and Tract Society"? A. Financial books, cash book. Cash book and ledger.

Q. Journal? A. No, sir.

Q. Stock books? A. Yes, sir.

Q. You have been subpoenaed to produce the books here, have you? A. Yes, sir.

Q. Have you got the stock book here? A. No, sir.

Q. Didn't you say there was a stockholders' book? A. No, sir. If I said so, I did not understand so. It was a voting share book. Every donor of ten dol-

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lars to the society is given a shares or a voting share for the election of officers. This entitles him at the annual election of the officers to vote one vote for every ten dollars he may have donated fully to the work of the society. It has no monetary value whatever. It is only used at the annual election for the voting of the officers. It is called a voting share.

Q. You have a book that shows the people who own the voting shares, what do you call that? A. The privilege of voting one share for every ten dollars donated to the funds of the society for the propagation of its work. We call that book simply a record of those donations, or a voting share book.

Q. You issue certificates, don't you, to them? A. If they ask for them—whenever required or whenever requested.

Q. What are the officers of that corporation? A. President, vice-president and secretary, or vice-president, secretary and treasurer. The vice-president is Mr. A. I. Ritchie, the gentleman who was on the stand the other day. The president is Mr. C. T. Russell. I am secretary and treasurer.

Q. What position does Mr. Brenneisen hold in the corporation? A. No position whatever in the "The Watch Tower and Tract Society." He is secretary and treasurer of "People's Pulpit Association." That is in the same house. He holds the same position in that which I hold in "The Watch Tower Bible and Tract Society."

Q. Don't Mr. Russell hold the position of president of "The Watch Tower Bible and Tract Society" for life? A. No, sir. He has held that position since its organization. The last election was held the 4th of January, 1913; prior to that time the preceding first Saturday in 1912.

Q. And did the certificate holders vote at that election? A. All who were there, yes, sir.

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568 *Defendants' Witness, William E. Van Amburg, Direct*

He is also president of the "People's Pulpit Association."

Q. Does he hold that position for life? A. I think so.

Q. Was there a provision made in the charter for his holding it for life? A. I think so, as I recall it.

This organization, "The Watch Tower Bible and Tract Society," is the successor of the "Zion's Watch Tower Tract Society." The name was changed.

Q. Isn't this the form of certificate that you say was used (handing witness paper)? A. I never saw
569 that certificate.

The Court: Is that the form?

The Witness: No, sir.

After we changed the name of the society we used the name "The Watch Tower Bible and Tract Society." I see no general difference, except in the name, and a trifle difference in the wording. The sentiment is the same.

Q. Will you produce one of the certificates as they are now issued? A. I can.

The Witness: I have not one here now. I could produce it in a very few minutes. I would have to go to the office for it.

570 Mr. Oeland: While we are on that point, I want the books of the corporation, showing the amounts and the different properties owned or bought by it, owned at this time by the corporation.

Mr. Sparks: We cannot see how that is material at all. That is simply a fishing expedition.

Mr. Oeland: I do not want to see the books. I want the witness to turn to it and read it from the book. I do not want to look at it at all.

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Mr. Sparks: You haven't any right to do that. We do not see that it is a matter of any justification. That is simply dragging into a libel suit the books of a corporation, that is not interested in the libel suit in any way, simply gratifying the efforts of the Eagle for the past three years to inspect these books, without justification. If the Court rules that that is a material issue in the case, then we will produce it.

Mr. Oeland: Would your Honor hear me on that?

572

The Court: Yes.

* * * * *

The Court: I will rule at this time that it is competent, relevant and material.

Mr. Sparks: That the holding of property by the corporation is material in justification of this libel? Exception.

The Court: I say I will allow it under the pleadings, to show that the plaintiff, as alleged in the answer—I do not know whether it be a fact or not, but it is alleged that he controlled this corporation, and they were a dummy corporation, and he was the controlling factor, and it was his act that did all these things. I say it is competent under the pleadings and under the pleading of justification.

573

Mr. Sparks: We take an exception, and will produce the books.

Mr. Oeland: Then we will want the books showing the property or investments by the United States Investment Company. Is that the proper name?

Mr. Sparks: You have not subpoenaed any body with the United States Investment Company?

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Mr. Oeland: I do not know who is connected with it.

Mr. Sparks: That is not our fault.

Q. Do you know the name of the company I speak of, United States Investment and Trust Company? A. The United States Investment Company, Limited.

Q. Where is their office?

Objected to as improper.

The Court: I will allow him to find out, if he knows, who the officers of this company are.

575 Plaintiff excepts.

Q. Who are the officers of that company? A. I don't know that.

I know something about that company. I don't know where they have their offices. That I was ever an officer of the company I do not recall. I think I was possibly for a few weeks. I don't know whether I was or not an officer.

Mr. Sparks: I will state that it is a Pennsylvania corporation.

The Court: No statement was required, Mr. Sparks.

576 Q. The counsel suggests that that is a Pennsylvania corporation. "The Watch Tower Bible and Tract Society" is also a Pennsylvania corporation? A. Yes, sir.

They have not their main offices here in the City of Brooklyn. They have their books here, some of them. They have an office in Pittsburgh.

Q. Tell us somebody who is connected with them, anybody we can get the information from.

Mr. Sparks: The same objection to all these questions.

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The Court: The same ruling.

Mr. Sparks: Exception.

A. I think Mr. F. H. Robison.

Q. And he is here? A. I saw him yesterday.

Q. What position does he hold with it? A. I don't know. He lives in Brooklyn, at 124 Columbia Heights. He lives there in the Bible House.

Q. Can you give us any one else? A. I think Mr. A. E. Burgess. He lives at the same place. I don't know what position Robison holds with the Investment Company. I don't know what position Burgess holds with the Investment Company. 578

Mr. Sparks: Do not presume. You are only called upon for your knowledge.

I don't know who is secretary and treasurer of it.

Q. Isn't the Investment Company a holding corporation for "The Watch Tower Bible and Tract Society"? A. Yes, sir. I said that the United States Investment Company was a holding company, but I did not say that it was the holding company.

Q. What other holding company is there? A. "The Watch Tower Bible and Tract Society" itself. It holds some of the property.

Q. What proportion does it hold compared with the other society, the Investment Company? A. I am not able to state offhand. 579

Q. Your books would show that you have in charge of the property you have put in the Investment Company, wouldn't it, "The Watch Tower Bible and Tract Society"? A. Of the property we have placed in there, yes, sir.

Mr. Oeland: I want that.

Q. How much stock does Mr. Russell own in "The Watch Tower Bible and Tract Society," or certifi-

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580 cates, or whatever you call them? A. He does not own one cent of stock.

He has given donations that would entitle him to about 47,000 voting shares. I presume in the neighborhood of four or five hundred thousand all told we hold. Mr. Russell does not own a controlling interest in that. Whether or not he did hold a controlling interest in it personally, I do not know, except from what the records are on file before my association with the office.

The Court: In the year 1911, do you know anything about the controlling interest, in and about September, 1911?

581

The Witness: I don't think he at that time held a controlling interest, a controlling vote.

The Witness: I have said I did not think that if the shares were all counted up that he was at that time—would have held a balance or controlling interest.

I do not have my certificate book, and I have not issued certificates except when they have been called for. One can be supplied by going back through the books, and we could show how much each one would be entitled to.

The Court: What I mean is, can you determine from your books the actual number of shares issued in September, 1911; what actual outstanding voting shares there were then?

582

The Witness: It would be a matter of considerable computation, because the books run over a long period of years.

Q. You spoke of some stock not being issued. What did you mean—by certificates not being issued?

Mr. Sparks: He did not say "stock."

The Court: Shares.

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The Witness: Supposing you, if I may be permitted to give the illustration, supposing you were to send me fifty dollars, and address it to "The Watch Tower Bible and Tract Society." "I would be glad to put this amount of money into the work as showing my interest in the work" That would be credited to what we call the free donation fund. A record of that would go on the share books, so if ever you called for it you would be entitled to a certificate showing that you had donated fifty dollars towards the work of the society, but that would not give you control of fifty dollars of stock, because there is no stock. That money may have come in and been spent. It would show that you had at the next election a right to vote five shares or five votes as to who would be the officers.

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The Court: I understand you to say that you did not issue these shares, or whatever they may be, certificates, unless there was a demand made for them?

The Witness: No, sir. If any one should ask for them—supposing if you do not care for them—there are thousands on the books that never cared for them at all, and never asked for them. They are there, and the record is there to show that if they call for them they are entitled to them.

585

Q. Can you tell the jury how many certificates has been issued? A. My record is about sixty, I think. It is between fifty-five and sixty. I don't remember the exact number.

Q. And how much do they total? A. About fifty thousand shares has been asked for—I mean voting shares.

Q. And of that fifty thousand how many have been issued to Russell? A. About forty-seven thousand; but any one that comes in can have his shares—

About forty-seven thousand had been issued to him. He asked for the certificates, and they were given to him.

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586 The Court: Then your book shows the number of shares voted at the annual election?

The Witness: Yes, sir.

Q. How many were voted? A. Something like fifty thousand.

Q. And Mr. Russell owned forty-seven thousand? A. Yes, sir.

Q. Of course he was elected president? A. Certainly.

Q. And had very little opposition? A. None at all.

587 Q. Did you ever see this circular? A. I have read it.

Q. Who issued that? A. I don't know, except from the title page there.

Q. Where did you get that from when you said you had read it? A. I heard there was something of that kind and sent to the office for a copy. I never heard of Mr. Russell. I don't know if he issued that circular. I never had heard of Mr. Russell when that was printed.

Q. Other officers of "The Watch Tower Bible and Tract Society" were elected in January, this year. Same number of shares were voted for the election of the secretary and treasurer, and of that number Mr.

588 Russell owned forty-seven thousand. The same number voted then for vice-president; no other officers elected. The Investment Company is a limited corporation under Pennsylvania.

Q. They do not have any shares or certificates of stock? A. I think there are one thousand shares.

Q. Then they have a stock book, don't they? A. I think so.

Q. Have you ever seen the stock book? A. No, sir.

Q. Where did it have its offices, in Pittsburg? A. Arch Street.

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"The Watch Tower Bible and Tract Society" have their offices in Pittsburg in the same building. I cannot say that it was the same room. I was a member of the association—or not a member of the corporation, and I don't know where they held their meetings. They may have held them in one room, and we may have held our meeting in another. It is a large building. I did learn who the officers were at that time.

I don't know what other books the Investment Company keeps. I don't know of my own positive knowledge who keeps them. I have seen a book that said "United States Investment Company," on the outside of the book. I saw it there in the office. It was in the same general building down there when I saw it.

590

Q. What was on the book?

Objected to. Objection overruled.

The Court: I will allow it. I think I may safely say that the witness is a hostile witness.

Mr. Sparks: I take an exception to your Honor's statement.

Q. What was on the book you saw? A. As far as I can recollect, it simply said "United States Investment Company."

591

Q. Don't you know, if it is in the same office where you are, who keeps the books? A. No, sir.

Q. Did you ever see anybody looking at the book? A. I don't know that I did.

Q. Did you ever see anybody working at the book? A. I don't know that I did.

Do I know that I did not? I could not swear positively that there is, no, sir. I could see a great many things in an offhand way, and I may not say—I could not say that I did not see it.

The Court: Did you see it enough to have any recollection of it?

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The Witness: No, sir, I have not. I have not investigated the book.

As secretary of "The Watch Tower Bible and Tract Society" I am interested in the investments they make. I just said that the Investment Company is a holding company for "The Watch Tower Bible and Tract Society," for some of its holdings. I simply say that the United States Investment Company is a holding company, and if they desire to turn over any property to them, or necessary for any cash, we simply supply it to them.

593 By the Court:

We supply it to the United States Investment Company, but they bring us a request. There is some man I deal with in that respect, Mr. Robinson. He is their representative, so far as I am concerned.

By Mr. Oeland:

Q. As an office of "The Watch Tower Bible and Tract Society," don't you take any interest in seeing how these investments are made in the Investment Company? A. In a limited way, yes.

We are interested to see that they—the extent that they acknowledge it in the proper way, but we do not
594 investigate. We do not investigate their dealings personally. I don't know who makes the investments of the Investment Company. As representative or secretary and treasurer of "The Watch Tower Bible and Tract Society," I do not just turn it over without seeing where it goes to. They turn back money to us quite frequently. If they get some property they turn it back to us. I keep a record of the money that has been given to them and of the money that they return to us.

Q. But don't you keep any mortgages or certificates or collateral, showing how the money is invested?

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A. Not from the United States Investment Company, no, sir.

I simply have a record of how much they are indebted to us, and how they are indebted to us, and how much we have received in return from them. We would not invest $50,000 offhand.

Q. If you had a business transaction—I am just using this one as an illustration—suppose you made an investment of $10,000 or $5,000 or $1,000 or $50,000, I don't care what, they came to you and requested you to make an investment with them of your money, the corporation of which you are secretary and treasurer, wouldn't you take some statement or showing from them as to the amount of money you had invested? A. Simply have a statement from them as we always get.

596

We would have a statement from them for what it was needed.

Q. Wouldn't you pass any resolutions on your books of "The Watch Tower Bible and Tract Society," as to how much money you invested with them and what it was for? A. No, sir, unless it was the transfer of property to them.

Q. Then how could you have told the Society how much money they had invested for you? A. Because I have it in the cash book.

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I have it in the cash book or ledger. I keep a separate account. They do not keep my books. I keep them.

Q. What showing would you have then that you could show them by their own obligation that they did owe you so much money? A. We have our account.

The ledger account. They do not give us any written evidence of their indebtedness to us.

Q. How much did you invest with them in 1911? A. I do not recall the specific amount offhand in 1911.

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598 *Defendants' Witness, William E. Van Amburg, Direct*

The Witness: I cannot give you accurately until I see the book.

Q. Will you bring the book in here? A. If you desire.

Offhand I cannot tell how much property we have in the name of the Investment Company in 1911, nor how much property we have taken in the name of "The Watch Tower Bible and Tract Society" in 1911, nor how much we have taken in 1912. I might state, if you desire, that some of these properties are donations to the Society, given to it by its friends. We
599 make an annual report to the public every year of the income of the Society. I think I have my report for 1911.

Q. Have you got it in published form? Do you publish it in "The Watch Tower"? A. Yes, sir, but it would not harmonize with it exactly, because in the published reports we have sometimes to cut off the accounts before the annual report is made up; but in our report in our "Watch Tower" we carry it back, where we cut them off before, and so it does not correspond with our record which we make up for the year. I mean it does not always show the same figures. Supposing we have to cut off an account in the middle of the month, whenever we get ready to
600 go to press. This might show a discrepancy but no error.

I have not with me the published report.

Q. Did you make investments in property in 1911, some investments, either in your own name, that is, "The Watch Tower Bible and Tract Society," or in the name of the Investment Company? A. I do not recall. We have a number of properties, and we are endeavoring to turn these properties into available material, such as cash. These properties change hands, as we have tried—sometimes we may dispose of a few of them for cash, and sometimes we have to

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dispose of them in exchange. Our endeavor is, so far as possible, to take these assets into cash to use in the work. I do not recall particularly any investments made in 1911.

Q. Did you loan the Investment Company any money for investments in 1911? A. If we did, it was very little.

The Investment Company does not pay interest on the money we loan it. I don't know who the stockholders of the Investment Company are.

All the interest on the property of the Investment Company are turned back to the "Watch Tower Bible and Tract Society" as soon as they are turned into 502 cash.

Q. Suppose you have got a house for 1911, renting for something, in the name of the Investment Company. Where do the proceeds of that go? A. "The Watch Tower Bible and Tract Society."

I cannot say from positive knowledge who the stockholders in the Investment Company are. I never heard of any of them complaining that they were not getting their money on their stock.

Q. Don't you know that the same parties who owned the majority in "The Watch Tower Bible and Tract Society" own the stock in the Investment Company? A. There is no stock in "The Watch Tower 603 Bible and Tract Society," no stock to that.

Q. The ones who own the majority of the certificates? A. Do I not know what?

Q. You have said that no one complained that the proceeds of the property in the name of the Investment Company was immediately turned over to "The Watch Tower Bible and Tract Society"? A. Yes, sir.

Q. Now, I ask you if any of the directors of the Investment Company makes complaints that they are not getting their dividends? A. No, sir.

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604 Q. Isn't it true that the same parties that owned certificates of stock or whatever you call them, in "The Watch Tower Bible and Tract Society" own the stock of the Investment Company? A. I cannot say positively.

Q. You have been used as a dummy yourself to take property in the name of the Investment Company? I mean "The Watch Tower Bible and Tract Society," haven't you?

The Court: He means, did you ever take title in your own name for the benefit of the corporation acting for it?

605 The Witness: Yes, sir, but not in the sense of being the dummy.

How often I have done that I don't know, but not frequently.

Q. We had some reference yesterday and the day before to a Cemetery Company, down in Pittsburg. Didn't you take the name of that company or the title of that property in your name? A. I did.

Q. What consideration was paid for the property? A. $27,000.

That was not my money that bought it. It was the money of "The Watch Tower Bible and Tract Society." I conveyed to The United States Investment

606 Company; they deeded it to the United Cemetery Company. There is no stock in the United Cemetery Company. May I explain that?

Q. Yes, if you will. I will be glad. A. The Society receives contributions in a tentative way very frequently, for which we issue a receipt something like this: "The Watch Tower Bible and Tract Company," a corporation under the laws of the State of Pennsylvania, has received from John Smith $500 as a donation to the Society to be used in the propagation of its work as the proper officers see fit. However in consideration of the uncertainties of life, it

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is hereby especially stipulated that should said donor have need of any portion or portions of said donation, and shall make request for the same in writing before death, the same shall be reimbursed to the donor from the Society fund." This fund is not ours to use at liberty. It may be called for at any time. Therefore, the Society thought well to have some place where it would have a good asset. It looked around in various places, and they found a farm, and they arranged for a United Cemeteries Company as being the most stable, it could not run away, something satisfactory that could always be used as an asset.

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Therefore, it deemed it wise to use $27,000 of the Society's money on this investment. It bought the farm. It was then agreed to take it in my name, and I passed it on to the United States Investment Company, and the United States Investment Company passed it on to the United Cemeteries Company. That is in the deed of the United Cemeteries Company that that company is—that the United Cemetery Company is a benevolent organization for benevolent purposes; and it is thereby stipulated that half of the income from this cemetery shall be used for the preservation and upkeep of the cemetery, and the other half of the income should go to The Watch Tower Bible and Tract Society. That is in the deed on record in

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Pennsylvania. The directors of the United Cemetery Company do not get one cent from it. The United States Investment Company never got one cent from it. I never got one cent from it. It is simply a holding—it is simply on the part of the United States Investment Company, as a protection against some of those who have placed money with us, and who may call for such at some time. We are in honor bound to protect these shares, and we have taken the best method we know of how to do it.

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610 Each year there comes to the "Watch Tower Bible and Tract Society" from this, half of the income, the proceeds of the sales of lots. This being a benevolent organization, the lots are placed on sale in that cemetery in the suburbs of Pittsburgh at about one-fifth to one-tenth of what they can be gotten for elsewhere. There are lots— It is a fact. There are many people in the large cities that are not able to buy a cemetery lot, scarcely able to buy a place to bury their dead; and we arranged for plans there or plans were arranged through the Cemetery Company so that one could get a five grave plot for
611 $15, large enough to bury the whole family. The Society has received income from that source, and is receiving it now, as it comes in, and were receiving it in 1911, and in 1909.

This Miracle wheat was raised on that property. I say yes, I beg your pardon. I don't know. I simply speak of what I heard from hearsay. Of my own personal knowledge, I was not there when it was raised. The income from that property in 1911 I should judge was about two thousand dollars to three thousand dollars. That is, one half equaled the two thousand dollars which is the share we got for "The Watch Tower Bible and Tract Society." The other
612 half was used for the benefit of the cemetery.

Q. Whose signature is that, will you look? A. I would say it was the signature of Mr. C. T. Russell and F. W. Williamson.

I could not swear it is. I did not see them write it. It looks very much like it. I have been a worker with Mr. Russell twelve years; have seen his signature during that twelve years I presume a hundred times, maybe more. I say that resembles it very closely—his signature; but there are so many counterfeiters nowadays that can counterfeit them very closely. If they desired to do it, they might do it

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easily. How could I say it was his signature? I say it resembles it very closely. If there was no such thing as counterfeiting, I would say that it was his signature. I believe it is his signature.

Q. The Society bought some property here in Brooklyn didn't it? A. The "People's Pulpit Association" did, yes, sir.

Q. That property was taken in your name too, wasn't it? A. Part of it, yes, sir.

The Brooklyn Tabernacle, No. 17 Hicks Street; I do not recall that at present, that any other was so taken. When that property was purchased there was

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no "People's Pulpit Association." "The Watch Tower Bible and Tract Society" bought it. I was going to say that Pastor, himself, acted as agent. He did not buy it personally. He acted as agent for the Society. What I intended to say—we sent him here for the purpose of looking up a location. "The Watch Tower Bible and Tract Society" sent him. The officers of the Society met together and talked the situation over, and we desired a new location. We asked Pastor Russell to come here and see if he could locate a place. He visited not only Brooklyn, but Boston, New York, Washington and Philadelphia.

Q. If you sent the Pastor on here to get the proper location, why did they take it in your name? A.

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Simply because it was not taken in the name of the Society, and I was asked to take it in my name, and I held it in trust.

Q. When was the "People's Pulpit Association" organized? A. I think in April, 1909.

I said that people gave donations to the Society. Why is it that you used these societies, like the Cemetery Company and the Investment Company, to hold investments? Why didn't you hold them outright in the name of the corporation?

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Objected to as immaterial.

Objection overruled. Plaintiff excepts.

The Witness: The United States Investment Company, Limited, was organized before I knew anything about the association. It was a holding company for "The Watch Tower Bible and Tract Society," when I came there, and we have simply continued to use it since I have been there. I cannot state positively why it was organized. I am simply stating that I know it has been used in that capacity since I have been connected with the Society. As far as my knowledge goes, there is no one interested in the United States Investment Company, but what is also interested in the interest of "The Watch Tower Bible and Tract Society."

Q. Do you know any one that is interested in the Cemeteries Company that is not interested in "The Watch Tower Bible and Tract Society"? A. I simply saw the list of directors when it was first organized, and that there were several of them who were not interested. There was a Bishop of Pittsburg, I think of the Presbyterian, no, I have forgotten—the Episcopalian denomination, I believe, a Bishop; a minister of the Presbyterian denomination, a merchant, and several others. Some of those were not interested in this at all, except as they were interested in philanthropic organizations.

Q. Do you know any one in the last three years that is interested in the Cemeteries Company that is not interested in "The Watch Tower Bible and Tract Company"? A. Positively, no, sir.

Q. Don't you know that the whole Cemeteries Company is controlled or owned outright by "The Watch Tower Bible and Tract Society"? A. No, sir, I do not know that.

Q. You say you don't know anybody outside of "The Watch Tower Bible and Tract Society," that is

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interested in the Cemeteries Company. I mean in the last three years? A. I don't know the present board of directors, and I don't know the present officers. I simply know that the deed calls for the transfer of half the income to our Society. That is on file in the records of Pennsylvania, in the Court House at Pittsburg. That is part of the deed.

Q. I asked you if these were the funds of "The Watch Tower Bible and Tract Society," why you placed them in the names of these dummy corporations? A. I would simply say that so far as using this United States Investment Company, it had been so when I came there and we continued to use it as a convenient method; and that is the only reason I can give.

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Q. How is it any more convenient than "The Watch Tower Bible and Tract Society"? A. Because being a limited organization it has some further privileges. I don't know exactly what. There are some legal points. That it has something like the difference between a trust company and a bank, one may have some privileges more than another. I don't know exactly the legal difference.

The United States Investment Company has its own set of officers, and "The Watch Tower Bible and Tract Society" has its own set of officers.

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Q. Don't you know the position Mr. Robinson holds with United States Investment Company? A. No, sir.

By the Court:

Q. He is the man you deal with? A. Yes, sir. He is the representative of the Society.

He is the representative that comes to me for anything. If he turns over any money, why he turns it over to me. If the property is sold, the money is turned over to "The Watch Tower Bible and Tract Society."

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622 *Defendants' Witness, William E. Van Amburg, Direct*

By Mr. Oeland:

Q. You did make an investment in property in the name of "The Watch Tower Bible and Tract Society"? A. Very seldom, lately. I do not recall any particular instance.

Q. Didn't you make an investment of this property here in New York or in Brooklyn? A. I do not recall.

Q. Didn't you loan on the property or take up a mortgage on one piece of twenty-five thousand dollars and on the other of twenty-four thousand dollars? A.
623 We raised a mortgage on that property, yes, sir.

Q. And it is in the name of "The Watch Tower Bible and Tract Society"? A. Yes, sir. It is in the name of "The Watch Tower Bible and Tract Society."

Q. Why didn't you take it in your own name—why didn't you give the mortgage in your own name on a piece of property of "The Watch Tower Bible and Tract Society" at $24,000? A. It was given in my name, yes, sir.

That looks like a copy of the instrument. I bought the property and placed a mortgage on it for $24,000. "The Watch Tower Bible and Tract Society,"—I sold
624 it to the "People's Pulpit Association" after the mortgage was created. "The Watch Tower Bible and Tract Society" advanced the $2,400, and took a mortgage for it.

Paper referred to received in evidence, and marked Exhibit G.

Mr. Oeland: We offer the conveyance made to the "People's Pulpit Association" of the same property.

Paper referred to received in evidence, and marked Exhibit H.

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On another piece I took it in my name in the same way and put a mortgage on it for $25,000; 124 Columbia Heights. That mortgage ran in the name of "The Watch Tower Bible and Tract Society."

Q. Why didn't you put that in the name of the Investment Company? What was the reason that this should be separate from the Investment Company? A. I don't know that the question came up of any particular reason. It was put in the name of "The Watch Tower Bible and Tract Society."

This was simply a mortgage, and as a rule the United States Investment Company does not deal in mortgages. It deals in property, as I recall the matter.

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Q. You mean, where you are getting a mortgage, you take it in the name of "The Watch Tower Bible and Tract Society," and if you take property you take it in the name of the Investment Company? A. Sometimes.

Q. Is that true all the time? A. No, sir.

Q. Do you know any reason why they are separate? A. Not particularly.

We have got a lot of property up in Binghamton, N. Y. That is not in the Investment Company, but in the name of "The Watch Tower Bible and Tract Society." Up there we have seventeen or eighteen pieces, I do not recall which. There may be twenty-seven, I do not recall exactly. I think originally it was, but quite a good many disposed of. They were taken in trade—traded property out in Pennsylvania. The property in Pennsylvania was located at Hammondville. I do not recall whether that was in the name of the Investment Company or "The Watch Tower Bible and Tract Society." It was property that was in possession of the Society before I came in touch with it. It had been given to the Society, as I understand it, many years before.

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628 We have a little piece of property donated to us out in Washington, that we are trying to dispose of. I think it is in the City of Tacoma, I think four or five lots that have been given to us. I think that is in the name of "The Watch Tower Bible and Tract Society." We have sort of a little farm of seven acres up near Rochester, Pennsylvania. That was given to us with the proviso that the man and his wife should live on it as long as they lived, and then we would bury them; and the property ain't worth the taxes. That is in the name
629 of the "Watch Tower Bible and Tract Society." Seven acres, and an imperfect title. There is a house and lot up in Buffalo, N. Y. It is valued at possibly $2,000, in the name of the "Watch Tower Bible and Tract Society." That is renting for about sixteen dollars a month; that money when it comes in is turned over to "The Watch Tower Bible and Tract Society." That is part of their income. There are running expenses, such as taxes, that is charged up to it. There are taxes and repairs occasionally needed. We have been trying to dispose of it for some time.

We have also a farm down in Oklahoma, in the State of Oklahoma—somewhere in the neighborhood of one hundred acres or more. I think it is in the
630 name of R. H. Hirsch, holding it as trustee. Mr. Hirsch is a friend of ours, who was closely associated with us. It was an absolutely free gift, given to us by —I cannot recall his name off-hand. A straight out gift, but taken in the name of an individual, because we thought it could be much better handled at a distance in the name of an individual. There is a little town down in Texas. I don't know what it is. I cannot recall offhand. I think there are two or three lots, with a possible valuation of maybe $25 a lot, and they may be worth $100 a lot. We have had it in the hands of a man down there to dispose of, but

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cannot do so. That is in the name of "The Watch Tower Bible and Tract Society."

We do not own any in Atlantic City that I know of. I think the property in Florida has all been disposed of last year if I remember correctly. What we own down there I am not positive. There were several hundred acres there that was bought. I think Pastor Russell bought it and turned it over to the Society.

In Kentucky we own about five thousand five hundred acres. I do not recall the name of the County. It is about twenty miles from the railroad. That was

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taken in at trade. I do not recall offhand who holds title—I think there is a house and lot in Perryville Avenue, Pittsburgh, Allegheny, or Pittsburgh, north side, in name of "The Watch Tower Bible and Tract Society." and has a mortgage on it. As I say, it has this interest in the United Cemetery Farm. That is not held in the name of the Society at all.

We own a few stocks and bonds. I think we have $2,500 in United States Bonds, donated to us by friends. We have never cashed them. We have had donations from, I guess, fifty or more patentees of various stocks, that we will be very glad to sell at a cent a share, several hundred thousand of them. I

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don't remember the National Biscuit Company. Somebody gave us some Physical Culture Restaurant Company stock that we have been trying to sell. I don't know where it came from. In regard to the National Biscuit Company, I do not recall it.

We have quite a number of gifts to us of various kinds. We have got some McAlpin Publishing Company stock given to us. I think it is worth about—the par value is worth about one thousand dollars. We have two shares of five hundred dollars each. We have been trying to sell them to some man here in New York, George Prentice and Company, for some

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634 time. It is not salable. We have got some stock in the San Antonio Telephone Company, about four thousand dollars' worth of donation, that we would be very glad to dispose of. That is paying interest, paying a dividend. It pays about six per cent when we get it. They have been rather slow about paying up lately, but it comes around afterwards. That is all turned into the Tract fund. If I remember rightly, about four thousand dollars of it. Physical Culture Restaurant stock, we have got one or two little dividends out of that. I think I got $1.50 at one time and $3.00 at another. That is a restaurant company over
635 here in New York, something like Childs Company.

Any other paying dividends I do not recall at present. We have got a few hundred thousand shares of various stocks that we would be very glad to let you have.

What property we have got in the name of the Investment Company I am not positive. This land may be in the name of the United States Investment Company, but I would not swear positively. I thought it was in the name of The Watch Tower Bible & Tract Society. I am not able offhand to give anything else in the name of the Investment Company—I cannot give that from my books. That would be from the
636 United States Investment Company's books. We keep a cash record, a cash debit and credit record. The cash record would show how much we would let them have, but not the particular property it is on.

Q. Tell us how much cash you let the United States Investment Co. have? A. I presume offhand, $40,000; odds and ends, here and there. It has been running over a period of about ten years of my association. The books would show that accurately.

I don't know how much of that was invested in 1911, a very small amount however.

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Q. Haven't they properties that belong to The Watch Tower Bible & Tract Society—haven't they got properties in addition to that money, the Investment Company, holding it for The Watch Tower and Bible Tract Society? A. I do not at present recall any instance where it was deeded, where any property was deeded from the Watch Tower to the United States Investment Company.

Q. Can you recall any instances where the title was taken in the Investment Company and the money paid by the Watch Tower Bible & Tract Society? A. If the United States Investment Company, in a proper 638
way, would present it—say, "We wish a thousand dollars to buy some land," we possibly would put out the money for that.

It is true that the United States Improvement Company holds property that we could control. How much that is or where located I do not know offhand. There is not very much of it so far as I know. The United States Investment Company is not speculative —it is not for the purpose of the interest of any individuals whatever, the United States Investment Company, whatever it makes does not go to any individual. That is what I intended to say. All of its property belongs to the Watch Tower Bible & Tract Society.

Q. How many stocks and bonds does it own? A. 639
As I recall there is a thousand shares of a dollar each; these shares of stock in the United States Investment Company.

What properties it owns I could not tell you offhand, not very much. It has no bonds that I ever heard of. I do not know of any bonds ever received under the name of the United States—yes, I do too— Simply some gift came to the society of this gas company. I think that Mr. Lawson had something to do with it—some one made a donation of some shares in—it seems to me it is the Consolidated Gas Company. I do not

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know where it came from. I think the shares were there—that they were of the investment company. Where they came from I don't know. There is no income from them at all. It is somewhat speculative yet. I told you I did not know what holdings may be in the name of the investment company. I can't recall offhand. So far as I know it didn't have any property of its own. I am simply speaking from hearsay now. About property in its name, I do not know offhand. There may be several odd pieces of property here and there, that we have been trying to dispose of,
641 or that the investment company has been trying to dispose of for us.

Q. What other corporations do you own an interest in—the Watch Tower Bible and Tract Society or the investment company own an interest in—what other corporation? A. The People's Pulpit Association, the United Cemeteries Company. I do not know of any other present corporation, at least I do not recall.

We sent out subscriptions of the Watch Tower sometimes, to poor people, what you call the Lord's poor.

Q. Is there a provision or contract that those shall be credited to Mr. Russell, those subscriptions, and
642 that he be paid in stock or certificates? A. That has been the custom since I have been connected with the society. For instance if there should be twenty-five hundred poor make application for the Watch Tower Journal, it is credited out of the donations sent in for that purpose, and at the end of the year these twenty-five hundred subscriptions are counted at a dollar each and Pastor Russell is simply credited with two hundred and fifty voting shares in payment somewhat of his editorial work on the paper; and that is all he gets.

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Q. Then whenever you send a subscription to the Lord's poor, at the end of the year Mr. Russell gets the benefit of that in added subscriptions? A. As editor of the paper this is granted to him, as a credit.

Q. Suppose you send out free to what you call the Lord's poor in one year twenty-five hundred subscriptions, then at the end of the year Mr. Russell gets how many certificates, voting shares? A. Two hundred and fifty voting shares which will be credited to his account.

Q. Then when you spoke of the issued stock being 50,000, and that he had 47,000—is there a lot of those 644
certificates that have not been issued to him yet? A. Very few. I think possibly there may be three or four hundred voting shares for which he has not asked a certificate, which is there to his credit.

He gets these added subscriptions each year. That is in compensation for him being the editor. That is all the compensation he gets.

Q. How many did he get last year? A. For 1912? A. If I recall correctly, about two hundred and forty. I think we had on the poor list last year between twenty-two and twenty-three hundred.

Q. Do you know of any contribution to any orphan asylum or any one in the world outside of the contri- 645
bution of the Watch Tower to the Lord's poor? A. Not from the society.

Q. You spoke of that being the compensation that Pastor Russell receives as editor of the paper. That was the way he was compensated at the end of each year? A. Yes, sir.

If the Lord's poor increases or decreases its compensation would be lessened. In addition to that he gets ten dollars a month for expense money, that is all, for his clothes. There is an association in England known as the International Bible Students' Association. That is an English corporation, formed

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under the laws of England, so that we might do business there. The Watch Tower Bible & Tract Society financed that. Last year I presume we put in something like twenty odd thousand dollars, nothing the year before so far as I can recall.

We advanced money on a property known as the London Tabernacle, in the neighborhood of ten thousand dollars. That property was taken I think in the name of the International Bible Student's Association, if I recall correctly. But I was not there. We advanced about ten thousand dollars. That was for the
647 work of the society; printing, publishing and various other lines of work we have there.

I do not know of any other property we own or for which we have advanced money in any foreign countries. We have not bought any property in Jerusalem that I know anything about. I say I don't know of any. No money has been advanced by me as secretary and treasurer of the Watch Tower Bible & Tract Society for the purpose of buying property. I do not know of any organization controlled by Mr. Russell that has bought property there. The only foreign investment is the one in London, that I know anything about. We rent offices in other places. We have a branch office at Melbourne, Australia. A. Mr.
648 Nicholson has charge—I have forgotten the other party, two men. We have a department at Elberfield, Germany, a large department there in charge of a Mr. Caditz. That department is not productive of money. It costs us money to sustain it. We paid out there in 1911 two or three thousand dollars. In Australia three or four thousand dollars.

We have a branch office at Orebro, Sweden, and Christiana, Norway. It takes money to keep them all going. Denmark—Copenhagen I think it is—and we have very small interests in Switzerland; and we also have a department in Kingston, in Jamaica, from

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which we cover all the West Indies and Southern American ports. The Watch Tower Bible & Tract Society receive donations each year, right here at home. Last year that amounted to two hundred and two thousand and some odd dollars for 1912. Received in 1911 about $169,000. In 1910 about $139,000.

Q. So then as the year 1914 draws nearer you have an increase of donations? A. The work is increasing very rapidly; yes, sir.

Q. And since this libel was published you have increased considerably, from $169,000 to $200,000 and some odd dollars? 650 A. Not on account of the libel. We might have got a great deal more if it hadn't been for that.

Those donations are received various ways. We get some by will, very small amounts. In 1911 by will we got as I recall seven or eight hundred dollars. In 1910 about the same amount. As I remember during the past five or six years I think we have taken about $4,000 on wills altogether.

Q. Didn't you get at one time $30,000 in a will—Goodwin? A. Not that I know of. We got several thousand dollars from Mr. Goodwin. We got a portion of his will, but that was several years ago.

Q. We have on page 386 in the Watch Tower, of 651 December, 1912—that is the date you published the annual report for 1911, is it not? A. Yes, sir.

Q. It says, "Receipts from the Good Hope Tract fund $200,767.51—" Is that right? A. That is the net; yes, sir.

Q. Do you mean that it ought to be increased by $22,415.00? A. No, sir. I mean the total receipts were $202,272.64; but there were expenses connected with it, $1505.13.

Q. And then follows disbursements of the fund—is that right? A. Yes, sir.

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652 Q. Now do you anywhere show any income from any of your property there in that report? A. This income of donations includes odds and ends from various parts. A donation from a will might not come in this year, but it would come in next year; when we balance our account this will all come in sooner or later.

Q. I am asking about the published report. Do you anywhere in that published report refer to any income or property from wills or any of your investments? A. No, sir; that is not a detailed statement.

653 Q. There is nothing in that report that you could tell you had an investment on mortgages or bonds, or had any interest in the Cemeteries Company, or had any interest in the investment company? A. No, sir.

That is the report that we publish. I was present at the Chautauqua convention in 1909 or 1910. Mr. Russell stayed up there at that time about a week He rented at that place for the time he was there, the Peacock Inn. We entertained there every night while he was there. He didn't do that on $10 a month. He would entertain there at the Peacock Inn in the evening about six hundred guests. Six hundred invitations issued every evening. And he chartered a

654 boat there. The Peacock Inn you had to go across the lake to get to it, about thirteen miles. He chartered the hotel. I understand that is the name of it. I don't know where it came from. When he travels across the continent he does not charter a special train. I know of his going across the continent in a special train. Who chartered that I do not know personally. I know by being told. There in our office we are interested in newspaper work; not under the name of syndicate. There is not any incorporation there for the newspapers that I know of. I don't know of any newspaper syndicate.

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By the Court:

Q. What newspaper business is there there, if any? Is there any newspaper business attached to it? A. Nothing except the publishing of the Watch Tower and the People's Pulpit—are the only publications—and what is known as Everybody's paper. We publish three papers.

By Mr. Oeland:

Mr. Driscol is a gentleman from Ohio. He does not have headquarters at the Bible House. When I saw him last it must have been a month ago. I know 656
he does advertising for Mr. Russell. He is paid in money. The society pays him for what he does. He is not in the employ of the society. How much we paid him for advertising last year I do not recall offhand. I presume $3,000, approximately the same in 1911.

Q. And you sent him round the world once to advertise, didn't you? A. We paid his ticket. Didn't pay him any salary for going. That was 1912. He went round the world, San Francisco, Japan, India, England—I simply note them offhand, I do not know all the places.

Q. What was his purpose in going abroad? A. 657
Mr. Driscol is a promotor, and he came to us and said he would like to promote Pastor Russell's sermons, and he came and desired to secure the work of promoting Pastor Russell's sermons. And he said he thought he could do it through the channels in which he had been operating through promotions. It is the purpose of the society as far as possible to preach the Bible. We are not advertising Pastor Russell, we are advertising the Bible, and Mr. Russell or Pastor Russell is a means to an end, and in order to get the Bible before the people Mr. Driscol said that it would be absolutely impossible for him to pro-

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mote this work unless Mr. Russell would permit his name to be attached to it, and that his name and that his picture should appear on the sermons. It is the desire of the society and the work of the society to promulgate the teachings of the Bible and get the people to be interested in the Bible, and we use any honorable means we can. Mr. Driscol came to us and desired the work of promoting this work, and we said we would give him the opportunity if he so desired, we would let him try it and see what he could do. The result was that he worked on many newspapers to get them to publish Pastor Russell's sermons, that is, under his direction.

659

Q. What did you send him abroad for? To advertise Pastor Russell? A. Eventually I would say yes—it was for the purpose of advertising Pastor Russell as a means to an end. The society paid that expense.

Q. Did you get any revenue from the newspaper syndicate? A. Not from his trip particularly; no, sir.

Q. How much do you pay for advertising in the Times in Brooklyn each Monday morning? A. I do not recall at present.

Q. Give it approximately?

660

Mr. Sparks: I don't see how it is material.
The Court: I think I will allow it.
Plaintiff excepts.

A. Possibly fifty dollars a week, I do not recollect.

Q. What other papers do you pay for advertising? A. I do not recall but two others, the Brooklyn Citizen and the New York World. We don't publish with the New York Journal. We don't publish with the New York American; quit quite a number of months ago. We were publishing with them in 1911. We paid them partly—we took subscriptions to their papers and sent them many hundred subscriptions.

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Q. Wouldn't you take the subscriptions, pay for the subscriptions, and then send them to some of your friends? A. In some cases we did, but not entirely all, not by any means.

Q. In some cases? A. In some cases; yes, sir. We considered that legitimate business.

Q. Did you write to the subscribers, when you sent a paper that way, to the subscribers and ask them to write a letter to the publisher saying how much they appreciated Pastor Russell's sermons? A. I never have.

Q. Have you ever seen such a letter? A. Not going out from the office, I have not seen such a letter. 662
I know many friends who do write such letters—that is I say I know them—I have had them tell me this.

Q. Have you seen one sent out by the Watch Tower Bible & Tract Society? A. No, sir; I do not recall that we have. We have a very large correspondence. I only attend to my own particular part of it; we have various departments. Don't recall any such letter as that sent out.

CROSS-EXAMINATION by Mr. Sparks:

I have told Mr. Oeland all the corporations that are in any way connected with this work. None of the 663
officers or employees of these corporations receive any salaries from the Watch Tower Bible & Tract Society, or from any other source so far as I know. In none of these corporations have dividends ever been declared upon the certificates of stock that are issued to the different individuals of the Watch Tower Bible and Tract Society—certificates or voting shares—there are no dividends declared. The Watch Tower has never paid any of its officers one cent. On two or three occasions, as holidays, the society has taken a small amount and given to the members of the families

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whose expenses are paid, a gift of five or ten dollars as a Christmas present aside from those Christmas presents none of the funds have directly or indirectly, under any subterfuge, been diverted to any source except the work of the society.

In 1912—the total receipts were $202,272.64. We carried forth a balance from the year before of $26,607.13 as a cash balance, but of this amount $18,606.83 belonged to colporteurs who had credits with us. This only left a small balance of $7,997.30. I am carrying forth this total as a whole. It shows here
665 $26,000 balance carried forward; $202,000 donations; from the receipt of sales of books, merchandise, and the Watch Tower subscriptions. $169,316. Total receipts, $398,322. Expenditures, total $371,715, leaving a net balance of about seven thousand dollars. And the entire disbursement of $371,000 has been expended in the spread of this work; the Bible work.

Q. And has Pastor Russell individually, directly or indirectly, for his personal use received one penny of that sum aside from the ten dollars which he gets per month, the allowance? A. Ten dollars per month allowance, and one dollar per month for laundry. That is the entire compensation for the entire year.

Q. Is that the maximum amount that any single in-
666 dividual connected with this work received during the year 1912? A. Above his actual travelling expenses. When he is out in the work for the society I mean by traveling expenses—if a man is on the road traveling, he gets his carfare and hotel bill and incidental expenses. Eliminating that, there is not, with one exception, any single individual connected with this work who receives anything more than his ten dollars a month and a dollar for his laundry. There is simply one individual who is working for the society and whose family receives a very small amount for the purpose of the sustenance of his family. That is the

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only exception. That person does not live at the Home; and that is true for the year 1911.

That has been true ever since I have been connected with this work. I would like to modify that a little. We had at one time I think two and possibly three of our public lecturers who had families dependent on them, and who offered us their services free provided some way could be arranged by which their families would be sustained at home. In one instance I think, we allowed twenty-five dollars a month for the sustenance of the family, and the man gave his time entirely to the work. And in another instance I think 668
we allowed, if my recollection is correct, fifty-five or sixty dollars a month, I don't remember which, but this man had a larger family and is not at present connected with the work.

This United States Investment Company, as soon as they sell a piece of property, and turn it into cash, they turn it to the Watch Tower Bible & Tract Society and it goes into the general fund, and there has been not a single exception to that rule, to my knowledge, since I have been connected with the work. And the profit or the half of the income received by the United Cemetries Association is used for the upkeep of the cemetery itself, and no part of it goes to any person connected with it except the expenses of the 669
caretakers and the things of that kind.

When I say that at Chautauqua, Pastor Russell entertained six hundred people a night, I mean the society. Did I say Pastor Russell? He was the entertainer, the host. I used it in that sense.

But the invitation to visit the house was at the invitation of the society itself.

I would like to explain a little further in regard to the steamer tickets. We sent our representative up there to make arrangements with the steamers—first we sent our representative up there to secure lodgings

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670 and boarding places for the delegates who might come, and these were dispersed around about six or eight different towns around Lake Chautauqua. We made an agreement with the boat companies there, one or two, I have forgotten which, by which we bought from them at wholesale rates their tickets. These tickets were disposed of to the different delegates as they would have occasion to go back and forth, and the sale of these tickets were turned back into the society. Pastor Russell had nothing whatever to do with the chartering of the boats or the selling of the tickets or the buying of the tickets.

671 Pastor Russell did not have a private yacht at his disposal at Chautauqua. He travelled on the boats and received tickets same as the other delegates as far as I know; I didn't travel with him. He had no special boat. The hiring of this cottage was done by the society, and the different delegates roomed in that cottage. It was not for the exclusive use of Pastor Russell in any sense of the word. The cottage itself was used for the entertainment of the different delegates who went to that convention.

The Court: What convention was this?

Witness: Chautauqua Lake, for the International Bible Society. Those entertainments were arranged

672 for by the society for the purpose of permitting friends from all over the country who wished to meet Pastor Russell personally an opportunity to see him. Pastor Russell while at the convention, except the time he was giving his public discourses, was very busy in dictation and correspondence, and answering letters, and it was arranged that he would give the evenings for the meeting of the various friends who came from all over the country, that they might meet him personally.

This was arranged for by the society for this purpose, the society therefore hired this hotel and

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673

arranged for the accommodation of as many as could be entertained at the hotel. It was crowded all the time. Pastor Russell simply had one little study room and a bedroom, and the house was thrown open to the friends, and at evening he gave a little discourse, and refreshments such as ice cream and cake were furnished for the entertainment of the friends. This was all at the expense of the society and the society did not expect him to pay that out of his ten dollars a month.

Q. In connection with the investment of the funds of the Watch Tower Bible & Tract Society, has the Tract Society ever invested either itself directly or through the United States Investment Company any money in any property except for church purposes? A. The property here in Brooklyn connected with the work and the United Cemeteries Company is all that I know of, so far as any investment is concerned, and the property in London. Aside from those properties the society has not invested any cash in real estate as an investment. The Watch Tower Society did have some land in Florida. I don't know the number of acres. They have been selling from that property from time to time. I don't know who gave it to the society. It was the property of the society when I became connected with it.

674

675

The property, fifty-five hundred acres in Kentucky, was not a gift to the society. That was acquired in a trade for some other property. I am not able in my mind to trace it back to the original source. I do not know personally whether the original source was a gift from Pastor Russell.

Q. Judge Oeland asked you in reference to a trip that Pastor Russell took across the continent. Did the society pay for that special train? A. No, sir; it did not. It paid for two tickets, one for Pastor Russell and one for his stenographer.

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676 *Defendants' Witness, William E. Van Amburg, Cross*

And subsequently part of the money that the society put up in the first instance for Pastor Russell and his secretary was refunded. The original cost to the society of Pastor Russell and his secretary's on that trip was about $180 for the two tickets to California and return. He was invited as one to go with a special party on a special train.

Q. And each individual who went on that train paid his or her own expenses? A. So far as I know; it didn't come out of the society.

The Kentucky property we have placed in the hands
677 of real estate agent to dispose of. I do not know personally that we gave him the price. It is what might be called prospective property. I do not know whether a price has been put upon the property. There has been received up to date from the Florida property, I presume in the neighborhood of six or seven thousand dollars.

So far as I know it has all been sold; there may be a few lots left, I am not positive. The entire value was about six to eight thousand dollars.

The Court: Is there any income from the Kentucky property?

Witness: No, sir.

It is vacant property out in the mountains. We
678 have been endeavoring to sell the Kentucky property ever since we got it. I think that was in 1904 or 1905. I think I mentioned a little property up near Rochester, Pa., about seven acres. That is not worth the taxes and—no it was simply deeded to us. That piece of property has been an expense to the society and is of practically no value. We can't dispose of it because we can't give a clear title to it. We have paid taxes on that property for the old folks while they lived and they lived there during their lifetime.

Q. What properties have been devised to the society by will? A. There was a little farm of a few

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679 acres, I do not recall how much, out in Washington; I think we realized something like four hundred dollars from it. Do you refer to property or cash? I do not recall any other real property.

And that is a matter that would come to my attention as the secretary and treasurer of the Watch Tower Bible & Tract Society.

During the past ten years or since I have been secretary and treasurer, we have received personal property, through will, moneys in the neighborhood of possibly ten thousand dollars.

680 So that all the real estate that the society owns, with the one exception that I have mentioned, came to it from other sources than the devises under wills.

