



Minnesota District Court (Carver County)
Civil and criminal case files

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No. 3039

DISTRICT COURT,
CARVER COUNTY, MINN.

*Theresa Kessler, Rosa Schmidt
Joseph Kessler, Frank Kessler et al.*
Plaintiffs.

vs.
*The Chicago, Milwaukee &
St. Paul Railway Company