And all the personal property that it has, with the exception of the ten thousand dollars that I have mentioned, came to it from other sources than by bequests under wills. And all the property personal or otherwise, with the exception that I have mentioned, has been expended by the society in the religious work in which it is engaged. None of the donations that have been made to the society have been invested in any character of security whatsoever, with this one exception of the cemetery plot.

681 The only money that we do not use in the work of the society is the cash that we keep on hand to meet these qualified donations, and which are subject to the call of donors at any time. That is kept in a separate bank account or with some trust company, and it is not used in this work until after the person who has donated the money has either died or given us the permission to use it. And that is kept in cash so that if these people get in straightened circumstances, that money is available for their use at a moment's notice.

In reference to the property in Brooklyn at the time that the first Home property was bought, the People's Pulpit Association had not been organized.

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682 The Watch Tower Society put up the money, the purchase price to buy that building or that ground, and that money that was used for that purpose was part of this contingent fund which was subject to be drawn upon, and the reason for our executing a mortgage back to the Watch Tower, was that the Watch Tower would have that money in place of the money that it had used of this special fund. And that was the reason for the execution by us of that mortgage upon that property.

The People's Pulpit Association is a membership corporation. If a person dies, his interest, whatever
683 it may be, dies with him, so that if Pastor Russell should die tomorrow, neither he nor his heirs would have a cent interest in the People's Pulpit Association.

Q. Do you know whether these voting trust certificates in the Watch Tower Society are nonforfeitable and nonassignable, and does the charter not so state? A. I would have to refer to the charter.

Q. What is your recollection on that, if you have any? A. I do not think that they are transferable. A person cannot pass them on to their heirs. In other words, if Pastor Russell should die today, he would have no voting share that he could assign to
684 anybody else. He could not assign to any person any right to vote in this Watch Tower Society.

The Court: Were any of these voting certificates issued against the income received from the Cemetery Corporation?

Witness: No, sir; any person who has donated ten dollars to the Watch Tower Society can call for a certificate for the ten dollars that he has contributed, at any moment, as soon as we can get to the books and find his record. Just as soon as we can find out, going back over the books during the entire life of this association and find out how much he has contributed,

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he gets voting shares for a like amount, and they are subject to call at any moment. Certificates have no face value.

Q. Taking ten dollars as the face value? A. You would issue it and say this would be good for one voting share.

Q. How many certificates would you have to issue if all the people entitled to voting certificates should receive them?

The Court: Would it be one-tenth of the total contributions?

Witness: Yes, sir. 686

It would be I presume two hundred thousand or two million dollars worth.

Q. Is that exclusive or inclusive of the certificates which have been issued to Pastor Russell for the property which he has transferred to the society? A. I would estimate that as inclusive. It might run a little over two hundred thousand, but that is not far away, I think. With the exception of the voting certificates which have been issued to Pastor Russell for these free subscriptions to the Watch Tower the balance of his certificates have been issued for the property which he transferred to the association.

Q. And how many would you say had been issued to him for these free subscriptions? A. I should think fully half of the number. 687

Q. That is twenty-three thousand? A. Probably—no it would not amount to quite that much.

Q. I want to know your best recollection? A. I would say fifteen thousand voting shares would be a fair estimate of what have been issued for him for editorial work.

Q. And the difference between that—that would amount to one hundred and fifty thousand on that basis? A. Yes, sir.

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688 Q. And the forty-seven thousand that have been issued to him would represent four hundred and seventy thousand—the difference between the four hundred and seventy and the one hundred and fifty, or three hundred and twenty thousand dollars, is the amount of property that Pastor Russell has given to the society? A. The amount that has been credited to him.

Q. Which credit represents? A. Voting shares.

Q. Does the difference between those two figures represent the property which he has turned into the society and for which certificates have been issued?

689 A. If you will allow me to explain I will. Certain of this was property—small amounts of this were copyrights, which might not represent so much property, but which had a value nevertheless. It would be property. He turned over property, whether it be real estate or whether it be copyrights, copyrights in these books, and the plates and the magazine the Watch Tower, and all these things were turned over to the society by Pastor Russell and certificates issued in lieu thereof. The People's Pulpit Association has no bank account of itself. There are no checks drawn by the treasurer of the People's Pulpit Association.

Q. In the distribution of literature, books and so forth, does the income from the sale of your books

690 equal the amount of the cash received—I mean the cash expended for the painting, books and papers? A. No, sir; it does not.

Q. So that your distribution of your literature and so forth—there is no profit in it? A. No profit whatever. A deficit has to be made up from the general donations.

Q. The different European branches as you call them carry on a similar class of work as the Watch Tower Society does here? A. Yes, sir; in their various languages, and lectures, distributing the papers and the books in the different languages, and the funds

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691

from those different branches do not equal the expenses. The parent company here in Brooklyn makes up the deficit.

By Mr. Oeland:

When the value of these copyrights and so forth for which we issued voting shares was fixed, I was not there at the time. If there is a resolution on our minute book by which Pastor Russell is to have his shares by will at his death, I do not recall it. If I ever saw such a thing as that, I don't recall now. If it is, it is on the record. I would not say positively, no. We have many donations on our books, where the parties donated for good at the time of their death, that is, as soon as they die, the property belongs to the association; those provisional donations that I spoke of this forenoon. We got a donation from Hope Hay. If that is a provisional donation, I do not know. It was before my time. I know where Hope Hay is now. In Canada in an asylum. We are paying his expenses.

692

By Mr. Sparks:

He was not in the insane asylum at the time he made the gift. He was in perfectly competent and rational mind at that time and for years after.

693

By Mr. Oeland:

I did see him and I am perfectly well acquainted with him. I don't know what ran him crazy.

By Mr. Sparks:

I knew him for many years after, and I knew him to be a competent and skillful business man. And at the time he went to the asylum, there was no obligation upon the society's part, to support him; not one bit, but voluntarily it has supported him ever since.

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He has been there since 1905, the winter of 1905 or 1906, I think it was.

By a Juror:

Q. On that issuing of the ten dollar certificates, on the voting end of, have you got any of those certificates—how many votes have you? A. I have in the neighborhood of a hundred or more. I mean on the voting for the election of officers. At the election at which I was elected I voted my share. The vice president had in the neighborhood of three or four hundred.

695 Q. There were fifty thousand votes cast at that election? A. Yes, sir.

Q. Pastor Russell had forty-seven thousand? A. Yes. I think I stated there were probably forty-eight or forty-nine thousand votes cast. Pastor Russell cast about forty-seven thousand.

Q. Were there any others that cast votes there besides the three officials that were elected? A. Yes, sir; in the neighborhood of a hundred or more all presented their certificates for voting.

By Mr. Oeland:

They presented their certificates. I checked them up
696 to see they were there. They voted their own shares by being there personally, subscribing their names, giving the number of votes they had. That amounted to about forty-eight thousand, somewhere about that. Of that forty-eight thousand, Pastor Russell had about forty-seven thousand.

By Mr. Sparks:

Q. These certificates up to many years ago—they have only been issued for the past two years? A. There was never any call for them until about two years ago, and the election for all the times prior to

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697

that was simply from our records, and those who were there were known and had on record so many votes. Each one cast his own number of votes. I always cast my own number every year; so did others.

By a Juror:

Any man who contributed ten dollars to the society had the privilege of a vote. Pastor Russell had the privilege of forty-seven thousand of these votes. At the last election there were forty-eight thousand votes; somewhere thereabouts. And of that number, aside from Pastor Russell, over one hundred voted with their individual shares.

698

Q. Would that record show that they voted on shares? A. Yes, sir. I checked it up with the cash book. The total votes issued was, approximated fifty thousand.

By Mr. Sparks:

Q. Any person who had given ten dollars to the society could come there and vote one share for each ten dollars which they had donated to the society, so that outstanding there are approximately two hundred thousand voting credits.

The Court: You don't issue the certificates unless you are asked for them, and the only people who have asked for them are those representing the fifty thousand?

699

Witness: Yes.

Anybody that has contributed, could come in there, get a certificate, and vote. If you had given a thousand dollars ten years ago, we would look up the books and see if you were entitled to a hundred voting shares. And if you had given a hundred dollars each year for the past ten years, it would be just the same. That would be a thousand dollars.

Q. I could come in and get a hundred shares and vote that? A. Yes, sir.

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700 Q. So you take a man's account ever since the society has been formed? A. Yes, sir.

Q. You figure up the amount of his donations and issue to him certificates equivalent to that amount? A. Yes, sir, whenever he calls for them.

We elect officers at the annual meeting and those officers are the president, vice-president and the secretary and treasurer.

Q. And do your rules and by-laws provide that any one of those officers shall receive any salary? A. No, sir—no provision whatever.

701 Q. What emoluments go with the office of president? A. A good deal of hard work.

Q. Aside from the hard work what advantage is there in being the president of this association? A. No worldly advantages whatever. And that has been true since my connection with the society—about ten years.

By a Juror:

There is an announcement made that the election of officers will take place at such a time, and all who are members of the society are invited to attend. Then they come there in a general opening meeting.

Q. Are they invited by mail? A. No, sir. All
702 who are about there are given notification. We don't mail notifications. All who are there and hear the announcement.

By Mr. Sparks:

Q. The charter fixes the date of the election, the annual election? A. Yes, sir, the first Saturday in January of each year.

By Mr. Oeland:

I handled the funds of the society. I have a balancing sheet every day, and I credit my—I receive

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703

the funds, enter all on the books, and show a credit for every cent given out.

Q. Who directs the expenditures, and how it is to be expended? A. The officers of the society. The president, vice-president, secretary and treasurer. I am the secretary and treasurer and Mr. Russell is president; and the vice-president is Mr. Ritchie; so that the expenditures and the manner in which it is to be expended is decided by us three, practically. We have an auditor who checks up our expenses, so far as the People's Pulpit Association is concerned.

704

Q. But is there anybody to whom you three officers are accountable for the manner in which the money is spent or how it is to be expended? A. Looking at it from a worldly standpoint, and not from another standpoint, but we are accountable to God for everything we get.

Q. I was just getting at the worldly end of it? A. No. Nobody has any say upon that, but we check ourselves up and audit ourselves very carefully.

Q. I am not complaining. I am just asking you about the facts? A. And I am giving you the facts.

Q. Do not let us get the Lord in it? A. But he is a great part of this.

705

Q. You have no Board of Directors to check up or direct how the funds shall be expended, or for what they shall be expended, and no Board of Directors to whom you report how those funds have been expended? A. Yes, sir. Seven of them.

Pastor Russell is one, A. I. Ritchie is another. The vice-president. A gentleman out in Ohio, J. D. Wright, another. A gentleman by the name of I. F. Hoskins is another. He lives at the Bethel. He is interested with us, and volunteered his services. H. R. Rockwell is another. He lives in the same place. J. F. Rutherford is another. J. F. Rutherford is the gentleman in front here. He lives in Orange Street,

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across from the Margaret Hotel. There are the seven. I don't remember the last meeting. Some transactions came up.

By Juror 5:

Q. Do these gentlemen hold stock or certificates or shares in your organization? A. Yes, sir, voting shares.

Q. Do you know how much they hold?

The Witness: Mr. C. T. Russell has forty-four thousand seven hundred and sixty. I was a little off when I said forty-seven thousand. I gave it approximately.

707 Mr. Rutherford has a credit here of nearly two hundred. Mr. Rockwell—

Mr. Oeland: Just a minute. Do you mean a credit of voting these shares?

The Witness: Yes, sir. That he is voting on, the voting shares that he has? A. Mr. Rockwell has thirty-five. J. D. Wright has ninety to his credit. Mr. Ritchie has a credit here of four hundred and ten. I have a credit here of one hundred and twenty-four. Now, at the election there were all these other ninety odd people that have credits here. That would bring it about between six and seven hundred.

708

EDWARD W. BRENNEIZEN, 122 Columbia Heights, Brooklyn, New York, sworn and examined as a witness on behalf of the defendant, testified as follows:

By Mr. Oeland:

I have been associated with Mr. Russell since 1907. I have been engaged in the work and associated with the secretaryship of the People's Pulpit Association. The secretary of the People's Pulpit Association, that

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was organized in April, 1909. I was with them before that time. I was engaged in the lecture service for the Watch Tower Bible & Tract Society from about January, 1907, until the present time. I was elected secretary and treasurer of the People's Pulpit Association. Pastor Russell is the president of the People's Pulpit Association. Vice-president, H. C. Rockwell lives at 122 Columbia Heights. That is in the Bethel Home where I live.

The charter provides in the People's Pulpit Association that Mr. Russell is elected president for life, and the balance of our officers are elected annually. 710
We have our election the first Saturday in each year. Each member of the association is entitled to one vote. The membership, besides the original charter members, are elected by the Board of Directors according as the needs of the situation require.

Q. You do not have any certificates or voting stock there? A. We do, if they are desired, or ask for them.

Q. Have you got any issued? A. No, sir.

Q. Who compose the Board of Directors of that organization? A. The president, the vice-president, the secretary and treasurer, as well as four other members of the association. F. H. Robinson lives at 122 Columbia Heights. W. E. Van Amburg at 74 Columbia Heights. 711

Q. Is that a private house? A. It is.

Q. Who owns it? A. I don't know.

Q. Who pays the rent for it? A. I don't know.

R. H. Hirsch lives at 122 Columbia Heights. Isaac F. Haskins lives at 122 Columbia Heights.

Our society owns the properties at 122 and 124 Columbia Heights, and 13, 15 and 17 Hicks Street. These properties are in the People's Pulpit Association's title. That is the one of which I have the privilege of being secretary. The People's Pulpit As-

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712 *Defendants' Witness, Edward W. Brenneizen, Cross*

sociation, to my knowledge, have no other property. I act in the capacity of secretary. Our society promulgates the dissemination of Bible truths as expounded by various lecturers that are engaged in that particular work, and as printed in various tracts and papers, religious newspapers. The leading lecturer is Mr. Russell. I do not handle any fund. Everything is handled by the Watch Tower Bible & Tract Society. It is for the People's Pulpit Association.

CROSS-EXAMINATION by Mr. Sparks:

713 Q. Have you ever gone to the Eagle and given them full information in reference to the work of the society? A. I have.

Q. On an occasion prior to the 23rd of September, 1911, did you visit the Eagle office in connection with the work of the People's Pulpit Association, and the Watch Tower Bible & Tract Society? A. I did, sir. In the spring of 1911, I saw the city editor. I talked with him in reference to the work that the society was doing.

Q. Did you give him the facts in reference to the character of the work? A. I did, sir.

Q. Just state the facts you gave to the city editor on
714 that occasion? A. I told him the nature of the work, that it was for the—that we were organized for the purpose of disseminating Christian knowledge, and went into considerable details as to just how this was accomplished through the printing of the literature, through the dissemination of it broadcast to the general helpfulness of mankind at large; that we also had the privilege of conducting a Bible school of correspondents, that questions, Bible questions were received from all parts of the world; that we handled such matter in quite a number of different languages; that this was all accomplished by those who were volun-

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715

tarily engaged in that work, who were glad to donate their time and their services; that they themselves had been richly benefited thereby; that they had received comfort, strength and encouragement.

Q. Did the editor ask you questions in reference to the nature of the work? A. He did, sir.

Q. You answered the questions put to you by the city editor? A. I did, sir.

Q. The city editor put certain questions to you and you answered him. The city editor made no objection to the answers that you gave him, that they were not responsive to the questions that he had put to you? A. No, sir, he accepted them. I was there engaged in giving him that information fully an hour.

716

Q. And there was no question that he asked you that you did not give him the information about?

Mr. Oeland: I object to that.

A. Yes, sir.

Mr. Oeland: I ask to strike it out as a conclusion.

The Court: Strike it out. I think the conversation is the best evidence.

Plaintiff excepts.

717

RE-DIRECT EXAMINATION by Mr. Oeland:

Q. Did you tell him you had a holding company known as the Investment Company, in which the property of the Watch Tower Bible & Tract Society was held? A. I did, sir.

Q. Why did you have to think so long before answering? A. Because I did not mention the name individually. He asked questions, and in connection with those various societies or names, and inquired as to why they were thus denominated, and I explained to him.

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718 *Defendant's Witness, Brenneizen, Re-cross—Russell, Direct*

Q. Did he ask you about the Investment Company? A. I do not recall that I denominated it specifically.

Q. Did you tell him how much of your money they had, how much of your property, or how much of your money they had, I mean the Investment Company? A. I did not.

Q. Did you tell him about the Cemetery Company that Mr. Bohnet was controlling? A. I did not.

RE-CROSS EXAMINATION by Mr. Sparks:

719

Q. He did not ask you anything about those? A. He asked me nothing about those.

By Mr. Oeland:

Q. Who was the editor you talked to? A. I do not know his name.

Q. What kind of a looking man was he? A. He was a smooth faced individual, and was seated in the center of the room on an elevated platform.

Q. A good looking man—a large man or a small man? A. He was a good looking man.

720

MARIA F. RUSSELL, 123 Pulaski Street, sworn and examined as a witness on behalf of the defendant, testified as follows:

By Mr. Oeland:

Q. You are Mrs. Russell? A. Yes, sir.

Q. You are not living with Mr. Russell at this time? A. No, sir.

Q. Where do you reside now? A. 123 Pulaski Street, Brooklyn.

Q. I show you a pamphlet. Do you know who issued that circular? A. This circular?

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 721

Q. Yes. A. This circular was issued by the Watch Tower Society.

Q. Do you know who wrote it? A. Yes, sir.

Q. Who? A. Mr. Russell. It was issued April 25, 1894.

Mr. Oeland: Now we offer that in evidence. I shall not weary the jury by reading it all. I want to read extracts from it.

Mr. Sparks: I object to this. I object to it upon the ground that the witness is incompetent to testify as the wife of this plaintiff, that it is a confidential communication. 722

Q. Was that written in the Bible Society and published by them?

Mr. Sparks: I object to that as immaterial.

The Court: It is only admissible here as against any claim of Mr. Russell that he himself wrote it, and that you are attempting to prove by the declaration of the wife.

Mr. Oeland: I will ask that it be marked for identification.

Paper referred to marked Exhibit J for identification.

Mr. Oeland: Now, we offer it in evidence. 723

Mr. Sparks: I object to it as incompetent, irrelevant and immaterial, and on the ground that it is a confidential communication. I also object to it on the ground that it is a mutilated article, and is only part of the article.

The Court: I will overrule the objection that the authorship was confidential communication between the husband and wife. I do not think it is confidential.

Mr. Sparks: Then I object to it on the ground that it is a mutilated document.

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724 The Court: I am only passing on that objection. I am not passing on the admissibility of the document itself.

Trial resumed January 27, 1913.

Mr. Oeland: We offer the three certificates from the Agricultural Department, and ask that they be marked for identification before I offer them.

Papers referred to marked Exhibit K for identification, Exhibit L for identification, and
725 Exhibit M for identification.

Mr. Oeland: Now, I offer these in evidence. We offer in evidence Exhibits for identification, K, L and M.

Mr. Sparks: We object to them on the ground, first, that it does not appear that there is any United States statute making the records of the Agricultural Department evidence in any suit. Second, that it is hearsay evidence.

Mr. Oeland: Exhibit K we offer that in evidence.

The Court: I am inclined to allow all of them that appear on their face to be the result
726 of experiments by the Government authorities and containing a record of it, and exclude anything in the nature of—I think there is one that caught my eye that it was apparently in the form of a letter, where he visited the Stoner farm. I do not think that comes within the rule.

Mr. Sparks: On the further ground that the document itself does not show what amount of seed was sown to any variety. Therefore, it is not a proper test of the growing of the grain.

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I mean this, that there is nothing in this report 727
to show how much Fuldz wheat was sown, or how much Hybrid wheat was sown or how much Miracle wheat was sown. Consequently a record of the different yields is not accurate and cannot give the jury any idea of the yielding qualities of any one of these wheats.

Objection overruled. Plaintiff excepts.

Exhibit K for identification is received and marked in evidence.

Mr. Oeland: Now, I offer Exhibit L for identification.

Mr. Sparks: The same objection to Exhibit L for identification. Also upon the ground 728
that it is hearsay evidence, and that no proper cross-examination is permitted or is afforded by reason of the fact that it is put in evidence without anybody being here to be cross-examined upon it.

Objection overruled. Plaintiff excepts.

Paper referred to, heretofore marked Exhibit L for identification, is received and marked in evidence.

Mr. Sparks: I also object to both the previous exhibits on the ground that there is no plea of justification in the answer in reference to the libel sued upon. This evidence is not
in justification or mitigation. There is no justi- 729
fication or mitigation in the answer of the cartoon. Justification and mitigation only runs to the written articles themselves and not to the cartoon which is the basis of the libel.

The Court: I am unable to say what the meaning of the cartoon is as matter of law. I will overrule the objection.

Mr. Sparks: Exception.

Mr. Oeland: Next I offer Exhibit M.

Mr. Sparks: In reference to Exhibit M, the same objections as previously noted; and the

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730 *Defendants' Witness, Carlton R. Ball, Direct*

additional objection that in the case of a lot of these pages attached to the certificate there is no comparison between Miracle wheat and other wheats.

The Court: I will allow them to show the growth of Miracle wheat any way.

Mr. Sparks: Exception.

Paper heretofore marked Exhibit M for identification is received and marked in evidence.

The Court: I will exclude one of them, that appears to be a photographic copy of a letter. That does not seem to me to be competent under the general rule, and I will exclude that part of it—that is, if it is objected to.

731

Mr. Sparks: I object to it.

Mr. Oeland: I will detatch this then.

CARLTON R. BALL, recalled.

By Mr. Oeland:

I am connected with the United States Government. With the Department of Agriculture. As agronomist and acting cerealist in charge of cereal investigations. I have entire charge of the collection of information, the dissemination of information, the conducting of

732 scientific and practical experiments with all the grain crops and cereal crops in all parts of the United States.

Q. Tell the jury what work you do under those two heads, the scientific and practical work? A. We conduct tests of very large number of varieties of cereals at different experimental farms or experimental stations, scattered over the United States, in which we determine the qualities and yields and other characteristics of the different cereals under carefully controlled or checked conditions.

Q. What do you mean by the checking or controlling conditions? A. By inserting a series of test plates

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at regular intervals a plat of a single variety in order that we may determine whether there is a variation in the soil in different parts of the field in which the experiments are conducted. Then we have a long row of plats across the field, and we expect naturally there will be some variation in the soil. In order to determine that, we put a plat of a single variety here and then we put a plat of another variety we are testing between them, and another plat of what we call the check variety, and another plat of the check variety; and we determine whether there is any great variation in the soil, and determine the accuracy of our results 734
by the checking and controlling conditions. All these plats are actually measured, that is, the area of ground is absolutely determined each year; and the yields therefrom are actually determined.

Q. And the grain that is put in is measured and spaced off on the ground? A. In one set of experimental plats, in what we call our nursery plats. In some other plats the ground is usually spaced out so many inches apart, the rows at a definite distance apart. In the field tests the measuring is done by the feeder or drill, just as it is in a practical farm by the ordinary farmer.

Q. In the nursery tests, it is divided by rows and so many seeds to the row? A. So many seeds to each 735
number of inches or a seed to each—to so many inches in the row.

Q. And the results of your experiments are kept on file in the Agricultural Department? A. They are. And that knowledge is disseminated to the farmers and is open to the world. We have two test stations very near Washington. One is at the Arlington farm on the Virginia side of the river, and one is at College Park, Maryland. We have sub-stations all over various parts of the United States.

Q. In your line of duty do you visit the various sub-stations? A. I do. And there consult with the

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736 men regarding the experiments, inspect the field plats and the crops growing upon them, and anything, any details regarding the conduct of the farm; the experiments of that year or experiments for the years to come; a general planning and conduct of the work. The results of these various farms throughout the country are kept on file in our department.

Q. I show you Exhibit K. Is that one of your tests kept at the Arlington Farm in reference to other wheats compared with the Stoner wheat or Miracle wheat? A. It is. That is the correct copy of the record.

737

Mr. Oeland: Now, I will read it.

Q. C. I. what does that mean? A. That is the accession number of that wheat on the record books of our office of cereal investigation, meaning it was wheat of that number in serial sequence which we had tested. That is a nursery test and begun in the fall of 1907 and completed with the harvesting and thrashing of the crop in 1908.

Q. Will you read that off and explain it?

Mr. Sparks: I object to that. If it is evidence at all under your Honor's ruling, the document itself is the only evidence.

738

The Court: He can read that to the jury, what the report shows.

Q. The first is number—

Mr. Sparks: I object. If they are in evidence, you must stand by the record.

The Court: I will allow him to ask this witness anything that explains the record as to its initials, letters and so on.

Q. Will you look at that and explain what you mean by Fuldz? What does that mean?

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Objected to. Objection overruled.
Exception by plaintiff.

A. With reference to another very common wheat variety, a standard variety for that area, and was naturally recorded as a standard variety and a special variety that we use it for our tests.

Q. What is the yield of Fuldz?

Mr. Sparks: That is objected to.
The Court: I will not allow him to contradict the record, but I think the jury can understand it better if he tells us what it is.
Plaintiff excepts. 740

A. The yield of Fuldz was two pounds six and one-eighth ounces from the row. The highest variety yields here is the Fuldz check. That is the first Fuldz check. The next highest variety is Hybrid wheat. Hybrid wheat means the result of crossing two varieties of wheat together, and this is the result of the cross. It is one of our Hybrids which was produced for conditions obtaining in that part of the country; and we used it in this test because we had considered it a very good wheat.

Mr. Sparks: I move to strike that out. It appeared from his early examination that he 741 knows nothing about the yield of these various wheats; and all he can testify to is from the documents on file in his office, and consequently he cannot say what the yield was, for any one of these wheats except as he sees it on the document itself.
Mr. Oeland: He is explaining the record.
Mr. Sparks: No. He said that the yield for the Fuldz wheat was so much. There is no evidence of that fact. All the evidence heard is that there is a report on file which so states,

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742 but that is not evidence of the fact itself; and that is my objection to this.

Objection overruled. Plaintiff excepts.

A. The yield of this Hybrid—

Mr. Sparks: I object to what the yield was, upon the ground that this witness has no information or knowledge of what the yield was except as it appears upon the record, and that the report itself is the best evidence of what the yield was.

Objection overruled. Plaintiff excepts.

743 A. The recorded yield is one pound seven and three-quarter ounces with this Hybrid.

Q. What is the third in yield?

Same objection and ruling. Plaintiff excepts.

The Court: You may take it all subject to the same objection; as one exception is as good as a dozen on that.

A. The next is fourteen and one-half ounces. That is another Fuldz. The fourth is one row of Stoner ten ounces, or Miracle. That would be the fourth. The fifth is another row of Stoner nine and one-fourth ounces. The sixth is another row of Stoner 744 eight ounces. The next is another and last row of Stoner, seven and three-quarter ounces.

Q. In the next column you estimate on that basis the supposed yield of bushels per acre? A. Yes, sir.

The Court: That is a mathematical estimate, that if the same conditions prevailed over the area of one acre the yield would be the yield per acre, is that it?

The Witness: Yes, sir. Those are the computed acre yields on the actual yields of these fractional acres.

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745

Q. At the time that the test was made you never heard of this lawsuit at all in any way, did you? A. No, sir. It was made there as a scientific test of the wheat by the Agricultural Department.

The first two pages of Exhibit L are the row test or nursery tests and the balance of it is the plat test. The plats are set previously, the ground measured off for size, and then prepared for seeding by machinery just as it is done on a farm and the same fertilizer is used on the ground where any fertilizers at all are used, which is rather rare. There are no commercial fertilizers used on that farm. And the same conditions prevail in these plats all through the field.

746

Mr. Oeland: Now, I will read Exhibit L.

Mr. Sparks: I will want to object, in that none of these sheets has Miracle wheat put down.

The Court: I am inclined to exclude that part of it that does not include the Miracle wheat test.

Mr. Oeland: There are only two that do not.

The Court: The first two pages, I understand, contain the nursery records and the last two are the plat records. As I understand it, the plat record test does not show this wheat about which we are talking?

747

Mr. Oeland: Yes, one of them does. I will give your Honor the statement about it. Table 1, table 2 and table 3 all contain the Stoner wheat. Table 4 and table 5 give different years of the same wheats—no. I am wrong. Table 5 contains Stoner. I do not think table 4 contains it.

Q. Look at that and see which one of those tables contain a comparison with the Stoner? A. Tables 1, 2, 3 and 5. Table 4 does not.

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748 *Defendants' Witness, Carlton R. Ball, Direct*

Mr. Oeland: We offer that in evidence, and save an exception if your Honor rules it out.

The Court: Let me see table 4.

The Witness: The variety is shown in table 4, and are the same that are shown in the other tables, part of this.

The Court: I will exclude table 4.

Defendant excepts.

Sheet containing table 4 is extracted from Exhibit L, and marked Exhibit N for identification.

749 In Exhibit M on page two there is a comparison of Stoner wheat with other wheat. Not on page one. Page one, if I have a right to explain, page one is attached to a different certificate. It was inadvertently omitted when these were being bound together, and as it is there it is presented as a separate document. Page one of this series is the one about which I have just testified. This begins with page 2. The page which has been admitted, the first one, I have testified regarding Exhibits L and M. Exhibit L is the first page of this series. That is one grown at Arlington. Page two is a record of wheats tested at the Arlington farm in 1912, and contains, among others, Stoner

750 wheat. In that test it is planted on one-tenth of an acre field plats at the rate of six pecks per acre. These test were begun in 1911, being winter wheats they are sown the year before. We speak of the year of the test as the year in which it is harvested and the actual yield determined. Tests of winter wheat necessarily begins the fall before.

The Court: When did you determine the yield?

The Witness: At the close of the harvesting and thrashing in 1912.

Page four is a record of seeding test, Stoner and several standard winter wheats, down in tenth acre

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plats in Arlington, Virginia, in 1912. By that I mean it was sown in 1911 and harvested in 1912. Page five is the record of wheats grown on the Arlington farm by the office of cereal investigations, those yielding above twenty-five bushels per acre when sown at the rate of six pecks per acre in 1911; understanding that this refers to the year of harvesting. Stoner is mentioned in that under the name of Miracle.

The Court: I will allow all the papers to remain in evidence, that were originally marked, except the photographic copy of a letter appearing to relate to some conversation with Mr. 752
Stoner and the experiments at his farm.

Mr. Sparks: You have not changed your ruling in reference to the exhibits that do not refer to the Stoner wheat?

The Court: Oh, no. Those are still excluded, I mean, as to the time limit. I think under the plea of justification I must take the subsequent experiments.

Mr. Sparks: I except.

Page two contains a record of twenty varieties of wheat grown at the Arlington farm in the crop year 1912. Harvested in 1912. And seeded in 1911 on tenth acre plats at the rate of six pecks per acre, which 753
made the highest yields.

Q. Which is the highest yield, what wheat, what is the first? A. The first yield is 37.17 bushels per acre.

That wheat was purple straw. The next yield was 36.42, which was Bearded Winter Fife wheat. The next was Dawson's Golden Chaff, 36 bushels. Next, Virginia, 35.15. Next, Hybrid, 34.61. Next, Hybrid, 34. That is different Hybrid. The next, an unnamed Hybrid, 33.08. Next, another Hybrid, 32.53. Next, Fuldz, 32.44. Next, Blue Stem, 32.08. Next,

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754 *Defendants' Witness, Carlton R. Ball, Direct*

Poole, 31.92. Next, Hybrid, 31.67. Next, Martin's Amber, 31.5. Next, another unnamed variety, 31.50. And the next, Dietz Longberry, 30.69. And the next, Early Genesee China, 30.67. Next, another Hybrid, 30.55. Next, Stoner, 30.17.

Q. Then in yielding at that rate, how many wheats were ahead of it? A. Seventeen.

Q. Now, take the next page? A. This does not finish that page.

Q. Well, go ahead? A. Hybrid 30.07. Another Hybrid 29.87. The average of the entire twenty is 32.60.

755 Q. Now, the next page. Is Stoner on that page? A. It is a continuation. No, Stoner does not occur on that page.

Q. Is it a continuation of the other? A. Yes, sir. It is the next twenty in sequence.

Q. All down there in the same test? A. Yes, sir.

Page four is record of the yields obtained in a seeding test with Stoner and several standard winter wheats sown in tenth acre plats at the Arlington farm, Virginia, crop year 1912, season of 1911. The first column shows the variety of names of the wheats grown and the next column the results obtained at four pecks per acre rate of seeding. That page shows

756 where you seeded different varieties, the first column is four pecks, and the next five pecks, and the next one six pecks. The same wheat sown under the same conditions, the same wheat in the ground. That is the highest, six pecks. The highest yield at four pecks per acre of any of these varieties was 34.92 bushels.

Q. And what variety was that? A. Martin's Amber. The next highest in yield, Fuldz 32.55. The next, exactly the same yield. The next two Stoner 29.67 and a selection from Fuldz 29.67.

So there are two wheats ahead of it and another that grew the same amount. Run through to the five

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757

pecks per acre. The highest is Fuldz at 32.42 bushels. The next highest in five pecks is Stoner 32.22. At five pecks that is higher than that produced at four pecks. And in the six pecks, the highest is Fuldz at 31.22 a bushel. Next highest in the six pecks is Stoner at 30.17. That is higher than it produced with the four pecks. It was not higher than produced with five pecks. The six peck rate yielded 30.17 and the five peck rate yielded 32.22; a difference of two bushels and five ounces. Page five is a record of the results obtained from wheat grown at the Arlington farm, Virginia, sown at the rate of six pecks per acre in 1910 and harvested in 1911.

758

Q. What was the highest yield there, which wheat yielded the highest? A. Maryland Flint 32.30 bushels. Next highest an unnamed variety yielded 31.30. Next Blue Stem 29.80. The next Dietz Longberry 39.50. The next Lancaster 28.80. Next Mammoth Red 28.-20. Michigan Amber 28 bushels; Fuldz 27.20; Bearded Winter Fife 26.60; New Amber Longberry 26.50; Fuldz-Mediterranean 25.80; Purple Straw 25.80; Miracle 25.20. Average of thirteen varities 28.08.

Q. How much of the next two pages refer to the, or compare—the two pages and part of a page, pages 6, 7 and 8—how much of that is a comparison with Stoner or Miracle? A. The last of page 7.

759

Mr. Oeland: We offer the entire record.

Q. That is from the Maryland experiment farm at College Park? A. Yes, sir.

The Court: This last offer is beginning at page 6. There is a variation in the yield from year to year in all of the wheats?

The Witness: Yes, sir.

The Court: I think I will allow only in evidence the one that has a yearly comparison with the Miracle wheat, and that would confine you

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760 *Defendants' Witness, Carlton R. Ball, Direct*

to the six pecks per acre on the twentieth acre plats in 1912; the last part of page 7 of this exhibit, beginning with the table entitled "Those yielding above 27 bushels per acre when sown at the rate of six pecks per acre on a twentieth acre plat in 1912." I will exclude the others on the objection, which I suppose will be renewed of counsel—

Mr. Sparks: Yes.

The Court: On the ground that the Miracle wheat does not appear in the other tables.

Mr. Oeland: Exception.

761

Q. Now take the last. That you say was at the Maryland farm? A. Yes, sir.

This is a test of a variety of wheats sown at the rate of six pecks per acre on twentieth acre plats, including Miracle. The highest there is Currell's prolific. That was 30.73 bushels. The next was Rieti, 28.63. Next, Acme Bred, 29.20. Next, Doub, 28.93. Blue Stem, 28.60. Miracle, 27.87. Rocky Mountain, 27.60. Fuldz, 27.33; check plat Miracle at two pecks per acre. The yield of Miracle at two pecks per acre was 22.66 bushels. When sown at the rate of six pecks per acre it was 27.87. The next page

762 is wheats raised at the experimental farm at Amario, Texas. That does not include Stoner.

Mr. Oeland: I will offer all these together.

The next, page 9, is the yield and stooling of wheat at the Hayes Experimental Farm, Hayes, Kansas, and does not include Stoner. Page 10 from the experimental station at Akron farm, Akron, Colorado, and does not contain Stoner. Culms is the more proper word for what has been referred to as stools. Stools of wheat is the entire clump which occurs from one seed; but the individual stalks are culms and not stools.

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Q. Record of culms from plants at Akron farm, Akron, in nursery rows planted eight inches apart, data taken from annual report of scientific assistant in charge. That does not contain Stoner? A. No, sir; I think not.

Q. Page 12 at Highmore sub-station, South Dakota, sown at the rate of five pecks per acre. That does not seem to contain Stoner? A. I think not.

Q. Page 13, at the Bellefurch experimental farm in South Dakota. That does not contain Stoner wheat? A. No, sir.

Q. Page 14, Fargo, North Dakota. That does not contain it? A. No, sir.

764

Mr. Oeland: Page 15, Dickinson sub-station, North Dakota, 1909-1910, does not contain it. Page 16 at the Williston station, Williston, North Dakota, does not contain it. Page 14 from Judith Basin, Moccasin, Montana, sub-station. Page 18 stooling of wheat at Judith Basin, sub-station 1911, number of culms per plant, ten foot rows. The next is taken from page 19, wheat grown at Morrow, 1910, 1911; and gives the average number of culms per plant and heads. Page 20 is a continuation of page 19. Page 21 from Chico, California. Then there is the letter which your Honor excluded. I offer all those in evidence, and particularly—I do not offer that which has been passed on.

765

Mr. Sparks: No. He has not passed on that letter. He has passed on a photographic letter.

Mr. Oeland: And I except.

The Court: The one I saw in looking over the exhibits, appeared to be a photographic copy of a letter which referred to some conversation between the expert from the depart-

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765 ment and Mr. Stoner down at Virginia; and I excluded that as not coming within the purpose of the document.

Mr. Oeland: Then we will read this other. If one goes in I want both to go in. I understand this has been excluded. We offer each and all of this, and especially we offer pages 20 and 21, which shows a comparison of the wheats from China and all parts of the world, but it does not include Stoner.

The Court: I will exclude it if it does not include the Stoner.

Mr. Oeland: We except to the exclusion of each of these pages mentioned. I especially
767 offer page 18, that portion of page 18 at the bottom.

The above pages just offered are all contained within Exhibit M.

The Court: I will allow the last two paragraphs.

Mr. Sparks: I object to it specifically on the ground that it does not say what the name of that wheat is; also it offers us no opportunity for cross-examination of the witness to find out what stool it has or what wheat it is; also upon the ground that it is hearsay, and that the original statement itself would not be evi-
768 dence if offered; and upon all the grounds urged to the other. And I take an exception.

Matter admitted is read to the jury.

Mr. Oeland: I do not know that I understand your Honor's ruling on the letters.

The Court: I have tried to confine myself to letting in evidence reports of experiments actually made. Those are the only ones I think competent under the statute.

Mr. Sparks: Your Honor has just allowed in something of that character.

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The Court: That is a report as the result of experiment. This letter (indicating) I have excluded because it related to conversations apparently in Virginia with somebody. I will take anything in the nature of a report of an actual experiment made by the agricultural department under the statute.

Mr. Oeland: I so understood the Court.

The Court: I only passed on this letter (indicating). I have not seen the other.

The Court: I will allow this report, dated November 23rd, 1907.

770

By Mr. Oeland:

I have attached at the end of this report two letters, or reports from two letters. The first report was the typewritten one. The letter was written by the same man in each case—two years later; and as a result of trips made by him down there. And this typewritten report here was made before we made our tests on the farm. Neither of them have anything to do with tests that—

Mr. Sparks: I object. This witness volunteers information that is not asked for.

771

The Court: I will take testimony as to whether this report was made of crops growing on any of the government stations—this report of November 23rd, 1907—was that report of any wheat grown on a government plot?

Witness: No.

The Court: It was a report of your agent down on the ground where the Stoner wheat was grown?

Witness: Not strictly our agent.

Mr. Sparks: I object to that as a conclusion.

The Court: I think it does call for a conclusion.

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Witness: I don't want to say that is our agent when it was not.

The Court: Who was he?

Witness: He was not the agent of my office; he was the agent of another office of the department, who happened to be in that locality, and he was near there.

The Court: Was this report made by reason of some communication from your department to investigate this wheat on the ground?

Witness: Yes, sir.

The Court: And that report was made in the course of business?

773 Witness: Yes, sir.

By Mr. Oeland:

That was made before we had made the experiments on our farm. The first one was in 1907. And the one of July 12th, 1909, was made by the same man. He came to go there July 12th, 1909, in response to requests of Mr. Stoner.

Mr. Sparks: I object to that.

The Court: That may stand, that part of it. But the letter on its face I think shows what it was. I am going to exclude that part.

774 Mr. Oeland: We offer that now in connection with the other one which your Honor has admitted.

The Court: I exclude it. It apparently relates to some advice to be given by the department to Mr. Stoner.

Mr. Oeland: I will read the letter which your Honor admits, dated November 23rd, 1907. (Reads letter.)

We obtained three or four heads of this wheat from Mr. Stoner a month I think previous to that, at least in time for seeding that fall. But at the time this was

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written, we hadn't made any actual tests. The tests were made in the subsequent years, including 1912.

Mr. Oeland: Mark this part for identification which is excluded.

The Court: Mark it Exhibit M-1 for identification, being part of the original Exhibit M proffered in evidence; and this part is rejected on objection.

Mr. Oeland: To which this defendant excepts.

This letter was written by the same man, on July 12th, 1909, this one here (indicating). 776

Witness: Yes, sir.

CROSS-EXAMINATION by Mr. Sparks:

This letter which is part of Exhibit M, and written by Mr. Miller, dated November 23rd, 1907, was on file in my office in 1911, I think; yes, sir. There is no reasonable doubt, no, sir. I qualify it simply because I don't know positively that it was in the letter files at that moment. I am trying to keep within the letter of the law.

Q. What moment do you refer to?

The Court: The letter bears date 1907. It was 777 on file in 1911.

And it was a public document, as I construe that term, and open to reading and investigation of the Eagle, had it chosen to send a representative there. And then Mr. Miller was one of the government agriculturists, and still is. In one report he says he did not see the wheat growing and in the other he did. I don't remember which is which. In this report of 1907, he did not make after having gone down to the farm in Virginia and seen the wheat growing in the field. I don't understand it. This report was sub-

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mitted—prepared—after that wheat had been harvested quite a long while. He could not have seen it growing in the field. I have not read the entire letter to see his language. That is my memory.

The Eagle first engaged my services or asked me to be interested in testifying here about ten days ago. I cannot give the exact date. I have not been looking up these records since that time for it. I was here in court last week. Not all last week, but three days anyway, last week.

Q. This report, Defendant's Exhibit K—it says:
779 Number of rows, one and two of the Fuldz wheat, yield of grain per row—how many seeds did you plant of the Fuldz in a single row? A. One seed to the foot. I don't remember the number of feet in the row.

I don't know how many seeds were planted to each row. One planted to each foot of row, and the number of rows—(witness refers to documents). This is page one of the exhibit. The rows were seventeen feet in length; seeds twelve inches apart in each row.

Q. So that you had seventeen seeds? A. Yes, sir.

Q. Seventeen Fuldz and seventeen in Miracle? A. Same number of each.

We got a yield from the Miracle wheat of eight ounces for the first row of Miracle wheat and that
780 was at the rate of twenty-one bushels to the acre. And from the Fultz we got two pounds and six and one-eighth ounces.

Q. That is about five times as much of the Fultz as the Miracle—not quite five, but approximately. Is that correct? A. (Witness consults document.)

Q. I don't ask you to read your report over. I am asking you if that is right? A. That yield, that number of pounds, is approximately—

Q. What is that? A. The amount recorded is approximately five times that.

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Q. And at eight ounces to the row of the Miracle wheat you had twenty-one bushels and a fraction? A. Yes, sir.

Q. Now why is not the yield of that put down here as five times twenty-one or one hundred and five bushels to the acre instead of fifty bushels? A. Because that was a yield—under the first column is the yield of two rows.

Q. Aren't you basing it upon the row, did the second row fall down? A. No. That was the yield of both rows. Two pounds, six and one-eighth ounces.

Q. Does it not say: Yield of grain per row two pounds six and one-eighth ounces? A. Yes, sir.

782

Q. Then it does not mean two rows, does it? A. It does, in that case and also in another case.

Q. So there are exceptions to these reports then, the report is not accurate?

Mr. Oeland: I submit that the report shows on its face, that it is rows one and two. I ask the Court to look at it.

Mr. Sparks: I submit that it does not.

Report handed to the Court.

The Court: I understand that he says that in the first column, where it says one and two, it designates two rows.

783

Under the column yield of grain per row, it is two pounds, six and one-eighth ounces; and under that same column you have the eight ounces per row for the Miracle wheat so that would be five times as much.

Q. So that your yield per acre in bushels computed on the basis of twenty-one bushels per acre for miracle would be one hundred and five instead of fifty, if I am correct in my computation? A. It would, if that were the yield for a single row.

Q. And that is what it is. It says, yield per row two pounds six and one-eighth ounces? A. Yes, sir.

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The Court: What do the words one and two in the first column mean?

Mr. Sparks: Objected to as his interpretation.

Witness: Rows one and two of that wheat.

Q. You mean you had two rows? A. Yes, sir.

Q. And does it mean that six rows of Miracle wheat only yielded eight ounces? A. No, sir. That was not six rows of Miracle wheat, but one row, No. 6. That is the yield of No. 1 and No. 2 in the first place; and three, four and five are omitted; six is in, seven
785 is in.

Q. It says number of rows? A. That is the particular serial number or row.

Q. You omitted a number of rows, three, four, and five, from this report? A. Apparently so.

Q. Do you know why? A. No. There were several hundred rows in the nursery and only six or eight are given.

Q. Of wheat? A. Yes.

Q. But this report shows that you put out rows No. one and two, and skipped to No. 6? A. Yes, sir.

Q. And then ran down from six, seven, eight, nine, ten, eleven and twelve, and got a report of all the other
786 wheats down to No. 12 with the exception of Nos. three, four and five—is that correct? A. Yes.

Q. And you know of no explanation for that? A. No, except that these first rows in the nursery were to test this Miracle wheat in the way in which Mr. Stoner asked that it be tested. We don't sow our other nursery rows with the grain twelve inches apart, but either three or four inches apart.

Q. Please answer my questions. Have you any explanation for rows three, four and five—I asked you that and you said no. Kindly answer my questions and I will be obliged to you. Did you sow but one

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787

row of Miracle wheat? A. According to the record we sowed four at least.

Q. That record does not show here, does it? A. Yes, sir. It shows that the rows number six, seven, eight, nine in the nursery that year were miracle wheat.

Q. How many rows did you sow? A. To the best of my knowledge only four. We had three heads of wheat, and we could not have got any more grains than that in three heads of wheat.

Q. Why did you omit from all the other wheats with the exception of Miracle wheat, how many stalks you got per plant? A. I don't think the record was made.

788

Q. You don't know anything about it, do you? A. I only know that we don't usually take the stooling records.

Q. You are making a comparison between Miracle wheat and other wheats, and you took particular pains to put down the amount and stooling qualities that the Miracle wheat had, and you didn't put down any stooling quality of any other wheat? A. We very frequently don't, usually don't.

Q. You didn't in this case, did you? A. No.

Q. And one of the particular claims for this wheat was that it had greater stooling qualities than others? A. The particular claim made to us was that it had a stooling quality of a certain number of stools. We wanted to determine whether it came anywhere near that or not. So we recorded it.

789

Q. So in order to form a basis of comparison you didn't put down the number of stools that the other wheat had? A. Not in this case.

Q. What is the ordinary return for grain in this country; wheat, I mean? A. The statistical records show that on a ten year average for the entire United States, all years, all soils, all conditions, it is approxi-

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790 mately fifteen bushels to the acre—fourteen and a fraction.

Mr. Oeland: All kinds of wheats?

Witness: All kinds and all places.

Q. And that is at a sowing of a bushel and a half to the acre? A. No.

Q. How much to the acre? A. It varies in different parts of the country.

Q. I ask for the average. You have given the average yield per acre, and I want the average sowing per acre? A. Those records are not taken. We know what the average is for large regions over the country.

791 Q. What is that average sowing? A. Well, in the—

Q. I don't want in any special district. You have given the average yield per acre over the entire United States, without giving any specific localities. Give me the average sowing over the country without designating any particular district? A. Four and a half pecks, roughly speaking.

Q. That is a little over a bushel? A. Yes, sir.

The Court: Four and a half pecks to the acre?

Witness: Yes, sir.

Q. And from your experiments you have determined that that, a little over that, is the best yield for

792 ordinary wheat? A. No, sir, I can't say that.

Q. That is the common practice and you are disseminating the best agricultural practice that you know of? A. What is the common practice?

The Court: Four and a half pecks to the acre—is that the common practice?

Witness: No, the average practice.

Q. Is not the common and average practice the same? A. No, sir, because you ask for the average for the whole country. The common practice in one state is three, another four, another five, another six. I gave the average for the whole country.

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Q. What is the best wheat growing section? A. There are different best growing sections for each class of wheat.

Q. What is the best for this section? A. The upper Mississippi Valley would be the wheat section.

Q. How much do they sow per acre there? A. In the dry lands three pecks, in the more humid, more; in the still more humid, five, in the most humid, six, occasionally more.

Q. Is Jersey regarded as a wheat state? A. No; I would not regard it as a wheat state; it grows wheat.

Q. What is the common ordinary sowing in Jersey —how much? A. Six pecks, I think. 794

Q. A bushel and a half. Is Florida regarded as a wheat state? A. Not at all.

Q. Georgia is not regarded as a wheat state at all, is it? A. Not now.

Q. Never was? A. Yes, I think so. Before the war.

Q. That is a long time ago. Pennsylvania is not regarded as a wheat section, is it? A. Among the soft winter wheat growing states, yes; not as a wheat state compared with the whole country.

Q. How much do they sow in Pennsylvania, usually? A. A bushel and a half, six pecks.

Q. How much do they sow in Georgia; the common practice? A. I don't have personal knowledge. I should say that the same rate as over these other different states. 795

Q. So that if you have a wheat that you could plant half a bushel to the acre, and get more results than you got from a bushel and a half, or two bushels of the wheat, you would say that was a very high grade of wheat would you not? A. Depending on the interpretation given to high grade.

Q. That it was a very superior wheat? A. If it could be guaranteed year and year out to do that, yes,

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sir—I beg pardon, I wish to qualify. Do I understand what is meant by superior wheat?

Q. Superior yielding qualities? A. I don't think that was given in the original question. If you want me to answer specifically, I would regard a wheat which experiments conducted over a long period of years had shown to be sown safely and give profitable returns at that rate of seeding—I would regard that as worth more than one which the record has shown by experiment to require a higher rate of seeding.

Q. The yielding quality of the wheat is the determining quality, is it not? A. The yielding and the milling qualities.

Q. And the milling qualities of wheat generally are the same? A. No, sir.

Q. In your experimental station what is the largest stool that you have seen? A. I don't know; I don't remember.

Q. What is the largest approximately that you have seen? A. Approximately thirty culms.

Q. And that is thirty stalks? A. Yes, sir.

Q. What wheat was that? A. I don't remember, one of the soft wheats.

Q. Was it the Stoner? A. I don't think that I ever saw thirty culms of Stoner at the Arlington farm.

Q. I will show you one. Look at this (Exhibit 3). There are one hundred and twenty-seven on that stool. That is larger than anything you have ever seen at Arlington—is that correct? A. Yes, sir; larger than any I have seen personally.

Q. The largest you have ever had called to your attention? A. Larger than any I remember.

Q. And you plant the wheat at Arlington under the most favorable circumstances, do you? A. I am not sure that I understand the question.

Q. When you plant a grain of wheat, you give it the best agricultural conditions that you can get in that

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soil, don't you? A. We give it good average conditions, yes, sir, not the best we can get by any means.

Q. You give it proper fertilization? A. We fertilize very little.

Q. What do you do, try to stunt it or get the poorest results? A. We don't fertilize as the average farmer does.

Q. What do you do at Arlington? Do you weed the ground? A. No, sir.

Q. You let the weeds choke up your grain, do you? A. That is not correct.

The Court: State what you do?

800

Witness: We keep our land free from weeds as any good farmer does. We don't weed it however; on the average field plot it is not necessary.

Q. When you are planting this in single rows, making tests, don't you give it the best agricultural conditions that you can? A. When this is planted in small rows in the nursery, we give it good conditions naturally.

Q. And you give it proper fertilization? A. From our point of view, yes, sir.

Q. And the largest stool that you have ever seen during an experience of how many years—is thirty? A. No, sir.

801

Q. Didn't you say thirty was the largest you had ever seen? A. The largest I remember having seen at Arlington farm.

Q. I am speaking of Arlington farm now until I switch from it. And that was under the most favorable conditions? A. No, sir. We can give much more favorable conditions than we do.

The Court: What do you undertake to do? Do you take just the natural soil?

Witness: We have a much less than an average favorable soil. Arlington farm is a very unfavorable soil.

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802 Q. You have your department established in the poorest section you can find—is that right? A. We have that one farm in the poorest section, because a great many farmers live in poor sections. We are trying to show what can be done in a poor section.

Q. I show you a stool of miracle wheat, this large one. That has fifty. Did you ever see one as large as that (showing witness Exhibit 6)? A. Personally I never did.

Q. I show you Exhibit 30, which has eighty culms in it. Have you ever seen anything like that? A.
803 Many times, yes, sir.

Q. What is that? A. I have a great many times, yes, sir.

Q. Have you ever seen any with eighty stalks in it? A. Never in that particular variety or at that particular place, no, sir.

Q. You have had to go to the wheat states to see it—is that right? A. Not at all.

Q. Did you ever see anything as high as that in the eastern states? A. Yes, sir.

Q. Where? A. I don't think I could at this moment specify a particular locality. I travel year in and year out over the United States, and I very frequently see stools of wheat containing a high number of culms.

804 Q. I asked you awhile ago what was the highest stool you had seen. You said thirty? A. No, sir—but at the Arlington farm thirty.

Q. Name any special place in the east here where you have seen as high as eighty culms to the stool? A. I think, sir, at the co-operative experiment station at Ithaca, Cornell University, New York; and our work at the Maryland Agricultural station, at College Park, Maryland; at the Tennessee agricultural experiment station, where we conduct co-operative experiments, Knoxville, Tennessee; in Iowa also; in St. Paul, Minnesota, and possibly other points.

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Q. You say you think. I ask you for a specific instance that you will swear to? A. I can't do it. I don't remember from year to year.

Q. I don't want your "think" on this. You can't name a specific instance where you have any present recollection of the stool with eighty stalks in it? A. Yes. I have seen that at the Maryland agricultural experiment station.

Q. Who raised it? A. It was raised in our co-operative experiments at that point.

Q. On your farm? A. Yes.

Q. Where? A. College Park.

806

Q. You swear to that, do you now? A. I won't swear to the actual year.

Q. What will you swear to in reference to it? A. I will say that I have seen at the Maryland station, on the nursery plots, Maryland experimental farm, stools of wheat which contained more than seventy-five, more than eighty culms.

Q. Did you count them? A. I have seen others count such instances.

Q. If you counted them yourself that is enough. Have you ever individually counted the culms in any single stool that you can swear had over eighty culms in it? A. I can't swear that I myself actually separated the culms with my fingers and took the count.

807

Q. Can you swear that you ever saw a culm, or rather a stool with more than twenty culms in actual field conditions, growing in the farm? A. In thin stands, yes, sir—are you referring to any particular farm?

Q. Yes? A. Which?

Q. Any part you know? A. Are you referring to any particular farm?

The Court: Any farm that you know of?

Witness: Yes, sir, that is under field conditions where the wheat had been planted under field condition, yes, sir.

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808 Q. Where was that farm? A. I have seen that on the Arlington farm.

Q. I am speaking now of farmers as they sow their seed in the field for harvesting? A. On a farmer's farm?

Q. Yes? A. No; I can't swear to any fact of that nature.

Q. Do you go around to farms of the country and see wheat actually growing? A. Yes.

Q. Been doing that all your life? A. Oh, no.

Q. Since you have been in the business, twenty years? A. Not twenty years.

809 Q. You went there— A. I went into the government service I think in 1898.

Q. You have been going around since that time? A. Yes.

The Court: Do you visit just the government farms, experimental farms, or do you visit the individual farms of different farmers?

Witness: I do both. When I have time I go and visit farmers' farms.

Q. Have you ever seen wheat grown on a farmer's farm under actual field conditions where the wheat has a stand of twenty stalks? A. I can't tell; I don't count them. We pay very little attention to that.

810 Q. How many would you say that is (showing witness Exhibit 1)? A. That may have anywhere from sixty to twice that many. It is hard to tell.

Q. You would not expect wheat like this to be sown broadcast in a field, would you, if it had the stooling qualities of this wheat as shown here in Exhibit 1? A. Will you define what you mean by sowing broadcast and I will answer.

Q. As the farmer sows it on an ordinary farm, a bushel and a half to the acre? A. Let me have the whole question.

Q. (Question read.) A. Yes, sir.

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Q. You would expect to do that? A. I understand the question to be would I expect the wheat to have stooling qualities like that sown at the ordinary rate by the ordinary farmer on an ordinary farm?

Q. Yes? A. Yes, sir.

Q. You could not get the best results if you planted seed broadcast? A. Drilled, not broadcast.

Q. How near together does the drill sow wheat, a bushel and a half to the acre—in the row how many inches or feet apart would it be? A. The rows are seven or eight inches apart, and the wheat, at that rate, the average sized berry or grain of wheat would probably give—I have not the count in my hand—would probably give two or three kernels to the inch, possibly two, at least one kernel, to the inch of row, I should think.

812

Q. So that, sown a bushel and a half to the acre, in the row you have a kernel of wheat, a couple of grains to the inch—is that right? A. One at least I should think.

Q. You would not expect a wheat of the stooling qualities of this shown by Exhibit 1 to get the best results sowing it one kernel to the inch, would you? A. Yes, sir.

Q. Does this plant as it is shown here occupy more than an inch? A. Yes, sir, probably.

813

Q. So just as soon as you put a grain of wheat, with the stooling qualities that this exhibit has, you immediately crowd out the next grain that is further along in the row, don't you? A. We always do that with practically all wheats. That is the insurance against winter killing. That is what every farmer does.

Q. These farmers don't do it. We are showing you a new kind of farming, Mr. Ball. If he can sow fifteen pounds of wheat to the acre and get forty bushels from it you would recommend that he discontinue sowing the bushel and a half, wouldn't you? A. No, sir.

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814 Q. You are not a practical farmer yourself? A. Yes, sir. I was raised on a farm, and ran a farm.

Q. And you know the common custom of sowing is a bushel and a half to the acre? A. No. It is under some circumstances, not where I was raised, in Iowa.

Q. How much did you seed there? A. Five pecks, in the county where I lived.

Q. That is a bushel and a quarter? A. Yes, sir.

Q. Have you ever seen Mr. Stoner grow his wheat? A. No.

815 Q. Do you know of Mr. Hunt's experiment in Jersey with this Stoner wheat? A. No, sir. I don't know what he has received in yield. I don't know what Mr. Prey has done in Jersey. I don't know what Mr. Tomlinson has done in Jersey. I don't know of Mr. Ayres' experiment in Tennessee, nor of Mr. Frey's of Pennsylvania.

Q. All these farmers have testified that they get from their Miracle wheat, from ten acres more than they do from the ordinary seed of eighteen acres, seeded eighteen acres.

Q. During the past three years? A. On the same rate of seeding?

816 Q. No—one-third the seeding of Miracle—from half a bushel of Miracle to a bushel and a half of ordinary wheat—that they get more out of ten acres than they do out of eighteen in direct competition? A. Every year?

Q. What would you say as to that? Would you say that is a very high grade of wheat? A. No, sir; not at all.

Q. You don't think that a wheat, sown one-third of the ordinary wheat, which yields more per ten acres than the ordinary wheat does from eighteen, is very satisfactory wheat? A. Not in a few isolated instances. I could pick that out from any farmers in the United States, for any kind of wheat.

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Q. If he does it consistently? A. Not unless tested with other wheats at the same rate. We know any wheat will do that if it does not winter kill. This extra seeding is the insurance against winter killing. Two pecks of wheat for the acre, if it all grows, is sufficient for any wheat. They plant the extra wheat as an insurance. It is cheaper to put one bushel extra to the acre than to lose your crop.

The Court: If all the seed which you planted grew, at the distances apart assumed in the question, what would be the effect?

Witness: Some would probably die.

818

Q. If the Stoner wheat has consistently been surviving the winter in competition with ordinary wheat, would you say it had superior resisting qualities? A. If I had the evidence. Our evidence shows that it does not.

Q. I don't ask for your experience. I ask you not to inject your own personal opinion into this examination.

The Court: Counsel is restricting you now to those particular instances that he has enumerated.

Witness: I say this is not what I call evidence.

Q. Never mind what you call evidence. We have twelve men here to decide that? A. Excuse me.

819

Q. Answer my last question? A. I would have to have that amplified.

The Court: Counsel is assuming that they sowed less of the Stoner wheat, and it stood up as good as the average wheat with a greater amount of seeding?

Witness: My interpretation of the word "consistently" means a long time of experimenting.

Q. I don't ask that? A. I say no, unless the word consistently is made to cover a number of years. If under fair tests, at the same rate of seeding, under the same conditions, and measuring the areas of land and measuring the yields, and that had been sown for

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820 a term of years, sufficiently long to be consistent to the scientific mind, I would say yes; otherwise I would say no.

Q. Do you put the scientific man's results above the practical farmer's? A. No, sir; not where there are controlled conditions, such as a scientist requires, and such as a farmer requires before he takes his word for it.

Q. If a farmer experimenting with wheat, finds he is getting more per acre in bushels to one-third the seed he gives for his ordinary practice of planting
821 common wheat, you would say that that was pretty good evidence of the superiority of the wheat, would you not—of the wheat that he adopted? A. You premise that with "if the farmer experiments." I say the farmer did not experiment. Those to whom you called my attention did not experiment. They didn't test the other wheat at that rate.

Q. You say if the farmer who experimented gave up the planting of the ordinary wheat and adopted the miracle wheat, he was wrong? A. Until it was proved right.

Some farmers do foolish things. The American farmer on the whole does not do foolish things. Tak-
ing him over the country as a whole he does not do
822 foolish things very much.

Q. What is the average of stalks to the stool of wheat or ordinary wheat, or other wheats than Miracle wheat, as you raise them at Arlington farm? A. I doubt if I could give that, it varies so from year to year.

Q. Give us 1910-1911, when you were making these experiments with Miracle wheat? A. I don't think I can give you definite information on that.

Q. So between the two you don't seem to be able to give us much of the qualities of the other wheats? A. As I said before, we pay very little attention to that.

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Q. What are the ordinary stooling qualities of the ordinary wheat in your plat tests? A. That again varies very widely with the year and the amount of winter survival. It will run from two culms per plant up to fifteen or twenty and probably a good deal higher than that. But I am talking about the average, and it will run up to that easily.

Q. You say you get from two to fifteen pounds per plant? A. No, you were asking me the stooling qualities.

Q. I want the number of stalks. A. It varies with the season and the thickness of the stand, that is, the amount that survives the winter.

824

Q. What is the ordinary number of stalks to the seed, per seed, one seed, as you sow it in your plat tests? A. That is what I have just answered. It will run from two to fifteen or twenty or more, depending on the field conditions. The average, I understood you to ask? Two to fifteen, possibly considerably higher.

Q. Where you get fifteen it is the exception is it not? A. No, not necessarily.

Q. Don't you get more with one stalk from a seed than you do two stalks from a seed? A. I doubt that very much.

825

The Court: Give us your best recollection.

The Witness: I say we don't take those records. We know that it varies with the year, and we don't take the record, therefore we don't have the knowledge.

Q. You haven't any knowledge of that? A. We don't take those stooling records on our plat tests.

Q. Don't you get more with two stalks to the grain than you do four? A. I can't tell you.

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826 *Defendant's Witness, Charles R. Ball, Re-direct*

RE-DIRECT by Mr. Oeland:

These tests that are offered in evidence, and which I explained to the jury, were made at a time when I didn't know anything about this lawsuit pending. The first I knew about it was ten days ago, approximately. So when these growing tests were made in 1908, 1909, 1910, 1911, 1912, I didn't know anything about this litigation pending at all. And these tests were made for the purpose of determining the products of these various wheats on average ground for
827 Arlington farm. And this knowledge is kept there, and is a public record, that anybody can examine and learn about for the benefit of farmers throughout the country.

Q. The amount of yield per acre is estimated on these tests that you made there with these various wheats? A. The recorded yields in these tables which I have presented are based on those—yes, sir. The records there are open to Mr. Russell or his counsel as much as to any one else.

Mr. Sparks: We have had all this.

Mr. Oeland: I wish to offer in evidence these various articles, and extracts from the
828 books on the doctrinal questions—both in justification and on the ground of fair comment.

The Court: How are they directed to justification?

Mr. Oeland: We claim that they are false doctrines and that that is what he is teaching.

The Court: But the subject of the alleged libel has nothing to do with doctrine, has it?

Mr. Oeland: We think it has.

The Court: What was the date of this publication?

Mr. Sparks: September 23rd, 1911—the Eagle article.

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The Court: The books?

829

Mr. Sparks: I suppose the books have been published frequently.

The Court: I think this would only be admissible in mitigation, and not admissible unless it is shown that the Eagle had knowledge of it at the time the article was published.

Mr. Oeland: It is admissible in fair comment. Any man who comes out and makes a new doctrinal dispensation—

The Court: I think it is still necessary to show that the Eagle was in possession of the knowledge of the books at the time of the alleged libel.

830

Mr. Oeland: I differ with the Court on that point.

The Court: That is the rule as to mitigation undoubtedly.

Mr. Oeland: But we say here, in justification, here is a man who has promulgated certain lines of doctrine, and raises a large amount of money each year; we say one of the methods by which he raises the money is the publication that he has got miracle wheat for sale, and he sells it, and his followers buy it, simply because they believe in his doctrines, and we say that the wheat is of no more material value than any other wheat, and that the wheat could have been bought for four and five dollars a bushel.

831

The Court: I think I will exclude it unless it is shown you had knowledge at the time of the publication of the alleged libel.

Mr. Oeland: I take an exception—I hand your Honor copies of the extracts. I shall offer them in evidence in detail.

The Court: I take it there is no suggestion these are not copies of the extracts.

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832 Mr. Sparks: No—for the purpose of the record. But we object to their admission.

Mr. Oeland: I have referred to the book and page each time.

Mr. Sparks: They can be marked for identification, and if there is any question about the correctness of the quotation we can correct it afterwards.

Mr. Oeland: Oh, yes.

The Court: You don't make any objection to these papers as not the best evidence?

Mr. Sparks: No.

The Court: But you reserve the right to show that it varies from the best evidence.

833 Mr. Sparks: Yes.

Mr. Sparks: We object that it is not justification, and that it has not been shown that the defendant has knowledge of it at the time of the alleged libel.

Objection sustained. Defendant excepts.

Extracts marked Exhibit R for identification in one bundle.

Mr. Oeland: We offer in evidence extracts from the journal, the Watch Tower, editorials and extracts from the publication.

Mr. Sparks: Same objection as urged to the the other extracts.

834 Mr. Oeland: There is the article marked in blue pencil. It is dated December 15th, page 309, beginning with the words "one very earnest brother" and so forth, and covering the lines marked in blue pencil.

Document handed to the Court.

The Court: What is this paper?

Mr. Oeland: That is the journal that he issues, and of which he is the editor. It is issued twice a month.

Mr. Sparks: I suppose it comes under the heading of doctrine.

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The Court: I will allow all of this if you show that any of the Eagle editors had knowledge of this at the time of the publication of the libel. 835

Mr. Oeland: I offer it on the ground of justification and fair comment in addition to that. I don't suppose our editor read all this.

Mr. Sparks: That is the very thing we claim, that it is a reckless publication.

Mr. Oeland: Then it is admissible on the compensation—on the question of compensatory damages. There is no dispute about his being the author of these. It is alleged in the complaint and is admitted. 836

The Court: I understand that.

Same objection, ruling and exception.

Mr. Oeland: On page 308, another article, beginning with the words "one dear brother"; it is marked in blue pencil. We offer those in evidence.

Same objection.

The Court: I will exclude them unless it be shown that the defendant had knowledge of them at the time of the publication.

Defendant excepts.

Extracts marked Exhibit S for identification.

Mr. Oeland: December 1905, page 379, beginning with the words "as spiritual"—etc. and covering the part marked with blue pencil. 837

Same objection, ruling and exception.

Mr. Oeland: Also page 380, beginning with the words "as our Lord pointed," and covering the parts in blue pencil.

Same objection, ruling and exception.

Mr. Oeland: Also page 380, beginning with the words "Let us see," etc. covering the words marked in blue pencil.

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838 Same objection.

The Court: I will rule all this out unless you show knowledge on the part of the defendant.

Defendant excepts.

Marked Exhibit T for identification.

Mr. Oeland: Also from the issue of August 15th, 1906, page 269, beginning with the words: "Through the eye of a needle."

Same objection.

The Court: This involves the same point, does it?

Mr. Oeland: I think it covers another point,
839 the methods by which he raises funds for his organization, and that seems to be directly in issue in this case. One means was the sale of Miracle wheat.

Objection sustained. Defendant excepts.

Mr. Oeland: Also another one, beginning with the words: "When we sacrifice ourselves wholly," etc.

Same objection, ruling and exception.

Mr. Oeland: Also page 270, beginning with the words "Our Lord's words with respect to the camel," etc. and covering the matter in blue pencil.

Same objection, ruling and exception.

840 Mr. Oeland: On page 271, beginning with the words: "But even in this present life," etc.

Same objection, ruling and exception.

Mr. Oeland: Also page 271, beginning with the words "If therefore," at the bottom of the page, with the words "if any man will come," etc.

Same objection, ruling and exception.

Extracts marked Exhibit U for identification.

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Mr. Oeland: Also December 15th, 1910, page 387 beginning with the words "The nearer we get to the grand confirmation of our lives." 841

Same objection, ruling and exception.

Mr. Oeland: Also, further down, and beginning with the words "Dear friend, and not only," and so forth, the matter covered with blue pencil.

Same objection, ruling and exception.

Mr. Oeland: Also page 396, beginning with the word "Divine providence."

Same objection, ruling and exception.

Extracts marked Exhibit V for identification.

Mr. Oeland: In the issue of January 1st, 1911, beginning on page five with the words "How few of mankind know of fallen angels." 842

Same objection, ruling and exception.

Mr. Oeland: Also on page 11, beginning with the words, "Good Hopes for 1911."

Same objection, ruling and exception.

Extract marked Exhibit W for identification.

Mr. Oeland: Also December 15th, 1911—two extracts.

The Court: I exclude it if it is after the libel.

Mr. Oeland: They are both marked—two extracts—we offer both in evidence.

Objected to. Objection sustained. Exception taken. 843

Extract marked Exhibit X for identification.

Mr. Oeland: Also January 15th, 1912, headed on page 35—"The Good Hopes Plan"—the entire article.

Same objection, ruling and exception.

Article marked Exhibit Y for identification.

Mr. Oeland: Also two pages of extracts from the 1907 report.

Same objection, ruling and exception.

Marked Exhibit Z for identification.

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844 Mr. Oeland: We offer in evidence the annual report for the year 1909, as published in the issue of December 15, 1910.

The Court: Isn't that all now in the testimony?

Mr. Oeland: Yes; but we claim the testimony varies materially from these annual reports. That is the purpose of this offer. The witness Mr. Van Amburg testified on the matter.

Mr. Sparks: We object to that, because in the first place, Mr. Van Amburg, is their own witness; and Mr. Van Amburg gave the explanation of that.

845 The Court: My recollection is that he said there was a variance, and it came from the publication being made in the middle of the month and not being carried down to the end of the year.

Mr. Oeland: Yes. He gave the explanation.

The Court: I will allow it.

Mr. Oeland: On page 389 beginning with the words "Our financial showing" and signed C. T. Russell, President.

Mr. Sparks: If it is just the statement, I suggest that we put the statement in and not the paper.

846 The Court: He is not offering the rest of the paper.

Paper referred to received in evidence and marked Exhibit AA.

Mr. Oeland: We offer in evidence the annual report as contained in the issue of December 15, 1911, at page 453, beginning with the words "The year's financial summary," and concluding with the words "As Providence" etc.

Mr. Sparks: The same objection to that and exception.

Paper referred to received in evidence and marked Exhibit BB.

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Mr. Oeland: The annual report headed "Financial report" on page 386 is offered, of the issue of December 15, 1912, beginning with the words "Financial report" and concluding with the words "We will not here mention particularly," etc. 847

Mr. Sparks: Subject to the same objection and exception.

Paper referred to received in evidence, and marked Exhibit CC.

Mr. Oeland: Again we offer this paper which was marked Exhibit J for identification, which Mrs. Russell testified was issued by Mr. Russell. We again offer the extracts from that marked therein. 848

Mr. Sparks: The same objection and ruling to that we made to the others, no justification; that it was long prior to the alleged libel; and it has not been shown that the Eagle had any knowledge of the paper.

The Court I will exclude it the same as I did before.

Mr. Oeland: We except.

DEFENDANTS RESTED.

Mr. Sparks: We offer in evidence the issue of the Eagle dated January 9, marked heretofore for identification Exhibit 16, the publication which announced that the Eagle files its answer in Pastor Russell's suit. 849

The Court: I think I will exclude that. I exclude it also on the ground that it is subsequent to the commencement of the action.

Plaintiff excepts.

Mr. Sparks: We also renew the offer of the Eagle of October 19, marked Exhibit 15 for identification, in which they republish the

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850 cartoon, and comment on the fact that the action has been started.

The Court: The same ruling as to that.

Mr. Sparks: Exception. We offer in evidence from the Watch Tower, under date of March 15, 1908, article on page 86 marked "Miracle Wheat."

Paper referred to received in evidence, and marked Exhibit 35.

Mr. Sparks: We offer in evidence the issue of the Watch Tower, dated October 1, 1908, under the title "More Miracle Wheat."

Paper referred to received in evidence, and marked Exhibit 36.

851 Mr. Sparks: We offer in evidence copy of the voting certificate that is issued by the Watch Tower Society.

Paper referred to received in evidence, and marked Exhibit 37.

The Court: Is there anything else?

Mr. Sparks: Our audits are being made up now. We are not prepared to go on with these audits at the present time, not thinking that the defense would rest so soon.

The Court: I do not think the question of the audit is at all material.

Mr. Sparks: I am going to put the experts
852 on on that point.

Mr. Oeland: We object to it.

The Court: I do not see how I can take it, unless it is consented to.

Mr. Oeland: We object to it.

The Court: I will hold that any audit made at this time is not competent.

Mr. Sparks: Well, I want to make my offer for the record now then.

Mr. Oeland: I object to any statement being made here, because I cannot cross-examine his statement.

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The Court: I will not take any offer of evidence except on questions to the witness. I will pass on any questions that come before me in the ordinary way.

Mr. Sparks: Then I will have to wait until I can get my auditors here.

The Court: Take up some other matter in the meantime. I can state upon the record that I will exclude any evidence of any auditor of any audit of these books made subsequent to the examination of any witness in this case, on the ground that it is incompetent, irrelevant and immaterial, and not going to the facts for which the proof was offered. I do not see why an exception to that statement does not protect you. 854

Mr. Sparks: I will take the exception.

ELIOT M. THOMSON, recalled.

By Mr. Sparks:

Q. For the past two days have you been working upon the audit of the Watch Tower Bible and Tract Society books? 855

Objected to as irrelevant and incompetent. Objection sustained. Plaintiff excepts.

Q. Have you particularly examined the account of moneys received by Pastor Russell from the Watch Tower Bible and Tract Society?

Objected to. Objection sustained. Plaintiff excepts.

Q. Have you particularly made an investigation of all moneys paid out by the Watch Tower Bible and

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856 Tract Society, or any of its officers, or any officer of the Peoples' Pulpit Association, or any of the other interested corporations?

Objected to. Objection sustained. Plaintiff excepts.

ERNEST W. KUEHN, Toledo, Ohio, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

857 *By Mr. Sparks:*

My business is seed merchant in Toledo, Ohio.

Q. Have you examined the books of the Watch Tower Bible and Tract Society to ascertain how many voting shares there are outstanding?

Objected to. Objection sustained. Plaintiff excepts.

The Court: I will exclude the number of shares now outstanding.

Q. Well, outstanding in September, 1911? A. May I refresh my memory from a statement I have taken from the books?

858 Q. Yes.

The Court: The number of shares actually issued and outstanding?

Mr. Sparks: No. Just the number standing on the books to the credit of the different subscribers.

Mr. Oeland: And that is objected to, the subscribers could not vote until they were issued.

The Court: I will allow the question.

Defendant excepts.

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A. On December 31, 1911, the total number of voting shares were one hundred and twenty-two thousand four hundred and eighty-nine or four hundred and ninety-nine. I cannot tell exactly from the type. I have been connected with this work for some time.

Q. I show you a check dated December 2, 1911, to the order of C. T. Russell for $10,000, and ask you if you gave that check personally to Pastor Russell?

Objected to. Objection sustained. Plaintiff excepts.

Check referred to marked Exhibit 38 for 860 identification.

Q. Did you purchase a check from the Second National Bank in the State of Ohio for $10,000 a cashier's check? A. Yes, sir.

Mr. Oeland: I move to strike out the answer.

The Court: I will allow the identification of the check, that is all. I will exclude the admission of the check in evidence.

Q. Have you examined the books of the Watch Tower Bible and Tract Society to see whether a check that you gave to Pastor Russell individually has been 861 credited to you as a donation upon the books of the Watch Tower Bible and Tract Society?

Objected to. Objection sustained. Plaintiff excepts.

CROSS-EXAMINATION by Mr. Oeland:

I have been here a little over two weeks, waiting for this trial. I paid my expenses here.

By Mr. Sparks:

I would pay them around the world if I had to.

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By the Court:

I have no means of arriving at my outstanding shares other than the books. Those are voting shares recorded opposite the names of the donors, and entitling them to such votes.

I understood the testimony of the treasurer to be that everybody who gave a ten dollar donation was entitled to a voting share of stock; a voting share.

Q. But he said that those were not issued until the donors asked for the certificates. What I am getting at is, do you mean to say that your answer includes
863 those where the donors have asked for certificates and got them; or is it the gross number of shares to which they would be entitled if they asked for them? A. It is the gross number they would be entitled to if they called for them.

By Mr. Oeland:

Q. How many were actually issued on September 31, 1911? A. I do not recall as to that.

By Mr. Sparks:

Q. But there is a mark upon the books of the corporation opposite the name of each donor, the number of shares that he is entitled to? A. Yes, sir.
884 Q. And that appears upon the books? A. Yes, sir.

WILLIAM E. VAN AMBURG, recalled.

By Mr. Sparks:

For a number of years past it has been the habit and custom in the annual election to allow persons to vote according to the number of shares set opposite their names without the certificates being issued. If a person comes to the annual election, who has made

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a contribution but who has not received a certificate, and if upon examination of the record I find him entitled to a certain number of shares of votes, he is entitled to vote.

By the Court:

I do not send him the shares unless he asks for them, but his credits are there; and if he comes in and demands the right to vote, we let him vote, provided he has made a donation. Provided our records show that he is entitled to vote.

By Juror 6:

866

Q. Do I understand that no one is allowed to vote then without a certificate? A. No. I did not say that. I said that any one who has a credit on the books is allowed to vote.

By Mr. Sparks:

Q. Whether he has a certificate or not? A. Whether he has a certificate or not. There are one hundred and forty-seven thousand votes that can be called for at any time, the certificates can be called for at any time. There are credits there of over one hundred and forty-seven thousand; and any donor who has given ten dollars or more can come in and on the record get his certificate. Whether he calls for the certificate or not, at the election he would be allowed to vote.

867

By the Court:

Q. Is it a fact that the actual number of outstanding shares which have been demanded and have been actually issued is about fifty thousand? A. About fifty thousand; but a lot of others can get them.

Q. They can get them if they come in and ask you for them, they are entitled to them? A. Yes, sir; and the record shows it.

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868 *Plaintiff's Witnesses, May, Direct—Robinson, Direct*

HOSEA J. MAY, Poland, Ohio, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

Q. Did you buy some of the wheat through the Society? A. I did; yes, sir.

Q. How much? A. Twenty-two pounds.

Objected to as not rebuttal.

Objection sustained. Plaintiff excepts.

869 Q. During the year that you planted this wheat did the other farmers in your section, who planted ordinary wheat, have to do anything with it?

Objected to.

The Court: Sustained as not rebuttal.

Plaintiff excepts.

FREDERICK H. ROBINSON, 124 Columbia Heights, Brooklyn, sworn and examined as a witness on behalf of the plaintiff, testified as follows:

By Mr. Sparks:

870 I am connected with the work being carried on by Pastor Russell. I hold a position in the United States Investment Company. That of chairman, of the United States Investment Company.

The United States Investment Company holds no property at the present time. In September, 1911, September 23, 1911, as near as I can recall, it did not hold any. The pieces of property held during its lifetime by the United States Investment Company number at a rough estimate, I should say about twenty-five.

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As these different properties were sold, the proceeds, if any, went to the Watch Tower Bible and Tract Society.

As to what source the majority of the property held by the United States Investment Company has come from, its original title, original source, I am not sure that I can answer.

Q. What proportion, if you know, came from Pastor Russell? A. In the beginning of its history, as near as I can recall—it is beyond my time personally —it came all from him.

Q. Has the Watch Tower Bible and Tract Society 872
ever conveyed any property to the United States Investment Company? A. I believe so, yes.

It conveyed title for lots in Hammondville, Pennsylvania; also it conveyed title to some lots in Hilsboro County, Florida. I do not recall any others at present. I cannot say with positiveness the original source of title of the Florida property. No pieces of property have come to the United States Investment Company by will during my incumbency of the office during five years. No person connected with the United States Investment Company receives any salary, or any dividend. Pastor Russell has never received from the United States Investment Company any portion of its
funds personally. 873

CROSS-EXAMINATION by Mr. Oeland:

The official office of the United States Investment Company, Limited, is in Allegheny, Pennsylvania; my individual office is at 13-17 Hicks Street, not as chairman of the Investment Company however. When I attend to the United States Investment Company business, I go to Pittsburgh before I do it. Such matters as have to be attended to in the State of Pennsylvania.

Q. Well, suppose you are going to loan money. Do you go down there to do it? A. No, sir. I have

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874 my books right here in Brooklyn. I said that I had to go down there to transact official business, because that is the official office of the company.

Aside from being connected with the United States Investment Company I am foreign secretary of the Watch Tower Bible and Tract Society.

My connection with the Peoples' Pulpit Association is I am one of the Board of Directors. That is all.

P. E. Thompson is editor of the paper issued by the Peoples' Pulpit Association.

The position I hold in the Watch Tower Bible and Tract Society is foreign secretary or clerk. The posi-
875 tion I hold with the Peoples' Pulpit Association is on the Board of Directors. I am chairman of the United States Investment Company. I hold no position with the Cemetery Company.

TESTIMONY CLOSED.

Trial resumed January 28, 1913.

Mr. Oeland sums up the case on behalf of the defendant.

876 Mr. Sparks sums up the case on behalf of the plaintiff.

Recess.

Charge.

KELBY, J.:

Gentlemen of the Jury: This action is brought by the plaintiff for damages to his reputation which he claims has been lessened by the publication of the

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article complained of, and which you have before you for your investigation.

It is presumed in law that every man has a good reputation; and every man is entitled to maintain that good reputation; and every man is entitled to have others refrain from falsely interfering with that reputation.

As to the publication contained in the Eagle, which is sued upon in this case, I charge you that it is in itself a libel; and that the law presumes damages from the mere publication of it; and that the plaintiff would be entitled to a verdict of some kind here unless it be shown that what was published of him was true, that is, unless the Eagle justifies the publication of the article sued upon by showing that it was true.

878

Time is not of the essence of truth. What was true yesterday is true today as to a man's reputation as of a certain date; and so I have allowed evidence here, both before and after the publication, which I thought went to the truth of the allegations complained of, and which has been pleaded in justification by the Eagle.

One of the first things you have to do is to determine the scope and general nature of the libel. I cannot define that to you as matter of law. I have told you that it is libelous of itself; but as to its exact meaning or as to its exact scope, I cannot tell you that as a matter of law. I am dealing only with the law in this case. You are dealing with the facts. You will take your facts from the evidence that was presented on the witness stand; and you have to take the law from me, whether you like it or not. I am sworn to give you the law as I best understand it; and if I am in error about it there is a division of this Court to review my errors and make it right. So you must not undertake to assume that duty which the law gives to another branch of this Court. You must not

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880 take the statements of counsel in summing up as evidence. They are allowed to make comments upon what they think has been proven; but you are not to take that as a fact. You are to find the facts from the sworn evidence in the case coming from the witness stand, and nowhere else. You being the judges of the facts, and I being the judge of the law, and you being the last and ultimate body that passes on this question, you must have both the facts and the law in order to do it intelligently.

Now, what does this cartoon and the written matter under it mean? That is for you to say. The way in
881 which you will determine what it means, is by a general rule of law that it has the meaning which the ordinary reader, in looking at it and reading it, would ascribe to it. It is the ordinary, casual reader; and not some extraordinary genius. We judge of our duties and responsibilities here in law by ordinary people. It would not be fair to judge people by a genius, because they are too uncommon in every day life. You have to judge it by the ordinary standard. You have to do that first, to determine the scope and nature of this libelous article, in order to take up the question as to whether it has been justified or not.

The plea of justification means that the Eagle says
882 that what is conveyed to the ordinary reader by that written matter and by that picture is true; and their justification of it must be just as broad as the inference you believe comes from it under the rule of construction that I have given to you. As the law has it, the justification must be as broad as the charge. That is the general rule of law which governs it.

The burden of showing justification by truth is on the defendant. That means that the defendant must show you by credible evidence, which outweighs the evidence of the plaintiff, that it is true. That is a matter which is solely within your province. I have

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nothing to do with it. You must not try and find out what I think about it; because what I think about it is immaterial. It is your responsibility; it is your duty and it should be a matter of conscience with you.

There seems to be no controversy here that this article complained of was published of and concerning the plaintiff. The Eagle sets up this justification as a defense; and it is also allowed under the law to show facts in what is called mitigation of damages, that is, a lessening of damages by showing the partial truth of the facts, to show the absence of actual bad feeling or actual malice, actual carelessness and disregard of the plaintiff's rights.

884

If you find that the article was not justified, that is, that the proof of the truth was not as broad as the charge made by this cartoon and by these words, then and then only will you come to the subject of damages. If you find that this was true, and that the truth proved is as broad as the charge contained in this libelous article, then that will end the case and your verdict will have to be for the defendant, because the truth is always a defense to a libel action. If you find that it has not been properly justified under the rules I have given to you, then you will come to the subject of damages, and then the question is, how much was the plaintiff's reputation injured by this article. What was his prior reputation? What is his reputation today? How much has it been impaired by reason of this article?

885

I have allowed in the course of this trial evidence of other publications both before and after the article complained of, and all of them before the commencement of this action. That evidence was allowed solely for the purpose of enabling you to find out whether the Eagle did this maliciously, from bad feeling. When I say "maliciously" I refer to actual, express

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886 *Charge*

malice. Or if it was made recklessly and wantonly, with a desire to hurt or a desire to injure. You are not to take all these several articles by themselves, and say that each of them was a separate libel, and undertake to compensate the plaintiff for each of those separate articles, if they be libelous, because the plaintiff has other remedies as to those. He is not barred by this action from suing for any other libel that this paper may print of and concerning him to his detriment. That evidence was only allowed for the purpose of showing actual intent to injure, or to show
887 a total disregard and wantonness in publishing these articles, and without any decent regard for the rights of the plaintiff. So you can see as to the question of damages, that would only have an indirect effect upon that.

The ordinary rule of damages in libel cases is that the damages that may be received flow from the publication alone, and without the intervention of any outside causes. You may take into consideration the degree of humiliation he sustained, if any; the fact that he was held up to contempt, if you so find. I cannot give you any rule as to the amount of damages, because that is entirely within your province. We have no list of injuries in the law. If a man loses
888 his leg, we have no price for a leg off. If a man has his reputation impaired we have no price for that; although his right of reputation is quite as integral a part of him as his leg. He has a right to have it remain unimpaired.

There is a wide range in damages in these libel cases. It depends upon the man himself, what his reputation was, how much it was impaired. Damages rove from almost a nominal sum to large sums, as you may find the facts to be. So you will have to try and estimate as best you can, if you find that the libel was unjustified and that it was not true, how

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much this man's reputation suffered by the publication of the article. Then if you find that the article was published with express malice, a feeling of spite, with ill feeling or intentionally, or with a wanton and reckless disregard of his rights, then you may consider the question of what is called punitive damages, and sometimes referred to as smart money. That is a sum which may be added in your discretion, if you believe the facts warrant it, by way of punishment. That is a matter for you.

From the fact that I am charging you on the subject of damages, you are not to infer that I think you must give damages, because that would be intruding upon your province. I am required to give you the law on all branches of the case, including the law as to the libel, the law as to the justification, and the law as to damages. The ultimate result is your own responsibility, and not mine.

890

The burden of proof as to justification is on the defendant. The burden of proof as to the nature and extent of the injury to the reputation of the plaintiff, and as to damages to be given by way of punishment, if any, is on the plaintiff. He must show that there was actual malice, that there was express malice. That evidence of damages may be given by evidence which is in the case of this publication and other publications. It is entirely for you to determine.

891

In the plea of justification, under our law, if the matter pleaded as justification falls short of a full justification, you may consider it as a justification in part and thus lessen the damages. That is, if you believe that a part only of the cartoon and written matter was true, you will take that into consideration in fixing the amount of damages. You will take that into consideration on the question of whether it was done maliciously or not. These are matters entirely within your province.

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892 *Defendants' Requests to Charge*

You will also take into consideration the manner of the witnesses on the stand in judging of their credibility. Did they testify frankly? Did they testify with a purpose of enlightening you as to the real truth? If any witness on either side of this case testified falsely on a material fact, intending to deceive you, then you have the right to disregard the whole of the testimony of that witness, because the law is that "false in one thing, false in all."

I have had a number of requests to charge handed up by both sides in this case. I have refrained purposely from referring to any of the facts. The facts
893 have been reviewed before you. You have the facts from the witnesses. You have had the benefit of able counsel on both sides in stating what they understand is proven. The case has been well tried; and apparently everything that has been possible to get out has been given to you in an effort to have you reach a fair determination. You were chosen by both sides. You have to be fair. You have got to be just. You must exercise common sense. You have to view this thing in the light of every day happenings. Do not get into any artificial frame of mind, or in an indignant frame of mind, or in a sympathetic frame of mind. That has nothing to do with your duties in the jury
894 box. You are to be without passion, without prejudice, and determine the matter as a matter of conscience solely.

The defendant has requested me to charge:

"That it is the law that this publication, cartoon or picture, and the words printed thereon, are not sufficient alone to support the charge of libel made by the plaintiff in his complaint."

I have already charged you just the opposite on that, and I therefore refuse to charge as requested by the defendant; and unless the subsequent matter be

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separated from it, I shall decline to so charge. The second request of the defendant is:

"If you find and believe from the evidence that plaintiff was promoting and furthering the sale of Miracle wheat by means of advertisements in the Watch Tower, and that such advertisements contained false statements about the productive qualities and value of said wheat, the defendant, as a newspaper, would have the right, fairly, honestly and in good faith, to discuss, criticise and call the attention of the public to plaintiff's conduct in connection with such advertisements; and if you find from the evi- 896
dence that the cartoon published by the defendant, and the words printed thereon, were warranted and were fair, just and reasonable inferences from plaintiff's acts and conduct, then you must find a verdict for the defendant. It does not matter that said cartoon, and words used in connection therewith, were not the most charitable or reasonable suggestions and inferences to be drawn from plaintiff's acts and conduct, or even that they were wrong, provided they were based upon plaintiff's acts and conduct in connection with the advertisements and the sale of said wheat, and provided such acts and conduct justified or warrasted the cartoon complained of." 897

I charge you that in connection with what I have already said, however, with this limitation, that this justification must be as broad as the charge of libel which you construe it to be from your inspection, under the rules I have given you.

Mr. Sparks: I take an exception to that charge as modified.

The Court: The third request of the defendant is:

"If you find and believe from the evidence that plaintiff's conduct as a minister, publisher, author and teacher, as well as the advertisements or statements

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made in the Watch Tower or paper controlled by him, with reference to the qualities of Miracle wheat, were calculated to mislead or deceive the public in regard to the nature or productive qualities of said wheat, then defendant, as the owner and publisher of a newspaper, had the right to call the attention of the public to the untruthfulness of the statements contained in the advertisements about Miracle wheat, if they were untrue, so long as it did so fairly, honestly and in good faith; and if you find and believe from the evidence that the publication complained of was nothing more than a fair, honest and *bona fide* method
899 of informing the public of the character of plaintiff, as a minister, writer and seller of wheat, and was a fair, honest and *bona fide* criticism of plaintiff as such, then your verdict must be for the defendant."

I so charge you, if you so interpret the cartoon and the printed words complained of.

Mr. Sparks: An exception to that.

The Court: What is meant by fair comment on a public man or author means fair comment as to what they are doing in that line, because I would not be justified in poking into the private life of a man and attributing to him any crime or any false
900 statement as to his private character, unless they were so commingled as to be one a part of the other. All these charges, as I have tried to make you understand, are predicated upon your finding the real meaning of this cartoon, and the justification must be just as broad as you find to be the meaning of it. The fourth request is:

"It is always a good defense in a libel action to prove the substantial truth of the publication claimed to be libelous, and if you find and believe, from the evidence in this case, that the plaintiff authorized or permitted Miracle wheat to be advertised for sale in

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the Watch Tower, a paper controlled by him, as wheat that would yield ten or fifteen times as much as common wheat, and if you find and believe from the evidence that the statements contained in such advertisement or advertisements were false and untrue, and if you further find that the plaintiff knew, or by the exercise of ordinary care in the conduct of his paper should have known, that the statements contained in such advertisements were false, if you find that they were false, and if plaintiff permitted such advertisements to be inserted in the Watch Tower, a paper published by him or under his control, for the purpose 902
of misleading the public or with the knowledge that the public might be misled thereby, and in order that the religious society promoted by him might receive the proceeds of the sales of such wheat, made by means of such advertisements, and if you find and believe from the evidence that the sales of Miracle wheat, made by means of such advertisements and at the price named therein, would be a fraud on the public, and that defendant has, by means of the publication complained of, done nothing more than inform the public of such fraud, if you find it to be such, then you must return a verdict for the defendant."

I charge you that, provided that you can find that 903
is the total meaning of the cartoon and the printed matter complained of in evidence.

Mr. Sparks: I take an exception to that, upon the ground that it embodies facts not in evidence.

The Court: The fifth request of the defendant is:

"If you find and believe that if, from the evidence, that the statements made in the advertisements published in the Watch Tower about the productive qualities of Miracle wheat were false, and that said advertisements were inserted or permitted to be inserted by plaintiff in such publication for the purpose

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904 of deceiving or misleading the public, and were in fact calculated to deceive or mislead the public and to induce the public, in the belief that the statements made in such advertisements were true, to purchase Miracle wheat, and if you find that such Miracle wheat could be purchased on the market at five dollars or six dollars per bushel, and that purchases of Miracle wheat made by the public on the faith of the statements contained in said advertisements at the price therein named would be a fraud on the public, and that the publication complained of in this case was fair and honest and was a proper method of
905 calling the attention of the public to such fraud, and made in good faith for that purpose, you must find a verdict for the defendant."

I charge that, provided you find the charge as interpreted by you means the facts that were set up in justification and not otherwise.

Mr. Sparks: Exception.

The Court: The defendant requests it to be charged that:

"It is undisputed that plaintiff, at and prior to the date of the alleged libelous publication involved in this case, was a teacher of certain religious doctrines
906 and views advocated by him, and an author and publisher of books and magazines for advancing and promoting the religious principles and tenets taught by him, and as such author, publisher and teacher appealed to the public in support of the teachings and doctrines advocated by him; that plaintiff and his said vocations were and are matters of public concern and interest. It is further undisputed that on or about June 15, 1911, there appeared in one of plaintiff's religious publications, the Watch Tower, an advertisement in which there was offered for sale by Brother Bohnet, one of plaintiff's followers, a limited quan-

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tity of Miracle wheat, and in which it was stated that the entire proceeds of the sales of such wheat were to go to the religious society fostered by plaintiff, and in this article it was also stated that Miracle wheat should be sowed one-fourth as thick as common wheat, and ordinarily should produce ten to fifteen times as much proportionately, and further stated that the Watch Tower readers should have the preference up to August 1st of that year of purchasing it at the rate of one dollar per pound, which would be at the rate of about sixty dollars a bushel. You are advised that plaintiff, by advertising or permitting the 908
advertisement of the sale of such wheat as above indicated, challenged public criticism and comment, and the defendant had the right to inform the public about the true character of the plaintiff and this Miracle wheat, and had the right to criticise and comment on plaintiff and Miracle wheat so long as such comment and criticism was fair and honest and made in good faith. Hence, if you find and believe from the evidence, and attendant circumstances that the defendant, in the exercise of its privilege and duty to the public, published the cartoon, caricature and picture complained of in this case and that such publication was a fair and honest comment or criticism of plaintiff and his conduct, and of the advertisement in his 909
paper, relative to the sale of Miracle wheat, and that such publication was made by defendant in good faith and for the public good, you must find a verdict for defendant."

I decline to charge that, the whole of it, as requested, except as already charged.

"In determining whether the publication complained of was or was not within the limits of reasonable criticism, you are at liberty to take into consideration all the circumstances surrounding the publication

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of the article in the Watch Tower about Miracle wheat, all the testimony about the qualities of said wheat, and the price at which it could be purchased on the market, the fact that such advertisement was an appeal to the followers of plaintiff's society and to the public in general, and the fact that the proceeds of the sales made of such wheat were to be paid to plaintiff's society; the fact (if you so find), that plaintiff made no proper investigation of the truthfulness of the statements contained in said advertisements and did not know whether or not they were
911 true; the fact that the public purchasing on the faith of the statements contained in said advertisements would pay fifty dollars or fifty-five dollars more per bushel than the market value of such wheat; and all the testimony in the case bearing on the issues; and then say whether or not defendant, in the conduct of its newspaper in conveying news or matters of importance to the public, went beyond the limits of fair and just criticism in adopting this method of calling the attention of the public to the plaintiff and to the Miracle wheat which was being advertised for sale in his newspaper."

I charge you that you may consider all these things,
912 providing there is evidence to show that the defendant, at the time of publication, knew these things, and as to the matters which were pleaded in bar as justification in so far as they relate to the actual truth of the facts contained in their answer, then they are admissible in reduction of the damages, if any you find. The eighth request of the defendant is:

"If you find and believe from the evidence that defendant published the cartoon or picture complained of in this case in good faith and without malicious intent to injure the plaintiff, but solely in the discharge of its duty as a newspaper to the public, and if

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you find from the evidence that the publication was a fair and honest and *bona fide* criticism of plaintiff's conduct in authorizing or permitting such advertisements to be inserted in a paper controlled by him, then you must find a verdict for the defendant."

I decline to so charge. Now, Mr. Sparks, I think I have passed on most of your requests in charging. In looking them over, I find that many of them are repetitions of whether the article was libelous *per se.* I have already charged that. If you will point out what ones you want me to pass on, I will do so.

Mr. Sparks: I do not think your Honor has charged 914
our first proposition, except qualifiedly.

The Court: The plaintiff requests me to charge:

"That the cartoon published is of and concerning the plaintiff, and that the same holds him up to public ridicule and scorn and is libelous *per se.*"

I have already charged that this article was libelous *per se,* only I did not use the words "*per se.*" I used the words "in itself" which I thought better to use.

Mr. Sparks: The third one you have not touched on.

The Court: The plaintiff asks this charge to the
jury: 915

"That the cartoon is a separate and distinct libel from that of the article published in the same issue."

I decline to so charge. The whole article must be taken together, both the cartoon and the words surrounding it as one charge.

Mr. Sparks: Exception to the refusal to charge.

The Court: The plaintiff asks that the jury be charged:

"That the defendant has offered no evidence in justification of the cartoon itself or the words used in connection therewith."

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916 *Plaintiff's Requests to Charge*

I decline to so charge. I leave that to the jury to determine as an issue of fact.

Mr. Sparks: I take an exception to the refusal to charge. Now, the eighth.

The Court: These are not numbered.

"Even though the jury should find that the plaintiff was at and prior to the publication of the cartoon complained of, the dominating and controlling power in the corporation mentioned in evidence, and that he dictated the policy of said corporation, this would in nowise justify the defendant in publishing the cartoon
917 and the words used in connection therewith, set forth in the complaint."

That is true, of course. If that was the only fact that this is predicated on, that he had control of the corporation, that would not justify it, of course.

Mr. Sparks: And the tenth, right below that.

The Court: I am asked to charge:

"The religious beliefs and teachings of the plaintiff are not in issue, and even if they were contrary to all other religions, that would be no justification or excuse for the defendant in publishing the libel complained of."

918 We are not trying a case of what this man's religious beliefs are alone. That is not an issue here at all. Every man has a right to his own religion and to worship God in the way he likes. That is not the question in this case at all.

Mr. Sparks: And that that would not justify a libel.

The Court: And it would not justify the libel alone.

Mr. Sparks: I take an exception to your conclusion, adding "alone" to that.

The Court: I so charge. I understand that is what you are asking me to charge.

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Mr. Sparks: I did not ask the word "alone" to be added to it.

The Court: I decline to charge it except with the addition of the word "alone."

Mr. Sparks: We take an exception to the refusal to charge.

The Court: The next request of the plaintiff is:

"If the jury find that the cartoon in this case was published maliciously, then in addition to the actual damages suffered by him, the plaintiff is entitled to recover punitive damages by way of punishment of defendant for the wrongful act in publishing said car- 920
toon. The jury may infer that the cartoon was maliciously published, from the simple fact of its publication, and if the defendant had no reasonable ground to believe the same to be true, then such malice is conclusively presumed. Even though they find that defendant was not prompted by actual malice, in the publication of said cartoon, yet if the cartoon and the words used in connection therewith were recklessly, carelessly or wantonly published, then the jury will be authorized to assess punitive damages against the defendant in this case."

The Court: I so charge. The next one:

921

"I ask your Honor to charge the jury on behalf of the plaintiff, that the defendant has offered no evidence of mitigating circumstances in connection with the cartoon and the words used in connection therewith."

I decline to so charge.

Mr. Sparks: Exception. I ask your Honor to charge the jury that there can be no mitigation of plaintiff's actual damages.

The Court: I think that is so, as to actual damages. I am not saying what the actual damage is. That is for you. If you find it from the evidence, you

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must give him actual damage. The actual damages is what you finally arrive at.

Mr. Sparks: In that connection, I ask your Honor to charge the jury that there is actual damages, that the law presumes actual damages from a libelous publication *per se*.

The Court: I so charge you.

Mr. Sparks: I ask your Honor to charge that the jury may take into consideration, in aggravation of damages, the matters which the defendant has pleaded in justification of the libel and in mitigation of the libel, for the reason that they have not offered nor
923 attempted to offer any evidence in substantiation of those matters.

The Court: I decline to so charge. I will charge you that if you find the justification was interposed by the defendant in bad faith and not believing it to be true, then you may consider that in aggravation of damages.

Mr. Sparks: The fact that they have offered no evidence in substantiation of these charges is indicative of malice.

The Court: If you find they have. I am not going to charge that as a matter of law.

Mr. Sparks: The last one on the bottom of page
924 4.

The Court: I am asked to charge the jury:

"The jury cannot find, from the evidence in this case, that the plaintiff ever received any personal financial advantage from his connection with the Watch Tower Bible and Tract Society, the Peoples' Pulpit Association, or the United States Investment Company, except the sum of eleven dollars a month."

I decline to so charge, because I think there was evidence that he was paid his travelling expenses and his living expenses.

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925

Mr. Sparks: Aside from that, then I ask your Honor to charge it.

The Court: I so charge.

Mr. Oeland: I except, because the proof is that his advertising was paid for out of this fund.

The Court: I will leave that to the jury as an issue of fact. I think I cannot dispose of it as matter of law. I think I will decline so to charge, Mr. Sparks.

Mr. Sparks: Exception. I ask your Honor to charge the jury that they cannot find that any of the funds of the society have been diverted to any uses other than those for legitimate corporate purposes.

926

The Court: I charge that there is no evidence that it has been diverted from any other than corporate purposes of this society, and those that are associated with it.

Mr. Sparks: I ask your Honor to charge the jury that the plaintiff does not hold a majority of the voting shares in the Watch Tower Bible and Tract Society, on the evidence.

The Court: I decline to so charge.

Mr. Sparks: Exception.

The Court: I am also asked to charge the jury:

927

"They must disregard the fact that the plaintiff holds a majority of the issued voting certificates of the Watch Tower Bible and Tract Society, as that would be no justification or excuse for the publication of the libel and not connected with other evidence is not matter in mitigation of damages."

I decline to charge that as requested.

Mr. Sparks: Exception.

The Court: I am also asked to charge:

"That any person who has contributed ten dollars to the Watch Tower Bible and Tract Society is entitled to vote at the annual election, whether a certifi-

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cate therefor has been issued or not, and that the selection of officers of this association lies with those who have contributed a majority of the money donated to it."

I decline to charge that as requested.

Mr. Sparks: Exception.

The Court: You must consider all the evidence on that point. Are there any others?

Mr. Sparks: I ask your Honor to charge the jury that the rights of a person to whom is credited one or more voting certificates on the books of the company
929 are not affected by the fact that a certificate has or has not been issued to him and that his right attaches immediately upon receipt by the society of the donation of a sum over ten dollars.

The Court: I think that is so, as far as it goes; but you will recall the other evidence in the case which seems to be undisputed, that the certificates are not issued unless the man calls in person and asks for them, either before or at the time of voting.

Mr. Sparks: That does not affect his right to vote at all.

The Court: No. If he asks for the right to vote, and he has the right to vote, under the evidence it
930 will be accorded him.

Mr. Sparks: I ask your Honor to charge that there would be no justification for a cartoon.

The Court: I decline so to charge.

Mr. Oeland: I ask your Honor to charge, in view of Mr. Sparks' summing up, which I could not answer, about these other articles offered in evidence, that I would not be permitted to prove the truth of them, and they are not to infer that they are false because I did not attempt to prove the truth of them; that I would not be permitted to offer the proof if I brought it into court.

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931

The Court: I charge you that the only purpose of those articles was to determine whether the Eagle was malicious or not at the time of publication; and that no evidence in justification of those libels, if they be libels, could have been put in, because they have not been pleaded in the complaint, and the answer can only answer the things that are pleaded in the complaint. These articles were not pleaded in the complaint.

Mr. Sparks: I take an exception.

Mr. Oeland: I ask your Honor to charge that even though the article is libelous *per se,* if the justification is as broad as they construe the libel, their verdict must be for the defendant.

932

The Court: I so charge.

Mr. Sparks: Exception.

Mr. Kuhn: We except to your Honor's refusal to charge our requests numbered 1, 6 and 8; and to the modification of the requests numbered 2, 3 and 4; and to the charge made by your Honor that the article is libelous *per se.*

Mr. Sparks: I ask your Honor to instruct the jury that they can have the exhibits if they want them.

The Court: Yes. If you want any exhibits let the officer know, and he will bring them up to you.

933

The jury then retired, and subsequently rendered a verdict in favor of the defendant.

Mr. Sparks: I move for a new trial on all the grounds stated in Section 999 of the Code.

Motion denied. Exception taken.

A stay of thirty days is granted, and sixty days to make a case.

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934

Plaintiff's Exhibit 1.

This exhibit consisted of a stool of miracle wheat produced by K. B. Stoner, raised in Virginia.

Plaintiff's Exhibit 2.

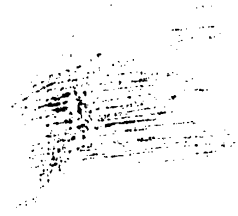
This exhibit consisted of three heads of miracle wheat produced by K. B. Stoner, raised in Virginia.

935

Plaintiff's Exhibit 3.

This exhibit consisted of a stool of miracle wheat (containing approximately 118 stalks).

936



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Plaintiff's Exhibit 4. 937

Paso Robles, Cal., May 23, 1911.

Dear Bro. Russell:

Last year I sent you the entire proceeds from the sale of miracle wheat at $1.00 per pound for use in spreading the truth in any way you might see fit. This year the crop will be much larger. I have not the time to personally attend to its selling and therefore will send you about August first the entire crop of this miracle wheat. You can dispose of it at $1.00 per pound to Tower readers and use the money in the Lord's work. Many of the truth friends have 938
farms or plots of ground and will be glad to have some of this wheat. Their boys would take special interest in its growth. My thought is to favor the truth people.

The money spent in securing a supply of the miracle wheat would be equivalent to a donation to the Tract Society for the spread of the Gospel message of great joy.

2

I might here suggest that the miracle wheat should be sown one-fourth as thick as common wheat and that ordinarily it should produce from ten to fifteen times as much proportionate with the amount sown. 939

Orders may be sent to you at once, as I shall forward the wheat to you immediately after threshing. The postage is eight cents per pound. However, there may be a special *seed* rate that would be somewhat less.

This miracle wheat may be a factor to preserve life during the troubulous times; it could not well be destroyed while growing in the field when wanton destruction prevails. The trouble might end just at the time when wheat is ready to harvest.

In the service of the Lord I remain your brother in Christ,

J. A. BOHNET.

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940 **Plaintiff's Exhibit 5.**

S. J. Fleming
Jul 22 1911

S. J. Fleming
Wabash Ind
R. T. D. 10

July 20/11

Get from him after B's supply gone thanks.

File

(Reclean wheat for sale)

941 Dear Friends

having Purchased 25 pounds of Miracle Wheat last year and having in mind that whatever I might be able to realize from the same I would put it into the tract fund of I. N. B. S. A. and having noticed the item in recent Tower that Bro Bonett had some to sell I thought I would make the same offer.

I will have Twenty Bushels or probably mor that I will let you sell and let the proceeds go to the tract fund I will either Ship the Wheat to you, or you can send the Orders to me, and I will fill the orders, please lit me hear from you at once so I will know what to do about it

942 Yours in christian love god Bless you all and our mutual endeavers to serve him and his your Bro in Christ

S. G. FLEMING
R. R. 10 Wabash
Ind.

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Plaintiff's Exhibit 6.

943

This exhibit is a stool of miracle wheat produced by Henry D. Ayre, containing 49 stalks or heads and raised in Tennessee.

Plaintiff's Exhibit 7.

(Extract from The Watch Tower and Herald of Christ's Presence, June 15, 1911.)

A DONATION IN MIRACLE WHEAT.

944

Brother Bohnet writes us that he has gradually accumulated a crop of miracle wheat from the few grains he obtained as a start. He prefers that the first opportuntiy for obtaining this wheat shall go to The Watch Tower readers. He will sell it for $1 per pound, including postage, and give the entire proceeds to our Society. All orders for this wheat should be addressed, Miracle Wheat Bohnet, 17 Hicks Street, Brooklyn, N. Y. This will keep mail on this subject separate from his personal mail and from ours.

Brother Bohnet promises to be ready to ship this wheat by August 1. He says miracle wheat should be sowed one-fourth as thick as common wheat. 945
Ordinarily it should produce from ten to fifteen times as much proportionately to the amount sown. To save keeping account, money should accompany the order. Watch Tower readers will have the preference up to August 15, after which orders will be attended to indiscriminately, so long as the supply holds out. This wheat should be sown in the fall.

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946 **Plaintiff's Exhibit 8.**

PASTOR RUSSELL'S AIDS WORK HARD "FOR LOVE."

Helpers in Brooklyn Headquarters Get No Salaries. Some Interesting Figures.

Receipts for Year Almost $150,000, but Expenses Are Even Greater. Millions of Tracts Distributed.

947 The announcement that Charles T. Russell, otherwise known as "Pastor Russell," has taken charge of the London Tabernacle, has stimulated interest in the methods he employs in spreading his religious propaganda. He is the head of the "Millennial Dawn" sect and president of the People's Pulpit Association and of the Watch Tower Bible and Tract Society, at 17 Hicks Street. The propaganda is spread by printed tract and pamphlet, which are sent out in such volume that recently, he said, in the "Watch Tower," a semi-monthly publication:

"We presume it is safe to say that no other organization ever put out one-tenth this amount of free literature in a year."

948 According to Pastor Russell's own figures, the number of these pamphlets and tracts published and sent broadcast with the space of a single year was 20,797,165, or 350,957,360 pages, all of which the printing presses rattled off and the laborers in the vineyard sent out free. Pastor Russell does not say what it cost to carry on this work of love, but the outlay was large. He also stated, "One thousand papers in the United States and Canada are publishing our sermons and Bible studies."

This is only a small part of the work that Pastor Russell and his associates have been doing. In the brick building at 17 Hicks Street, there are 100 per-

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949

sons at work, according to one of those connected with the People's Pulpit Association. These get no salary —just their board and necessary expenses. Everything is done for "love."

"No salaries are paid—merely moderate expenses" to quote Pastor Russell himself. "Yet we are all comfortable and very thankful and happy."

Twenty-five Typewriters Employed Sending out Letters.

950

About twenty-five typewriters and stenographers spend many hours each day answering letters which pour into 17 Hicks Street from points all over the world. The official figures of the correspondence department show that in one year the letters and cards received in Brooklyn, as published in the "Watch Tower and Herald of Christ's Presence," was 112,085, and the letters and cards sent out from Brooklyn reached the very respectable total of 144,311. Many of the letters received contain voluntary contributions. They are not asked for say the pastor's associates. They just "pour in."

951

The Watch Tower has a circulation of 30,000, and it is paid for at the rate of $1 a year. The revenue from this publication alone would amount to $30,000 a year at this rate if all the subscribers paid cash, but those of the vineyard say that many copies are sent out gratis—how many they do not make clear.

Then there is the Pilgrim Service. The number engaged in pilgrim service in the United States and Canada is fifty-seven. These fifty-seven preaching brothers have already traveled (the figures taken from the Watch Tower and Herald of Christ's Presence), 477,247 miles, visited 3,251 cities to spread the "true Gospel;" held 3,297 public meetings and 7,416 parlor meetings. The greatest traveler is Pastor Russell

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952 *Plaintiff's Exhibit 8*

himself, who is now sojourning in the slums of London. The London Tabernacle is at Paddington, where there is much need of the light the true gospel spreads.

Pastor Russell is the author of six volumes on the new method of Bible study. They are referred to as "two sets of Bible Keys of three volumes each." These books, which are "of priceless value to God's humble, faithful children," are sold at the rate of $1 for the first set and $1.20 for the second." About 5,000,000 copies of these have been printed, according
953 to Pastor Russell's associates, but then a great many copies are given away free, regardless of the expense of getting them up, and Pastor Russell doesn't make anything out of them, say those who represent him. In fact, he spent $100,000 "out of his own pocket" in circulating one of his earlier works.

Millions of Copies of Periodicals Are Sent Out.

Millions of copies of the People's Pulpit, another means of spreading the light, are printed and sent out every year. It is subscribed for at the rate of twelve cents a year. In addition to this hundreds of thousands of copies of Scripture Studies are put in cir-
954 culation annually, and many thousands of copies of Manna and of religious booklets.

Having in mind all this work, together with the costly placards bearing the leader's likeness that are put up in conspicious places where they are best calculated to strike the eye, "it might be expected that millions of money had been expended in order to bring about its accomplishment" (the words included within quotation marks are Pastor Russell's). But not so. On the contrary, "economy is associated with every part of the work," wrote the pastor in the Watch Tower recently. Then he went on to give "our financial showing," which is as follows:

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Plaintiff's Exhibit 8

955

Expended for above work in America		$139,743.80
Expended elsewhere:		
In Great Britain	$7,965.55	
In Germany	3,673.27	
In Australasia	487.06	
In India	522.37	
In South Africa	1,438.62	
In Sweden	1,675.82	
In Norway and Denmark	3,494.58	
In Jamaica	935.29	
In France, Italy and Switzerland	295.73	
In Greece	396.45	
In Mexico	50.50	20,935.24
Total expenditure		$160,679.04
Receipts:		
Balance from 1909	$9,718.38	
Good Hopes, tract fund, etc.	139,058.72	148,777.10
Shortage		$11,901.94

956

This is close for the extent of the work, and if other "Good Hopes" be realized this balance will be wiped out before January, 1911.

957

We congratulate all of our dear co-laborers and praise God for the privileges thus represented.

Very truly your servant in the Lord,

C. T. RUSSELL,
President.

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958 *Plaintiff's Exhibit 8*

Bookkeeping is Very Strict, says Secretary-Treasurer.

At 17 Hicks Street an Eagle reporter found a man who said his name was Van Amberg and explained that his position being that of secretary and treasurer, he was thoroughly familiar with all the details of the work.

"That financial state is from the books itself?" he was asked.

"It is compiled from the books. Our system of bookkeeping is very strict."

959 "You do not itemize it. Are you willing to open your books for inspection?"

Mr. Brenneisen, who is secretary of the People's Pulpit Association, was also asked if he would permit the books to be inspected.

"No," he said. "I shall refer you to Pastor Russell. He will be here shortly.

According to Van Amberg, Pastor Russell at one time ran four department stores and a music store. He gave up these activities to labor in the vineyard for nothing.

"Is he a graduate of any theological seminary?" he was asked.

960 "He is neither an ordained clergyman nor a graduate of a theological seminary," was the reply, "but there is more theology in those six books of his than all the theologians can tell you," he said.

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Plaintiff's Exhibit 9. 961

CHURCH A SALESROOM FOR "MIRACLE WHEAT AT $60 PER PUSHEL.

Offered the Faitful Who Read Pastor Russell's Magazine.

SOLD AT THE TABERNACLE.

Anyone Who So Desires Can Purchase the Precious Grain at Hicks Street Headquarters.

Many of the devoted followers of Pastor Russell, 962
whose indefatigable efforts in the vineyard of the Lord has attracted wide attention in Brooklyn, are awaiting with interest the result of a new experiment emanating from his headquarters in the Tabernacle, 13 and 17 Hicks Street, this borough.

The experiment is "Miracle Wheat."

The society of which Pastor Russell is the head wants it distinctly understood that it has nothing whatever to do with the wheat itself, beyond the fact that the grain is being sold from its headquarters, and that it expects the faithful followers who produces it to give the society the returns from the sales.

Because of the meraculous powers of the wheat in 963
question, it is being sold at a slightly higher rate than that commanded by the ordinary variety. Generally speaking, the price of the "Miracle Wheat" is $60 a bushel. It can be bought in small lots at about $1 for a pound. Or, if one desires, it can also be purchased at the rate of fifty-five pounds for $50.

The price of ordinary wheat for which farmers claim no extraordinary or divine qualities is, according to the latest quotations, about 59 cents or $1 per bushel.

Brother Dockey (first name refused to inquirers), is the watchdog of the wheat treasury. Brother

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964 *Plaintiff's Exhibit 9*

Dockey states that from thirty to thirty-five bushels have been sold thus far, which, according to the price quoted, has netted from $1,800 to $2,100. The Watch Tower Bible and Tract Society gets this money, according to Brother Dockey. The society's receipts last year from the sale of religious literature, donations, etc., was $150,000, and the money realized from the sale of wheat at $60 a bushel is expected to swell this year's revenues to an even higher figure.

Brother Dockey says that Brother J. A. Bohnet, who, Brother Docky understands, has a "farm out in Ohio," first discovered "miracle" wheat. This was in
965 1907. Since that time he has experimented with it, and other "brothers" have been told the secret, until now Brother Bohnet of Ohio and Brother Flemming of Indiana and others are able to grow enough "miracle" wheat to have it placed on sale in Brooklyn, the brothers generously agreeing to donate all the proceeds to Pastor Russell's society. The following advertisement in the Watch Tower, the semi-monthly of the society, explains the proposition:

Brother Bohnet's Generous Offer Set Forth in Detail.

A Donation of Miracle Wheat.

966

Brother Bohnet writes us that he has gradually accumulated a crop of miracle wheat from the few grains he obtained as a start. He prefers that the first opportunity for obtaining this wheat shall go to The Watch Tower readers. He will sell it for $1 per pound, including postage, and give the entire proceeds to our society. All orders for this wheat should be addressed, Miracle Wheat Bohnet, 17 Hicks Street, Brooklyn, N. Y. This will keep mail on this subject separate from his personal mail and from ours.

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Plaintiff's Exhibit 9

967

Brother Bohnet promises to be ready to ship this wheat by August 1. He says miracle wheat should be sowed one-fourth as thick as common wheat. Ordinarily it should produce from ten to fifteen times as much proportionately to the amount sown. To have keeping account, money should accompany the order. Watch Tower readers will have the preference up to August 15, after which orders will be attended to indiscriminately, so long as the supply holds out. This wheat should be sown in the fall.

Brother Dockey says that some of Pastor Russell's followers in this city came to the Tabernacle personally and bought "miracle" wheat, while others in other cities and states sent in their money by mail and Uncle Sam carried the precious grain.

968

For years wheat experts in America have tried to produce wheat with the yielding qualities claimed by Brother Bohnet's grain. Yet here is a marvelous grain that has been in existence for four years and not a big grain man in the country has known anything about it, or it would have been commercialized long ago.

No Guarantee Goes With the Wheat, However.

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At the Tabernacle in Hicks Street no guarantee is given with the "miracle" wheat that is sold that it will yield "from ten to fifteen times as much proportionately to the amount sown." Brother Dockey admits the possibility that the "miracle" brand isn't so wonderful as all this. He says that Brother Bohnet doesn't claim this. Brother Dockey in substantiation of this statement points to the advertisement above quoted, pointing especially to several certain words, to wit, "ordinarily it should produce." Brother Dockey figures that this relieves Brother Bohnet of

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970 *Plaintiff's Exhibit 9*

all responsibility in case any particular lot of "miracle" wheat should prove to yield only ordinary results.

Brother Dockey says that a wrong impression is got by anyone who, reading the advertisement, believes that Pastor Russell or the Watch Tower Bible and Tract Society guarantees the worth of "miracle" wheat or that either Pastor Russell or the society has anything to do actually with promoting the sale of the wheat.

"Here's our lawyer right here," said Brother Dockey today, motioning to a tall man in black who
971 was standing nearby. "He'll explain that this society has nothing whatever to do with 'miracle wheat.' "

The tall man in black said he was "general counsel" for the society. He did not care to give his name.

"Brother Dockey is right," he said. "Anybody who says that Pastor Russell or the society is selling wheat is a liar. Brother Bohnet offered to donate his 'miracle wheat' and the society accepted his offer. He is merely allowed to place the wheat on sale here in the Tabernacle. Brother Dockey sells it. Neither brother has a voting share in the society. Brother Bohnet has kindly agreed to turn over all the money received for the wheat to the treasury of the society."

Neither Brother Dockey nor the "general counsel"
972 make any claim that the "miracle wheat" has an intrinsic value of $60 a bushel.

"The advertisement in the Watch Tower does not say that 'miracle' wheat is worth $1 a pound," said the general counsel. "It says simply that Brother Bohnet is willing to sell it at that price. It is purely a donation sale, for the benefit of the society, and those who buy at the price quoted, do so with the understanding and the idea that they are voluntarily giving aid to the society. I might place high value upon worthless furniture if I wished to, and if people

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wanted to buy at the price I named they could do so if they wished, though I made no claims that the furniture had any real value beyond that of ordinary furniture."

Although Brother Bohnet is not a member of the society, according to the "general counsel," it is a fact that he finds time, between tending his "miracle" wheat on his Ohio farm, to lecture before Bible classes. Brother Bohnet just now is lecturing out in Washington or Canada, Brother Dockey is not sure just which.

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976 **Plaintiff's Exhibit 10.**

EASY MONEY PUZZLE.

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If Pastor Russell can get a dollar a pound for Miracle wheat, what could he have got for Miracle stocks and bonds as a director in the old Union Bank?

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Plaintiff's Exhibit 11. 979

(From Brooklyn Daily Eagle, Sept. 23, 1911.)

SKEPTICAL UNCLE SAM SEEKS TO KNOW MORE ABOUT 'MIRACLE' GRAIN

Postoffice Inspector Dickson Will Have the Wheat Sold in Tabernacle Tested, He Says.

Pastor Russell is Loyal 980

But He Doubts the Faith of Those Who Are Not Members of His Faithful Band.

Uncle Sam has decided to make an official test of the "Miracle" wheat sold at $60 a bushel at Pastor Russell's Tabernacle in order that the faithful who have invested their money, and a waiting world as well, may learn more fully of the astonishing merits of the precious grain.

W. W. Dickson, chief of the postal inspectors in 981
Manhattan, has received a communication regarding the notice which appeared in Pastor Russell's semi-monthly, The Watch Tower, setting forth the unusual qualities of "miracle wheat." He promises to set going the wheels of inquiry. He says the Watch Tower notice may or may not represent grain that yields from ten to fifteen times the amount sown, and may be worth $1 a pound, as advertised. But he wants to find out. Accordingly he has mapped out a plan. It is likely that Inspector John N. Parsons, who generally conducts investigations into Brooklyn affairs, will have

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982 the task of testing the yielding qualities of "miracle wheat."

Pastor Russell said today that he had full confidence in the qualities of the grain, as noted in the Watch Tower, but he admitted that his confidence was based only upon letters written to him by "brothers" of the "millennial dawn" sect, and that he had never supervised the sowing and harvesting of "miracle wheat."

Inspector Dickson will ask that he be furnished with a sample of "miracle" wheat. It will be analyzed by Government chemists in Manhattan. Along with the
983 sample, Inspector Dickson's men will find out who bought "miracle" wheat from Brother Dockey, the watchdog of the cereal treasury so that it may be learned what interstate shipments were made of "miracle" grain.

Brother Dockey Says Supply of Wheat Is Limited.

Pastor Russell could not state today just how much "miracle wheat" there was on hand at the Tabernacle. He telephoned Brother Dockey to come right over to Pastor Russell's home at 124 Columbia Heights. Brother Dockey did so.

Brother Dockey announced that the supply was limited. It is still selling at $6 a bushel, only there
984 isn't enough for any one person to buy as much as two bushels. So Brother Dockey is selling preferably by the pound, still at $1 a pound. He had 200 pounds left a few days ago, but someone—he thought it was another "brother"—telegraphed from California that he must have 100 pounds. So brother Dockey is reserving 100 pounds until the California sends on $100. This leaves 100 pounds still in sale at the Tabernacle. Brother Dockey was loath to name the amount until Pastor Russell gave him permission.

An Eagle reporter yesterday bought one pound for $1. Brother Dockey wouldn't sell it for less, though

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the reporter shamelessly tried to "beat him down." Today Pastor Russell, in Brother Dockey's presence, made an offer to the reporter.

Pastor Russell Would Buy Back Reporter's Wheat.

"If you will bring that pound of wheat back I will pay you what you gave for it," said Pastor Russell.

The reporter indicated that his pound of "miracle wheat" was not for sale.

"It's pretty late to plant it now, unless you send it down South," reminded Brother Dockey.

Brother Dockey stated that less than 5 per cent of 986
all the "miracle wheat" sold at the Tabernacle went to people other than Pastor Russell's followers.

"Other people than my own," explained Pastor Russell, "wouldn't believe that this wheat contains extraordinary qualities. It is too much of a miracle for them to comprehend."

"It wouldn't do to try to fool our own people, either," Brother Dockey interpolated. "If we did that they would never have confidence in us again."

Pastor Russell says that as long as Brother Bohnet, Brother Flemming and other "brothers" continue to display generosity enough to hand over the proceeds from the sale of "miracle wheat" to the society, the 987
grain will be sold at the Tabernacle. Regarding the advertisement in the Watch Tower, Pastor Russell says that, as Brother Dockey said yesterday, no guarantee is offered that "miracle wheat" possesses powers of extraordinary yield. Pastor Russell does say, however, that he was responsible for the notice being inserted in the Watch Tower and that he believes in "miracle wheat" and intended to have his readers, all over the world, fully understand that he thought highly of it.

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988 **Plaintiff's Exhibit 12.**

MIRACLE WHEAT IN DEMAND ON THE PRODUCE EXCHANGE.

Brokers Ask for Quotations on Pastor Russell's "Divine" Grain.

HAVE SOME "JUST AS GOOD."

Postal Authorities to Test True Value of Religious $60-a-Bushel Stuff.

989 Chief Postal Inspector W. W. Dickson, in Manhattan, said today that he was "preparing a case" in connection with the "Miracle" wheat which is on sale at Pastor Russell's Tabernacle in Hicks Street, Brooklyn, the price still being $60 a bushel, with small lots to be had at $1 a pound. Inspector Dickson said he expects to have the case ready within a few days to place in the hands of Postal Inspector John N. Parsons, who handles Brooklyn Post Office investigations.

"My men have been pretty well tied up with the Flagg case in Manhattan and with handling the 'areal special delivery' service at the aviation meet," Inspector Dickson explained today. "I am preparing a case in the matter of 'Miracle' wheat and expect to
990 turn it over to Inspector Parsons in Brooklyn soon.

"It is not true that Inspector Kinkade has issued an order against this wheat being sent through the mails. This would not be done unless we knew for a certainty that this 'Miracle' wheat hadn't the yielding qualities claimed for it. We have no way of knowing this yet and at present no such order will be issued."

Chance for Brother Dockey to Make $59 a Bushel.

It was learned today that a complaint regarding the "Miracle" wheat being sold here has reached the office

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of the chief Inspector of the Post Office Department in Washington. Chief Inspector R. J. Sharp has turned the complaint over to the Third Assistant Postmaster General, division of classification, and the matter, according to a letter written by Inspector Sharp, will be given proper attention at the earliest date practicable.

"Miracle" wheat is a matter of discussion these days on the Produce Exchange in Manhattan. Brokers are asking one another, with some amount of sarcasm, if they have "any 'Miracle' wheat for sale this morning." Benjamin F. Schwartz, a member of the Exchange, announces that he will supply Pastor Russell with wheat just as good as that sold at the Tabernacle at $60 a bushel and will charge Brother Dockey or Brother Bohnet or any other "brothers" only about $1 a bushel for it, giving persons interested in the success of the Watch Tower Bible and Tract Society a chance to make $59 a bushel profit.

992

Alexander Forbes, vice-president of Peter Henderson & Co., 35 Cortland Street, Manhattan, one of the oldest seed firms in the country, says that offers of "Miracle" wheat have often been made to the company, but that the company would "run away" from any grain that carried the term "Miracle" with it.

993

"If Pastor Russell or anyone else came in here and offered us 'Miracle' wheat," Mr. Forbes said, "we would politely show him the door."

M. Reilly, a grain dealer at 175 Pacific Street, offers to sell Pastor Russell wheat which is, says Mr. Reilly, as good as the advertised "Miracle" wheat, at 10 cents a pound, giving the Tabernacle people a chance to make 90 cents a pound profit.

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994 *Plaintiff's Exhibit 12*

Still Better Chance to Make $59.05 Profit.

J. C. Jube, superintendent of the Hecker flour mills in Manhattan, was shown a sample of "Miracle" wheat. He sent for his head miller, who examined the "divine" grain with great interest. Then the head miller disappeared and returned later with a sample package of No. 2 Red. soft winter wheat. In appearance it was the same as the "Miracle" wheat, and Superintendent Forbes said he would stake his reputation as a wheat man for years that the wheat the head
995 miller brought in—it sells at 95 cents a bushel—was just as good as the "Miracle" brand. Both wheats were grown in Ohio.

The "Miracle" wheat was first grown in Pennsylvania, according to Pastor Russell. Brother Bohnet's contributed grains were grown in Ohio and Brother Flemming's in Indiania. The best wheat, according to grain experts, comes from none of these States, but from the Northwest and Canada.

According to Dr. John C. Olsen, the Polytechnic Institute chemist and an authority on pure foodstuffs, it is not prossible to take the best Pennsylvania grain, plant it in Ohio and then have Pennsylvania quality grow. The result will be Ohio quality, for climate
996 and soil will be determining factors. Dr. Ilson does not see, accordingly, how "Miracle" wheat grown in comparatively poor wheat soil of an Eastern State can have extraordinary qualities when planted in also comparatively poor wheat soil this side of the region where the country's best wheat is grown.

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Plaintiff's Exhibit 13.

997

Wise as a Serpent.

For the information of a correspondent the Eagle begs leave to say that it does not know whether Pastor Russell "keeps a yacht," oceangoing or otherwise.

Much can be done with the receipts from Miracle Wheat at $1 a pound, always presuming the supply to be unlimited, meaning thereby not only the wheat, but the purchasers thereof.

With enough of both, a fleet of yachts can be acquired and maintained, but this proves nothing. It doesn't warrant even the inference that Pastor Russell owns a canoe.

998

Besides, it has been explained that the profits accruing from the sale of the miraculous grain are devoted not to the gratification of expensive tastes but to the promotion of the work in which the pastor is engaged.

More than once the Eagle has been asked for enlightenment as to the precise nature or character of this "work." And more than once it has endeavored to equip itself with information on the subject.

Gently, but firmly, it has been repulsed. The more it has asked the less it has discovered. There may be a reason for this. It may be essential to the success of the work that the wisdom of the serpent shall be displayed.

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It is.

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1000 **Plaintiff's Exhibit 14.**

MIRACLE WHEAT HAS AN ALASKAN COUSIN.

Brought $20 a Bushel Until Petulant Government Got Out Fraud Stamp.

FARMER ADAMS' BONANZA.

30,000,000 Acres Still Waiting for Marvelous Seed Found by Mysterious Stranger.

1001 Eagle Bureau,
608 Fourteenth Street.

Washington, September 26—This is the sad story of a little grain of wheat. No, that's wrong. Not a little grain—a whopping big grain—a whole head of whopping big grains. To quote Holmes' Dr. Watson, it was "simply marvelous." Not as marvelous, perhaps, as Pastor Russell's Miracle wheat, because that sells for $60 a bushel, whereas the wheat of this tale brought only $20, and was, therefore, only one-third as marvelous. But it was wheat with a big W; wheat that was going to revolutionize husbandry, make a multi-millionaire out of the humble farmer and fill
1002 the grain elevators of the world until they groaned in agony and finally burst, scattering their golden bounty to the four winds and feeding the wide, wide world forever and ever. All these benevolent things might it have done had not the United States Government, in a moment of petulence, stamped "Fraud" in big letters all over the rosy dawn of a new agricultural era and turned a Utopian future into a pathetic past. This was "Alaska Wheat"—near relative of the "Seven Headed Wonder," "Egyptian Mummy" and other wheats of high degree, which performed all kinds of feats except when the experts of the Agricul-

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Plaintiff's Exhibit 14 1003

tural Department come to watch, in which case they seem to become victims of stage fright and are unable to give any better account of themselves than the plain farm varieties that go into our daily bread. Alaska wheat had fine prospects until the government stepped in. Its discover and promoter is said to have reaped several thousand dollars from it, at the rate of $20 per bushel. His tale had a pleasing beginning in mystery. His head of wheat came to him out of the great and little known Northland, where everything is big—the nuggets of gold, the beds of coal, the trees of the forests, the Kadiak bears and the mountain that was 1004
not climbed by "Doc" Cook.

Mysterious Stranger Gives Marvelous Wheat to Farmer Adams of Idaho.

Abram Adams, farmer, of Julietta, Ida., is the hero. Farmer Adams had been raising wheat off and on for years down home, but when he met a mysterious stranger while returning from a trip to British Columbia, and when that stranger handed him a single head of wheat, his eyes grew big with wonder and admiration. "I just picked it up in Alaska," said the stranger. The year was 1904, a memorable one for Farmer Adams, for he carefully carried that head of wheat 1005
back to Idaho, put it in the earth in the fall of the year and then paced up and down restlessly until the springtime should read the riddle for him.

The history of that mysterious head of wheat is told in the records of the Postoffice Department, in that particular bureau which is devoted to detecting fraudulent users of the mails. In the year 1908 articles began to appear in newspapers here and there, and that in at least one widely circulated weekly, from the pen of Oscar F. Day, concerning a "marvelous" wheat discovered by Farmer Adams, Two hundred and

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1006 twenty-two and a half bushels to the acre was its record! Agricultural folks who read these articles wrote by next mail to Farmer Adams, asking how about it. In return they received printed circulars, with halftone engravings and big type and the word "Alaska," with an exclamation point after it, and the information that a limited supply of this prodigy of nature could be obtained from the Adams-Hobe Seed Grain Company, price $20 per bushel. It was the "cereal marvel of the world," to quote from this Idaho farmer's literature. According to his tale, he had devoted a lot of time to perfecting this wheat. Afterward he
1007 admitted to the Government that he had not, but had simply planted the single head received from the mysterious stranger in British Columbia.

53,000 Pounds of Wheat at $20 a Bushel.

Now, what happened to that head of wheat was this, according to the circular: It harvested seven pounds in 1905. Farmer Adams treasured that seven pounds until the spring of 1906. Then back to the soil it went. Presto! In the fall of 1906 he reaped 1,545 pounds. Step up, gentlemen! This is the marvel of the age. Only a few left, etc., etc.! Into the
1008 earth (always according to the circular) went that 1,545 pounds of cereal marvel, so that the year 1907 yielded 53,000 pounds. Not quite such a good record, gentlemen, we admit. But think of the hailstorms we had. Besides 53,000 pounds at $20 a bushel was a pretty good little nucleus for a mail-order business.

By this time Farmer Adams' wheat was attracting not only bucolic, but scientific attention. The Department of Agriculture, the Ohio Agricultural Station, the Colorado Agricultural College and Professor Elliott of Washington State College all addressed themselves to the American farmer on the subject.

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Plaintiff's Exhibit 14 1009

Unfortunately they all said it was a fraud. On September 28, 1908, the Agricultural Department was unkind enough to write to the Postoffice Department:

"This wheat is an ordinary variety, grown in numerous places in mountain valleys, and is of low grade for flour and is only an ordinary yielder."

Post Office Department Takes a Hand.

So the Postoffice Department sleuths investigated. They found that the Adams-Hobe concern was owned by Farmer Adams and his son-in-law, O. K. Hobe— 1010
who was perfectly willing to put his O. K. on Alaska wheat. The first two crops, it also appeared, had been planted in Farmer Adams' garden, where the soil was very fertile and drilled thin. For the two years the wheat had been sown in ordinary fields the yield had been no better than that of other varieties, and in some places not so good. Farmer Adams admitted in an affidavit that when the wheat was sown outside of his magic little garden it yielded from 25 to 30 bushels per acre—not 222 1/2. It also developed that his circulars had been prepared by Mr. Day, who had written the newspaper and magazine articles, and that the Adams-Hobe Company was doing its mail order business with the East and South; practically none in the 1011
West.

On November 25, 1908, the Postoffice Department told the postmaster at Julietta to hold up any more mail that might come for Farmer Adams' concern, and then notified the farmer that it was from Missouri and would have to be shown a few things about the cereal marvel before he could get his letters. Farmer Adams came to Washington in a hurry and began to admit things. He admitted that his wheat, planted under ordinary farm conditions, yielded only about thirty bushels per acre, and that it was "not what

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1012 *Plaintiff's Exhibit 14*

was hoped for." He admitted that the claim of 222-1/2 bushels per acre in "large tracts" was not true, and that the only large yield was the crop of 1906. But to back up his claims for Alaska wheat he brought down from Brookline, Mass., F. M. Slagle, who averred that he had knowledge of wheat, and believed that the Alaska grain would be a great yielder; better than other varieties.

Experts Find Nothing Marvelous in Alaska Wheat.

1013 They sent Adams and Slagle over to the Bureau of Plant Industry, in Tama, Jim Wilson's department, to show Dr. Galloway and his experts what the cereal marvel could do. Now, it takes a mighty industrious plant to startle the Plant Industry Bureau, which on January 20, 1909, advised the Postoffice Department that there was no evidence to show that Alaska wheat was anything but the wellknown Seven-Headed Egyptian, or Mummy, wheat, already cultivated in a small way in the Northwest. It appeared to be analagous to Little Club in yielding qualities, which at best is ranked about half way between the best and the poorest of milling wheats. Farmer Adams was told that if he could give Alaska wheat its right name, state that
1014 it was to be ranked with Little Club, both in quality, average yield and breadmaking properties, the department would have no objection to his selling it.

On February 25, Adams made an affidavit to the Postoffice Department, in which he agreed to allow the mail that had accumulated at Julietta to be confiscated, promised to destroy the circulars that he had on hand and also promised that if any new ones should be issued they should be in accordance with the views of the Agricultural Department.

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Plaintiff's Exhibit 14

Bobs Up Again at Rate of 206 Bushels to the Acre.

But Alaska wheat was not to be thus summarily cheated of its bright future—as a mail order proposition. On April 5 following, the Agricultural Department tipped off the Postoffice Department that a circular was going out over the name of the Alaska Wheat Seed Grain Company, of Julietta, Idaho, and St. Paul, Minn. It was the same old friend—Alaska wheat, now running as high as 206 bushels to the acre in Idaho, and selling, gentlemen, for the small sum of $20 per bushel. E. H. Hobe, brother to son-in-law O. K. Hobe, was running the St. Paul office. It was a perfectly good circular, with pictures and promises and injunctions like this:

DON'T WASTE TIME.

Start Your Fields to Bringing You Big Money.

30,000,000 of Acres are Waiting for Alaska Wheat Seed.

Well, the Post Office Department acted sort of short and suddenlike. On April 19, 1909, it clapped a fraud order on the company and put an end to the mail business. The 30,000,000 acres are still waiting. Not only was it a fraud, declared Assistant Attorney General R. P. Goodwin, but it was a violation of promises made to the department, because the company had submitted one innocuous circular to the Government authorities and then issued an entirely different one to the public. Mr. Goodwin decided that the scheme could be treated "only as a deliberate and intentional scheme to defraud a credulous public."

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1018 *Plaintiff's Exhibit 15*

So ends the story of Farmer Adams and the head of wheat presented to him by the mysterious stranger from British Columbia. In one of his circulars Farmer Adams admitted that he had heard of such a thing as Miracle Wheat, and Seven Headed Wonder, and Egyptian Mummy, but he did not claim to know anything about them. All he knew was Alaska wheat. Simple arithmetic shows that Miracle Wheat must be three times as good as Alaska wheat, because it costs three times as much. Just what the Post Office Department may or may not do to Miracle Wheat its
1019 hard hearted officials will not say. But over in the Bureau of Plant Industry even the stenographers giggle when you ask about it.

Plaintiff's Exhibit 15 for Identification, Offered at folio and excluded and Exception Taken.

(Extract from Brooklyn Daily Eagle of Oct. 11, 1911.)

PASTOR RUSSELL SUES EAGLE FOR $100,000

1020 *Alleges Articles and Cartoon on "Miracle Wheat" Injured His Reputation.*

REFERS TO "ONION" BANK.

Objects to Inference in Picture That He Was Trying to Swindle Public.

In behalf of Pastor Russell, who is in Europe, a suit against the Brooklyn Daily Eagle for the recovery of $100,000 has been instituted by Edward W. Brenneisen, his agent.

The complaint alleges that Pastor Russell has suffered "injury to his reputation, good name, fame and

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Plaintiff's Exhibit 15 1021

standing" through the publication of certain articles concerning the sale of seed wheat, known as "Miracle Wheat," at $1 a pound at the Brooklyn Tabernacle, and particularly by the publication of the following cartoon, which appeared in The Eagle on September 23:

EASY MONEY PUZZLE.

(Cartoon as shown in Exhibit 10 printed at page 326 folio 976).

1022

If Pastor Russell can get a dollar a pound for Miracle wheat, what would he get for Miracle stocks and bonds as a director in the old Union Bank?

The attorneys for the plaintiff are Sparks & Fuller and Joseph F. Rutherford, and the action is brought in the Kings County Supreme Court.

The complaint recites that Pastor Russell has preached the gospel for thirty years, that he is the pastor of the Brooklyn Tabernacle and the London Tabernacle, that he is president of the Watch Tower Bible and Tract Society and of the People's Pulpit Association, and that through his work as "preacher, pastor, teacher and author he has the respect, esteem and confidence of many thousands of people." 1023

Confidence in Pastor Russell Has Been Shaken.

This general confidence, according to the complaint, has been shaken by the suggestion that the $1 a pound seed wheat, known as "Miracle Wheat," is of no greater value than ordinary wheat, and by the cartoon reproduced above. It is further alleged that the plaintiff has been "brought into scandal and reproach and has been held up to odium, scandal, disgrace and con-

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1024 *Plaintiff's Exhibit 15*

tempt among his neighbors, friends and the readers of his Journal, books and other writings and among his parishioners and members of his congregations."

The complaint goes on to say that Pastor Russell, because of these publications, has received through the mails "insulting and insinuating letters and writings."

Particular objection is made in the complaint to the presentation of the so-called "Miracle wheat" and Pastor Russell in connection with the Union Bank.

1025 *Says Onion Bank Cartoon Represented Pastor as "Street Hawker."*

It is alleged in the complaint:

"That the building shown in the picture, photograph, drawing or cartoon, aforesaid, is intended to represent and does represent the said Union Bank Building and the words across the top of the door, to wit, 'Onion Bank,' represent and were intended by defendant to represent said Union Bank; that the figure of the man standing in the door of said building * * * represents some officer connected with the bank, and that the old man in the street represents the
1026 plaintiff 'going through the streets carrying a package of 'Miracle Wheat,' and as a 'street hawker' crying out his wares for sale; and the words, 'You're wasting your time, come on in here' * * * represent an invitation to the plaintiff 'to cease selling wheat and come on in the bank and join others in defrauding its depositors and patrons, that his, plaintiff's time could be much better employed in said bank and greater returns could be realized by plaintiff engaging with those in the bank in fleecing, cheating and defrauding its patrons and depositors that the words 'Easy Money Puzzle,' appearing on said picture, photograph, drawing or cartoon, were intended by de-

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fendant to represent and do represent that both plaintiff and said Union Bank directors and officers were engaged in an unrighteous and unlawful scheme or business, and that plaintiff by misrepresentations, fraud and deception was obtaining 'easy money' or dishonest money or tainted money, from the people."

The papers in the action go on to say that "the statements and representations made and attempted to be made and conveyed" were and are "wholly false and were printed, edited, composed and published by the defendant maliciously and with a wrongful intent of injuring the plaintiff" in his good name and his professional career as a preacher. 1028

Plaintiff's Exhibit 16 for Identification, Offered at folio and Excluded and Exception Taken.

EAGLE FILES ITS ANSWER IN 'PASTOR' RUSSELL SUIT.

Denies Having Libeled the "Pastor," and Will Prove Truth of Every Assertion.

WILL GO FURTHER AT TRIAL. 1029

Answer Declares It Will Be Shown Russell's Religious Cult Is Mere Moneymaking Scheme.

Through Dykman, Oeland & Kuhn, its attorneys, The Brooklyn Daily Eagle has filed its answer to the complaint of "Pastor" Russell in which he sues this paper for $100,000 for publishing articles on the sale of Miracle Wheat" for $1 a pound in the Brooklyn Tabernacle.

In its answer The Eagle denies most of the assertions in the "Pastor's" complaint and declares that

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1030 every one of the assertions in the articles of which "Pastor" Russell complains is true, and will be proved to be true at the trial of the action.

The Eagle goes even further, and declares that at the trial it will show that "Pastor" Russell's religious cult is nothing more than a money-making scheme.

Partial Text of the Answer.

The Eagle's answer reads in part as follows:

"Defendant alleges upon information and belief that
1031 each and every of the statements set forth in said article complained of were and are true, and that each and every one of the following allegations were and are true:

"That the plaintiff is and has been for a long time the controlling and dominating power in certain corporations known as the 'Watch Tower Bible and Tract Society' and the 'People's Pulpit Association.' That he dictates, and has for a long time dictated, the actions and conduct of said corporations, and the executive boards thereof do, and for a long time have done his will. That in said Watch Tower Bible and Tract Society, a business corporation, he holds, dom-
1032 inates or controls, and has for a long time held, dominated or controlled, a majority of the voting shares of said corporation.

"That through the medium of said corporations, by the issuing, publishing and distributing vast quantities of printed matter, arranging for and providing speakers and lecturers on Biblical subjects, and in other ways, plaintiff has denounced and criticised all religions in the interest of a so-called religion or cult claimed to have been invented by himself called the 'Millenial Dawn' or 'Russellism,' the central tenets of said so-called 'Millennial Dawn' or 'Russellism' being

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Plaintiff's Exhibit 16 1033

that the world as it is now constituted will come to an end in October, 1914. By reason of the aforesaid, great numbers of persons, believing that the end of the material world is near and that only through 'sacrifice' of their material substance they can become of what he calls the 'elect' under what he calls the 'new dispensation,' have turned over their property to plaintiff and said corporations, in preparation for the end. Many of the said persons have given their property to plaintiff and said corporations outright and received assurances from plaintiff that they would receive interest thereon as long as they should live. 1034

Wills Made in "Pastor" Russell's Favor.

"Others have made wills, giving, devising and bequeathing property to him. Others, influenced in the manner aforesaid, have been persuaded by him to pledge and pay money for advertising plaintiff, and said so-called religion, and by virtue of a skillfully worded clause in the printed pledge they have been asked by him to sign, the money is made available for any purpose to which plaintiff, the president and controlling influence of said corporations, chooses to apply it. Through the means aforesaid, plaintiff has urged his followers to pay him their money to spread 1035 his doctrines and advertise himself, exhorting that 'The heavenly things are to be attained only by those who sacrifice earthly things.' Much of the money that has been received by plaintiff in this way has been invested in real estate, mining stocks and various speculative enterprises, the investments having been made in the name of dummy corporations, partnerships and associations, or through other persons acting as secret representatives or dummies for plaintiff. Plaintiff's said operations have extended until they cover every State in the United States as well as

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1036 *Plaintiff's Exhibit 16*

Story of "Miracle Wheat."

On or about June 15, 1911, plaintiff caused to be published in a journal known as 'The Watch Tower,' of which journal plaintiff was editor, and said Watch Tower Bible and Tract Society, publisher—an advertisement in the words following:

"A Donation of Miracle Wheat.

" 'Brother Bohnet writes us that he has gradually accumulated a crop of miracle wheat from the few grains he obtained as a start. He prefers that the
1037 first opportunity for obtaining this wheat shall go to The Watch Tower readers. He will sell it for $1 per pound, including postage, and give the entire proceeds to our society. All orders for this wheat should be addressed Miracle Wheat Bohnet, 17 Hicks street, Brooklyn, N. Y. This will keep mail on this subject separate from his personal mail and from ours.

" 'Brother Bohnet promises to be ready to ship this wheat by August 1. He says miracle wheat should be sowed one-fourth as thick as common wheat. Ordinarily it should produce from ten to fifteen times as much proportionately to the amount sown. To save keeping account, money should accompany the order.
1038 Watch Tower readers will have the preference up to August 15, after which orders will be attended to indiscriminately, so long as the supply holds out. This wheat should be sown in the fall.'

"That said seed wheat was of no greater value than ordinary seed wheat which could be procured for a far lower price and had no peculiar virtue when used as seed. That there was nothing miraculous about said so-called and so advertised 'Miracle Wheat.'

"That large quantities of said so-called 'Miracle Wheat' were sold with the aid, connivance, consent and procurement of plaintiff, and at the 'Brooklyn

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Plaintiff's Exhibit 17

Tabernacle,' controlled by plaintiff, in the Borough of Brooklyn, City of New York during the month of September, 1911, with and because of the understanding on the part of the purchasers of same that the entire proceeds from such sales would be given to said Watch Tower Bible and Tract Society and that thereby they would be rewarded after death, and also, because of the state of mind into which they had been put through the teachings of plaintiff and said corporations, that said 'Miracle Wheat' possessed supernatural qualities."

Plaintiff's Exhibit 17.

WORTHLESS NOTE WAS BANK ASSET.

Repudiated Obligation of $50,000 Carried Under Grout Regime.

HINT OF FORGERY.

Francis C. Brown Denies Knowledge of Papers Totaling $40,000.

GRAND JURY TO ACT.

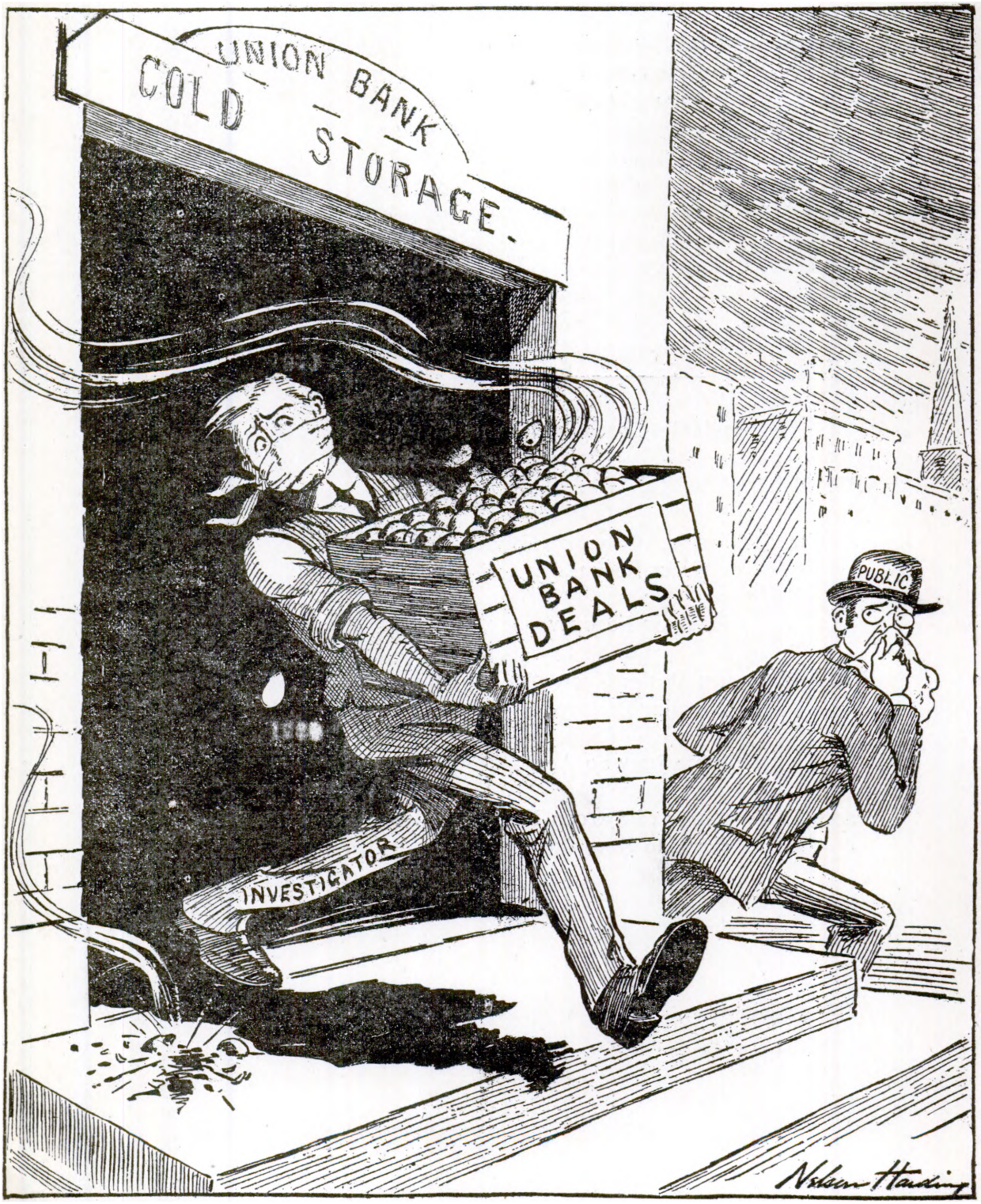
Clarke Takes Charge of $50,000 Note and Also Checks Believed to Have Been Forged.

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Plaintiff's Exhibit 18.

Cartoon, issue of Brooklyn Daily Eagle, Sept. 13, 1911.

"ROTS AND SPOTS!"



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Plaintiff's Exhibit 19. 1045

SAYS ELLIOTT DICTATED FULL BOOK OF MINUTES FOR DUMMY REALTY CO.

Stenographer for Mechanics and Traders Bank Throws Light on Methods of Sullivan.

WAS PAID BY THE BANK.

But She Worked in Gilbert Elliott's Office and Got at Joralemon Company's Minutes at One Time.

Plaintiff's Exhibit 20. 1046

FOUR BANK WITNESSES BEING VAINLY SOUGHT BY GRAND JURY AGENTS.

C. J. Brooks, Horace Nichols, L. D. Burkhardt and J. D. Hildreth Are Not to Be Found.

ARE VERY MUCH NEEDED.

Missing Persons Are in a Position to Clear Up Some Very Important Transactions Under Investigation.

Plaintiff's Exhibit 21. 1047

BANK'S NOTES SECURED BY DUMMY MORTGAGES DRAWN UP BY ELLIOTT.

Latter Says He Was an "Easy Mark," Willing to Take Chances, and Did as He Was Told.

ANOTHER FORGERY APPEARS.

Dunne Says He Never Saw Incorporation Papers Bearing His Name and Witnessed by C. J. Brooks.

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1048 **Plaintiff's Exhibit 22.**

PILLAGE DOGGEREL.

1049



1050 Hark! Hark! the dogs didn't bark,
So the looters came to town;
They pulled fees and bonds from the Union Bank
Until it tumbled down.

Plaintiffs' Exhibit 23.

DIRECTORS OWED BANK $1,471,550 IN PANIC.

Heavy Borrowings in October, 1907, From Mechanics and Traders.

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Plaintiff's Exhibit 24. 1051

DIX EXPECTED TO ISSUE SUBPOENA FOR E. M. GROUT.

Van Tuyl Has No Objection to This Proceeding if Attorney General Favors It.

QUESTION OF POWER INVOLVED.

Report That Investigation Is Being Made of What Has Become of Sullivan's Money.

Plaintiff's Exhibit 25. 1052

NO ACTION IN GROUT CASE BY DIX, WHO QUITS ALBANY.

Inference That Governor Will Not Issue an Executive Subpoena.

COMMITTEE'S VISIT IN VAIN.

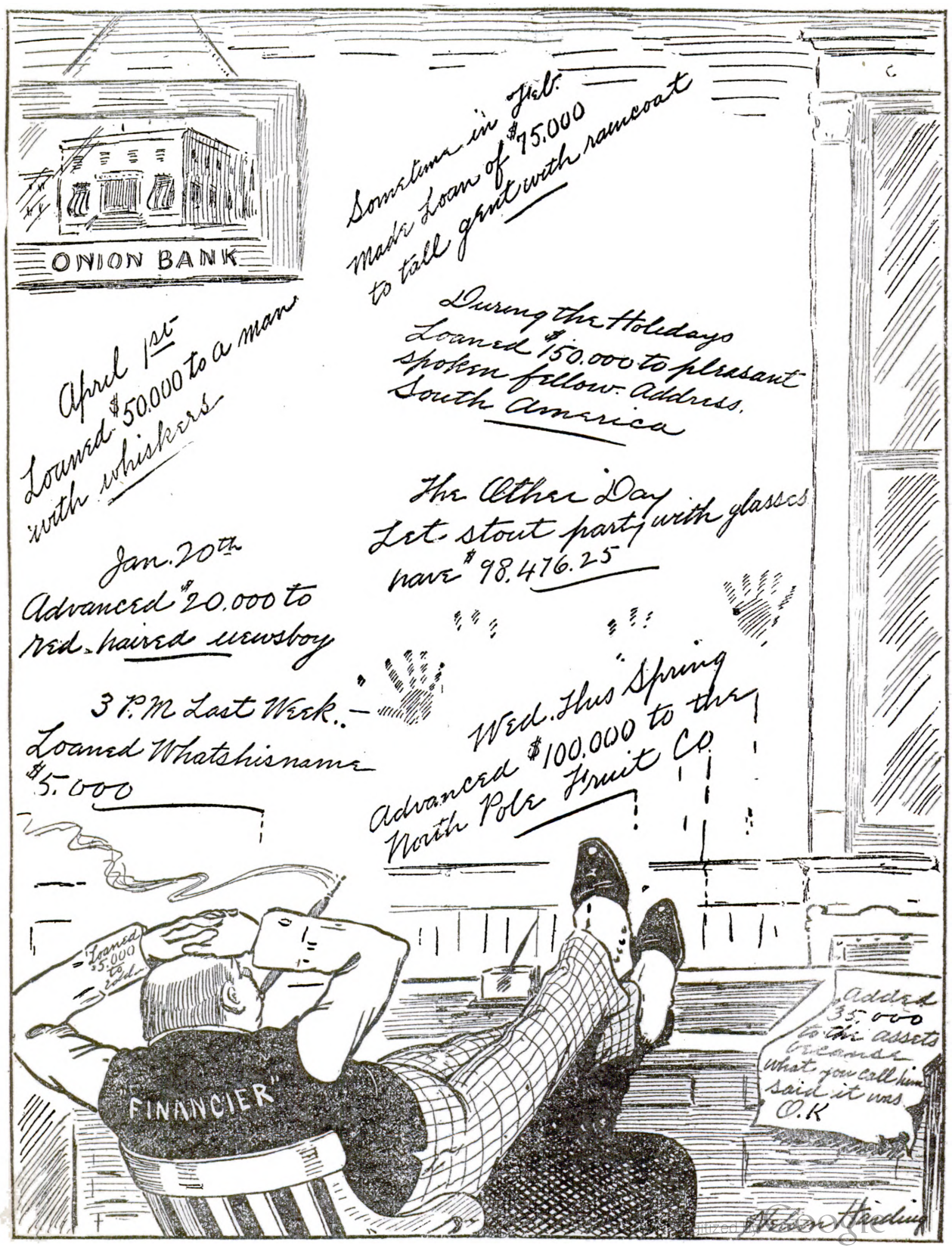
Representatives of Union Bank Depositors Angry at Slight Put Upon Them by Governor.

1053

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Plaintiff's Exhibit 26.

"SECURITIES!"



Plaintiff's Exhibit 27.

1057

UNION BANK PROBE TO GO ON, SAYS DODGE.

Governor's Refusal to Subpoena Grout Will Not Halt Investigation.

MORE SENSATIONS EXPECTED.

Attorneys Unearth Additional Peculiar Transactions —Hearings to Be Resumed Monday.

1058

~~Plaintiff's Exhibit 28.~~

~~This is same as Exhibit 12 see p.~~

Plaintiff's Exhibit 29.

INDICTMENTS REPORTED IN UNION BANK CASE

Rumor Is That Five or Six Have Been Found by Grand Jury.

1059

MAY BE HANDED IN ON FRIDAY.

Mr. Goldstein, Mr. Chambers and Delegation Will Urge Gov. Dix to Act on Grout Subpena.

Five or six indictments are said to have been found as a result of the Union Bank investigation. According to the same authority these will be handed down by the Grand Jury next Friday. The information that the jurymen might take some such action reached

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1060 *Plaintiff's Exhibit 29*

depositors of the bank who are close to the prosecution last night.

It is understood that the Grand Jury has come to a conclusion on some cases, but has some others still under consideration. It was said last night to be almost certain that indictments would be handed in.

Assemblyman Louis Goldstein, special prosecutor in the Union Bank case, will go to Albany, Monday night, and will be out of the city Tuesday, Wednesday and Thursday. The depositors who had received the information about the indictments last night said
1061 the handing down of the indictments would wait upon the return of the prosecutor.

Assemblyman Goldstein, State Superintendent of Banks Van Tuyl and Deputy Attorney General Chambers conferred all of yesterday afternoon in Manhattan over the developments in the Grout case. Affidavits were prepared in reply to the appeals taken by Grout from the orders of Justice Putnam and these will be filed with County Clerk Molloy on Monday morning.

The deputy attorney general gave Assemblyman Goldstein to understand that in his opinion the Governor would be well within his rights if he should issue an executive subpoena for Edward M. Grout
1062 and compel the testimony of the former president of the Union Bank. Mr. Chambers, after filing the affidavits in reply to the Grout appeals, on Monday, will go directly to the Governor's chambers in Albany and impress upon the executive the necessity of having the testimony of Mr. Grout immediately. He will tell the Governor that there is no bar to an executive subpoena and no steps by which its service or execution can be stayed.

Mr. Goldstein will reinforce the statements of the deputy attorney general and both will be backed by representatives of the executive committee of the bank

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depositors. A delegation of these men will go to Albany to ask the Governor to do all that he can to hurry the investigation. J. E. Rohrer will be chairman of this committee. Henry Nieland, Jr., John Woodbury, John McCrate and others will be in the delegation. 1063

Plaintiff's Exhibit 30.

Live exhibit of two stools of miracle wheat produced by William T. Pray, one stool containing approximately 80 stalks, and the other not counted; raised in New Jersey. 1064

Plaintiff's Exhibit 35.

"MIRACLE WHEAT"

The public press is telling of the origin of "Miracle Wheat" in answer to prayer. The description has the earmarks of truth to it, in that it gives the address of the man whose prayers are said to have been answered—"K. B. Stoner, a farmer of Fincastle, Botetourt county, Virginia." It would appear from the account that the original stalk of wheat appeared in the midst of a crop of the ordinary kind, but with "142 heads of grain." We quote: 1065

"Mr. Stoner was amazed. It seemed incredible. When a Frenchman, in 1842, announced that he had discovered a species of wheat in the Mediterranean country which produced four heads to the plant, people said he was crazy.

"But here was a plant with 142 heads!

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1066 *Plaintiff's Exhibit 35*

"Naturally Mr. Stoner carefully preserved the heads, and the next year sowed the seed, continuing to do this each year, for he realized he had discovered a phenomenal brand of grain. And each year his amazement increased.

"That first year after discovering the plant he got 2000 grains. In 1906 he got sixteen bushels, and has now raised the crop of wheat, all carefully preserved for seed, to 800 bushels.

"What is most remarkable about the wheat is this: Whereas there is produced in the wheat sections of that county an average at the best of seventeen bushels
1067 to an acre, the average yield of the 'miracle wheat' during the last three years has been fifty-six bushels to the acre; and whereas from eight to ten pecks of seed are required to plant an acre in Virginia, Mr. Stoner uses only two pecks, and, in comparison to the yield of ordinary wheat in the neighborhood, which is eight bushels for each bushel of seed, Mr. Stoner gets about seventy-five bushels for one. An ordinary stalk of wheat covers about four inches of space. The miracle wheat covers twelve.

THE GOVERNMENT REPORT

1068 "Last year United States government officials became interested in the remarkable wheat and sent Assistant Agriculturalist H. A. Miller to examine it. In his report he declares:

" 'The wheat, which came from an unknown source, has been grown in the nursery every year since that time, and also has been grown under field conditions the last two years, giving excellent results. The yield has been from two to three times the yield of other varieties grown on the farm under the same condition of culture, except the rate of seeding, which was two pecks to the acre, while other varieties were sown at

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1069

the rate of eight to ten pecks per acre, which is the common practice of farmers in the vicinity.

" 'Milling tests have been made of this wheat, and its quality seems to be as good as, if not superior to, other varieties of winter wheat.'

"The average height of the wheat, according to the report, is four feet four inches.

"It is said that the Russian government has secured an option on the wheat, and will buy a consignment of 80,000,000 bushels when that quantity shall have been raised. During the next year the seed will be distributed among farmers in Virginia and North 1070
Carolina, who will raise it and preserve the seed, keeping the seed only for planting until the required amount will have been produced. By next fall, it is believed, 30,000 bushels will have been produced."

IS IT RESTITUTION WHEAT?

If this account be but one-half true it testifies afresh to God's ability to provide things needful for the "times of restitution of all things which God hath spoken by the mouth of all the holy prophets since the world began."—Acts 3:19-21.

1071

Plaintiff's Exhibit 36.

MORE MIRACLE WHEAT

Our notice of the "Miracle Wheat" grown in Virginia, the grower reports, has caused him lots of trouble answering letters and returning money sent for small samples. He has shown us representative stalks of the wheat and photos of its growing in the field, fully corroborating all that we have published

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1072 *Plaintiff's Exhibit 36*

respecting the same. But he refuses to sell any of it until he has secured a fair stock, which will be in a few years hence.

Meantime the matter has brought out the fact that others are also propagating "Miracle Wheat," as witnessed by the subjoined reports. We advised farmers to begin at once to inspect their wheat before cutting and cull out for seed the choicest, fullest heads or most "stooled." Our thought is that in that natural way God is preparing for the Millennium, when "the earth shall yield her increase."

1073

SEVEN-HEADED WHEAT DISCOVERED

W. W. Ward, of Dayton, Washington, has discovered a new variety of wheat that has seven distinct heads united to a common base. And each head is larger than the ordinary wheat. Ward figures that the new variety will yield as high as 280 bushels to the acre, with an average of 200 bushels.

Hundreds of farms have visited the Ward ranch and are intensely interested in the new wheat. All have asked for a few pounds of the seed, but Ward is figuring upon further experiments and plans to plant all of this year's crop next season, enlarging his pres-
1074 ent area to about three acres.

Ward has been experimenting for five years to get a wheat that will yield bigger crops, but never expected anything like the seven-headed variety.—*Sioux City Tribune.*

* * *

Neither of the above notes relate to what is termed "Alaska" wheat grown in Idaho, which we understand had been repudiated by Government experts.

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Plaintiff's Exhibit 37.

1075

No. ..... Shares .....
Name .....
Of .....
Credits .....
Date .....
Donations .....
No. .... Shares

WATCH TOWER BIBLE AND TRACT SOCIETY

1076

THIS CERTIFIES that ..... of ..... is the owner of ..... voting shares of the WATCH TOWER BIBLE AND TRACT SOCIETY, non-forfeitable, non-assessable and non-dividend bearing; transferable only upon the books of the Corporation on surrender of this certificate, properly assigned and approved by the Board of Directors.

IN WITNESS WHEREOF the said Corporation has caused this certificate to be signed by its duly authorized officers and sealed with the seal of the Corporation this ..... day of .....

1077

.....
President.

.....
Secretary.

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1078 **Plaintiff's Exhibit 38 for Identification.**

This exhibit is the cashier's check of the Second National Bank of Toledo, Ohio, dated December 2nd, 1911, to the order of C. T. Russell, for $10,000; endorsed "C. T. Russell per W. E. Van Amburgh" and deposited by the Watch Tower Bible & Tract Society in the Nassau National Bank of Brooklyn.

Offered in evidence at page 287 P. C. Fol. 860.

Excluded and excepted to at page 287. Fol 861.

1079 **Defendant's Exhibit A.**

K. B. Stoner J. I. Knight

STONER SEED WHEAT CO.,

1078 East 38th St.,

Brooklyn, June 21st, 191 .

Prof Minkler.

Dear Sir:

1080 Sorry not to have met you at New Brunswick on Monday. I hope you will be able to test the sample of wheat for me. I wish to send to that Italian party who rejected my seed on account of black rust. Am willing to pay expenses of test. Will you please let me know how soon I can get results. I had hoped you would have experimented further with our wheat and looked for some remarkable stalks grown by you. I believe you can get them containing 100 heads. You recommended our wheat last year and one party took enough seed to sow 10 acres. I desire that you should get some compensation and am willing to pay you $1.00

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Defendant's Exhibit B

1081

per bushel for all seed you are instrumental in selling. This summer I propose to sell seed for first time. If my proposition strikes you favorably would like to talk the matter over.

Yours truly,
(Signed) J. I. KNIGHT.

Address me 3451 Walnut St., Philadelphia.

Defendant's Exhibit B.

1082

August 28, 1911.

Mr. J. I. Knight,
3451 Walnut St.,
Phila, Pa.

Dear Sir:

I have your letter of Aug. 17th, and note what you say regarding Miracle Wheat. I wish you would write to Miss Sarah V. Clark, R. F. D., Middlebush, N. J., quoting her on some seed wheat, as she has made several inquiries regarding Miracle Wheat.

Regarding the portion of your letter referring to commission, I beg to advise that I would not, under 1083
any consideration, accept commission for any sales of wheat; I am not in the commission business, and would not accept any gratuities whatsoever. I am perfectly willing to refer any inquiries regarding this wheat to you, and to give them our experience with this product, but further than this I could and will do nothing.

Yours very truly,

Professor of Animal Husbandry.

FCM/K

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1084 **Defendant's Exhibit C.**

K. B. Stoner J. I. Knight

STONER SEED WHEAT COMPANY

3451 Walnut St.,

Philadelphia, July 11th, 1911.

Prof. Minkler.

Dear Sir:

Your Mr. Halsted reported concerning the *rust* matter. I am coming your way soon and will call upon
1085 you.

It is my wish to attend the Farmers' meeting at your place this year. Will you please inform me of the date on which it is to be held. Wheat crops were generally short this year, but considering conditions, our seed did fairly well. Don't forget my proposition —and I believe it can be made mutually beneficial.

Yours truly,

(Signed) J. I. KNIGHT.

Defendant's Exhibit D.

1086

K. B. Stoner J. I. Knight

STONER SEED WHEAT COMPANY,

3451 Walnut St.,

Philadelphia, Pa., Aug. 26th, 1910.

Prof. Minkler,
New Brunswick.

Dear Sir:

I hope you have been able to ascertain data concerning the wheat you grew from our seed— We

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Defendant's Exhibit E

1087

wish the farmers of N. J. to plant and raise this seed and if results justify a report from your institution favorable to this end I might be able to use it to our mutual interest— We would be pleased to hear from you— When does your farmers' annual meeting take place?

Yours truly,
(Signed) J. I. KNIGHT.

Address me Camden, N. J., Gen. Delivery.

1088

Defendant's Exhibit E.

J. A. Carlton
Dentist

Palmetto, Ga., Augst 10-10

Dear Brother Russell:

Realizing your interest in the things that our Lord is preparing for "the restitution of all things" I include a photo of one stand of Miracle wheat with 69 stalks with well developed heads from one seed. I estimate that there is something near Three Thousand grains on this stand. Some heads have 90 grains. This stand was taken out of the field and photoed. I have just returned from the Celoron Convention which was spiritually helpful.

1089

May the Lord continue to bless you in your labors for his people.

With much appreciation love and prayers for you I am yours in the hope of the early consummation of "the things spoken by the mouth of all the holy prophets."

J. A. CARLTON.

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1090 **Defendant's Exhibit F.**

WATCH TOWER
BIBLE AND TRACT SOCIETY.

Bible House, Allegheny, Pa., U. S. A.
Sep. 26, 1908.

United Cemeteries,
Allegheny, Pa.

Gentlemen:

I, Chas. T. Russell, do hereby constitute and appoint Mr. F. H. Robison my representative or proxy as a
1091 trustee of the Rosemont, Mount Hope and Evergreen United Cemeteries. I hereby authorize him in my name and stead to vote at any meetings of the said board of directors which may be held this day or at any time during this year.

Witness my hand and seal this 26th day of September, A. D., 1908.

(Signed) C. T. Russell (Seal)

Witness
F. W. Williamson

1092 **Defendant's Exhibit G.**

Serial No. D22028.

THIS INDENTURE, made the 14th day of May, in the year one thousand nine hundred and nine, between WILLIAM E. VAN AMBURGH, of Pittsburgh, Pennsylvania, hereinafter described as party of the first part, and WATCH TOWER BIBLE AND TRACT SOCIETY OF PITTSBURGH, PENN., hereinafter described as party of the second part,

WHEREAS, the said WILLIAM E. VAN AMBURGH, is justly indebted to the said party of the second part, in

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1093

the sum of TWENTY-FOUR THOUSAND dollars, lawful money of the United States, secured by a certain bond or obligation, bearing even date herewith, to be paid on the fourteenth day of May, one thousand nine hundred and ten, with the interest thereon, to be computed from May 14th, 1909, at the rate of five per centum per annum, and to be paid on the 14th day of November next ensuing, and semi-annually thereafter.

IT BEING THEREBY EXPRESSLY AGREED, that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided. NOW THIS INDENTURE WITNESSETH:

1094

That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to the successors and assigns of the said party of the second part, forever. All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, of the City of New York, County of Kings and State of New York, bounded and described as follows, to wit:

1095

BEGINNING at a point on the westerly side of Columbia Heights, distant twenty-five feet, three inches Southerly from the corner formed by the intersection of the westerly side of Columbia Heights with the southerly side of Orange Street; running thence Westerly parallel with Orange Street and part of the distance through the centre of a party wall, one hundred and fifty feet to the easterly side of Furman Street; thence Southerly along the easterly side of Furman Street twenty-five feet, three inches; thence Easterly parallel with Orange Street and part of the distance

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1096 through the centre of a party wall, one hundred and fifty feet to the westerly side of Columbia Heights; and thence Northerly along the westerly side of Columbia Heights twenty-five feet three inches to the point or place of beginning. BEING the same premises which were conveyed to the said party of the first part by deed intended to be recorded simultaneously with this indenture. THIS MORTGAGE being a purchase money mortgage, and given to secure a portion of the consideration in said deed expressed. TOGETHER with all fixtures and articles attached to or used in connection with said premises, all of which are declared to be
1097 covered by this mortgage. TOGETHER with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, and to the successors and assigns of the said party of the second part forever. PROVIDED ALWAYS, that if the said party of the first part, or the heirs, executors or administrators of the said party of the first part, shall pay unto the said party of the second part, or the successors or assigns of the said party of the second part, the said sum of money mentioned in the said bond or obligation, and the interest thereon, at the time and in the manner mentioned
1098 in the said bond or obligation, that then these presents, and the estate hereby granted, shall cease, determine and be void. AND said party of the first part covenants with the party of the second part, as follows:

FIRST: That said party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law.

SECOND: That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

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Defendant's Exhibit G

THIRD: And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for thirty days after notice and demand.

FOURTH: That the holder of this mortgage, in any action to foreclose it, shall be entitled without regard to the adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of said premises; and said rents and profits are hereby, in the event of any default or defaults in paying said principal or interest, assigned to the holder of this mortgage as further security for the payment of said indebtedness.

FIFTH: That until the amount hereby secured is paid, the party of the first part will pay all taxes, assessments and water rates, which may be assessed or become a lien on said premises, and, in default thereof, the holder of this mortgage may pay the same, and the party of the first part will repay the same with interest, and the same shall be a lien on said premises and secured by this mortgage.

SIXTH: That the mailing of a written notice and demand by depositing it in a postpaid envelope addressed to the owner of record of said mortgaged premises, and directed to said owner at the last address actually furnished to the holder of this mortgage or in default thereof, directed to said owner at such mortgaged premises, in any postoffice, station or letter box shall be sufficient notice and demand in any case arising under this instrument.

SEVENTH: That the party of the first part will execute any further necessary assurance of the title to said premises, and will forever warrant said title.

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1102 *Defendant's Exhibit G*

IN WITNESS WHEREOF, the said party of the first part hath signed and sealed this instrument the day and year first above written.

WILLIAM E. VAN AMBURGH, (L. S.)

In the presence of

Geo. S. Pettit.

State of New York, }
City of New York, } ss:
County of Kings, }

On this 14th day of May in the year nineteen hun-
1103 dred and nine, before me, the undersigned, personally came William E. Van Amburgh, to me personally known, and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

GEO. S. PETTIT,
Commissioner of Deeds for the
City of New York,
Residing in the Borough of Brooklyn.

Tax Statement:

Kings County Register's Office.

1104 Received as recording tax on the within instrument $120.00. May 14, 1909.

WM. A. PRENDERGAST,
Register, Kings County.

The land affected by this instrument lies in section 1, Block 223, on the land map of the County of Kings.

Recorded May 14, 1909, at 44 min. past 1 P. M.
Return to T. G & T. Co.
Liber 3284, page 484 of Mortgages.

O'DONNELL,
Comparer.

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Defendant's Exhibit H 1105

Register's Office,
County of Kings,
State of New York.

I, E. T. O'Loughlin, Register of the said County, have compared the annexed copy with an instrument Mortgages recorded in this office, on the 14th day of May A. D., 1909, at 1 o'clock 44 min. P. M. Section 1, Block 223, Liber 3284 of Mortgages, page 484, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 17th 1106
day of January, 1913.

E. T. O'LOUGHLIN,
(Seal) Register.
A. EKROTH,
Assistant Deputy Register.

O'Donnell,
Comparer.

Defendant's Exhibit H.

THIS INDENTURE, made the 14th day of May in the 1107
year nineteen hundred and nine, BETWEEN WILLIAM E. VAN AMBURGH (widower) of Pittsburgh, Pennsylvania, party of the first part, and PEOPLE'S PULPIT ASSOCIATION, a corporation organized under the laws of the State of New York, party of the second part, WITNESSETH:

That the said party of the first part, in consideration of one dollar, and other valuable considerations lawful money of the United States paid by the party of the second part, doth hereby grant and release unto the said party of the second part, its successors and assigns forever, All that certain plot, piece or parcel of land

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1108 *Defendant's Exhibit H*

situate, lying and being in the Borough of Brooklyn, of the City of New York, County of Kings, and State of New York, bounded and described as follows, to wit:

BEGINNING at a point on the westerly side of Columbia Heights, distant twenty-five feet, three inches southerly from the corner formed by the intersection of the westerly side of Columbia Heights with the southerly side of Orange Street; running thence westerly, parallel with Orange Street and part of the distance through the centre of a party wall, one hundred
1109 and fifty feet to the easterly side of Furman Street; thence southerly along the easterly side of Furman Street, twenty-five feet three inches; thence easterly, parallel with Orange Street and part of the distance through the centre of a party wall one hundred and fifty feet to the westerly side of Columbia Heights; and thence northerly along the westerly side of Columbia Heights, twenty-five feet, three inches, to the point or place of beginning.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, its successors and assigns forever.

1110 SUBJECT, HOWEVER, to a certain indenture of mortgage, now a lien on said premises for the sum of twenty-four thousand dollars and interest.

AND the said William E. Van Amburgh doth covenant with said party of the second part, as follows:

FIRST: That said William E. Van Amburgh is seized of the said premises in fee simple, and hath good right to convey the same.

SECOND: That the party of the second part shall quietly enjoy the said premises.

THIRD: That the said premises are free from incumbrances, except as aforesaid.

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Defendant's Exhibit H 1111

FOURTH: That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

FIFTH: That the said William E. Van Amburgh will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

WILLIAM VAN AMBURGH. (L. S.)

In the presence of
Geo. S. Pettit.

1112

State of New York,
The City of New York. } ss:
County of Kings,

On this 14th day of May in the year nineteen hundred and nine, before me, the undersigned, personally came William E. Van Amburgh, to me personally known and known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged before me that he had executed the same.

GEO. S. PETTIT,
Commissioner of Deeds for the
City of New York,
Residing in the Borough of Brooklyn.

1113

The land affected by this instrument lies in Section 1, Block 223, on the Land Map of the County of Kings.

Recorded May 14, 1909, at 44 Min. past 1 P. M.
Return to Title Guarantee and Trust Co.
Liber 3147, page 139 of Conveyances.

O'DONNELL,
Comparer.

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1114 *Defendant's Exhibit H*

Register's Office,
County of Kings,
State of New York.

I, E. T. O'Loughlin, Register of the said County, have compared the annexed copy with an instrument Deed recorded in this office, on the 14th day of May A. D., 1909, at 1 o'clock 44 min. P. M., Section 1, Block 223, Liber 3147 of Conveyances, page 139, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have hereunto sub-
1115 scribed my name and affixed my official seal, this 20th day of January, 1913.

E. T. O'LOUGHLIN,
Register.

(Seal)

A. EKROTH,
Asst. Deputy Register.

O'Donnell,
Comparer.

1116

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Extracts From Defendant's Exhibit J (not in evidence).

1117

(TITLE PAGE)

EXTRA EDITION

Vol. XV, No. 8

ZION'S WATCH TOWER
and
HERALD OF CHRIST'S PRESENCE

April 25, 1894

C. T. Russell, Editor.

1118

"The disciple is not above his Master, nor the servant above his Lord. It is enough for the disciple that he be as his Master, and the servant as his Lord. If they have called the Master of the house, Beelzebub, how much more shall they call them of his household?

"Fear them not, therefore, for there is nothing covered that shall not be revealed; and hid that shall not be known—Matt. 10:24-26."

TOWER PUBLISHING CO.
Allegheny, Pa.
U. S. A.

1119

Entered as Second Class Mail Matter at the P. O.
Allegheny, Pa.

Extract from page 57 of Exhibit J:

"The affairs of the Society are so arranged that its entire control rests in the care of Brother and Sister Russell as long as they shall live."

Extract from page 58 of Exhibit J:

"It will be seen from this and other mentions of the subject in the Watch Tower that I have never intimated

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1120 *Defendant's Exhibit K*

otherwise than that the management of the Tract Society would probably rest entirely in the hands of myself and Sister Russell so long as we live."

Extract from page 59 of Exhibit J:

"Having up to December 1, 1893, 3705 voting shares out of a total of 6383 voting shares, Sister Russell and myself of course elect the officers and thus control the Society and this was fully understood by the directors from the first."

Extract from page 60 of Exhibit J:

1121 "For this reason also formal elections were not held, because it would be a mere farce, a deception to call together voting shareholders from all over the world at great expense to find upon arrival that their coming was useless, Sister Russell and myself having more than a majority over all that could gather."

Defendant's Exhibit K.

DEPARTMENT OF AGRICULTURE

1122 OFFICE OF THE SECRETARY

Washington.

I, James Wilson, Secretary of Agriculture, do hereby certify that the following and annexed are true, correct and compared typewritten copy of the original, on file in the United States Department of Agriculture, of a table showing the record of Miracle wheat grown at Arlington Experiment Farm, Virginia, in wheat nursery 1908.

DONE at Washington, D. C., this Twenty-fifth day of January, One thousand nine hundred and thirteen.

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Defendant's Exhibit K

1123

WITNESS my hand, and the seal of the United States Department of Agriculture.

(Signed) JAMES WILSON,
Secretary of Agriculture.

(Seal)

Record of Miracle wheat grown at Arlington Experiment Farm, Virginia, in wheat nursery, 1908. Rows seventeen feet in length, twelve inches apart, and the seeds 12 inches apart in the row.

C. I. No.	No. of row	Variety	Yield of grain per row	Yield per acre bus.	Stools (culms) per plant	Winter Survival
1923	1-2	Fultz (check)	2 lbs. & 6 1/8 oz.	50.83	———	100%
2980-1	6	Miracle	8 oz.	21.33	8 to 21	100
2980-2	7	"	9 1/4 oz.	24.63	"	"
2980-3	8	"	10 oz.	26.67	"	"
2980-4	9	"	7 3/4 oz.	20.67	6 to 8	"
542a-5-2	10-11	Hybrid	1 lb. & 7 3/4 oz.	31.66	———	"
1923	12	Fultz (check)	14 1/2 oz.	38.67	———	

1124

1125

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1126 **Defendant's Exhibit L.**

DEPARTMENT OF AGRICULTURE,

OFFICE OF THE SECRETARY,

Washington.

I, James Wilson, Secretary of Agriculture, do hereby certify that the following and annexer are true, correct and compared typewritten copies of originals, on file in the United States Department of Agriculture, of tables 1, 2, 3, 4 and 5, showing results of tests
1127 of Stoner ("Miracle") wheat and other wheats at the Nephi Experiment Farm, Nephi, Utah.

Done at Washington, D. C., this twenty-fifth day of January, one thousand nine hundred and thirteen.

Witness my hand and the seal of the United States Department of Agriculture.

JAMES WILSON,
Secretary of Agriculture.

(Seal of the United States Department of Agriculture.)

1128 Results of tests of Stoner ("Miracle") wheat and others wheats at the Nephi Experiment Farm, Nephi, Utah.

Table I. Tests of stooling power and yield of Stoner ("Miracle") wheat and eight other wheats in the years 1909, 1911 and 1912 when planted in head rows ten feet long, one foot apart and the seeds four inches apart in the row.

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Defendant's Exhibit L

C. I. No.	Variety	No. of heads per plant 1909, 1911, 1912 aver.				No. years	Yield per row in grams 1909, 1911, 1912 aver.				No. years
3055-13	Turkey	13	25	18	19	3	210	181	148	180	3
2997- 5	Koffoid	9	16	10	12	3	253	265	157	225	3
2996- 2	Gold-Coin	7	16	7	10	3	191	165	129	162	3
2980	"Miracle"	7	16	11	11	3	213	186	116	172	3
——	Alaska	3	—	—	3	1	47	—	—	47	1
2100	Black Don	5	5	—	2.5	2	56	25	—	41	2
3001- 1	Silver Club	7	—	—	7	1	211	—	—	211	1
2398- 1	Galgalos	6	—	—	6	1	144	—	—	144	1
2934- 1	————	4	3	3	3	3	—	—	—	—	—
		—	—	—	—	—	—	—	—	—	—
	Average	7	13.5	10	8	3					

Table II. Yield, in ounces per row, of rows of wheat 121 feet long (one six-hundredth acre) sown at the rate of 3 pecks per acre, at Nephi, Utah, in 1910.

C. I. Number	Variety and Class			Yield ounces	Yield per acre bushels
1571- 2		Hard	Winter	46	28
1583- 2		"	"	47	29
2979-17		"	"	44	27
2998- 1		"	"	44	27
3055-13	Turkey	"	"	44	27
2997- 5	Koffoid	Soft	"	16	10
2980	Stoner	"	"	54	34
				—	—
	Average of all			42	26

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1132 *Defendant's Exhibit L.*

Table III. Yield in pounds per plot and bushels per acre of wheat grown in twentieth acre plots at Nephi, Utah, in 1911, from pedigreed seed of 1910.

C. I. No.	Variety and Class	Yield per plot, lbs	Yield per acre bu.
1571- 2	Hard Winter	(36) 54*	18.0
1583- 2	" "	(62) 93*	31.0
2979-17	" "	88	29.3
1133 2998- 1	" "	83	27.7
3055-13	Turkey " "	82	27.3
2980	Stoner ("Miracle") soft	80	26.7
	Average	80	26.7

*These two plats were one-thirtieth acre in size instead of a twentieth acre. The figures in parenthesis are the actual yields from the thirtieth acre plats. The figures not in parenthesis are the yields calculated for twentieth acre plats to make them uniform with the others.

1134

Table V. Showing yield in bushels per acre, number of thousand plants per acre, number of plants per square foot and per cent of seed producing plants which survived the winter, of wheat grown in twentieth acre plats at Nephi, Utah, in 1911, from pedigreed seed of 1910.

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Defendant's Exhibit L

1135

Variety	C. I. No.	Class	Yield per acre (bu.)	Number of thousand plants per A.	Number of plants per square foot	Per cent of seed producing plants which survived the winter
Odessa	3274- 1	Soft Winter	38.1	246	5.6	35.4
Turkey	1571- 2	Hard Winter	18.0	218	5.0	28.8
Kharkov	1583- 2	" "	31.0	235	5.4	31.0
Alberta Red	2979-17	" "	29.3	200	4.6	26.6
Turkey	2998- 1	" "	27.7	232	5.3	30.6
Turkey	3055-13	" "	27.3	230	5.2	30.4
Stoner	2980	Soft Winter	26.7	230	5.2	32.6
Average			26.7	227	5.1	30.8

1136

(These data were extracted from the 1911 Annual Report of the Superintendent of the Nephi [Utah] substation.)

1137

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1138 **Defendant's Exhibit M.**

I, James Wilson, Secretary of Agriculture, do hereby certify that the annexed are true, correct and compared copies of the originals on file in the United States Department of Agriculture, of the following:

Table showing the twenty highest yielding wheats at the Arlington Experimental Farm, Virginia, in 1912.

Table showing the second twenty highest yielding wheats at the Arlington Experiment Farm, Virginia, in 1912.

Table showing yields obtained in a rate of seeding test with Stoner and several standard winter wheats
1139 sown at Arlington Farm, Virginia, in 1912.

Table showing high yielding wheats grown at Arlington Experiment Farm, Virginia, by the office of Cereal Investigations in 1911.

Table showing high yielding wheats grown at the Maryland Experiment Station in co-operation with the office of Cereal Investigations in 1908, 1909, 1910, 1911 and 1912.

Table showing yields and stooling of wheat at Hays' Experiment Farm, Hays, Kansas.

Table showing some yields of wheat obtained at Akron Experiment Farm, Akron, Colorado.

Table showing record of culms per plant obtained
1140 at Akron Experiment Farm, Akron, Colorado.

Table showing high yielding wheats at Highmore Sub-station, Highmore, S. D., in 1905.

Table showing high yielding wheats at Bellefourche Experiment Farm, Newell, S. D., in 1909.

Table showing some yields of wheat obtained at Fargo, N. D., in co-operation with State Experiment Station in 1907 and 1908.

Table showing high yielding wheats at Dickinson Sub-station, Dickinson, N. D., in 1909 and 1910.

Table showing some yields of wheat obtained at Williston Sub-station, Willison, N. D., in co-opera-

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Defendant's Exhibit M

1141

tion with State Experiment Station in 1909 and 1912.

Table showing yields of wheat at Judith Basin Sub-station, Moccasin, Montana.

Table showing stooling of wheat at Judith Basin Sub-station in 1911.

Table showing average number of culms per plant of wheats grown at Moro, Oregon, in 1910 and 1911.

Table showing some yields of wheat obtained at Chico, Cal., in 1911.

Letter dated July 12, 1909, by H. A. Miller, Assistant Agriculturist to M. A. Carelton, Cerealist.

Report of observations on a variety of wheat originated and grown by K. B. Stoner, Fincastle, Va.

1142

Done at Washington, D. C., this twenty-fifth day of January one thousand nine hundred and thirteen.

Witness my hand and the seal of the United States Department of Agriculture.

JAMES WILSON,
Secretary of Agriculture.

(Seal)

1143

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Defendant's exhibit "4" page 2
144 (marked "O" for identification)

The twenty highest yielding wheats at the Arlington Experimental Farm, Virginia, sown at the rate of 6 pecks per acre on ten acre plats in 1912.

C. I. Number	Variety	Bearded or Smooth	Actual yield per acre bushels	Winter Survival
1915	Purple Straw	S	37.17	Mostly 100%
145				none less
1942	Bearded Winter Fife	B	36.42	than 97%
1733	Dawson Golden Chaff	S	36.00	
3277	Virginia	B	35.15	
3617	Hybrid	B	34.67	
548a-4-1	"	B	34.00	
1957	(Unnamed)	S	33.08	
3609	Hybrid	B	32.53	
1923	Fultz	S	32.24	
1912	Bluestem	B	32.08	
1979	Poole	S	31.92	
3608	Hybrid	B	31.67	
1974	Martin's Amber	S	31.50	
1930	(Unnamed)	B	31.50	
146 1981	Dietz Longberry	B	30.69	
1744	Early Genesee Giant	B	30.67	
3618	Hybrid	B	30.55	
2980	Stoner (Miracle)	B	30.17	
3614	Hybrid	B	30.07	
548-1-1	Hybrid	B	29.87	
	Average of the first 20 varieties		32.60	

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Defendants exhibit "M" page 3
(marked "P" for identification)

The second twenty highest yielding wheats at the Arlington Experiment Farm, Virginia, sown at the rate of 6 pecks per acre in 1912.

C. I. Number	Variety	Bearded or Smooth	Actual Yield per Acre Bushels	Size of Plat	Winter Survival
1745	Rieti	B	29.83 1/20	Acre	Mostly 100%,
3616	Hybrid	B	29.67 1/20	"	few lower
1973	New Amber Longberry	B	29.50 1/10	"	than 97%
3610	Hybrid	B	29.20 1/20	"	
2008	Mammoth Red	B	29.20 1/10	"	
1945	Lancaster	B	29.08 1/10	"	
1949	Maryland Flint	S	29.08 1/10	"	
1980	Fultzo Mediterranean	S	28.83 1/10	"	
1969	Michigan Amber	S	28.83 1/10	"	
3638	(Un-named)	B	28.67 1/40	"	
1911	Bearded Purple Straw	B	28.67 1/10	"	
1732	Fish-head	B	27.33 1/20	"	
548a-5-1	Hybrid	B	26.53 1/20	"	
547a-29-2	Hybrid	B	24.53 1/20	"	
3115	Acme Bred Kharkov	B	24.33 1/20	"	
1586	Berdiansk	B	23.00 1/10	"	
547a-7-1	Hybrid	B	22.27 1/40	"	
3615	Hybrid	B	22.27 1/40	"	
3611	Hybrid	B	21.60 1/40	"	
3612	Hybrid	B	20.27 1/40	"	
	Average of the 20 varieties		26.63		
	Average of the 40 varieties		29.61		

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Defendant's exhibit "M" page 4
150 (marked "Q" for identification)

Yields Obtained in a Rate-of-Seeding Test with Stoner and Several Standard Winter Wheats Sown in Tenth-Acre Plats at Arlington Farm, Va., in 1912.

	4 pecks	5 pecks	6 pecks	Average of 3 rates	Rank
Stoner ("Miracle")	29.67 bu.	32.22 bu.	30.17 bu.	30.68 bu.	3
Fultz	32.55 "	32.42 "	31.22 "	32.06 "	1
Martins Amber	34.92 "	31.83 "	28.83 "	31.86 "	2
Fultz Selection	29.67 "	29.25 "	28.78 "	29.23 "	4
Acme	26.87 "	25.87 "	24.33 "	25.69 "	5
Alabama Bluestem	27.67 "	25.07 "	23.33 "	25.36 "	6
151 Dietz Longberry	28.00 "	24.50 "	22.67 "	25.06 "	7

Defendant's Exhibit M (continued).

Page 5.

High-yielding wheats grown at the Arlington Experiment Farm, Virginia, by the Office of Cereal Investigations. Those yielding above 25 bushels per acre when sown at the rate of 6 pecks per acre in 1911.

C. I. Number	Variety	Bearded or Smooth	Actual yield per acre Bushels	Size of Plat
1949	Maryland Flint	S	32.30	1/10 Acre
152 1957	Un-named	S	31.30	1/4 "
1912	Bluestem	B	29.80	1/10 "
1981	Dietz Longberry	B	29.50	1/10 "
1945	Lancaster	B	28.80	1/10 "
2008	Mammoth Red	B	28.20	1/10 "
1969	Michigan Amber	S	28.00	1/40 "
1923	Fultz	S	27.20	1/20 "
1942	Bearded Winter Fife	B	26.60	1/10 "
1973	New Amber Longberry	B	26.50	1/20 "
1980	Fultze-Mediterranean	S	25.80	1/20 "
1915	Purple Straw	S	25.80	1/20 "
2980	Miracle	B	25.20	1/20 "

Average of 13 varieties....28.08

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Defendant's Exhibit M

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Page 6.

High yielding wheats grown at the Maryland Experiment Station in cooperation with the Office of Cereal Investigations.

Those yielding above 37 bushels per acre when sown at the rate of 5 pecks per acre on eightieth-acre plats in 1908.

C. I. No.	Variety	Actual yield per acre, bushels	Stooling, average culms per plant.
1942	Bearded Winter Fife	39.41	4
1993	Boughton	38.26	3
1923	Fultz	38.14	4
2496	Jones' Silver Sheaf Longberry	37.88	4
1945	Lancaster	37.88	4
1925	Mealy	37.75	3
1747	Canadian Hybrid	37.75	3
1733	Dawson's Golden Chaff	37.49	3
2008	Mammoth Red	37.36	4
1933	Jones' Winter Fife	37.23	4
	Average of the ten	37.92	

1154

Those yielding above 25 bushels per acre when sown at the rate of 6½ pecks per acre on twentieth acre plats in 1909.

1155

1911	Bearded Purple Straw	27.49	3.2
2008	Mammoth Red	27.26	3.2
1981	Dietz Longberry	26.15	3.3
	Turkish Amber (Md. #195)	25.50	3.6
1945	Lancaster	25.01	2.8
	Average of the five	26.28	

Page 7.

Those yielding above 32 bushels per acre when sown at the rate of 6 pecks per acre on twentieth-acre plats in 1910.

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1156 *Defendant's Exhibit M*

C. I. No.	Variety	Actual yield per acre, bushels	Stooling, average culms per plant.
1733	Dawson's Golden Chaff	34.01	
1925	Mealy	32.88	No stooling
1932	Valley	32.43	notes were
1974	Martin's Amber	32.37	taken for
1966	Harvest King	32.29	this year.
	Average of the five	32.80	

1157 Those yielding above 36 bushels per acre when sown at the rate of 6 pecks per acre on twentieth-acre plats in 1911.

	China (Md. No. 194)	39.49	1 to 11
3326	Currell's Prolific	37.89	1 to 6
1942	Bearded Winter Fife	36.94	1 to 7
1911	Bearded Purple Straw	36.57	1 to 10
1981	Dietz Longberry	36.18	1 to 8
	Average of the five	37.41	

1158 Those yielding above 27 bushels per acre when sown at the rate of 6 pecks per acre on twentieth-acre plats in 1912.

3326	Currell's Prolific	30.73	6
1743	Rieti	28.63	4
3115	Acme Bred	29.20	7
	Doub (Md. No. 348)	28.93	6
1912	Blue Stem	28.60	6
2980	Miracle	27.87	6
1930	Rocky Mountain	27.60	7
1923	Fultz	27.33	5
	Average of the eight	28.61	

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Defendant's Exhibit M 1159

Miracle wheat sown at the rate of 2 pecks per acre on the twentieth-acre plat in 1912.

2980	Miracle	22.66	12

Page 8.

High-yielding wheats at Amarillo Experiment Farm, Amarillo, Texas, in 1906, when sown at the rate of 3 pecks per acre on one-tenth-acre plats. 1160

C. I. No.	Variety	Yield, bushels Per acre.
1558	Turkey	25.75
1564	Pesterboden	25.20

Page 9.

Yields and stooling of wheat at Hays Experiment Farm, Hays, Kansas. 1161

Year	C. I. No.	Variety	Yield, per acre bushels	Area	Spacing, inches each Way	Culms per plant
1910	1571	Turkey	31.76	Nursery	4	12
1912	1436	Crimean	24.25	Plat	6 x 2	11
1912		Roumania (Hays No. 237)	24.69	Plat	—	—

Page 10.

Some yields of wheat obtained at Akron Experiment Farm, Akron, Colorado, on plots sown at the rate of 4 pecks per acre. Data taken from annual reports of Scientific Assistants in Charge.

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1162 *Defendant's Exhibit M*

C. I. No.	Variety name	Year	Area Acres	Yield Bu. per acre
1350	Pererodka	1908	.1	29.17
1444	Yellow Gharnovka	1908	.1	32.83
1440	Kubanka	1908	.1	26.83
1445	Velvet Don	1908	.04	33.33
3020	Haynes Ped. Blue Stem	1908	.04	25.21
1444	Yellow Gharnovka	1909	.05	29.83
1493	Wild Goose	1909	.04	27.50
1584	Pelissier	1909	.05	27.08
1436	Crimean	1912	Var. test	58.33
1163	Hammonds Turkey	1912	Var. test	53.47
1447	Gharnovka	1912	Increase plot.	46.87

Page 11

Record of culms per plant obtained at Akron Experiment Farm, Akron, Colo., on nursery rows, planted eight inches apart. Data taken from annual reports of Scientific Assistants in Charge.

C. I. selection number	Variety	Year	Length of Rows	Culms per Plant
1493	Arnautka	1910	20 ft.	6
1593	Marouani	"	"	5 to 6
1164 2398	Galgalos	"	"	10 to 12
1435-2-10	Crimean	1911	40 ft.	18
" "	"	"	"	18
1442	Kharkov	"	"	20
1432	Crimean	"	"	21
1442	Kharkov	"	"	20
1437-7-'09	Crimean	"	"	16
1437-2-'10	"	"	"	13
1442	Kharkov	"	"	20
1571	Turkey	"	"	14
1442	Kharkov	1912	20 ft.	12
1432-2-'11	Crimean	"	"	7
1432-4-'11	"	"	"	6
1436-4-'11	"	"	"	8
1442-7-'11	Kharkov	"	"	5

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Defendant's Exhibit M

Page 12

1165

High-yielding wheats at the Highmore Sub-Station, Highmore, S. D., when sown at the rate of 5 pecks per acre on 1/10-acre plats in 1905.

C. I. No.	Variety	Yield, bushels per acre.
1516	Kubanka	28.5
1350	Pereodka	28.3
	Arnautka	36.7
1537	Arnautka	36.0
1513	Beloturka	35.8

1166

Page 13.

High-yielding wheats at the Bellefourche Experiment Farm, Newell, S. D., when sown at the rate of 4 pecks per acre on thirtieth-acre plats in 1909.

C. I. No.	Variety	Yield, bushels per acre
3055	Turkey	44.5
1558	"	41.0
1571	"	39.0
1442	Kharkov	40.3
1583	"	39.0

1167

Page 14.

Some yields of wheat obtained at Fargo, N. D., in cooperation with the State Experiment Station in 1907 and 1908, when sown at the rate of seven pecks per acre. Data from the report of the cooperative cereal investigations at that station for the years named.

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1168 *Defendant's Exhibit M*

C. I. No.	Variety	Year	Size of plot, acres	Rate of seeding per acre, pecks	Yield bushels per acre
1444	Yellow Gharnovka	1907	1/10	7	49.5
1446	Black Don	"	"	7	46.8
1569	Argentine	"	"	7	52.5
1350	Pererodka	"	"	7	54.6
1440	Kubanka	"	"	7	50.0
1445	Velvet Don	"	"	7	48.1
1570	Taganrog	"	"	7	55.6
1169 1520	Beloturka	"	"	7	53.1
2006	Nicaragua	"	"	7	59.5
1446	Black Don	1908	1/15	7	49.5
1569	Argentine	"	"	7	47.0
1440	Kubanka	"	"	7	46.7

Page 15.

High-yielding wheats at Dickinson Sub-Station, Dickinson, N. D., in 1909 and 1910, when sown at the rate of 4 pecks per acre on tenth-acre plats.

C. I. No.	Variety	Yield, bushels per acre
1170		
1440	Kubanka	43.2
2006	Nicaragua	38.2
1490	Arnautka	37.0
1517	Ghirka	28.0
1517	"	27.3

Page 16.

Some yields of wheat obtained at the Williston Sub-station, Williston, North Dakota, in cooperation with the State Experiment Station, on twentieth-acre plats, in 1909 and 1912. Data taken from the annual report

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1171

of the Assistant in charge of the experiments for those years, Mr. F. R. Babcock.

C. I. No.	Variety	Year	Rate of Seeding per acre pecks	Yield per acre Bushels
3083	Selected Bluestem	1909	6	35.1
3082	Marvel	"	6	35.9
	Selected Powers Fife	"	6	34.0
1517	Ghirka	"	6	33.2
1447	Gharnovka	"	7	35.5
1440	Kubanka	"	7	39.1
1350	Pererodka	"	7	34.8
1445	Velvet Don	"	7	36.8
3083	Selected Bluestem	1912	4	42.3
3082	Marvel Bluestem	"	4	41.0
	Selected Powers Fife	"	4	44.7
1517	Ghirka	"	4	51.7
1447	Gharnovka	"	5	46.0
1440	Kubanka	"	5	51.0
1350	Pererodka	"	5	48.3
1445	Velvet Don	"	5	43.3

1172

Page 17.

1173

Yields of wheat at the Judith Basin Substation, Moccasin, Montana, on tenth-acre plats at the rate of three pecks per acre.

C. I. No.	Variety	Year	Average number of culms per plant	Yield per acre Bushels
1584	Pelissier	1909	8	41.00
1520	Beloturka	"	7	40.33
2398	Galgalos	"	11	40.16
	Turkey	"	12	60.5

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1174 *Defendant's Exhibit M*

1583	Kharkov	1910	14	48.00
1583	"	1911	9	41.33
1442	"	1910	14	46.2
1442	"	1911	9	43.33
1558	Turkey	1910	14	43.7
1558	"	1911	8	43.66
	Turkey Selection	1910	13	44.00
	" Selection	1911	8	39.00
1571	Turkey	1910	13	41.6
1543	Beloglina	1910	10	40.5
1435	Crimean	1910	12	40.1
1432	Crimean	1911	9	40.33
1437	"	1911	10	40.16
1559	"	1911	8	40.00

1175

Average yield of Kharkov, C. I. No. 1583, for 1909, 1910, and 1911,—40.72 bushels.

Page 18.

Stooling of Wheat at Judith Basin Substation, 1911. Number of culms per plant in ten-foot rows, one foot apart, with seeds four inches apart in the row.

C. I. No.	Variety	Average No. of Clums per plant Row 1	Row 2	Row 3
1442	Kharkov	39	37	..
1434	Kujavka	38	34	..
1435	Crimean	41	38	36
1559	Crimean	37	35	..
1437	"	40	38	35
1571	Turkey	35	..	..
1539	Torgova	37	..	..
1799	Red May x Turkey	37	..	..
1904	Zimmerman x Turkey	37	..	..
1756	(Unnamed—from Missouri)	35	38	..

1176

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Defendant's Exhibit M 1177

Stooling of Wheat in Montana, 1909.

It is not uncommon to find a plant having one hundred stools, and containing the same number of heads, all of which have been produced from a single seed. In collecting samples this fall several plants containing from one hundred forty to one hundred fifty-five heads produced from a single seed were found. This stooling was, of course, on a field having a thin stand.

On the eighteen variety plates, with an average stand of forty per cent, and producing an average yield of 25.2 bushels, the average number of stools per plant on the different plats was twenty. The plat grown on the rotations which yielded 60.5 bushels per acre, contained an average of twelve stools per plant. 1178

Page 19.

Average number of culms per plant in headrows 14 links long and 2 links apart, with seeds 3 to 4 inches apart in the row, of wheats grown at Moro, Oregon, in 1910 and 1911. Data taken from report of the Superintendent of the Moro Experiment Farm for those years. 1179

C. I. Number	Variety	Average number of culms per plant 1911	1910
2247-1	Velvet Don	12	8
2397-3-1	Erivan	—	13
2397-4-1	"	10	10
2346-1-	W. Saumur	14	12
2398-2	Galgalos	24	12
2402-1-1	Spring	12	10
2404-1-1	Yangtagby	12	8
2407-1-1	Aulieata	—	9
2407-2-1	"	18	10

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1180 *Defendant's Exhibit M*

2503	Bledur	10	—
2670-2	Urtoba	18	—
2796-1	Durum	9	—
2823-1	Black Persian	10	8
2824-1	Elephant	14	16
2826-1	Bobs	8	10
2921-1	Bola Blanco	14	—
3022-1	Rystings Fife	12	12
3035-2	Mexican #1	18	12
3036-2	" #2	12	12
3088	Club	9	—
2086-2-1	Pelissier	10	—
1181 2086-6-1	Pelissier	—	10
Page 20 2099-1	Mamhoudi	10	—
2087-2	Mohamed ben Bachir	10	—
1517-2	Spring Ghrika	—	23
2227-1-1	Chul	—	13
2227-2-1	Chul	—	16
2429-2-1	From Egypt	—	10
1584-2-1	Pelissier	—	16
2691-1	From Italy	—	12
2691-1	From Channing, Texas	—	14
—	S. P. I. No. 21668-1 from China	—	10
—	S. P. I. No. 24157 from China	—	10
1182 —	S. P. I. No. 24160 from China	—	20

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Defendant's Exhibit M
Page 21.

1183

Some yields of wheat obtained on fortieth-acre plats at Chico, California, in 1911, with average yields for longer periods.

Variety	C. I. No.	Yield per acre 1911	5-year average yields
Crimean	1437	57.6 bu.	———
Turkey	1558	56.3 bu.	———
Kharkov	2208	55.3 bu.	———
Galgalos	2398	63.3 bu.	40.02 bu.
Fretes	1596	75.9 bu.	48.89 bu.
Australian	3019	76.6 bu.	42.82 bu.
Propo	1970	86.0 bu.	50.47 bu.
Chul	2227	86.8 bu.	52.26 bu.
Early Baart	1697	90.6 bu.	64.96 bu.
Allora	1698	67.6 bu.	51.91 bu.

1184

Years 1907-1911 inclusive
Two-year average, 1910-1911

REPORT OF OBSERVATION ON A VARIETY OF WHEAT ORIGINATED AND GROWN by MR. K. B. STONER, FINCASTLE, VA.

1185

The wheat described in this brief report has been propagated from a single plant selection made in 1904. It has been grown in the nursery every year since that time, and has also been grown under field conditions the past two years giving excellent results. The yield has been from three to five bushels more per acre than that of other varieties grown on the same farm under the same conditions of culture except the rate of seeding, which was three pecks per acre, while other varieties were sown at the rate of eight pecks per acre, which latter is the common practice of farmers in that

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1186 locality. One of the distinguishing characteristics of this variety is its abundant stooling habit which enables a single plant to occupy a comparatively large space, and in that way make a thick stand from a small amount of seed sown. There have been no experiments to determine definitely the amount to be sown per acre for the best results, but enough has already been done to show that less than one-half the amount of seed required by other varities will give a good stand of this wheat. Where it was sown under field conditions at the rate of three pecks per acre from
1187 eight to fifteen heads per plant were produced, while in the breeding plat ten to thirty heads per plant were produced, and as many as fifty heads per plant were not uncommon. The number of heads per plant varies with the rate of seeding and fertility of the soil.

The straw is large, stiff, and stands well without lodging. The growth of straw is quite uniform, that is, nearly all the heads are the same height, giving the field an even appearance. The average height this year—1907—was four feet four inches. The heads average four and one-half inches in length, are bearded, have a smooth white chaff, and usually have three grains per spikelet. The grain has a red color, is rather hard, and in size is perhaps slightly larger
1188 than the grain of other varieties of this class of wheats.

No milling tests have as yet been made of the wheat, but its quality seems to be as good as, if not superior to, other varieties grown in the same locality. However, this latter point must be more fully determined by tests. With pure seed propagated from a single plant selection, and with the very excellent results obtained in the field the past two seasons this variety can be strongly recommended as a wheat of unusual vigor for soils and climates similar to that where it is now being grown.

Respectfully submitted,

(Signed) H. A. Miller,
Assistant Agriculturist.

Nov. 23, 1907.

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Defendant's Exhibit M-1. 1189

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Plant Industry.

(Grain Investigations Received Jul 14 1909)

Office of Farm Management,

Washington, D. C., July 12, 1909.

Mr. M. A. Carlton, Cerealist,
Grain Investigations.

Dear Sir: 1190

In accordance with your telegram and memorandum from your office sent to me at Tazewell, Virginia, June 23, I visited Mr. J. B. Stoner at Fincastle, the 28th, to make some observations on the variety of wheat he has been growing.

A brief report of this wheat was made in 1907, in which attention is called to the stooling habit of the variety, which enables it to make a good stand with a comparatively small amount of seed sown. It is on this point, the amount of seed to sow per acre for best results, that Mr. Stoner wishes advice. Unfortunately, most of the wheat in the county had been cut and was in the shock before my arrival and there 1191 was little or no opportunity to judge of the stand except by the stubble left on the ground and the general appearance of the shocks on the field.

On Mr. Harlow's farm there was about 25 or 30 acres of wheat which had been sown at the rate of 3 pks. per acre. There was a good stand on all the bottom land, but on the ridges where the soil is not so good, the stand was rather thin, but the field taken as a whole will be a little above the average crop of that neighborhood. Some of this wheat was also sown on Mr. Williamson's place. On some hilly land

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1192 *Defendant's Exhibit M1*

on Mr. Williamson's farm where the rate of seeding had been 2 pks. per acre, the crop was about an average of the wheat in the community, but was thinner on the ground and had less straw than some of the best crops of ordinary varieties sown at 6 to 8 pks. per acre. Yields were not obtainable, as no threshing had been done, but the farmers who have tried the wheat seemed to be well pleased with the yield. While a small amount of seed of this wheat seems to give a good stand, a much larger yield may perhaps have been secured by these men had the seeding been
1193 a little heavier. As the yield is one of the most important points in the final test of the variety, it seems to me that too much importance has been given to the fact that a small amount of seed will give a fair stand of this wheat. I was of course unable to advise Mr. Stoner as to the proper rate of seeding, but suggested that he make some test to determine this point. This can be done by laying off a series of one-tenth acre plats, and seeding five plats at different rates from 1 pk. to 5 pks. per acre, and by the side of each plat seed in the same way the ordinary wheat grown in that community. The yield of the plats ought to give the desired information.

1194 It may be that your office will want to take up the matter of determining the rate of seeding of the variety, as it seems to be gaining in importance and there will no doubt be considerable discussion of this variety. If you care to make any tests of this kind or cooperate with Mr. Stoner, I am sure you will find him a thoroughly reliable man and willing to cooperate with you on investigations of this kind.

Very respectfully yours,

H. A. MILLER,
Assistant Agriculturist.

HAM-F

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Defendant's Exhibit N (not in evidence), Being Page 4 of Report Marked Exhibit "L."

4.

Table IV.

High-yielding wheats at the Nephi Experiment Farm, Nephi, Utah, in tenth-acre plats, 1908 to 1912, inclusive.

Year	Variety	Yield per acre	Number of thousand plants per acre	Plants per square foot
1908	Turkey (C. I. No. 2998)	35.00		12.0
	Alberta Red (C. I. No. 2979)	34.33		8.5
	Turkey (C. I. No. 3055)	34.16		10.2
	Bacska (C. I. No. 1562)	34.00		7.6
	Average	34.37		9.6
1909	Japanese (C. I. No. 1787)	23.33	157	3.6
	Currell (C. I. No. 2906)	21.83	181	4.1
	Armavir (C. I. No. 1355)	21.33	97	2.2
	Average	22.16	145	3.3
1910	Khartov (C. I. No. 1583)	21.20	85	1.9
	Turkey (C. I. No. 1571)	20.50	96	2.2
	Crimean (C. I. No. 1437)	20.30	111	2.6
	Average	20.66	97	2.4
1911	Koffoid (C. I. No. 2997)	32.70	110	2.5
	White Club (C. I. No. 2999)	31.50	168	3.9
	Bulgarian (C. I. No. 2048)	31.20	164	3.8
	Zimmerman x Turkey (C. I. No. 1824)	30.50	170	3.9
	Average	31.97	153	3.5

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1198 *Extract from Defendant's Exhibit R*

1912	Bulgarian (C. I. No. 2048)	22.80	136	3.1
	Armavir (C. I. No. 1355)	22.30	138	3.2
	Ghirka (C. I. No. 1438)	22.10	159	3.6
	Turkey (C. I. No. 1571)	22.10	138	3.2
	Average	22.32	143	3.3

Extracts From Defendant's Exhibit R.

1199 *(Not in Evidence.)*

From page 99 of the book called "The Times at Hand":

"In view of this strong Bible evidence concerning the times of Gentiles we consider it an established truth that the final end of the kingdoms of this world and the full establishment of the Kingdom of God will be accomplished at the end of A. D. 1914."

From page 101 of the book called "The Times at Hand":

1200 "That the 'battle of the great day of God Almighty' (Rev. 16:14) which will end A. D. 1914, with the complete overthrow of earth's present rulership is already commenced."

From page 76 of the book called "The Times at Hand":

"In this chapter we present the Bible evidence proving that the full end of the times of the Gentiles, *i. e.*, the full end of their lease of dominion will be reached in A. D. 1914, and that that day will be the farthest limit of the rule of imperfect men."

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Extract from Defendant's Exhibit R

1201

From page 13 of the book called "The Day of Vengeance":

"A few years more must of necessity ripen the elements now working in the direction of the predicted trouble; and according to the sure word of prophecy the present generation will witness a terrible crisis and pass through a decisive conflict."

From page 73 of the book called "The Day of Vengeance":

"For the swelling waves of social and political commotion will quickly spread and involve and engulf 1202
them all and thus the whole earth will be swept with the besom of destruction and the haughtiness of man will be brought low, for it is written 'Vengeance is mine, I will repay' saith the Lord, and the judgment of the Lord upon both Christendom and Heathendom will be on the strictest lines of equity."

HOPE FOR THE ELECT.

From page 594 of the book called "The Day of Vengeance":

"On the contrary the scriptures everywhere hold out the promise that the faithful, humble, lamp-light 1203
shiners of this present time shall by and by with Christ be the gloriest and honored seed of Abraham—'as the stars of Heaven,' but not in the present Heaven which shall shortly pass away with great commotion will these shine;—no, but in the 'new heavens'—the new ecclesiastical kingdom of the millenial age."

ANCIENT WORTHIES.

From page 625 of the book called "The Day of Vengeance":

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1204 *Extract from Defendant's Exhibit R*

"The beginning of the earthly phases of the kingdom, in the end of A. D. 1914, will, we understand, consist wholly of the resurrected holy ones of olden times—from John the Baptist back to Abel--Abraham, Isaac and Jacob, and all the holy prophets. While these ancient worthies will have neither part nor lot in the spiritual kingdom because not called thereto, that high or heavenly calling not being possible until after the ransom had been paid by our Lord Jesus, yet they will occupy a position of preferment upon the world having attested their faith and love through
1205 a reign of evil in a manner approved of God. Thus, they were prepared and proved worthy to be the earthly ministers and representatives of the spiritual kingdom."

From page 626 of the book called "The Day of Vengeance":

"When Abraham, Isaac and Jacob and all the ancient worthies have been resurrected and shall appear amongst the regathered Israelites, about to close the time of Jacob's final trouble with Gog and Magog, their superior mental powers will speedily distinguish them from others. * * * Thus we see that when God's time for the inauguration of his Kingdom
1206 among men shall arrive, his agents will all be amply ready for the service and their master strokes of wise policy, their moderation and dignified self-control and their personal exemplification of every grace and virtue will attract men and quickly enlist them."

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Defendant's Exhibit S.

1207

(Not in Evidence.)

Extract from page 309 of the issue of the Watch Tower for December 15th, 1897:

"One very earnest brother, who for years has been a generous contributor to the work and helpful every way, writes us that being appreciated by his employer he has received a substantial increase in his salary and thereby expects to be able to considerably increase his '98 contributions to the general fund for the spread of good tidings; and having heard one of the 'Pilgrims' he desires to become responsible for the ex- 1208
pense of one of these, after which, if he be able to give more, he shall go to the general work. This dear brother who resides in Easton, Pennsylvania, is as modest and meek as he is zealous and unselfish and insists that his name be not mentioned. But he does this unto the Lord, and the Lord knows of it and we may be sure, appreciates it and will by and by reward."

Extract from page 308 of the issue of the Watch Tower for December 15th, 1897:

"One dear brother, an Express Co.'s agent in a western city, recently interested and very active in the Lord's service, longed to be in the colporteur work, or 1209
to do something to assist in this department, and finding another brother anxious for the work he became sponsor for his account and started him as a colporteur. His deficit during the year was probably $120, but he rejoices in this as the next best thing to being a colporteur himself. He has become still more deeply interested and besides a liberal donation has recently promised the proceeds of some property as soon as he can sell it. It is needless to say that he is greatly blessed in heart and growing in grace and knowledge."

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1210 **Defendant's Exhibit U.**

(Not in Evidence.)

Extract from page 269 of the issue of the Watch Tower for August 15th, 1906:

THROUGH THE EYE OF A NEEDLE.

"Our Lord emphasized the matter, saying, 'It is easier for a camel to go through a needle's eye than for a rich man to enter into the Kingdom of God.' The thought is not that all of the Lord's people should be penniless, dependent upon the charity of others, but
1211 that they must all be so fully consecrated to the Lord and to his service that they will not be their own—that their possessions, whatever they may consist of, riches of knowledge or wealth of money and houses and lands, or wealth of reputation and honor of men—all must be consecrated to the Lord, to be used in his service, to be sacrificed as our belongings if we would have a share with him in the Kingdom. We must not blind our eyes to these specific terms; if we do there will some day be an awakening to the fact that the opportunities which are ours have passed from us and are lost to us, and we will find that others have entered into the Kingdom and we have failed."

1212 Extract from page 270 of the issue of the Watch Tower for August 15th, 1906:

"In any event the Lord's thought is evident; no rich man can enter into the Kingdom. The only way one can enter is by becoming poor, nothing—by sacrificing everything, and this would include riches, social, political and financial; and thus, whatever his previous condition, he must cease to be rich in his own name and title and possession ere he could be accepted by the Lord as fit for the Kingdom."

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Extract from Defendant's Exhibit V 1213

Extract from page 271 of the issue of the Watch Tower for August 15th, 1906:

"But even in this present life how much the Lord grants us to enjoy; our enjoyment will be proportionate to our loyalty of spirit in the sacrificing. If we love much, and are prompt and liberal in our sacrificing we will in turn be loved much by the Lord, be blessed, and comforted as he has stipulated, and hundredfold more than all our distresses."

1214

Extracts From Defendant's Exhibit V.

(Not in Evidence.)

Extract from page 387 of the issue of the Watch Tower for December 15, 1910:

"The nearer we get to the grand consummation of our hopes, the more swiftly do the years go by, and the more interesting and meaningful do they become to us. If we realize our hopes, four more years will see the 'elect' little flock of God all gathered; and the world's time of trouble begun in which brethern of the 1215 'great company' will share and wash their robes in the blood of the Lamb. Is it any wonder that we all feel a fervency of zeal? Surely not.

We admit, as we have always done, that 'We walk by faith and not by sight—that our chronology is not indisputable—that our opinion of it is fallible—that it is not clear to us just how all of the 'little flock' can pass into death so speedily. Nevertheless, we rejoice in faith and love and zeal. And this year's report shows that the dear friends everywhere are of one mind and of one heart on the subject. They have ac-

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1216 complished this year exploits in the publishing of the Truth which put all other years in the shade in many particulars.

The sentiment of all seems to accord with our own —that the chronology (and the prophetic times and seasons which so wonderfully interlock with it and seem to prove it) has brought great joy and refreshment, even if later on it should appear that we have not located the end of the Times and the Gentiles *exactly*. Their end is surely near, if not on October 1st, 1914, as we still believe."

1217 Extract from page 396 of the issue of The Watch Tower for December 15, 1910:

THE WIDOW OF ZAREPHATH.

"Divine providence guided Elijah to the home of a poor widow, to whom the drouth and continued scarcity had proved a great trial. She had a little coarse flour left, which alone stood between herself and her son and starvation, so far as she could discern. The Prophet, meeting her, asked for a drink of water, and a small cake of bread. This was a severe test to the woman's faith and generosity. She ex-
1218 plained the situation, indicating her desire to accede to the prophet's wishes, yet loth to part with her all. Elijah replied, 'Fear not. Bake for yourself and for your son, but the first cake make for me and bring to me.' Then he explained to her the Lord's message: 'The barrel of meal shall not waste, neither shall the cruse of oil fail until the day that the Lord sendeth rain upon the earth.' The word of the Lord was fulfilled. Miraculously the supplies were increased little by little, just as required for use.

There is a lesson for the Lord's people in this—a lesson that, even in our own extremities, we should exercise sympathy toward others in like condition or

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1219

worse. The Lord loveth a cheerful giver. Those who give not, and those who give grudgingly miss, therefore much of the Lord's blessing."

Extracts From Defendant's Exhibit W.

(*Not in Evidence.*)

Being from page 5 of the issue of the Watch Tower for January 1, 1911:

1220

"HOW FEW OF MANKIND KNOW OF THE FALLEN ANGELS.

For some two years we heard practically nothing along these lines. We had about concluded that the Adversary has misled our attention to this direction, in order that he might make the more serious attack upon the minds and hearts of the consecrated. Now, however, after two years of silence, we have a report from far-off Australia which seems to confirm our worst fears as respects the course that will be pursued in the time of trouble by the demons, the fallen angels.

1221

Brother Nicholson, of the Australian Branch, writes us of an astounding circumstance. One of the Australian Brethern has a wife who is neither for nor against the Truth, and who professes no sympathy for Spiritism. Quite recently the Brother, returning to his home, had a harrowing tale related by his wife. She declared that Brother Russell had appeared to her. (Possibly she had seen his photograph.) She declared that he made improper proposals, to which she yielded.

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1222 *Extract from Defendant's Exhibit W*

At such a distance it is easy enough to prove an *alibi*—to prove that the Editor was not there. But suppose the materialization in all of its particulars had transpired in Brooklyn, or in the Bethel home, or in any of the various cities which the Editor visits in the preaching of the Gospel, or in a Pullman sleeping car, in which he frequently travels—it is easily seen that an *alibi* might be very difficult to prove in such cases. And what would be true in this respect of the Editor might be true in some respects of many of the Pilgrim brethern; yea, true of all of the Lord's people everywhere.

1223 How few of mankind know of these fallen angels, or believe at all in their power to communicate with men. How few, especially, believe in their power to materialize. Could we blame such people if they should mob the innocent under such conditions? Would not all explanations seem like foolishness to them? If such matters as this shall form any part of the Church's experience during the year 1911, it will mean very stirring times indeed and that some of us wholly innocent may have opportunity of dying cruel and very ignominious deaths, after the manner of the Master.

1224 'AS DECEIVERS AND YET TRUE.'

Nothing in all this need make the Lord's consecrated people timid or fearful. Nothing can by any means harm us as New Creatures. If such experiences come to us, let us decide, as did the Master, that it is the cup that the Father has poured for us, and let us seek his aid in the drinking of it with courage. Whatever may be the Lord's portion of experience for us, his grace is sufficient, and he is able to make an ignominious death a joyful one to those who put their trust in him.

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Extract from Defendant's Exhibit W

1225

WAS THE ALARM CLOCK RIGHT?

Chronology (time prophecies in general), was evidently not intended to give God's people accurate chronological information all the way down the path of the centuries. Evidently it is intended more to serve as an alarm clock to awaken and energize the Lord's people at the proper time.

We have no fault to find with the chronology nor with the prophetic periods built upon it, as already presented to our readers in Studies in The Scriptures. We would not know how to improve on the statements therein presented if the books were to be written today:

1226

But let us suppose, for instance, that October, 1914, should pass and that no serious fall of Gentile power would occur. What would this prove or disprove? It would not disprove any feature of the Divine Plan of the Ages."

1227

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1228 **Defendant's Exhibit X.**

(Not in Evidence.)

Extracts from "The Watch Tower and Herald of Christ's Presence," issue of December 15, 1911.

Page 452:

"'WATCH TOWER' SUBSCRIPTIONS."

We watch The Watch Tower subscription list with keen interest, considering it our very best index to the general growth of the work, because all who become
1229 truly, deeply interested in 'present truth' we assume will want to be on The Watch Tower list—that they may keep in touch with the work as well as with the Truth."

Page 453:

"HARVEST WORK IN NEWSPAPERDOM."

Many of our readers appreciate, as we do, the publication of our weekly sermons by the secular press. This is effected by a newspaper syndicate. The prosperity and success of the syndicate depends upon getting sermons into numerous papers and keeping them
1230 there."

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Defendant's Exhibit Y.

1231

(Not in Evidence.)

YOUR "GOOD HOPES" FOR 1912.

(The plan here proposed we designate "GOOD HOPES," because nothing is actually promised—only your generous hopes expressed, based upon your future prospects as they now appear to you. The plan proved not only so beneficial to the cause of Truth, but also so blessed to the hopers for some years past, that we again commend it to all as Scriptural and good. Those who desire to make use of this plan can fill out both these memoranda. One should be kept for the refreshment of your memory; the other mail to us.)

To the

"WATCH TOWER BIBLE & TRACT SOCIETY."

Dear Friends: I have read with interest of the openings for the STUDIES and Tract work in foreign lands and here at home. I need not tell you that I am deeply interested in the spread of the Glad Tidings of the lengths and breadths, the heights and depths of redeeming love expressed for us in God's great Plan of the Ages.

I am anxious to use myself—every power, every talent, voice, time, money, influence, all—to give to others this knowledge, which has so greatly blessed, cheered and comforted my own heart and placed my feet firmly upon the Rock of Ages.

I have been considering carefully and praying to be instructed how to use my various talents more to my Redeemer's glory and for the service of His people—those blinded by human tradition who are, never-

YOUR "GOOD HOPES" FOR 1912.

(The plan here proposed we designate "GOOD HOPES," because nothing is actually promised—only your generous hopes expressed, based upon your future prospects as they now appear to you. The plan proved not only so beneficial to the cause of Truth, but also so blessed to the hoper for some years past, that we again commend it to all as Scriptural and good. Those who desire to make use of this plan can fill out both of these memoranda. One should be kept for the refreshment of your memory; the other mail to us.)

1232

To the

"WATCH TOWER BIBLE & TRACT SOCIETY."

Dear Friends: I have read with interest of the openings for the Dawn and Tract work in foreign lands and here at home. I need not tell you that I am deeply interested in the spread of the Glad Tidings of the lengths and breadths, and heights and depths of redeeming love expressed for us in God's great Plan of the Ages.

I am anxious to use myself—every power, every talent, voice, time, money, influence, all—to give to others this knowledge, which has so greatly blessed, cheered and comforted my own heart and placed my feet firmly upon the Rock of Ages.

I have been considering carefully, the praying to be instructed, how to use my various talents more to my Redeemer's glory and for the service of his people—those blinded by human tradition who are, neverthe-

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theless, hungering for "The good Word of God," and those also who are naked, not having on the wedding garment of Christ's imputed righteousness, the unjustified, who stand at best in the filthy rags of their own righteousness. I have decided that so far as my "*money talent*" goes, I will follow the rule so clearly laid down for us by the great Apostle Paul (1 Cor. 16:2), and will lay aside on the first day of each week, according to my thankful appreciation of the Lord's blessings during the preceding week. Out of this fund I wish to contribute to the several parts of the
1235 Lord's work carried on by our Tract Society. Of course, I cannot in advance judge or state particularly what the Lord's bounty may enable me to set apart weekly, and hence you will understand the sum indicated to be merely my conjecture or hope, based upon present prospects. I will endeavor to contribute more than I here specify; and should I not succeed in doing as well, the Lord will know my heart, and you also will know of my endeavors.

My only object in specifying in advance what I hope to be able to do in this cause is to enable those in charge of the work of publishing and circulating the Tracts, etc., to form estimates, lay plans, make con-
1236 tracts, etc., with some idea of what I will at least try to do in the exercise of this my highly appreciated privilege.

My present judgment is that during the coming year, by self-denial and cross-bearing, I shall be able to lay aside on the first day of each week for Home and Foreign Mission Work (to assist in circulating SCRIPTURE STUDIES in foreign languages, and in publishing the PEOPLE'S PULPIT in various languages, and in supplying these gratuitously to brethern who have the heart and opportunity to circulate them widely, and in meeting the expenses of brethern sent out as Lecturers to preach the Divine

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Defendant's Exhibit Y 1237

Plan of Salvation, and in general to be expended as the officers of the Society may deem best), the amount of ..... per week.

To comply with the United States Postal Laws, all or any portion of my donation may be applied as subscription price of WATCH TOWER OR PEOPLE'S PULPIT sent to the Lord's poor to others, as the Society's officers may deem advisable.

That the work be not hindered, I will endeavor to send you what I shall have laid aside for this cause at the close of each quarter. I will secure a Bank draft, Express Order or Postal Money Order as I may find most convenient, and will address the letter to

WATCH TOWER BIBLE & TRACT SOCIETY,

Brooklyn Tabernacle, 13-17 Hicks St.,
Brooklyn, N. Y., or
London Tabernacle, Lancaster Gate W., England, or
Flinders Building, Flinders St., Melbourne,
Australia.

(Name) .....
(Post Office) ..... (State) .....

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(Post Office) ..... (State) .....

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1240 **Defendant's Exhibit Z.**

YOUR "GOOD HOPES" 1907.

[The plan here proposed we designate "GOOD HOPES," because nothing is actually promised—only your generous hopes expressed, based upon your future prospects as they now appear to you. The plan proved not only so beneficial to the cause of truth, but also so blessed to the hopers, for some years past, that we again commend it to all as Scriptural and good. Those who desire to make use of this plan can fill out both of these memoranda. One should be kept for the refreshment of your memory; the other mail to us.]

1241

To the

"WATCH TOWER BIBLE & TRACT SOCIETY."

Dear Friends: I have read with interest of the openings for the Dawn and Tract work in foreign lands and here at home. I need not tell you that I am deeply interested in the spread of the Glad Tidings of the lengths and breadths, the heights and depths of redeeming love expressed for us in God's great Plan of the Ages.

1242 I am anxious to use myself—every power, every talent, voice, time, money, influence, all—to give to others this knowledge, which has so greatly blessed, cheered and comforted my own heart and placed my feet firmly upon the Rock of Ages.

I have been considering carefully, and praying to be instructed, how to use my various talents more to my Redeemer's glory and for the service of his people—those blinded by human tradition who are, nevertheless, hungering for "the good Word of God," and those also who are naked, not having on the wedding garment of Christ's imputed righteousness, the unjustified, who stand at best in the filthy rags of their

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Defendant's Exhibit Z 1243

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My only object in specifying in advance what I hope to be able to do in this cause is to enable those in charge of the work of publishing and circulating the Tracts, etc., to form estimates, lay plans, make contracts, etc., with some idea of what I will at least try to do in the exercise of this my highly appreciated privilege.

My present judgment is that during the coming year, by self-denial and cross-bearing, I shall be able to lay aside on the first day of each week for Home and Foreign Mission Work (to assist in circulating Millenial Dawn in foreign languages, and in publishing the "Old Theology Tracts" in various languages, and in supplying these gratuitously to brethren who have the heart and opportunity to circulate them widely, and in meeting the expenses of brethren sent out as "Pilgrims" to preach the divine plan of salvation, and in general to be expended as the officers of the Society may deem best), the amount of.....per week.

To comply with United States Postal Laws, all or

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1246 *Defendant's Exhibit Z*

any portion of my donation may be applied as subscription price for Watch Tower or O. T. Tracts sent to the Lord's poor or others, as the Society's officers may deem advisable.

That the work be not hindered, I will endeavor to send you what I shall have laid aside for this cause at the close of each quarter. I will secure a Bank Draft, Express Order or Postal Money Order as I may find most convenient, and will address the letter to

WATCH TOWER BIBLE & TRACT SOCIETY,

1247

"Bible House," Allegheny, Pa.
or, 24 Eversholt St., London, N. W., England; or,
Equitable Building, Collins St., Melbourne,
Australia.

(Name) .....

(Post Office) .....(State) .....

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(Name) .....

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Cut between the columns: this one mail to us.

1248

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Defendant's Exhibit Z 1249

WATCH TOWER SUBSCRIPTIONS

—ON GOOD HOPES ACCOUNT.—

The friends who contribute to the "Good Hopes" (described on the reverse of this sheet) at times desire to send the *Watch Tower* to friends who are not yet interested enough to subscribe for themselves; or to deeply interested friends who are too poor to subscribe and backward about accepting our *Lord's Poor* offer. They are invited to give such addresses below —the expense to be deducted from their donations. Give full addresses, and write very plainly please, mentioning the length of the subscriptions.

CHRISTIAN HOME EMBELLISHMENTS.

For several years we have been supplying our readers with handsome text and motto cards for the walls of their homes. Their influence is excellent; for they continually and cheerfully catch the eye and remind the heart of our great favors present and to come, based upon the exceeding great and precious promises of our Father's Word. We commend these as *helps* in the "narrow way,"—*helps* in character-building.

We have laid in a large supply of very choice mottoes this year and expect to be able to fill all orders promptly. Late orders last year we were unable to supply. 1250

We have for your convenience put these up in four assortments at $1.00 per package, including postage. We also have a 50c assortment of the smaller sized mottoes. If you get any of these you will be pleased; but if you have already had some, mention when and how many, that we may send you different ones now.

OLD THEOLOGY TRACTS.

These are published quarterly, copies being sent to all subscribers. Other copies, for distribution among friends, from house to house for enclosure in letters, and in general for use in such ways as seem judicious, are supplied freely, the expense entailed by the great demand for them being borne by the Tract Fund of voluntary contributions. Write for the tracts as you feel able to use them, even if not so well able to contribute toward the expense; some who are not able, and do contribute, do not have opportunities personally to use all that their contributions pay for, so that the matter is equalized and all may have a part in this service of disseminating the truth. 1251

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1252 *Defendant's Exhibit Z*

A PRIVILEGE AND A SERVICE.

We are convinced that the *Watch Tower* lists do not contain the names of one-half of those deeply interested in its teachings. The total is small enough surely, and we are not content that the name of any should be missing. We believe that all such will be stimulated and encouraged on the "narrow way" by its semi-monthly appearance on their table, reminding them afresh of spiritual matters which the world, the flesh and the devil continually tend to crowd out of mind and heart.

1253

Hitherto we have required that all desiring the *Watch Tower* on credit, or free, "as the Lord's Poor," should make *personal* application; but now we request every subscriber to inquire among those whom he *knows* to be interested in present truth, and to obtain the *consent* of all such to send in their subscriptions either on *credit* or *free*, as their circumstances may necessitate. Any getting it on credit may at any future time request that the debt be cancelled, and we will cheerfully comply. We desire that as nearly as possible the *Watch Tower* lists shall represent all those deeply interested in its message.

1254

Our object is not the gain of "filthy lucre," but "the perfecting of the saints for the work of ministry"—present and to come. (Eph. 4:12.) We offer no premiums, desiring the co-operation of such only as appreciate the privilege of being co-workers with us in this ministry. Our list is now about 22,000; but it should be at least 30,000, and we confidently expect the above program to bring it to that figure. Let as many as appreciate it as a privilege, join at once in this service.

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Defendant's Exhibit Z 1255

WATCH TOWER SUBSCRIPTION RENEWALS.

Most of our subscriptions end with the year, so we take this opportunity to remark that we will be glad to hear *promptly* from such as desire the visits of the *Watch Tower* continued. This applies to all who get it on the Lord's Poor list as well as to those who pay. When names are dropped and afterwards renewed it makes us unnecessary trouble.

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1258 **Defendant's Exhibit AA.**

Extract from page 389 of the issue of the Watch Tower for December 15th, 1910:

"OUR FINANCIAL SHOWING"

"Having in mind the foregoing work it might be expected that millions of money had been expended in order to its accomplishment. But, dear friends, economy is associated with every part of the work. No salaries are paid—merely moderate expenses. Yet we are all comfortable and very thankful and happy.

1259

Expended for above work in America		$139,743.80
Expended elsewhere:		
In Great Britain	$7,965.55	
In Germany	3,673.27	
In Australasia	487.06	
In India	522.37	
In S. Africa	1,438.62	
In Sweden	1,675.82	
In Norway and Denmark	3,494.58	
In Jamaica	935.29	
In France, Italy and Swiss	295.73	
1260 In Greece	396.45	
In Mexico	50.50	20,935.24
Total expenditure		$160,679.04
Receipts:		
Balance from 1909	$9,718.38	
Good Hopes, Tract Fund, etc.	139,058.72	148,777.10
Shortage		$ 11,901.94

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 1261

This is close for the extent of the work, and if other 'Good Hopes' be realized this balance will be wiped out before January, 1911.

We congratulate all of our dear co-laborers and praise God for the privileges thus represented.

Very truly your servant in the Lord,

C. T. RUSSELL, President."

Defendant's Exhibit BB.

1262

Extract from page 453 of the issue of the Watch Tower for December 15th, 1911:

"THE YEAR'S FINANCIAL SUMMARY"

"The cost of foregoing work, including all the expenses of the Office and of the Bethel Home maintenance, was	$140,729.51
Last year's deficit	11,901.94

ADDITIONAL EXPENDITURES IN OTHER LANDS:

1263

British Branch	$23,401.87
Germany and Holland	4,098.81
Australasia	2,046.40
India	1,366.25
South Africa	904.71
Sweden	3,462.65
Jamaica	3,004.42
Greece	240.00
Crete	50.50
Syria	69.34
Egypt	115.84
Cuba	5.00

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1264 *Defendant's Exhibit CC*

Hungary	115.25
France, Italy and Switzerland	137.67
Total	$39,018.71
Grand Total	$191,650.16
Receipts from 'Good Hopes' and other sources	169,234.23
Deficiency or shortage	$ 22,415.93

1265 We doubt not this indebtedness will soon be cancelled; nevertheless the fact that it is nearly double the shortage of last year, cautions us that we must to some extent put on the 'brakes;' for it is our judgment of the Lord's will that we spend money only as it is supplied under His Providence."

Defendant's Exhibit CC.

Extract from page 386 of the issue of the Watch Tower for December 15th, 1912:

1266

"FINANCIAL REPORT"

"As we look back over the past, we perceive a steady progress in the amount of money donated to the Tract Fund for the promulgation of the Truth. Each year has shown a little better than its predecessor, and the present one is no exception to this rule. Remember, too, that few of our donations are large—that not many WATCH TOWER subscribers have much of this world's goods. Two things astonish our enemies and our friends:

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Defendant's Exhibit CC

1267

(1) While all denominations of Christendom are in distress because of increased expenditure and decreased contributions and because they are ashamed to beg more than they have done, our receipts, on the contrary, without solicitation, come gradually forward, apparently just as they are needed. Or rather, we should say, keeping within our receipts we are enabled to push the work a little more and a little more every year. Of course, we could do much more if we had more means; but we are not worried about that, for if the Lord desires us to do greater things, He is abundantly able to provide the means.

1268

(2) The other point which surprises both our enemies and our friends is the large amount of work accomplished with the small amount of money expended. This is attributable to the fact that we pay no salaries, and all of our expenses are kept at a minimum. Our home and office force of over a hundred persons all labor diligently, earnestly, perseveringly, rendering their services as unto the Lord. We have no drones. All are provided for decently, comfortably, as, we believe, the Lord would be pleased with, but very inexpensively. This is one secret of our ability to do more than others with the same amount of money.

1269

Financial statement follows:

Paid Shortage of 1911		$22,415.93
Receipts from 'Good Hopes,' Tract Fund, etc.	$200,767.51	
Expended in the work mentioned above:		
In Great Britain		20,038.60
" Austria		4,663.97
In the United States and Canada		134,228.43

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1270 *Stipulation*

" Germany		1,562.12
" Sweden		1,338.04
" Denmark and Norway		1,059.52
" South Africa		1,298.77
" Jamaica and South America		3,933.69
" Japan		2,300.00
" China		2,300.00
" Korea		2,028.62
" India		1,723.19
" France, Italy and Switzerland		343.67
1271 " Greece		240.00
" Hungary and Poland		471.29
" Philippine Islands		157.95
Cash balance on hand		663.72
	200,767.51	$200,767.51"

Stipulation Settling Case.

1272 It is hereby stipulated that the foregoing case contains all the evidence and exhibits introduced upon the trial of this action, and the same be settled and ordered to be filed and annexed to the judgment roll herein, and that the foregoing printed copy be ordered to be filed in the office of the Clerk of this Court in lieu of the engrossed copy required by the rules.

Dated, May 28, 1914.

SPARKS & FULLER,
JOSEPH F. RUTHERFORD,
Attorneys for Appellant.
DYKMAN, OELAND & KUHN,
Attorneys for Respondent.

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Order Settling Case.

1273

On the above stipulation it is hereby ordered that the foregoing case and exceptions which contains all the evidence and exhibits introduced on the trial of this action be and the same is hereby settled as the case and exceptions herein, and the foregoing printed copy is hereby ordered to be filed in the office of the Clerk of this Court, in lieu of the engrossed copy required by the rules.

Dated, May 29, 1914.

C. H. KELBY,
J. S. C.

1274

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, judgment roll and case and exceptions as settled, and the whole thereof now on file in the office of the Clerk of Kings County; and certification thereof by the clerk, pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, May 28, 1914.

1275

SPARKS & FULLER,
Attorneys for Plaintiff-Appellant.
DYKMAN, OELAND & KUHN,
Attorneys for Defendant-Respondent.

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1276 **Affidavit of No Opinion.**

State & City of New York,
County of Kings, } ss:

Frederick W. Sparks, being duly sworn, deposes and says, that he is one of the attorneys for the appellant, Charles T. Russell, herein.

That no opinion or memorandum was given by the Trial Judge herein.

FREDERICK W. SPARKS.

Sworn to before me this
28 day of May, 1914.

~~P. V. Manning,~~
~~Notary Public,~~
~~Kings County.~~

Francis J. Cronin
COMMISSIONER OF DEEDS,
FOR THE CITY OF NEW YORK.
RESIDING IN THE BOROUGH OF BROOKLYN

1277

Order Filing Record in Appellate Division.

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record be filed in the office of ~~the~~ Clerk of the Appellate Division of the Supreme Court, in the Second Judicial Department.

1278

Dated, May 29, 1914.

C. H. KELBY,
J. S. C.

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456

To be Argued by
Jesse Fuller, Jr.

SUPREME COURT

APPELLATE DIVISION—SECOND JUDICIAL DEPARTMENT.

CHARLES T. RUSSELL,
Plaintiff-Appellant,

against

THE BROOKLYN DAILY EAGLE,
Defendant-Respondent.

BRIEF ON BEHALF OF PLAINTIFF.

Statement.

This is an appeal by plaintiff from a judgment of the Supreme Court rendered after a trial before Mr. Justice Charles H. Kelby and a jury in Part 3 of the Supreme Court of Kings County, on the 22nd to the 28th days of January, 1913, in an action for libel, in favor of the defendant and against the plaintiff, and also from an order entered on the 10th day of February, 1913, denying plaintiff's motion for a new trial on all the grounds stated in Section 999 of the Code of Civil Procedure.

In his complaint the plaintiff alleged:

That defendant is a Brooklyn newspaper; that plaintiff is favorably known as Pastor Russell and for more than thirty years has been a preacher of the Gospel in the United States and Europe, and pastor of a large congregation at the Brooklyn Tabernacle of Brooklyn,

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and the London Tabernacle of London, England, where he preaches at regular intervals and is aided by assistants; that for years he has been the editor of "The Watch Tower", a semi-monthly religious journal; that his sermons are published weekly and have been for a long time in a large number of papers in the United States, Canada, Great Britain and Australia; that he is the president of the Watch Tower Bible and Tract Society and the People's Pulpit Association, religious corporations engaged in spreading the Gospel; that for years he has written religious articles for periodicals and that he is the author of six volumes known as "Studies in the Scriptures," published to the extent of six million volumes and distributed throughout the world (fols. 11 to 16).

That prior to September 23rd, 1911, a certain seed wheat known as Miracle Wheat, was being sold at the Brooklyn Tabernacle for a dollar a pound; that defendant published various articles concerning such sales, charging that this wheat was of no greater value than ordinary wheats and further charging that claims were being advanced, without substantial justification, that it had peculiar virtues, and that plaintiff was deriving a personal advantage from the same (fols. 18, 19); that defendant was also publishing various articles and cartoons charging that the directors and managers of a certain bank in Brooklyn, known as the Union Bank, were violating the law in managing the affairs of the bank and were criminally liable and were being investigated by the District Attorney and that indictments were pending for criminal offenses in the management of the affairs of the bank (fols. 20, 21).

That on the 23rd day of September, 1911, defendant published a libelous picture or cartoon of plaintiff portraying him as hawking wheat near the Union Bank from which a person was calling to him, "You're wasting time, come on in here," which cartoon was headed, "Easy Money Puzzle" and had appended to it the query, "If Pastor Russell can get a dollar a

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pound for Miracle Wheat, what could he have got for Miracle stocks and bonds as a director in the old Union Bank?" which cartoon and wording constituted a false and defamatory charge to the effect that both plaintiff and the Union Bank officers were engaged in unrighteous and unlawful business schemes, characterized by fraud and deception in obtaining "Easy Money" (fols. 22-23). That plaintiff had been damaged by said libelous publication in the sum of one hundred thousand ($100,000) dollars (fol. 36).

The answer of defendant admitted:

That plaintiff is known as Pastor Russell, is the editor of "The Watch Tower" and president of the Watch Tower Bible and Tract Society, and the People's Pulpit Association, which corporations sell the books known as "Studies in the Scriptures" (fol. 41); that defendant had published various articles on, prior and subsequent to September 23rd, 1911, charging that a seed wheat known as Miracle Wheat was being sold at the Brooklyn Tabernacle, for one dollar a pound, and further charging that said wheat was of no greater value than ordinary seed wheat which could be procured at a far lower price, and further charging that plaintiff was claiming, without substantial justification, that said wheat had peculiar virtues when used as seed (fol. 44); and that it had published the cartoon and accompanying words (fols. 45, 46).

Defendant alleged in justification:

That for a long time plaintiff had dominated and controlled the two said religious corporations and dictated their conduct and that of their executive boards (fols. 48, 49). That through them, by the distribution of printed matter and the providing of speakers and lecturers, plaintiff denounced and criticised all religions in the interest of a so-called religion or cult claimed to have been invented by himself, the central tenet of which was that the world as now constituted, would end in October, 1914, and that by reason thereof, great numbers of persons, believing the end

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of the material world to be near, had turned over their property to plaintiff (fol. 50) and that *much of the money thus received by plaintiff had been invested in real estate, mining stocks, and speculative enterprises through dummies acting secretly for plaintiff, plaintiff's operations in this regard covering every state in the United States as well as many European countries* (fols. 52, 53); that large quantities of Miracle Wheat were sold through plaintiff *"with and because of* the understanding on the part of the purchasers of same, that the entire proceeds from such sales would be given to said Watch Tower Bible and Tract Society and *that thereby they would be rewarded after death*, and also, because of the state of mind into which they had been put through the teachings of plaintiff and said corporations, that said 'Miracle Wheat' possessed *supernatural* qualities" (fol. 56).

Facts.

The defendant is the Brooklyn Daily Eagle, a newspaper published at the Borough of Brooklyn, City of New York, having a general circulation in the State of New York and elsewhere of at least 25,000 (fol. 11). The plaintiff is a preacher of the Gospel and Bible teacher and is the president of the Watch Tower Bible and Tract Society and People's Pulpit Association, two organizations engaged in disseminating Bible teachings throughout a large portion of the civilized world. For a period of much more than twenty years, plaintiff has been wholly engaged in preaching the Gospel, lecturing and writing upon religious subjects (fols. 41, 211, 242, 366, 721). Originally the headquarters of the Watch Tower Society were in Pittsburg, Pennsylvania. In 1909, they were changed to Brooklyn, New York (fol. 511). Since that time the work had been carried on from Brooklyn, and in the year 1911, the work was being carried on by the Peo-

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ple's Pulpit Association, a New York corporation (fol. 379), and the Watch Tower Bible and Tract Society, a Pennsylvania corporation (fol. 576), in a building known as Bethel Home (fols. 513, 522), operated in connection with a church building known as the Brooklyn Tabernacle (fols. 365, 372). In conjunction with these two corporations, there have been organized over 1,200 classes for Bible study in various parts of the world which have been affiliated into the International Bible Students Association (fols. 362, 363, 438). Under these three organizations the following work in the year 1911, and for a long time prior thereto, was being performed: Six books written by plaintiff, the serial name of which is "Studies in the Scriptures," have been printed and distributed broadcast (fol. 714). A semi-monthly religious publication having a circulation of about 35,000, is printed and circulated, a large part of its articles being written by plaintiff (fol. 365). Sermons are prepared and delivered each week by plaintiff, which sermons are printed weekly in about fourteen hundred different newspapers throughout the world (fol. 368).

The plaintiff is the pastor of the Brooklyn Tabernacle (fol. 365). He travels throughout the United States and in foreign countries delivering his weekly sermons at places specified in an itinerary arranged for him by said associations. Classes in Bible studies are conducted at the Brooklyn headquarters and students of the teachings being disseminated by these associations, are there instructed and trained by the associations. Lecturers are employed by the associations to preach and lecture upon its scriptual work at various towns and cities throughout the United States and Canada and to various of the Bible classes comprising the International Bible Students Association. The students of these Bible classes use the books and writings of the plaintiff as commentaries and aids in their Bible studies (fols. 712, 714, 362, 370, 418, 486, 515, 656). None of the employees or officers of said or-

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ganizations, nor anyone connected with said work, receives any compensation for his efforts except his necessary living expenses and the sum of ten dollars per month (fols. 366-666). Plaintiff's personal contributions to this work, including real estate and various copyrights, have been approximately $320,000 (fols. 687-689).

The meetings at which plaintiff delivers his sermons and lectures are largely attended. In 1911, he lectured about fifteen times in the Brooklyn Academy of Music, which was usually crowded and on many occasions people were turned away. Such audiences as this have been of common occurrence (fols. 365, 410, 423). Plaintiff has been elected pastor of some one hundred and forty various Bible classes (fol. 363), which he serves as opportunity is afforded. He receives no compensation for any of this work, to which he devotes his entire time (fol. 364), except his actual expenses for travelling and the like, his lodgings and meals and the usual allowance of ten dollars per month (fols. 251-364). The cost of conducting this vast religious enterprise is from two to three hundred thousand dollars per annum, all of which is supplied by voluntary donations from persons interested in the work throughout the area it serves, and from such sources as subscriptions to the semi-monthly publication, "The Watch Tower," and moneys received in the sale of "Studies in the Scriptures" (fols. 665, 1258 to 1271). For the purpose of having a holding agency to deal with real property donated to the society, a company known as the United States Investment Company was organized in Pennsylvania, whose function was to take title to property donated to the cause, deal with it by transfer, sale, exchange or otherwise so that the proceeds could be realized, and turn such proceeds into the work (fols. 616-621, 636, 668, 674, 680, 681). It never speculates (fol. 638). In order to make possible the return to persons interested in the work of all or a portion of special donations re-

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ceived, in the event that such persons should subsequently find themselves in want, a corporation known as the United Cemeteries Company was organized to take over and hold certain special donations to the cause (fols. 605-609). This corporation set apart for cemetery purposes certain property which it held for the Society, on which one, J. A. Bohnet, acted as superintendent (fols. 197, 605, 606)). The United States Investment Company was used by the Watch Tower Society as an aid in dealing with the business questions incidental to the use of real property and other donations (fols. 616, 620). The foregoing is a brief sketch of the work carried on under the general supervision of the plaintiff at the time the libel complained of was published.

In the organization of the Watch Tower Bible and Tract Society, it has been provided that every person who shall donate ten dollars to the society, will be entitled to one voting share in the society for which a certificate shall be issued upon request (fols. 684, 697, 699). All such persons are entitled to vote at the annual election (fol. 867). The plaintiff has caused to be issued to him the voting certificates to which his shares entitled him (fol. 688). Most of the voting shares, however, to which contributors to the work are entitled, have not been issued by reason of the requests not having been preferred, and only about three thousand certificates having been issued, apart from those issued to the plaintiff (fol. 644). Of about 50,000 certificates that had been issued in 1911, the plaintiff held about 47,000 (fol. 585). These certificates have no face value (fol. 685).

In the year 1904, a man named K. B. Stoner, noticed growing on his land at Fincastle, Virginia, an unusual plant which at first he mistook for a kind of grass known as parlor grass, but which, upon further observation, proved to be wheat. The plant had one hundred and forty-two stalks bearing heads and Mr. Stoner had never prior to that time seen a wheat plant

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bearing more than five heads. The unusual yield from a single plant, prompted him to save the grain, which he planted the following fall (fols. 73-75). For several seasons he continued reproducing this grain and, in 1906, about two years after discovering it, because of its remarkable producing qualities, he named it Miracle Wheat (fol. 81). In 1908 or 1909, Mr. Stoner called the attention of a man named J. I. Knight to the unusual qualities of the wheat and it was arranged that they should grow the wheat on shares and market it after accumulating a sufficient supply (fols. 86, 127, 129). Mr. Knight received a forty-five per cent (45%) interest in the wheat. They agreed to withhold the wheat from the market until 1912 (fol. 128), but subsequently decided to sell in August, 1911 (fols. 128, 125). After making his arrangement with Mr. Stoner, Mr. Knight went to Europe and exhibited the wheat in the agricultural departments of various countries (fols. 129-131). Neither Mr. Knight nor Mr. Stoner had ever corresponded with the plaintiff nor had any acquaintance with him or with any of his associates prior to the time of the trial (fols. 82, 154). Prior to his meeting Mr. Knight, Mr. Stone had sold some of the wheat, always at $1.25 a pound (fols. 80, 83). In 1908, he sold four pounds at $1.25 a pound to James A. Carlton, a dentist of Palmetto, Georgia the owner of a 256 acre farm (fol. 162). In 1909 he sold two pounds to Frederick S. Widener of Belvidere, N. J., for from somewhere between two and five dollars (fol. 396). Mr. Widener gave some of this to Isaac L. Frey, a farmer of Lower Mt. Bethel. Neither he nor Mr. Frey had any connection with Pastor Russell's work (fols. 395, 387, 383). William Pray, a farmer of Mansfield Township, N. J., bought some of the wheat from Mr. Knight at $6 a bushel under contract to sell the product back to Mr. Knight at 10c over the market price of ordinary wheat, or $1.10 a bushel (fols. 468, 475, 476). William I. Tomlinson, a

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farmer of Kirkwood, N. J., made a like arrangement with Mr. Knight and Edward W. Hunt, a farmer of Stratford, N. J., bought some of the Miracle Wheat through Taylor Bros., seedmen, of Camden, N. J., and sold the harvest back to Mr. Knight at $1 a bushel (fols. 489-481).

All of these persons who thus bought their wheat directly or indirectly from Stoner, the discoverer of the wheat, or from Knight, his partner, found it to have remarkable reproducing qualities (fols. 385-392, 396, 470-1, 478-480).

The first plant found by Stoner had over 4,000 grains to the stalk. In the fall of 1904, he planted 1,-800 grains and each grain yielded on an average of 250 grains. The average return from ordinary wheats in this country was about 10 grains for each grain of seed (fols. 75-78). He found that a peck to the acre, that is, 15 pounds, produced over forty bushels (fol. 88). He has raised as high as 80 bushels to the acre (fol. 92). He had experimented with Red Wonder, Fuldz and Old Mediterranean Wheats. The productiveness of Miracle was found to be due to its large stooling qualities (fol. 95). For these stooling qualities it needs more room than the average wheat, requiring sixteen inches between rows and about four times the space of ordinary wheat. If sown like ordinary wheat, Miracle was a failure, for room was essential (fols. 97-99, 104). A four by four inch space, such as the government allows, is too small to allow for the normal stooling of Miracle Wheat (fol. 104). When he has observed common wheat planted in competition with Miracle, the spaces between Miracle planting had been about four times the spaces between the other wheat plantings. This was as he recommended (fol. 155). Widener when he sowed Miracle, counted 22 to 28 stalks to the grain (fols. 396-397). Mr. Frey raised a bushel and a half of wheat from a quart of grain (fol. 385), and the following year, 1911, raised 108 bushels out of from 16 to 22 quarts

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of seed. He seeded about 15 pounds to the acre (fols. 387-392). Mr. Henry A. Ayre, a farmer of Cleveland, Tennessee, with thirty-five years' experience, bought some Stoner (Miracle Wheat) in the fall of 1909 or 1910. He sowed one-half a bushel to a scant seven-eighths of an acre and reaped a little over twenty-three bushels, being at the rate of about twenty-six bushels per acre. His is a poor wheat section where the yield is about eight bushels per acre. He found Miracle Wheat hardier than ordinary wheat, standing the winters better and stooling much more than any other wheat he ever saw. It stood a freezing winter where rye had frozen out (fols. 299-402). He had the surrounding farmers raise this wheat for him under contract (fol. 407). He had raised as large as 64 stools from one plant of this wheat. It took first prize for him in the fall of 1910, at the Appalachian Exposition, for Tennessee, Georgia and North Carolina, and also took first prize at the State Fair in Tennessee and at his county fair (fol. 406). He grew Exhibit 6, a stool of Miracle containing 49 stalks (fols. 408, 943).

William Pray, a farmer of Mansfield Township, N. J., who was unacquainted with plaintiff in any way, raised Stoner or Miracle Wheat for three years. He grew Exhibit 30, containing over 80 stalks grown from a single grain. He had been a farmer for twenty-five years. An acre of ordinary wheat which he sowed with two bushels, yielded 17 bushels, whereas an adjoining acre which he sowed with a half a bushel of Miracle yielded 25 bushels. He never saw any wheat stool as Miracle Wheat did. To this is due its superior producing qualities (fols. 464-466). The usual practice of farmers in his section is to sow two bushels of ordinary wheat to the acre and he knows of no way of getting better results (fols. 467-468).

William I. Tomlinson, who had been a farmer for nine years, in Kirkwood, N. J., in 1909 planted Miracle Wheat in competition with ordinary wheat,—sixteen

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acres with Miracle Wheat at a half bushel to the acre, which yielded 32 bushels to the acre, and 20 acres of ordinary wheat at one and a half bushels to the acre, which yielded 21 bushels to the acre. He bought his Miracle Wheat from Mr. Knight at $6 a bushel under a contract to turn over the product at $1 a bushel. He is not a follower of Pastor Russell nor a believer in any of his doctrines (fols. 470-471). Edward W. Hunt, a farmer of Stratford, N. J., for many years, who does not know Pastor Russell and was not connected with him in any way, experimented with Miracle Wheat. He first sowed a bushel of seed to an acre and a half, which produced 56 bushels, part of the crop having been destroyed. In 1911 and 1912, he planted Miracle in competition with Amber Wheat. He planted 10 acres with Miracle, three pecks to the acre, and the yield averaged 34½ bushels per acre or 345 bushels in all. He planted 18 acres with Amber Wheat, a bushel and a half to the acre, and the yield was 325 bushels in all. Both fields were alike, stood side by side and the conditions were the same. He raised this wheat under contract with Mr. Knight, paying $6 a bushel for the seed, and selling the harvest back at $1.10 a bushel (fols. 478-480).

On November 23, 1907, an assistant agriculturist in the United States Government, filed a report upon the wheat being grown by Mr. Stoner (Defendant's Exhibit M," Report of observation on a variety of wheat originated and grown by Mr. A. R. Stoner, of Fincastle, Va." fols. 774 and 1185). On March 15, 1908, there was re-published in the Watch Tower part of an article which had appeared in the public press on the origin of "Miracle Wheat" in answer to prayer (Plaintiff's Exhibit 35, fol. 1065). The article quoted contained a brief paraphrase of the report of the assistant agriculturist, and commented upon the matter. James A. Carlton, a dentist of Palmetto, Georgia, read Pastor Russell's magazine regularly (fols. 162, 177). He was prompted to buy Miracle

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Wheat by what he saw published claiming value, as was his custom in buying all seed (fol. 169). This was in 1908. He wanted to experiment with this new wheat (fol. 169). He ordered four pounds of Miracle Wheat from Mr. Stoner at $1.25 a pound. It came by mail in two packages, one of which had broken and lost some of the seed. He planted a pound and three-quarters to about one-fifth of an acre, took accurate count of the yield, and found that it was eight bushels and twenty-four pounds or 504 pounds. Georgia is not a wheat growing state, cotton being its staple product (fols. 162-163). The ordinary yield in Georgia runs from four and one-half bushels to twenty bushels to the acre (fol. 164). In 1910 he sowed a little over two acres with Miracle Wheat and reaped 62½ bushels (fol. 165). The largest stool he raised from Miracle Wheat was one containing 71 stalks grown from a single grain under field conditions (fol. 168).

From the yield of the original one and three-quarter pounds received by Dr. Carlton from Mr. Stoner, Dr. Carlton sent a peck to J. Adams Bohnet of Pittsburg (fols. 170, 187). Mr. Bohnet had been associated with Pastor Russell for about seventeen years (fol. 192), part of the time in the office in Alleghany (fol. 194) and part of the time as a lecturer (fol. 195). He was on a farm until 24 years of age (fol. 196). At the time he received the peck of wheat from Dr. Carlton, Mr. Bohnet was in charge of a farm owned by the United Cemeteries Company (fol. 197). He sowed fourteen pounds of the Miracle wheat to about one-half an acre and reaped about eight bushels and a half. About one-half of this yield he sent to Mr. Kueshardt of Port Clinton, the other one-half he disposed of himself (fol. 187). In 1910, he sold Miracle for seed at one dollar a pound, received $250 or $300 therefor, and turned these proceeds over to the Tract Society as a donation. The following season he sowed a little over a half bushel to about an acre and

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a quarter and received, owing to unfavorable conditions of the field and weather, but a small yield of 17 or 18 bushels, nearly all grown on one part of the field, the rest of the wheat having been killed out (fols. 188-189). At the time he fixed the price at $1 a pound, he had not heard of the wheat being sold for less than $75 a bushel. He sent to the Watch Tower Society about 16 or 17 bushels indicating that the proceeds from the sale of the wheat should be applied as a donation in any way the society would see fit. On May 23rd, 1911, he wrote to plaintiff (Exhibit 4, fol. 937, 191). He tried sowing Blue Stem wheat on a piece of ground adjoining the ground on which he sowed Miracle, planting a bushel of Blue Stem and fourteen pounds of Miracle. The bushel of Blue Stem seed—(a bushel is 60 pounds, fols. 191, 234)—produced 11 bushels, and the fourteen pounds of Miracle seed produced 8 1/2 bushels (fol. 199).

Samuel Kuesthardt of Port Clinton, Ohio, is the publisher and editor of the Ottoway Zeitung, a German County newspaper. He knows Pastor Russell and Mr. Bohnet, has heard the latter lecture, is a subscriber to the Watch Tower and has read the books written by plaintiff, first published under the name of "Millennial Dawn" and recently changed to "Studies in the Scriptures." In 1910, Mr. Bohnet turned some Miracle wheat over to him for sale, he advertised it in his paper and sold it generally. Among others he sold Mr. Fleming twenty pounds for twenty dollars. His total proceeds were about $145 which he turned over to the Watch Tower Bible and Tract Society, as instructed by Mr. Bohnet (fols. 206-207).

Samuel J. Fleming of Warbash, Indiana, has been a farmer all his life. He ordered some wheat from Mr. Bohnet and received 25 pounds—five pounds from Mr. Bohnet and twenty pounds from Mr. Kuesthardt. He sowed it in about an acre of land (fols. 230-231). Sowing it late and with poor distribution, the yield was about 34 bushels (fol. 232). The average yield of

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ordinary wheat in his section is about twenty bushels to the acre from a seeding of about 90 pounds, *i. e.*, a bushel and a half. He found that Miracle wheat excelled ordinary wheat in that it requires less seed per acre, stools much more to the grain and yields a greater quantity per acre than ordinary wheat. He forwarded about 26 bushels of his crop as a voluntary donation to the Watch Tower Society, pursuant to his letter of July 22nd 1911 (Exhibit 5, fol. 940), wherein he stated that he desired to make the same offer as Mr. Bohnet, and suggested either that he would ship the wheat to the Society or that they forwarded orders to be filled by him. Up to this time he had not known Miracle wheat to be sold for less than one dollar a pound (fols. 234-235). He found Miracle to be an abnormal, not an ordinary wheat (fol. 237). The latter will not yield well at 25 pounds to the acre as has been demonstrated in experiment stations and by practical farmers (fol. 238). In his community the usual rule for 32 years has been to sow ordinary wheat about one and one-half bushels to the acre (fol. 240).

All of the persons who testified to having raised Miracle wheat found it to have extraordinary reproduring qualities (fols. 173, 386-9, 397, 402, 405-6, 465-6, 471, 479). The usual planting of ordinary wheat is about 90 pounds or a bushel and a half to the acre (fols. 234, 240), and the usual yield is from 15 to 20 bushels to the acre (fols. 89, 234). Miracle wheat when sown from 10 to 12 pounds to the acre, yields about 30 to 35 bushels to the acre (fols. 88, 89, 172), ordinary wheat yielding from ten to twelve times the amount of seeds sown to the acre, Miracle wheat yielding about 150 to 200 times the amount of seed sown to the acre (fols. 76-78), Miracle wheat thus yielding about fifteen times as much as ordinary wheat.

On May 23rd, 1911, Mr. Bohnet wrote plaintiff a letter (Plaintiff's Exhibit 4, fol. 937), stating that

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while the year before he had forwarded the entire proceeds of his sale of Miracle wheat at one dollar per pound, he would, for lack of time personally to attend to its selling, forward his entire crop to the society about August 1st, which could be disposed of at one dollar per pound. On June 15, 1911, this offer was advertised in the columns of the Watch Tower (Plaintiff's Exhibit 7, fol. 944). On July 22nd, 1911, Mr. Fleming wrote the society a letter (Plaintiff's Exhibit 5, fol. 940) offering to duplicate Mr. Bohnet's offer. When the wheat was received at the Brooklyn headquarters of the Watch Tower Bible and Tract Society, Mr. Dockey was designated to sell it. Plaintiff had nothing to do with the sales and received none of the proceeds thereof (fol. 369). These were held in a separate fund to the account of Mr. Bohnet and Mr. Fleming for a year and then put in the regular funds of the society. These proceeds were kept separate because of charges made in the columns of the Brooklyn Eagle and the society desired to give any one an opportunity to receive back his money. This was advertised in the papers (fols. 362, 376-377). A letter was sent out asking for a report of the wheat and if they were satisfied with the results, stating that if they were not satisfied, they could have their money back. This offer was published broadcast. There was no request made for the refund of the money (fols. 380-381).

The Brooklyn Daily Eagle, reading of the announcement in the Watch Tower of the donation offered by Mr. Bohnet of Miracle wheat, undertook to publish its personal view with respect to Miracle wheat, Pastor Russell and the Watch Tower Bible and Tract Society. The libel for which this action is brought, was the culmination of a series of publications as follows:

On September 22, 1911, it published an article purporting to disclose the manner and purpose of the religious work in which plaintiff was engaged (Exhibit 8, fol. 936). On the same day it published Ex-

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hibit 9, with respect to Miracle wheat ridiculing the wheat and the various persons described as engaged in growing it. On the 23rd day of September, 1911, it published an article announcing that the United States Government was about to take up the matter of the wheat and in the same issue published the libelous cartoon upon which the action is based (Plaintiff's Exhibits 10 and 11, fols. 976-979).

On the 11th day of September, 1911, (Exhibit 17, fol. 1041), was published in the Brooklyn Eagle referring to a $50,000 obligation of the Union Bank (a banking institution then subject to public obloquy and suspicion by reason of the scandalous nature of the transactions in which it had been engaged) and intimating that some one connected with the bank was guilty of forgery. On September 13, 1911, the Eagle published a cartoon entitled "Rots and Spots," a term applied to eggs too rotten for use as human food. This is a pictorial allegory disclosing an investigator taking from a building marked "Union Bank" a box of eggs marked "Union Bank deals" with his nose protected by a bandage against the effluvium pictured as arising from the rotten deals he has discovered in the bank (Plaintiff's Exhibit 18, fol. 1042). The public is portrayed with its handkerchief to its nostrils seeking to escape the rottenness being brought forth. On September 14, 1911 (Exhibit 20, fol. 1046) was published in the Eagle stating that four bank witnesses were being vainly sought; on September 17, 1911 (Exhibit 29, fol. 1059), was published in the Eagle, stating that five or six indictments have been found as a result of the Union Bank investigations and that these indictments are to be handed down the following Friday; and on September 19, 1911 (Exhibit 21, fol. 1047), was published stating that the bank's notes were secured by fraudulent mortgages. On September 17, 1911, Exhibit 22 (fol. 1048) was published in the Eagle, being a cartoon labeled "Pillage Doggerel." A wrecked building is portrayed

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labeled "Onion Bank" from which looters are fleeing with materials labeled "mortgages," "bonds" and "fees," by reason of the removal of which the building is represented as having tumbled down, and the cartoon is explained by a footnote to the effect that "the looters came to town" and "pulled fees and bonds from the Union Bank until it tumbled down." On September 18, 1911, Exhibit 23 (fol. 1050), was published stating "Directors owed bank $1,471,550 in panic. Heavy borrowings in October, 1907, from Mechanics and Traders," Mechanics and Traders being the former name for the Union Bank and October, 1907, having been the occasion of a grave financial panic. On September 21, 1911, Exhibit 26, a cartoon labeled "Securities" (fol. 1054), was published in the Brooklyn Eagle wherein a person labeled "Financier" sitting before a picture labeled "Onion Bank" is depicted as contemplating various memoranda roughly written on his cuff, on the wall, and on a sheet of paper, regarding transactions in which large sums of money were loaned to "a man with whiskers," "tall gent with raincoat," "pleasant spoken fellow," "stout party with glasses," "red-haired newsboy," etc. On September 23, 1911, Exhibit 27 (fol. 1057), was published in the Eagle wherein it was stated that the probe into the affairs of the Union Bank will go on and that more sensations are expected and that attorneys have unearthed additional peculiar transactions.

On September 23, 1911, after defendant had been thus questioning the character of the wheat sales conducted for Messrs. Bohnet and Fleming at the Brooklyn headquarters of the Watch Tower Society, and at a time when the Union Bank was being pictured in its own columns as having perpetrated the most scandalous deceptions and frauds upon its stockholders and its depositors, the Brooklyn Daily Eagle published the cartoon set forth in paragraph "Fifth" of the complaint wherein it sought to co-ordinate Pastor Russell, the head of a purely religious enterprise,

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the sale of Miracle wheat then taking place at the Brooklyn Tabernacle, and the matter of the Union Bank into an unmistakable innuendo that the plaintiff in this action was as great a perpetrator of fraud as was to be found among the responsible managers or directors of the Union Bank, who had caused its downfall and perpetrated the vicious acts then under investigation.

The evidence adduced in defense was confined mainly to testimony disclosing the financial management and workings of the Watch Tower Bible and Tract Society and the relations existing between plaintiff and the various organizations engaged in the religious work in which plaintiff was engaged; and to testimony given by an "agronomist" or "cerealist" employed in the United States Department of Agriculture explanatory of various reports (Exhibits K, L and M), containing words and figures purporting, as explained by the witness, to give the results of experiments purporting to have been carried on in different sections of the United States in various stations and sub-stations operated under or in conjunction with agents employed by the Department of Agriculture.

Upon this state of facts the jury rendered a verdict for defendant.

POINT I.

The court erred in charging as requested by defendant at folios 895, 897, 900 and 903, and especially at folio 915, in declining to charge as requested by plaintiff.

At folio 878, the Court charged the jury as follows:

> "As to the publications contained in the Eagle, which is sued upon in this case, I charge

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> you that it is in itself a libel; and that the law presumes damages from the mere publication of it; and that the plaintiff would be entitled to a verdict of some kind here unless it be shown that what was published of him was true, that is, unless the Eagle justifies the publication of the article sued upon by showing that it was true."

At folios 915 and 916 occurs the following:

> "The Court: The plaintiff asks that the jury be charged: 'That the defendant has offered no evidence in justification of the cartoon itself or the words used in connection therewith.' I decline to so charge. I leave that to the jury to determine as an issue of fact.
>
> "Mr. Sparks: I take an exception to the refusal to charge."

That the Court correctly construed the libelous publication, in charging the jury, that it was in itself a libel, is not open to question, especially when the publication is (as it must be) considered in the light of the previous and contemporaneous publications in defendant's paper relating to Miracle wheat and to the affairs of the Union Bank.

For many days prior to the publication complained of, defendant had been engaged almost daily in exposing what it characterized as the criminal workings of the Union Bank, a financial institution of Brooklyn, and in holding up to the people of Brooklyn, the managers and directors of the Union Bank as perpetrators of fraudulent schemes leading to the wrecking of the bank and to the defrauding of persons who had had dealings therewith. The managers and directors of this bank had been charged in the columns of defendant's newspaper with forgery, with carrying repudiated obligations as assets, with securing bank notes with dummy mortgages and with many other fraudulent transactions.

From September 11th to September 23rd, 1911, the date of the libelous publication, a stream of articles

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had been pouring into the columns of the defendant's paper, purporting to expose the bankrupt condition of the Union Bank and the fraudulent and unscrupulous conduct of its managers and directors as the cause therefor. Large headlines and vivid cartoons had been employed to accentuate the moral obliquity which investigation of the Union Bank had brought to light, as follows:

On September 11th appeared an article with these headlines: "Worthless note was bank asset. Repudiated obligations of $50,000 carried under Grout regime. Hint as forgery. Grand jury to act. Clark takes charge of $50,000 note and also checks believed to have been forged" (fol. 1041).

On September 13th appeared the cartoon labeled "Rots and Spots" (Exhibit 18), allegorically describing the deals of the Union Bank as nauseating in their rottenness.

On September 14th appeared the headlines (Exhibit 20), "Four bank witnesses being vainly sought by Grand Jury agents. Are very much needed. Missing persons are in a position to clear up some very important transactions under investigation."

On September 15th appeared the headlines "Bank notes secured by dummy mortgages drawn up by Elliot. Another forgery appears" (Exhibit 21).

On September 17th was published a cartoon (Exhibit 22), labeled "Pillage Doggerel," portraying the wrecked "Onion Bank" from which looters are pictured as fleeing with materials extracted from it labeled "mortgages," "bonds" and "fees" to which cartoon is appended a footnote explaining that "looters came to town" and "pulled fees and bonds from the Union Bank until it tumbled down." In the same issue of defendant's paper, September 17th, appeared an article under headlines: "Five or six indictments are said to have been found as a result of the Union Bank investigation" (Exhibit 29). And on September 18th, is an article under the headlines, "Directors owed bank

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$1,471,550 in panic. Heavy borrowings in October, 1907, for Mechanics and Traders" (Exhibit 23). On September 19th an article was printed under the headlines: "Dix expected to issue subpoena for E. M. Grout. Report that investigation is being made of what has become of Sullivan's money" (Exhibit 24).

On September 20th an article under the headlines: "No action in Grout case by Dix who quits Albany. Representatives of Union Bank depositors angry at slight put upon them by governor" (Exhibit 25).

On September 21st appeared a cartoon (Exhibit 26) labeled "Securities! portraying a financier" sitting before a picture labeled "Onion Bank" contemplating various memoranda written on his cuff, on the wall and on a sheet of paper, regarding transactions whereby large sums of money were loaned to "the man with whiskers," "Tall gent with rain coat," "red-headed newsboy," "pleasant spoken fellow, address South American," "North Pole Fruit Company," etc.

After repeated publications concerning the investigation of the Union Bank being made by the grand jury and the District Attorney, and the indictments returned against the directors and officials of said bank, the defendant, on September 22nd, 1911, published an article in its paper (Exhibit 9), headed, "Church a sales room for Miracle wheat at $60.00 per bushel," and describing in ironical terms Miracle wheat and Pastor Russell and the religious work in which he was engaged. Here it brought forth plaintiff into its columns with the evident purpose of holding him up to public ridicule, scorn and contempt.

Defendant sought to create the impression that plaintiff had named the wheat "Miracle" because it possessed some supernatural qualities, and that this was part of his scheme to defraud, and asserted that Bohnet first discovered the wheat. Nothing was further from the truth. Mr. Stoner discovered the wheat, and he named it more than five years prior to said publication, and the United States Government had designated

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it as Miracle wheat fully two years prior thereto, which defendant knew or could have known by the exercise of reasonable investigation at the time of such publication.

On the very next day after ridiculing Pastor Russell, his work and the Miracle wheat, to wit, September 23rd, defendant published an article to the effect that the United States Government had decided to make an official test of Miracle wheat sold at $60.00 a bushel at Pastor Russell's Tabernacle, and that Government Inspector Dickson, had promised to set going the *wheels of inquiry,* when as a matter of fact the United States Government had been experimenting with said wheat for more than three years prior thereto (Exhibit 11). The manifest intention of said publication was to put plaintiff in the same category with the looters of the Union Bank who were then *under official investigation.*

In the same issue of said paper, namely, September 23rd, defendant published an article concerning the Union Bank, under the following headlines, "Union Bang probe to go on says Dodge. Governor's refusal to subpoena Grout will not halt investigation. More sensations expected. Attorneys unearth additional peculiar transactions—hearings to be resumed Monday" (Exhibit 27). On the same date and in the same issue of its paper in which it was asserted that both the Union Bank and Pastor Russell's "Miracle wheat" were under investigation, defendant published the cartoon and words upon which this suit is based. It in effect said to the public concerning plaintiff: "Here is another crook who is about to be investigated by the government of the United States for his fraudulent transactions. He is getting "easy money" fraudulently fleecing the people. Behold him in the streets hawking wheat at a dollar per pound, which is not worth more than $1.00 per bushel. If he is smooth enough to defraud the people so completely by getting $60.00 a bushel for wheat that is worth only one, what

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a rich haul he would have made for himself had he been a director in the old Union Bank handling 'Miracle' stocks and bonds."

There can be no doubt as to the meaning of this cartoon and its appended words. It is not possible to put any construction on it except one injurious to plaintiff. Defendant so construes it in its answer (fols. 56 and 57). It is not easy to conceive of a more effective method of holding plaintiff up to ridicule, scorn and contempt in the eyes of the public than by classing him with the officers and directors of the much looted Union Bank who had been so definitely characterized by the Brooklyn Daily Eagle itself as criminal in financial matters.

Where the words are subject to but one meaning, the question of libel or no libel is one for the Court to decide.

Moore v. Francis, 121 New York, 199.

> "There is no doubt that where the language of the alleged libel is ambiguous, and capable of being understood in an innocent and harmless, as well as injurious sense, its true interpretation is for the jury, but it is equally clear that if, upon examination of the whole writing and comparison of its different parts, it appears to admit of no just construction except one which is injurious to the plaintiff, its meaning is to be determined by the Court."

Lewis and Herrick vs. Chapman, 16 New York, 369 at 371.

Collis vs. Press Publishing Co., 74 New York Sup. at 80, 68 A. D., 38.

In the light of the previous publications in the defendant's newspapers upon the matters of the Union Bank and of the Miracle wheat, the Trial Court was clearly correct in construing the publication complained of as being in itself a libel and so charging the jury. The Court, however, was likewise under a duty properly to charge the jury with respect to the justification

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set up in the answer as a defense, which justification, defendant was under a duty to establish by competent legal proof.

In paragraph VII of its answer, the defendant pleads a justification of the libelous publication by alleging "that each and everyone of the statements set forth in said article complained of were and are true," and further stating, that the said wheat mentioned in evidence was "of no greater value than ordinary seed wheat which could be procured for a far lower price and had no peculiar virtue when used as seed," * * * and, "that large quantities of said so-called 'Miracle wheat' were sold during the month of September, 1911, *with and because of the understanding on the part of the purchasers* of same, that the entire proceeds from such sales would be given to said Watch Tower Bible and Tract Society, *and that thereby they would be rewarded after death,* and also, *because of the state of mind* into which they had been put *through the teachings of the plaintiff* and said corporations, that said 'Miracle wheat' possessed *supernatural* qualities" (fols. 56-57).

The record fails to disclose a scintilla of evidence in support of the justification as pleaded.

The rule is that defendant must justify by stating the particular facts which evince the truth of the imputation.

Wachter vs. Quenzer, 29 N. Y., 547.

Justification must be as broad as the charge. Since the libel sued on clearly imputes to plaintiff fraud and fraudulent practices, the justification pleaded must set forth the facts as broad as the charge.

Collis vs. Press Pub. Co., 74 N. Y. Supp., 78 at 80, 68 App. Div., 38.
Brooks vs. Pemiss, 8 Johns, 455.
Style vs. Comstock, 9 Howard's Pr., 48.
Holmes vs. Jones, 121 N. Y., 461.

Defendant cannot plead one justification as a defense and prove another, and where he attempts to prove

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justification not set up in his answer, there is total failure of proof of justification and it would be the duty of the Court to charge the jury that there is no evidence in justification of the libel sued on.

> Carpenter vs. Evening Journal, 89 N. Y. Supp., 263 at p. 266, 96 App. Div., 376.

Notwithstanding defendant's failure to prove the justification it had alleged, or any justification, the Court after charging the jury that the publication complained of was "in itself a libel" also charged the jury at folio 878 as follows:

> "One of the first things you have to do is to determine the scope and general nature of the libel. I cannot define that to you as matter of law. I have told you that it is libelous of itself; but as to its exact meaning or as to its exact scope, I cannot tell you that as a matter of law."

Again at folio 881 the Court charged:

> "Now, what does this cartoon and the written matter under it mean? That is for you to say."

Then at folio 882, it further charged the jury that the

> "justification of it (the libel) must be just as broad as the inference you believe comes from it * * * must be as broad as the charge."

Thus charging the jury that they had unrestricted latitude to determine the scope and meaning of the libel and the extent of the justification, he further charged them in effect at folio 895 that they were at liberty to find from the evidence that plaintiff was promoting the sale of Miracle wheat by advertisements in the Watch Tower, and that this contained false statements about its productive qualities and value, and that they could find from the evidence that the cartoon with its accompanying words were fair, just and reasonable inferences from plaintiff's conduct, and, if they so found, their verdict must be for defendant, pro-

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vided that (fol. 897) "this justification must be as broad as the charge of libel which you construe it to be from your inspection under the rules I have given you." To this charge, plaintiff duly excepted.

At folio 897, the Court further charged the jury in effect that they were at liberty to find from the evidence that plaintiff's conduct and the Watch Tower statements with reference to the qualities of Miracle wheat, were calculated to deceive the public in regard to its productive qualities and that the publication complained of was nothing more than a fair, honest and *bona fide* method of informing the public of the character of plaintiff as a minister, writer and seller of wheat and was a fair, honest and *bona fide* criticism of plaintiff as such and that if they so found and so interpreted the cartoon and printed words complained of, their verdict must be for the defendant. To this the plaintiff duly excepted (fol. 899).

Again at folio 900, the Court charged the jury in effect that they were at liberty to find from the evidence that plaintiff permitted Miracle wheat to be advertised for sale in the Watch Tower, controlled by him, as wheat that would yield ten or fifteen times as much as common wheat and that they could find that such statements were false and untrue and that plaintiff knew or should have known this and that plaintiff knew or purposed that the public might be misled thereby, and that the jury were further at liberty to find from the evidence that the sales of Miracle wheat so made would be a fraud on the public and that defendant in the publication complained of, had done nothing more than inform the public of such fraud and that they could find that this was the total meaning of the cartoon and the printed matter and that, if they so found, they must return a verdict for defendant.

Plainiff's counsel excepted to this charge upon the ground "that it embodies facts not in evidence" (fol. 903).

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A somewhat similar contingent instruction to the jury to find a verdict for the defendant is embodied in the charge of the Court at folios 903-905, to which exception was taken by plaintiff.

The charge as thus delivered left the jury free to hold that the defendant had proved the truth of the libel, notwithstanding the failure of the defendant to offer any evidence in substantiation of the libelous charge or in support of its justification as alleged in the answer. Thereupon the defendant made the request above noted (fol. 915) that the Court charge the jury as a matter of law that the evidence did not and could not be found by them to establish a justification and took an exception (fol. 915) to the Court's refusal so to charge.

It is respectfully submitted that the Court at the folios noted, committed a series of errors in charging the jury, culminating in its refusal to charge as requested by the plaintiff (fol. 915).

This Court has well said:

> "The defendant, in order to justify the publication of the alleged libel, must prove the entire charge to be true; and in case the defendant *fails to prove the truth of the entire publication,* there is no justification thereof."
>
> Saunders vs. Post Standard Publishing Co., 94 N. Y. Supp., 993 at 994, 107 A. D., 84. 84.

Concerning the allegations in the answer that Miracle Wheat was of no greater value than ordinary wheat, it is notable that defendant was unable to produce a single practical wheat raiser, who would testify that Miracle Wheat was not superior to other wheat, especially in view of the fact that Miracle Wheat for several years had been and was being raised by many farmers in various parts of the country, and great claims were being made for it by Mr. Stoner, its discover and others, and that ample time had elapsed to determine its merits. Defendant found itself com-

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pelled to rely on the witness Ball, who was not qualified to testify as to the virtue or lack of virtue of Miracle Wheat, except from the rankest hearsay.

On the other hand plaintiff produced eleven witnesses who testified to the superior qualities of Miracle Wheat. Eight of these never heard of plaintiff and his teachings prior to the trial. At least seven of these were practical farmers and wheat raisers, who came from widely separated sections of the country, and who for several years had been experimenting with Miracle Wheat in competition with other wheats. All of these witnesses testified that the result in every instance was greatly in favor of Miracle Wheat. To offset this testimony defendant produced nothing except the witness, Ball, who was a farmer and wheat raiser *in theory only*, not having had any practical experience. Mr. Ball stated that he was "connected with the United States Government, with the Department of Agriculture as an agronomist and acting cerealist in charge of cereal investigations" (fol. 732). With his imposing title and governmental status it is clear that such a witness would have great weight with the jury. Without his testimony defendant would not have had one word in support of any part of its justification. The record is utterly devoid of a single word in support of the rest of the justification pleaded.

There was absolutely no testimony that anybody had purchased wheat at the Brooklyn Tabernacle "because of the understanding on the part of the purchaser of the same that the entire proceeds would be given to the Watch Tower Bible and Tract Society, and that thereby they (the purchasers), would be rewarded after death," nor did any witness testify to any fact, showing, or supporting the inference that he purchased said Miracle Wheat "because of the state of mind in which he (said purchaser) had been put through the teachings of the plaintiff and of the cor-

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porations, that said Miracle Wheat possessed supernatural qualities."

Furthermore, all of the testimony in the case concerning Miracle Wheat entirely excludes the theory pleaded in the answer as a justification. Eleven witnesses testified on behalf of the plaintiff concerning Miracle Wheat, to the effect that it was superior to any other wheat known by them. Eight of these, namely, Stoner, Knight, Frey, Widener, Ayre, Pray, Tomlinson and Hunt never heard of Pastor Russell or his religious teachings prior to the trial. They had been raising Miracle Wheat for several years, some of them as long as seven years, prior to the alleged libel. Plaintiff could not have influenced them in any way whatsoever to purchase said Miracle Wheat. The other three witnesses, namely: Bohnet, Fleming and Carlton, knew Pastor Russell and were familiar with his Scriptual views. Bohnet and Fleming raised the seed that was sold and which was distributed from the Brooklyn Tabernacle, hence they were the sellers, not the purchasers of the wheat in question. Fleming got his seed wheat from Bohnet the year before and paid a dollar a pound for it. Bohnet got his seed wheat from Dr. Carlton three years prior to the alleged libel, and Dr. Carlton got his seed in 1908, from Mr. Stoner, the discoverer of the wheat, for which he paid Mr. Stoner $1.25 a pound. Hence, there was absolutely not one word of testimony in support of the plea of justification *that Pastor Russell had induced anyone to buy of him Miracle Wheat.*

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POINT II.

The court erred at folio 933 in denying defendant's motion for a new trial.

Plaintiff moved for a new trial on all the grounds set forth in Section 999 of the Civil Code (fol. 933). One of the grounds specified in Section 999 is that the verdict is contrary to the evidence. The argument in support of the proposition that defendant utterly failed to establish its justification as alleged in its answer or any justification whatever of the libel it perpetrated on plaintiff, is fully set forth under Point I hereof. The question of plaintiff's damage was necessarily submitted to the jury but when the jury returned a verdict for defendant, it became, for the reasons set forth in Point I, the duty of the Court to set the verdict aside and direct that a new trial be had.

Clemons vs Mellon, 27 App. Div., 349.

POINT III.

The court erred in admitting Exhibits K, L and M, and the testimony of the witness Ball when plaintiff objected thereto at folios 556, 725, 728, 729, 730, 738, 739, 741, 742, 743, 752 and 767.

Exhibits "K," folio 1122, "L," folio 1126 and "M," folio 1138, are certified copies of reports on file in the Department of Agriculture at Washington, of the

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performances of various varieties of wheat purporting to have been grown under observation at Arlington Experiment Farm, Va., Nephi Experiment Farm, Nephi, Utah and Maryland experiment station, and elsewhere. They were introduced in the course of the testimony of Carlton R. Ball, Agronomist and Acting Cerealist in charge of the cereal investigations of the United States Department of Agriculture. Mr. Ball stated his duties to be the investigation of "cereal crops of the United States, the methods of their production and anything else of interest in connection with cereal work." The department conducts experiment stations at Arlington Farm, Nephi, and some twenty other places. Tests of the growth of the various grains are made on these experimental farms. Some of the farms are conducted in co-operation with State Agencies or other agencies of the states where they are located, that is to say, they are not wholly Government farms (fols. 546, 547). Work is done under the general direction of Mr. Ball, who is in charge of it. Reports of the growth are made to him (fol. 556). He did not personally gather the grain from the ripened wheat, nor know of the kind of grain that was gathered, nor make any of the experiments, all of this having been done by the men employed at the experiment station (fols. 554, 555). Mr. Ball is in charge of the collection and dissemination or information and of the conduct of tests of a large number of varieties of cereals at different experimental farms or stations scattered over the United States, in which are determined the yields and other characteristics of the different cereals under carefully controlled or checked conditions, with respect to variances in soil, etc. (fols. 732, 733). There is a test station at Arlington Farm and one at College Park, Md., and substations all over the United States. In his line of duty, Mr. Ball visits the various substations, consults with the men in regard to the various

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experiments, inspects the field plots and growing crops and all details regarding the conduct of the farm. The results of these farms throughout the country are kept on file in his department (fols. 735, 736).

At folio 725 appears the following:

> "Mr. Oeland: Now, I offer these in evidence. We offer in evidence exhibits for identification 'K,' 'L,' 'M.'
>
> "Mr. Sparks: We object to them on the ground, first, that it does not appear that there is any United States statute making the records of the Agricultural Department evidence in any suit. Second, that is hearsay evidence.
>
> "Mr. Oeland: Exhibit 'K' we offer that in evidence.
>
> "The Court: I am inclined to allow all of them that appear on their face to be the result of experiments by the government authorities, and containing a record of it, and exclude anything in the nature of—I think there is one that caught my eye that it was apparently in the form of a letter, where he visited the Stoner farm. I do not think that comes within the rule."

Later on at folios 727, 728, appears the following:

> "Mr. Sparks: On the further ground that the document itself does not show what amount of seed was sown to any variety. Therefore, it is not a proper test of the growing of the grain. I mean this, that there is nothing in this report to show how much Fuldz wheat was sown, or how much Hybrid wheat was sown or how much Miracle Wheat was sown. Consequently a record of the different yields is not accurate and cannot give the jury any idea of the yielding qualities of any one of these wheats.
>
> "Objection overruled. Plaintiff excepts.
>
> "Exhibit K for identification is received and marked in evidence.
>
> "Mr. Oeland: Now, I offer Exhibit L for identification.
>
> "Mr. Sparks: The same objection to Exhibit L for identification. Also upon the ground

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that it is hearsay evidence, and that no proper cross-examination is permitted or is afforded by reason of the fact that it is put in evidence without anybody being here to be cross-examined upon it.

"Objection overruled. Plaintiff excepts.

"Paper referred to heretofore marked Exhibit L for identification, is received and marked in evidence."

Again at folios 729 and 730 appears the following:

"Mr. Oeland: Next I offer Exhibit 'M.'

"Mr. Sparks: In reference to Exhibit 'M' the same objections as previously noted; and the additional objection that in the case of a lot of these pages attached to the certificate there is no comparison between Miracle wheat and other wheats.

"The Court: I will allow them to show the growth of Miracle Wheat anyway.

"Mr. Sparks: Exception.

"Paper heretofore marked Exhibit M for identification is received and marked in evidence.

At folio 741 while the witness Ball was testifying as to the growth of wheats named in the report marked Exhibit K, and basing his testimony wholly upon what he found in the report, counsel for the plaintiff interposed and the following occurred:

"Mr. Sparks: I move to strike that out. It appears from his early examination that he knows nothing about the yield of these various wheats; and all he can testify to is from the documents on file in his office and consequently he cannot say what the yield was, for any one of these wheats except as he sees it on the document itself.

"Mr. Oeland: He is explaining the record.

Mr. Sparks: No—he stated that the yield for the Fuldz wheat was so much. There is no evidence of that fact. All the evidence heard is that there is a record on file which so states, but that is not evidence of the fact itself; and that is my objection to this.

"Objection overruled. Plaintiff excepts.

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"A. The yield of this Hybrid—

"Mr. Sparks: I object what the yield was, upon the ground that this witness has no information or knowledge of what the yield was except as it appears upon the record, and that the report itself is the best evidence of what the yield was.

"Objection overruled. Plaintiff excepts.

"A. The recorded yield is one pound seven and three-quarter ounces with this Hybrid.

"Q. What is the third in yield?

"Same objection and ruling.

"Plaintiff excepts.

"The Court: You may take it all subject to the same objection; as one exception is as good as a dozen on that."

At folio 752, occurs the following:

"The Court: I will allow all the papers to remain in evidence, that were originally marked, except the photographic copy of a letter appearing to relate to some conversation with Mr. Stoner and the experiments at his farm.

"Mr. Sparks: You have not changed your ruling in reference to the exhibits that do not refer to the Stoner wheat?

"The Court: Oh, no. Those are still excluded. I mean as to the time limit. I think that under the plea of justification, I must take the subsequent experiments.

"Mr. Sparks: I except."

Defendant thereupon proceeded to examine the witness Ball, upon various pages of Exhibit M, except those reports of experiments which did not include Miracle Wheat, which were excluded (p. 18, fol. 1176), was excluded, except the last two paragraphs of page 18, printed at folios 1177 and 1178, which two paragraphs were allowed in evidence (fol. 767). The two paragraphs in question are headed "Stooling of Wheat in Montana, 1909." Upon these latter two paragraphs the following occurred at folio 767:

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"The Court: I will exclude it if it does not include the Stoner.

"Mr. Oeland: We except to the exclusion of each of these pages mentioned. I especially offer page 18, that portion of page 18 at the bottom.

"The above pages just offered are all contained within Exhibit M.

"The Court: I will allow the last two paragraphs.

"Mr. Sparks: I object to it specifically on the ground that it does not say what the name of that wheat is; also it offers us no opportunity for cross-examination of the witness to find out what stool it has or what wheat it is; also upon the ground that it is hearsay, and that the original statement itself would not be evidence if offered; and upon all the grounds urged to the other. And I take an exception.

"Matter admitted is read to the jury."

The reports thus submitted to the jury purported to give the detailed observations of unknown persons in various parts of the United States, some of whom were not under the control of the Federal Government, upon competitive growing of certain wheats, including Miracle, under conditions not disclosed to the jury. While Mr. Ball had general supervision over this experimental work, he had no detailed personal knowledge of the circumstances, methods or results of these experiments yet these purported results of experiments were presented to the jury in the guise of facts. The reception of this evidence as tending to establish the facts purporting to be reported upon the written reports, violates every canon of the law of evidence. The rule of the common law is clearly stated in Stephens vs. Vroman, 16 N. Y., 381, at page 383, as follows:

"The law does not regard as sufficiently authentic to influence a jury, any statement which is not made under the sanction of an oath; and in general it further requires that

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> the witness making the statement should be present at the trial to the end that he may be examined by the adverse party, and that the jury may draw their own conclusions as to his sincerety and accuracy by his appearance and bearing upon the witness stand."

There is no authority which takes the reports thus received in evidence out of the operation of this well established rule. There is no statute of the United States making these reports evidence of the truth of the facts contained therein. The only general statute of the United States bearing upon the question is Section 882, 7 U. S., Revised Statutes, being Chap. 17, Title 13. The judiciary which reads as follows:

> "Copies of any books, records, papers or documents in any of the Executive Departments authenticated under the seals of such deparments respectively, shall be admitted in evidence *equally with the originals thereof.*"

It was however urged by the defendant upon the trial, and accepted by the learned Court below, that the provisions of Section 944 of the Civil Code are sufficient to take all the evidence in question out of the operation of the common law rule. The pertinent part of this section is its first sentence, which reads as follows:

> "A copy of a record or other paper, remaining in a department of the government of the United States, is evidence, when certified by the head * * * of that department."

It would seem that the purpose of Section 944 is to give to a certified copy of a record on file in a Federal Department the same force and effect as would be given to the original paper were the same produced in a state tribunal; and that this is the sole purpose of the statute and that the effect of the statute is limited to this, its sole purpose. If this be the case, a paper offered under this section is subject to all of the rules

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of evidence, except the rule that would require the production of the original instead of the certified copy. That this is the intent of the portion quoted, is clearly implied in the next two provisions of Section 944, the first of which provides that the certificate of the Director of Census stating the population of any part of the United States shall be received *"as prima facie evidence of such facts"* and the second of which provides that the record of observations of the weather taken under the direction of the Signal Service of the United States, shall, when duly certified be *"prima facie evidence of the matters of fact stated therein,"* and the final provision in such section gives to the duly certified records of the City Weather Bureau, the effect of *"presumptive evidence of the facts set forth therein."* Under the usual standards of statutory construction failure to provide in the first sentence of Section 944 that a duly certified copy of a record remaining in a dpartment of the United States Government "shall be *prima facie* evidence of the facts set forth therein" is most significant of the intention of the legislature that no greater weight should attach to the copy than would attach to an original offered in the absence of such statutory provision, and that no greater weight attach either to the copy or to the original than would attach to any other document recording what purports to be a state of facts.

It seems therefore that in permitting these exhibits to be introduced as evidence of the facts purporting to be set forth therein, the Court wholly misconstrued the purpose and effect of Section 944. It is worth noting in this connection that if the Court properly construed the effect of Section 944, it erred in excluding the photographic copy of a letter at folios 731, 775, which was marked Exhibit M1 for identification. It would be possible under the construction adopted by the Court to offer competent evidence of any fact by having an experimenter at the Experiment Station in Delphi, Utah, include in his report to the

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Agricultural Department, the substance of a conversation with a small boy on a country road. The report could be offered in evidence as to the truth of the assertions reported as to what the small boy said. Indeed, the statements in the last two paragraphs of page 18, of Exhibit M (fols. 1177, 1178), may rest on no higher authority.

It seems clear that these reports received at the hands of Mr. Ball, were open to the objections that they were not competent for any other purpose than to prove that the originals were on file in the office at Washington, D. C. This fact was wholly irrelevant to the trial. The reports were not legal proof of the actual stages of experiment and results had therefrom in the various stations affected by them. They should have been excluded, and their exclusion would have stripped the defendant's case of every particle of evidence intended to rebut the evidence offered by the plaintiff that Miracle Wheat was an unusual grain, warranting as unusual price.

POINT IV.

The court erred at folios 918 and 919 in declining to charge as requested by plaintiff and in its modification of the request made.

At folio 917 occurs the following:

> "The Court: I am asked to charge: 'The religious beliefs and teachings of the plaintiff are not in issue, and even if they were contrary to all other religions, that would be no justification or excuse for the defendant publishing the libel complained of.'
>
> "We are not trying a case of what this man's religious beliefs are *alone*. That is not an issue here at all. Every man has a right

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to his own religion and to worship God in the way he likes. That is not the question in this case at all.

"Mr. Sparks: And that that would not justify a libel.

"The Court: And it would not justify the libel *alone.*

"Mr. Sparks: I take an exception to your conclusion, adding 'alone' to that.

"The Court: I so charge. I understand that is what you are asking me to charge.

"Mr. Sparks: I did not ask the word 'alone' to be added to it.

"The Court: I decline to charge it except with the addition of the word 'alone.'

"Mr. Sparks: We taken an exception to the refusal to charge."

It is clear from the record of this trial that the purpose of defendant is and has been to discredit the religious belief and preachings of plaintiff. In paragraph "Seventh" of the answer (fols. 50, 51, 52), it sets forth that plaintiff's religious beliefs and teachings are merely a scheme and expedient for his self-enrichment by practicing upon the credulity of great numbers of persons. Many hours of the time of the trial were utilized by defendant in an effort to discredit the sincerety of plaintiff in his religious teachings, to ridicule his religious doctrines and to discredit his associates in his religious work (fols. 252-296, 324-360, 375, 414-422, 425-429, 656-662).

In its answer defendant admitted having charged that Miracle Wheat was being sold at the Brooklyn Tabernacle at $1 a pound and that it was of no greater value than ordinary wheat, procurable at a far lower price, and that plaintiff was claiming without substantial justification that the wheat has peculiar virtues as seed (fol. 44). The testimony of Carlton R. Ball did not establish this charge. There was no other evidence offered in support of it. Defendant alleged in its answer that great numbers of persons induced by plaintiff's teachings to believe that the world would

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end in October, 1914, had turned over their property, by reason of that belief, to plaintiff (fol. 50). It introduced no evidence whatever in support of this charge. It alleged that much of the money so received by plaintiff had been used by him through dummines acting secretly for investment and speculative purposes, in operations covering every state in this country (fols. 52-53). Not a particle of evidence was introduced in support of this allegation. And the answer further charged that large quantities of Miracle Wheat had been sold to purchasers who bought it because of their belief that they would be rewarded after death and because of their belief, induced by plaintiff that Miracle Wheat possessed supernatural qualities (fol. 56). Not a scintilla of evidence was offered in support of this allegation.

The answer filed by the defendant in the action and the evidence adduced by defendant on the trial, unite in disclosing that the real purpose of defendant was to discredit the religious teachings of plaintiff and to discredit plaintiff as a religious teacher. Defendant implicitly appealed to the jury to hold defendant harmless in this action upon the ground that the religious doctrines of plaintiff were founded in hypocricy were fictitious and a sham. Defendant rested its whole defense upon this tacit appeal to the religious bias of the jury. It had furnished no other ground upon which to justify its gratuitous attack upon plaintiff. It counted upon the religious prejudice of the jury. And the Trial Court was requested to charge as stated for the specific purpose of meeting this tacit defense upon which defendant relied.

When the Court charged the jury that "we are not trying a case of what this man's religious beliefs are alone," it gave a favoring impulse to the efforts of defendant covertly to establish the defense upon which it rested its hopes for a favorable verdict. The Court thus opened the door to the religious bias existing in

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the minds of the jurors. The harmful effect of this error is readily perceived upon conceiving what would have happened to defendant had the jury been comprised of men who accepted plaintiff's religious teachings.

Defendant proved just two facts in this action:

First: That there are rumors afloat in the Agricultural Department that Miracle Wheat has not been found better than other wheats.

Second: That the religious beliefs of the defendant differ from the religious beliefs of the plaintiff. Upon these two facts the jury was permitted by the Trial Court to find that defendant was justified in libelling plaintiff. It is submitted that the Court committed grave and reversible error in declining to charge unequivocally that the religion and teachings of the plaintiff would not justify the libel.

POINT V.

The judgment and order appealed from should be reversed and a new trial granted.

Respectfully submitted.

SPARKS & FULLER,
Attorneys for Appellant.

J. F. RUTHERFORD, and
JESSE FULLER, JR.,
of Counsel.

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B. H. Tyrrel, Printer, 206-8 Fulton St., N. Y.

To be argued by
I. R. Oeland.

Supreme Court,

Appellate Division—Second Department.

Charles T. Russell,
Plaintiff-Appellant,

against

The Brooklyn Daily Eagle,
Defendant-Respondent.

RESPONDENT'S POINTS.

Statement.

Plaintiff brought this action to recover damages in the sum of $100,000. as compensation for an alleged libel published by the defendant on the 23rd day of September, 1911. The alleged libelous article appears at page 9 of the printed case. The defendant admitted the publication. The defendant denied the innuendoes as set forth by the plaintiff and denied that the words and cartoon had the meaning ascribed to them by the plain-

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tiff (fol. 48). Defendant further alleged facts in justification (fols. 49-57). Defendant further alleged that the article was published as a fair honest criticism of the plaintiff (fol. 59).

A trial was had before Mr. Justice Kelby and a jury in January, 1913. The jury returned a verdict in favor of the defendant (fol. 62). A motion for a new trial was made by the plaintiff. An order was entered denying the motion for a new trial (fol. 69). The plaintiff appealed to this Court.

Pleadings.

The plaintiff alleged that he was engaged in preaching the gospel; that he was the elected pastor of various congregations; that he was known as Pastor Russell; that he was the editor of a journal known as the Watch Tower and president of certain religious corporations; that he was the author of certain books known as "Studies in the Scripture"; that these books had been sold in all parts of the world; that he had the respect and esteem of many thousands of people (fols. 12-18).

That on, prior aand subsequent to the 23rd day of September, 1911, the defendant published certain articles concerning the sale of wheat then being sold in the Borough of Brooklyn at the Brooklyn Tabernacle of which the plaintiff was the pastor, at the price of $1. per pound, which said wheat was known as "miracle wheat", in which said articles the defendant charged that the "miracle wheat" was of no greater value than other wheat which could be procured at a much lower price and in which said articles the defendant charged that plaintiff was directly interested in the sale of said wheat (fols. 19 and 20). That

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prior and subsequent to the 23rd day of September, 1911, the defendant published certain articles and cartoons concerning the management and existing conditions of the Union Bank (fols. 21 and 22). That on the 23rd day of September, 1911, the defendant published of and concerning the plaintiff a certain picture drawing or cartoon with inscriptions thereon. A copy of the cartoon and words accompanying it appear at page 9 of the complaint. The defendant admitted the publication of the cartoon and the accompanying words (fols. 45 and 46). The plaintiff further alleged that the picture was intended to represent the Union Bank; that the picture of the man was intended to represent the plaintiff. Plaintiff then set forth various and sundry innuendoes as the proper meaning to be placed upon said words and cartoon. Defendant denied the entire allegation as set forth in paragraph Sixth, except that it admitted the publication of the words which accompanied the picture (fol. 47). Plaintiff further alleged that the cartoon and words were wholly false; that they were published maliciously and with the intention to injure his reputation (fols. 33 and 34) and that by reason of same plaintiff had been brought into public scandal and reproach, had been disgraced and suffered injury to his reputation (fols. 35 and 36). Defendant denied each and every allegation contained in paragraphs Seventh and Eighth of the complaint (fol. 47).

For a separate defense and in answer to the innuendoes set up by the plaintiff in paragraph Sixth of his complaint, defendant denied the meaning attributed by the plaintiff to each and every portion of the article and alleged that the words used by the defendant in said article had not and have not the meaning ascribed to them

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by the plaintiff (fol. 48). In justification the defendant alleged that each and every one of the statements set forth in the article complained of were true; that the plaintiff for a long time had been the dominant and controlling power in certain corporations known as the Watch Tower Bible & Tract Society and the People's Pulpit Association; that the plaintiff dictated the actions of said corporations and controlled the executive boards thereof; that in the Watch Tower Bible & Tract Society he controlled a majority of the voting shares of the corporation; and through the medium of said corporation and by distributing large quantities of printed matter and by furnishing speakers plaintiff had criticised other religions in the interest of a religion or cult claimed to have been invented by himself and known as the "Millenial Dawn" or "Russelism", the central tenet of which said religion was that the world as now constituted was to come to an end in October, 1914. That great numbers of persons, believing that the end of the material world was near, and believing that by giving their material substance they could become of the elect under what the plaintiff called a "new dispensation", had turned over their property to the corporation and to plaintiff; that others had devised property to the plaintiff by will; that others, influenced by the plaintiff, had pledged money for advertising the plaintiff and his so-called religion; that much of the money received in this way had been invested in real estate, mining stocks and various speculative enterprises; that investments were made in dummy corporations through persons acting as the secret representatives of the plaintiff (fols. 50 to 53); that his operations had extended so that they covered the United States and many countries in Europe; that in June, 1911,

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plaintiff published in the Watch Tower an advertisement headed "A donation of miracle wheat". Defendant then sets forth in full the advertisement; that the wheat offered for sale was of no greater value than ordinary seed wheat which could be procured at a much less price (fols. 54 to 56); that there was nothing miraculous about the wheat; that large quantities of said wheat were sold with the aid, connivance, consent and procurement of plaintiff during the month of September because of the understanding that the proceeds from the sale of the wheat should be given to the Watch Tower Bible & Tract Society and that thereby the purchasers would be rewarded after death (fol. 56).

As a partial defense, defendant alleged that it employed expert and qualified newspaper reporters and cartoonists; that the article complained of was prepared by expert and qualified newspaper reporters and cartoonists; that it was founded upon information which came to the defendant in the ordinary course of its business. The article was published in the ordinary course of defendant's business without malice on the part of the defendant. The information was received from trustworthy and reliable sources and the article was published in good faith (fols. 58 and 59).

As a separate defense, defendant alleged that the article complained of was published as an item of news and of public interest and was a fair and honest criticism of the plaintiff and was privileged (fol. 59). As a partial defense, defendant reiterated the matters set forth in justification, and alleged that the evidence in support thereof would be used in partial defense and in mitigation of damages (fol. 60).

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Facts.

The plaintiff was not an ordained minister of the Gospel. He was the elected pastor of various congregations throughout the United States. He claimed to be the author of a certain set of books called "Studies in Scripture". He was the editor of a publication known as the Watch Tower.

On the trial of this case, the plaintiff did not take the witness stand to testify in his own behalf, thereby eliminating much evidence which would have thrown light on his character and teachings. His followers were willing to testify that the plaintiff had a favorable reputation as a minister and preacher (fol. 498). They gave no information, however, as to his general reputation and private life (fols. 501, 502 and 503). We therefore have in the record some evidence as to his standing as a bible student and minister, but no evidence as to his general reputation and private life except such as the law presumes.

Among other things, the plaintiff taught his followers to believe that the world would come to an end in October, 1914 (fol. 281); that the rulers of Israel were to be resurrected in 1914 and become the civil rulers of the world (fol. 278). These are designated in his writings as "ancient worthies" (fol. 326). He speaks of the ending of the world as the day of Vengeance (fol. 285) and says that the whole earth will be swept by the besom of destruction (fol. 289). He also taught the doctrine that the Fallen Angel re-appeared and took on the form of a human being for the purpose of getting human beings into trouble and gives as an example how he (the plaintiff) was represented by one of the Fallen Angels in Australia (fols. 293, 296).

The plaintiff was the founder and President of the Watch Tower Bible & Tract Society. The Watch Tower Bible & Tract Society is the suc-

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cessor of Zion's Watch Tower Tract Society (fol. 568). The Watch Tower Bible & Tract Society issued voting certificates. At the last election there were 50,000 votes cast. Pastor Russell cast 47,000 votes out of the 50,000 (fol. 695). No notices were mailed of the annual election (fol. 702). The charter fixes the annual election as the first Saturday of January in each year.

The Watch Tower journal was sent to the Lord's poor and the plaintiff, at the end of the year, received certificates of stock in an amount equal to the number of the Lord's poor which received the Watch Tower journal (fols. 642, 644 and 645). By this means, his holdings of certificates of stock were annually increased. The United States Investing Company, Limited, was a holding corporation for the Watch Tower Bible & Tract Society (fol. 578). The Watch Tower Bible & Tract Society turned over money and property to the Investment Company (fol. 592), and when the Watch Tower Bible & Tract Society turned over money to the Investment Company they took no evidence of debt or obligation from the Investment Company (fol. 597).

The United Cemeteries Company was a holding company for the Watch Tower Company (fol. 606). Property was bought in the name of Mr. Van Amburg. The money was furnished by the Watch Tower. Mr. Van Amburg conveyed the title to the investment company and the investment company conveyed it to the United Cemeteries Company (fols. 605, 608 and 609).

The plaintiff was president of the People's Pulpit Association and is to hold that position for life (fol. 568). The People's Pulpit Association owned property in Brooklyn (fol. 614). Property was bought in the name of Mr. Van Amburg. He bought property in Brooklyn; it was trans-

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ferred to the People's Pulpit Association and the Watch Tower Bible & Tract Society owned a mortgage on it for $24,000. (fol. 624). Another piece Mr. Van Amburg took in his own name on Columbia Heights, and the Watch Tower Bible & Tract Society owned a mortgage on that for $25,000. The Watch Tower Bible & Tract Society owned property in Binghamton, New York; in the City of Tacoma; a house and lot in Buffalo; a farm in Oklahoma (fol. 629); they owned about 5000 acres of land in Kentucky (fol. 632); they owned stocks and bonds (fol. 633); they advanced cash to the United States Investment Company (fol. 636). The Watch Tower Bible & Tract Society advanced money for the purchase of property in London (fol. 646). This property was taken in the name of the International Bible Students Association (fol. 647).

The Watch Tower Society received in 1910 $139,000. in contributions; in 1911, $169,000., and in 1912 over $200,000. (fol. 650); they received money and property willed to them by individuals (fol. 650).

The plaintiff advertised his sermons in the press and by posters on the billboards (fols. 419, 420). He paid for publishing his sermons in various newspapers (fol. 660). Mr. Driscoll, a promoter, was sent abroad by the Watch Tower to advertise the coming of Mr. Russell (fols. 656, 657 and 659). Mr. Driscoll was paid by the Watch Tower (fol. 656). At the Chatauqua Convention in 1909, the plaintiff rented a place for the entertainment of his guests known as Peacock Inn. He entertained each evening about six hundred guests; he chartered the hotel; he chartered a boat (fol. 654).

In 1912, the total receipts were $398,322 (fol. 665).

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From the foregoing facts, it will be seen that the plaintiff dominated and controlled all of the corporations; that the proceeds of the money received from the various corporations were used in advertising the plaintiff, in paying his expenses and in furnishing money to him for the purpose of entertaining whenever he saw fit. The advertising of Pastor Russell was the paramount duty of all of these institutions and the religious element was an incident to the advertising.

"Miracle Wheat" was first discovered by a man by the name of Stoner in Virginia. He did not claim any miraculous origin for the wheat, but as soon as the Watch Tower Bible & Tract Society began to advertise it, they attached to it miraculous properties.

Plaintiff offered in evidence a statement in reference to "Miracle Wheat" published in the Watch Tower (Plaintiff's Ex. 35). This statement refers to the wheat as coming in answer to prayer, and further says that the description has the earmarks of truth about it (fol. 1065). This article winds up with the suggestive remark: "Is it restitution wheat?" (fol. 1075).

Plaintiff offered in evidence another publication (Plaintiff's Ex. 36, p. 357). This publication winds up with the statement "Our thought is that in that natural way God is preparing for the millenium and the earth shall yield her increase" (fol. 1073).

The plaintiff was the editor of the Watch Tower and he early begins to hold out the thought that this wheat may be of Divine origin.

In 1910, J. A. Carlton wrote to the plaintiff and refers to "Miracle Wheat" in connection with the restitution of all things (fol. 1089).

On May 23rd, 1911, J. A. Bohnet wrote to the plaintiff stating that he would turn over his en-

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tire crop of "Miracle Wheat" to be sold at $1 per pound, the money to be used in spreading the truth (fol. 937). He refers to this wheat as a factor to be used in preserving life during the troublous times (fol. 939). Then follows the publication in the Watch Tower of June 15th, 1911 (Plaintiff's Ex. 7, p. 315) advertising the "Miracle Wheat" at $1 per pound.

On July 20, 1911, Mr. S. G. Fleming made a contribution of "Miracle Wheat" for use in spreading the truth (Ex. 5, p. 314). From reading the advertisement (Plaintiff's Ex. 7) you are forced to the conclusion that this wheat is advertised as a donation of J. A. Bohnet. As a matter of fact, this particular wheat was raised on property belonging to the Watch Tower Bible & Tract Society and belonged to the plaintiff or to the Watch Tower Bible & Tract Society, and in truth and in fact they were selling their own wheat. The Watch Tower Bible & Tract Society, through the Cemeteries Company, owned the land on which this wheat was raised (fols. 608 and 609). Mr. Bohnet testified on direct that he raised the "Miracle Wheat". He made no reference to the fact that it was being raised on property belonging to the Watch Tower Bible & Tract Society (fol. 189). He referred to the Cemeteries Company's land as his farm on cross-examination (197). He admitted, however, that it was raised on land of the United Cemeteries Company; and when Mr. Van Amburg was placed on the stand by the defendant, it was enabled to prove that this property belonged to the Watch Tower Bible & Tract Society and that it was in reality their own wheat which was being advertised and sold at $1 per pound. The defendant also proved that this wheat was being offered for sale at $5 a pound in 1911 (fol. 146).

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Plaintiff produced a large number of witnesses who testified to the wonderful productive qualities of this wheat.

The defendant proved by Mr. Ball, the United States Agricultural expert, together with the tests which had been made of this wheat, that it was wheat of ordinary quality and fell far below some of the well-known varieties of wheat (fols. 753, 754, 755 and 758; see also Defts's Exhibits K, L and M, pages 375 to 381, inclusive).

POINT I.

The Court properly left it to the jury to determine just what the libelous article meant and instructed the jury that the justification must be as broad as the libel.

The libelous article is capable of several meanings. The defendant denied that the plaintiff had placed the proper construction as to the meaning of the alleged libelous article (paragraphs Fourth and Sixth, Defendant's Answer, p. 16). In looking at the cartoon and the words accompanying it, the ordinary mind is left in doubt as to just what meaning it intended to convey. This being true, it was the province of the jury to determine just what it meant. The Court instructed the jury that after they determined the meaning of the alleged libelous article, unless they found that the defendant had proved facts in justification as broad as the libel, their verdict must be for the plaintiff. The jury after hearing the facts in justification have determined the meaning of the li-

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belous article and have determined that the justification was as broad as the libel and that the plaintiff was not entitled to recover. The finding of the jury on these disputed points should not be disturbed.

The defendant proved that the plaintiff was the dominant and controlling power in certain corporations known as the Watch Tower Bible and Tract Society and the People's Pulpit Association; that he dictates, and for a long time had dictated, the actions of the boards of directors of said corporations; that he dominated and controlled a majority of the voting shares of the Watch Tower Bible & Tract Society; that he taught the world was coming to an end in 1914; that his followers had donated property to the corporations in order to become of the elect; others had devised their property to him or his corporations by their wills. This money had been used by the plaintiff to advertise his doctrines and himself; that he had bought property which was held in the names of these dummy corporations and individuals; that plaintiff published in the Watch Tower on June 15th, 1911, of which he (the plaintiff) was editor, an advertisement of the sale of "Miracle Wheat", which said wheat was to be sold at $1. per pound. The defendant proved that the wheat was of no greater value than ordinary seed wheat; that there was nothing miraculous about the wheat; that large quantities of the wheat were sold with the aid, consent and procurement of the plaintiff; that the proceeds of the sale were to be used in advertising the plaintiff and his religion, and that he held out that said wheat possessed supernatural qualities. These facts proven in justification were as broad as the libel as construed by the jury, and the verdict of the jury should be upheld.

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The plaintiff was promulgating a new and unique religious doctrine. He claimed to be promulgating a new religion and was appealing to his supporters for money contributions to carry on his work. If he was teaching false doctrines and procuring money by false pretences, it was nothing but right that the people's attention should be called to this by the public press, and if the evidence offered by the defendant in justification is as broad as its criticism, the plaintiff is not entitled to recover. It must be noted that all of this money was used by the plaintiff, or under his directions, for advertising the plaintiff and in promulgating the sale of the plaintiff's books. Though teaching religion, the plaintiff failed to show that he ever gave a dollar's contribution for any charitable purpose. So far as this record goes, the plaintiff never gave donations to the poor. The only donation that ever went to the poor was to send them free the publication known as the Watch Tower. If they needed bread or support, they must get it from the doctrines set forth in the Watch Tower, and at the end of the year the plaintiff himself received an indirect benefit from these donations of the Watch Tower to the Lord's poor by receiving additional voting certificates of stock of the Watch Tower Bible & Tract Society.

No one does contend that a man should be ridiculed because of his religious beliefs alone, but if he is using those religious doctrines for the purpose of accumulating money for his self advertisement, then it is proper for the press to call attention to the facts. The Court excluded a great many of the plaintiff's doctrines which we submit were proper in showing the manner in which the plaintiff was using his religion to get money for his own advertisement and advancement.

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The evidence excluded appears in defendant's Exhibits R, S, U, W, X, V and Z.

Schedule E contains extracts from the defendant's publications designating the end of the world in 1914, and that his followers are to become the elect. In Exhibit U, plaintiff holds out the idea that none of the rich can enter the Kingdom of Heaven; that in order to become one of the elect, he must divest himself of his earthly riches.

In Exhibit V, the plaintiff holds out the idea that if one is poor and gives liberally, his worldly possessions will be increased, and cites the example of the widow of Zarephath, and also in Exhibit V the plaintiff holds out the idea that the world is about to come to an end and that his followers will be the elect of God (fol. 1215).

In Exhibit Y he sends out his circular known as "Good Hopes," which he sends out to his followers in order to raise money.

We submit that all of this testimony had a direct bearing upon plaintiff as a public man and on the doctrines which he was promulgating and that they were all admissible in evidence under the defendant's answer of fair comment and justification.

POINT II.

Exhibits K, L and M were properly admitted in evidence, and the testimony of Mr. Ball, the government's expert, explaining these exhibits, was properly admitted in evidence.

These exhibits were correct copies of the originals on file in the Agricultural Department at

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Washington, were properly certified and were admissible in evidence (pp. 373-381, inclusive).

Section 882 of the United States Revised Statutes (Federal Statutes Annotated, Vol. 3, p. 26) provides as follows:

> "Copies of department records and papers. Copies of any books, records, papers or documents in any of the Executive Departments, authenticated under the seals of such departments, respectively, shall be admitted in evidence equally with the originals thereof."

Another provision of the Federal Statutes makes the Department of Agriculture one of the executive departments of the United States Government and makes all provisions applicable to the Executive Departments applicable to the Agricultural Department. Sec. 1, 25 Stat. L. 659 (Vol. 1 Fed. Stat. Ann., p. 8). Another provision of the Statute requires the Agricultural Department to make tests of seeds and keep a record thereof in the department. 31 Stat. L. 928 (1 Fed. Stat. Ann., p. 14). Sec. 526, R. S. (1 Fed. Stat. Ann., p. 7).

Section 944 of our Code provides:

> "Copies of documents on file in departments of U. S. presumptive evidence."

This is the title of this particular section of our Statute. The Statute then provides that all books, records, etc., properly authenticated, should be admitted in evidence equally with the originals thereof. It would seem that this statute directly provided for the introduction of these certified copies. In addition to the statute, the following authorities hold that this evidence is admissible:

Evanston v. *Gunn,* 99 U. S., 666;
McInerney v. *U. S.,* 143 Fed. Rep., 729;

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Pooler v. *U. S.*, 127 Fed. Rep., 509;
Wynne v. *U. S.*, 217 U. S., 234;
Holt v. *U. S.*, 218 U. S., 245;
Jacobi v. *Order of Germania*, 73 Hun, 602.

This testimony clearly established that "Miracle Wheat" was wheat of ordinary production; that it did not possess the qualities claimed by the plaintiff. Mr. Ball testified that these tests were made under his supervision and direction; that the knowledge obtained therefrom was disseminated to the farmers and was open to the world (fol. 735); that in making these tests, he did not know anything of the plaintiff and did not know that this action was pending; that they were made for the purpose of procuring accurate knowledge as to the qualities of this wheat; that he did not know anything of the plaintiff or of this action until about ten days before he came to Brooklyn. Under these circumstances, this evidence was directly admissible, and the Court properly admitted all of this testimony.

POINT III.

The judgment appealed from should in all things be affirmed.

Respectfully submitted,

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Attorneys for Defendant,
177 Montague Street,
Brooklyn, New York.

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To be argued by
Jesse Fuller, Jr.

Supreme Court,

APPELLATE DIVISION—SECOND JUDICIAL DEPARTMENT.

CHARLES T. RUSSELL,
Plaintiff-Appellant,

against

THE BROOKLYN DAILY EAGLE,
Defendant-Respondent.

APPELLANT'S BRIEF IN REPLY.

POINT ONE.

The religious doctrines of appellant, disclosed in the record, do not contravene public policy, allow of judicial condemnation, nor supply either justification or excuse for the libel.

Two general views of the end of the world foretold in the Scriptures have long been held by Christian people. One is, that at the second coming of Christ, the physical earth or world and all things therein will be literally destroyed. The other is that the end of the world contemplates the passing away of previously existing systems and the universal selfishness they expressed, and the beginning

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of an era characterized by a harmony of human relations, peace, brotherly love, and happiness, by moral and intellectual advancement, hitherto unknown and incomparable to anything previously within human experience. The latter view is the one entertained and taught by appellant. The former view is the one taken by respondent of appellant's teachings and is the one which it alleged in its answer and sought to establish upon the trial. The reason for this effort by respondent is clear. It is a well known fact that at various times during the Christian era, exponents of the view of the literal, physical, impending destruction of the earth have produced a class of followers who, dominated by this thought, have turned over their wealth and possessions to the exponents of such a doctrine. It has been a persistent purpose of respondent to stamp the doctrine of appellant as coming within this general class in the hope that by so doing it might justify its charge that appellant's religious activities were guided by a fraudulent purpose.

It is alleged in the answer, "the central tenet of the so-called 'Millennial Dawn' or 'Russelism' being that the world as it is now constituted will come to an end in October, 1914. By reason of the aforesaid great numbers of persons, believing that the end of the material world is near and that only through 'sacrifice' of their material substance they can become of what he calls the 'elect' under what he calls the 'New Dispensation,' have turned over their property to plaintiff and said corporations, in preparation for the end" (fol. 50).

It was thus essential to defendant's plea of justification that it establish, first, that appellant did teach the doctrine of the literal physical destruction of the earth and all things therein at a day fixed, and, second, that donations to his religious

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work were consequent upon the fears or hopes thus inspired in his followers, whereby he became enriched—Miracle Wheat being used as one of the means adapted to this end.

There is not a scintilla of evidence supporting defendant's theory nor justifying defendant's charge. Defendant made Mentas Sturgeon its own witness on this question and examined him at length as to the doctrine taught by appellant. And notwithstanding his testimony affords no support to defendant's theory that appellant taught the first view alluded to, the statement of fact in respondent's brief is prepared in attempted support of this theory. The doctrine which, appellant teaches, arises from a correct reading of the Scriptures, is disclosed in the record, to be as follows:

The present era has been a Gentile dominion of the world, Gentile as opposed to Jew (fol. 280); present events show, and the Scriptures indicate, "a great change for the betterment of the whole race of mankind; and that we now have the beginnings of that change which will ultimately mean good for all people" (fol. 284); Scriptural statements, chronology, and everything together indicate that 1914 marks the ending of the old period and the commencement of the new (fol. 286), which date is fixed approximately (fol. 333), and is inferential—not dogmatic (fol. 327); the occasion of the change from the old to the new order is the Scriptural "Day of Vengeance" (fol. 284), the "time of tribulation, such as was not seen since the beginning of the world," spoken of by the Prophet Daniel and referred to in the 24th Chapter of Matthew (fol. 285); in the course of this change, the swelling waves of social and political commotion will quickly spread and involve and engulf the nations of the earth which will be swept by the besom or broom

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of destruction (fols. 289, 290); in this new period *after* 1914, the good old men of the Bible are to be resurrected and will become "the leaders among the people" (fol. 278); the duration of this period of resurrection is to number "one thousand years" (fol. 325); this new period is to be "the time of the Kingdom of God's dear Son Jesus Christ" (fol. 278); and the transition fixed approximately for the year 1914 will mark the end of the kingdoms of the world and the establishment of the Kingdom of God (fol. 281). The advent or progress of the new period does not involve physical changes, like upheavals, throwing down of buildings, and so on (fol. 316), nor will it affect the continued existence of banks, railroads, cars, steamships, and all these things through 1915 and 1916, nor for a great many years until something better in the way of advancement takes their place (fol. 323), nor will the advent of the Kingdom of God, the dawn of the new era, be observable to the eyes—"The kingdom cometh not with outward observation" (fol. 339). The character of the new dispensation is foreshadowed by the condition of the financial world compared with the great masses of people, whereby a clash between these great parties is indicated unless there be some remarkable readjustment (fol. 322) and the era of the new dispensation is to be manifested by a great world change along financial, social, industrial, religious and political lines (fol. 283).

It thus appears from the evidence that the doctrinal teachings of appellant are totally misrepresented by respondent and that far from the property transactions of appellant's followers being explainable upon the theory that they were induced to give in expectation of their approaching destruction, such doctrine of destruction was never, in fact, taught It is to be noted

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in this connection that the theory advanced by respondent involves the most absurd contradiction in so far as it bears upon the sale of wheat. It is charged that by convincing his followers that the world would be physically and literally destroyed in October, 1914, and representing to them that Miracle Wheat would be greatly productive in years to come, appellant succeeded as a result of the double deception in selling the wheat at a ridiculously high price—persuading them that there would be no world after 1914, he induced them to buy seed for their enrichment after 1914.

It may be further noted that, while the justification pleaded was, that appellant was procuring moneys through the sale of Miracle Wheat and otherwise, from students of his religious teachings, for his personal enrichment by investment "in real estate, mining stocks and various speculative enterprises" through dummy corporations, partnerships, associations, or through other persons acting as corporations or dummies for the plaintiff" (fol. 52), respondent now retreats to the proposition that plaintiff was "using these religious doctrines for the purposes of accumulating money for his self advertisement!"—the advertisement being of the occasion upon which appellant was to lecture upon those very religious doctrines!

POINT TWO.

The cases cited under respondent's Point "Two" afford no authority for the introduction in evidence of Exhibits "K," "L" and "M," alleged reports from the Department of Agriculture.

It is said in Evanston *v.* Gunn, 99 U. S., 660, at page 666 (cited by respondent), in upholding the

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admissibility in evidence of the weather observation of the Federal Signal Service, that a person employed in the United States Signal Service, whose public duty it is to record meteorological observations, is making a record "of a public character, kept for public purposes, and so immediately before the eyes of the community that inaccuracies * * * could hardly escape exposure. They come, therefore, within the rule which admits in evidence 'official registers or records kept by persons in public office in which they (are) required, either by statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties or under their personal observation.' * * * Nor need they be kept by a public officer himself, if the entries are made under his direction by a person authorized by him."

It is said in McInerney *v.* United States, 143 Fed. Rep., 729, at page 737:

> "The general proposition is sometimes made in the books, and it has some support upon the authorities, that, whenever a person is by law required to make a report or return of his acts, the report is a public record. We need not accept this general and extreme proposition, because it must be subject to some qualifications, and the admissibility of a given document must, after all, largely depend upon its character and the nature of the facts to which it relates."

Both of these cases, it is submitted, are distinctly hostile to respondent's contention that the records in question, uncertified, unverified, unsigned, were admissible as proof of facts disclosed by alleged tests, held on farms "conducted co-

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operatively with state agencies or other agencies in the states where they are located" (fols. 546, 547), scattered throughout the United States (fols. 546, 735), performed by unknown employees of the various stations or substations (fol. 555), merely under the general direction of the witness Ball (fol. 556), who resides at Washington (fol. 545) and occasionally visits the various substations (fols. 735, 736), and who has no personal knowledge of who conducted the tests nor of when nor where nor how they were carried on (fols. 554, 555).

That the admissibility of this evidence is condemned by the very cases cited by respondent, is clear upon a reading in conjunction with those authorities, the following excerpt from page 18 of Defendant's Exhibit "M" received in evidence (fol. 767) and printed at folio 1177:

"Stooling of Wheat in Montana, 1909.

> "It is not uncommon to find a plant having one hundred stools, and containing the same number of heads, all of which have been produced from a single seed. In collecting samples this Fall several plants containing from one hundred forty to one hundred fifty-five heads produced from a single seed were found. This stooling was, of course, on a field having a thin stand."

There is nothing in the cases cited by respondent and we believe there is nothing to be found in the books which will authorize giving effect as evidence to this anonymous rumor from Montana. It is submitted that little more probative value attaches to the other exhibits on this question which defendant was permitted to place before the jury in its effort to justify the charge of fraud

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and deception which it had brought against plaintiff.

Respectfully submitted,
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THE NEW YORK SUPPLEMENT

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CONTAINING

THE DECISIONS OF THE SUPREME AND LOWER COURTS OF RECORD OF NEW YORK STATE

WITH TABLE OF NEW YORK SUPPLEMENT CASES THAT HAVE BEEN PASSED UPON BY THE COURT OF APPEALS

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502, 3 Am. Rep. 721, where an infant was exposed to an oncoming locomotive; for in O'Brien v. Erie R. R. Co., 139 App. Div. 291, 123 N. Y. Supp. 1040, an adult was saving an adult. Nor is it necessary that the danger should have reached or menaced a particular person, for in Manthey v. Rauenbuehler, 71 App. Div. 173, 75 N. Y. Supp. 714, there was danger threatened generally to children in the street in a tenement house neighborhood and near schools. In the case at bar, horses with a street sweeper were dashing ungoverned through the street, and the jury was justified in inferring that, if they continued unchecked, harm would come to some one. Indeed, that apprehension would come to the mind of any rational and well-disposed person. The question, then, is whether a man strong in courage and capable physically should be content to let the probably destructive agency go its way or attempt to stop it. It is not necessary to let admiration for the deed influence our judgment of its rational nature. In the Eckert and Muhs Cases it is said that the person attempting the service was under a duty to rescue the person in danger. Such sense of duty is based upon feelings of the highest value. Whether it was or was not culpable to obey the prompting to that duty depends upon the conditions presented. It is a choice between strong and brave men keeping themselves in assured safety and letting the horses make their hurtling away unchecked, or using efforts as prudently as the occasion permits to avert it. In the present instance, it was a fair question for the jury whether the venture of the decedent was justified by the circumstances.

The judgment and order should be affirmed, with costs. All concur.

RUSSELL v. BROOKLYN DAILY EAGLE.

(Supreme Court, Appellate Division, Second Department. May 7, 1915.)

1. LIBEL AND SLANDER ⇐6—ACTIONABLE WORDS—CARTOON.

A newspaper publication of a cartoon, under the headline "Easy Money Puzzle," showing a building with a legend "Onion Bank," and the figure of a man at the door saying, "You're wasting time; come on in here," and in the foreground an effigy of the plaintiff, an unordained preacher, carrying a small package with the subscription, "If Pastor R. can get a dollar a pound for Miracle Wheat, what could he have got for Miracle Stocks and Bonds as a director in the old Union Bank," in view of the contemporaneous failure of the Union Bank by reason of the unlawful acts of its officers, who had been charged with purchasing with depositors' money bogus securities at fictitious prices from co-conspirators, was libelous.

[Ed. Note.—For other cases, see Libel and Slander, Cent. Dig. §§ 3–16; Dec. Dig. ⇐6.]

2. LIBEL AND SLANDER ⇐123—QUESTION FOR JURY—DEFENSE.

Where defendant pleaded the truth in justification, it was for the jury to ascertain the scope of the cartoon, and to say whether the defense was established.

[Ed. Note.—For other cases, see Libel and Slander, Cent. Dig. §§ 356–364; Dec. Dig. ⇐123.]

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3. EVIDENCE ⊂⊃333—OFFICIAL REPORTS—DEPARTMENT OF AGRICULTURE.

Where plaintiff, the editor of a publication purporting to be devoted to a religious propaganda, told his readers that an associate had accumulated Miracle Wheat, which he would sell to readers for $1 a pound, and represented that the yield of Miracle Wheat was 10 to 15 times that of common wheat, report of the United States Department of Agriculture, charged by Rev. St. U. S. § 520 (Comp. St. 1913, § 788), with acquiring information on agricultural subjects, by section 526 (section 818) with preserving information on agriculture, etc., which reports, when duly authenticated, are receivable, for any proper purpose, under Code Civ. Proc. § 944, and Act Feb. 9, 1889, c. 122, 25 Stat. 659 (U. S. Comp. St. 1913, § 789), to the effect that Miracle Wheat was no more prolific than ordinary brands of wheat, was admissible.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1247–1257, 1259–1265; Dec. Dig. ⊂⊃333.]

Appeal from Trial Term, Kings County.

Action by Charles T. Russell against the Brooklyn Daily Eagle. From a judgment for defendant, and from an order denying his motion for a new trial, plaintiff appeals. Judgment and order affirmed.

Argued before JENKS, P. J., and THOMAS, CARR, STAPLETON, and PUTNAM, JJ.

Jesse Fuller, Jr., of Brooklyn (J. F. Rutherford, on the brief), for appellant.

I. R. Oeland, of New York City, for respondent.

PER CURIAM. [1] The action is for damages for libel. The defendant is the publisher of a daily newspaper. The plaintiff professes to be an interpreter of the Bible, and is an unordained preacher. The libel alleged was published in a cartoon. The headline of the cartoon is "Easy Money Puzzle." In the cartoon is shown a building on which is printed "Onion Bank." The figure of a man appears at the door of the building. He is represented as saying: "You're wasting time. Come on in here." In the foreground is an effigy of the plaintiff, portrayed as carrying a small package. There is this subscription: "If Pastor Russell can get a dollar a pound for Miracle Wheat, what could he have got for Miracle Stocks and Bonds as a director in the old Union Bank?"

Contemporaneously with the publication, the Union Bank had defaulted in payment of deposits. Its failure was by the press attributed to the infidelity, inefficiency, and unlawful acts of several of its officers. They were charged with purchasing with the depositors' money bogus securities at fictitious prices from co-conspirators. A violent denunciatory newspaper campaign, in which the defendant prominently participated, was being waged against the officers. The plaintiff's plea was that the defendant's purpose was falsely to charge him with dishonest and fraudulent practices in disposing to his disciples, to their loss, of a grade of wheat, known as Miracle Wheat, at $1 per pound. The defendant pleaded the truth in justification. The learned trial court charged the jury that the publication was libelous, and left it to them to say whether the defense was established. The jury rendered a verdict for the defendant.

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[2] The charge contained a correct exposition of the law governing the defense. The court properly left it to the jury to ascertain the pith and scope of the cartoon, and then to determine whether defendant's proofs were adequate to meet the charges as thus ascertained.

[3] The appellant's only assignment of error which we deem it necessary to discuss is the asserted inadmissibility of reports of the United States Department of Agriculture. Such reports were duly authenticated, and when so authenticated they are receivable as evidence for any proper purpose. Section 944, Code Civil Procedure; 25 Stat. 659, Fed. Stat. Ann. vol. 1, p. 8.

The plaintiff was the editor of a publication purporting to be devoted to a religious propaganda. In it he informed his sympathetic readers that one of his associates had accumulated Miracle Wheat, which the associate was disposed to sell to the readers of that publication for $1 a pound. The associate promised to give the entire proceeds to a corporation organized and controlled by the plaintiff. In the article it was represented that the yield of Miracle Wheat was 10 or 15 times as great as the yield of common wheat. The record offered in evidence tended to show, as the result of governmental experiment, that Miracle Wheat was no more prolific than brands of wheat in general use and of ordinary quality. There was independent evidence that other wheats could be purchased at prices so low, in comparison, as to make the advertised price of Miracle Wheat exorbitant.

Among the duties imposed and the powers conferred upon the Department of Agriculture are the following: To acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word (section 520, Rev. Stat. U. S.); to procure and preserve all information concerning agriculture which the Commissioner of Agriculture (now the Secretary), can obtain by means of books and correspondence, and by practical and scientific experiments, accurate records of which experiments shall be kept in his office, by the collection of statistics, and by any other appropriate means within his power. He shall collect new and valuable seeds and plants, shall test, by cultivation, the value of such of them as may require such test, shall propagate such as may be worthy of propagation, and shall distribute them among agriculturists. Section 526, Rev. Stat. U. S. See, also, Act March 2, 1901, c. 805, 31 Stat. 928.

The question is, are those records relevant evidence of the facts therein recorded, upon the issue of justification? In Evanston v. Gunn, 99 U. S. 660, 666, 25 L. Ed. 306, speaking of records of the Weather Bureau, the court said:

"They are, as we have seen, of a public character, kept for public purposes, and so immediately before the eyes of the community that inaccuracies, if they should exist, could hardly escape exposure. They come, therefore, within the rule which admits in evidence 'official registers or records kept by persons in public office in which they are required' (sic) 'either by statute or by the nature of their office, to write down particular transactions occurring in the course of their public duties or under their personal observation.' Taylor,

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Evid. § 1429; 1 Greenl. Evid. § 483. To entitle them to admission it is not necessary that a statute requires them to be kept. It is sufficient that they are kept in the discharge of a public duty. 1 Greenl. Evid. § 496. Nor need they be kept by a public officer himself, if the entries are made under his direction by a person authorized by him. Galt v. Galloway, 4 Pet. 332 [7 L. Ed. 876]. It is hardly necessary to refer to judicial decisions illustrating the rule. They are numerous. A few may be mentioned. De Armond v. Neasmith, 32 Mich. 231; Gurney v. Howe, 9 Gray (Mass.) 404 [69 Am. Dec. 299]; The Catharine Maria, Law Rep. 1 Ad. & Ec. 53; Cliquot's Champagne, 3 Wall. 114 [18 L. Ed. 116]."

While we appreciate that there is some difference between the official record of observations of natural conditions and the official record of observations of the operation of natural conditions, influenced by human action, the distinction is not sufficient to make the rule just quoted inapplicable. We think the court did not err in receiving the evidence.

The judgment and order should be affirmed, with costs.

STEWART v. FRANCHETTI. (No. 7179.)

(Supreme Court, Appellate Division, First Department. May 7, 1915.)

1. WILLS ⇐226—ACTION TO ESTABLISH—DEATH OF PARTY—ABATEMENT.

Under Code Civ. Proc. § 765, providing that title does not authorize the entry of a judgment against a party who dies before a verdict, report, or decision is actually rendered against him, and that in that case the verdict, report, or decision is absolutely void, and section 3347, subd. 6, providing that section 765, among other sections, applies to all courts, a decree of the Surrogate's Court, adjudging that a codicil to a will did not create a valid charitable trust, was void as to persons claiming through a party to the proceeding in which it was entered, who died before the entry of such decree.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 548; Dec. Dig. ⇐226.]

2. CHARITIES ⇐21—VALIDITY OF CHARITABLE TRUSTS—UNCERTAINTY AS TO BENEFICIARIES.

Under Personal Property Law (Consol. Laws, c. 41) § 12, providing that no gift or bequest to benevolent uses, which shall in other respects be valid, shall be deemed invalid by reason of the indefiniteness of the persons designated as the beneficiaries thereunder in the instrument creating it, and that if in such instrument a trustee is named to execute the gift or bequest the property shall vest in him, otherwise it shall vest in the Supreme Court, a bequest to be spent "in charity" in Italy and in the city of New York created a valid charitable trust.

[Ed. Note.—For other cases, see Charities, Cent. Dig. §§ 44–50; Dec. Dig. ⇐21.]

3. CHARITIES ⇐29—MISUSE OF TRUST FUND—REVERSION.

When a valid charitable trust is created, without provision for a reversion, the interest of the donor is permanently excluded, and the title to the property does not revert to the donor or his representatives; and hence, though there was a misuse of the trust fund, the donor, or the assignee of one of her residuary legatees, was not entitled to the return of the fund.

[Ed. Note.—For other cases, see Charities, Cent. Dig. §§ 59, 60; Dec. Dig. ⇐29.]

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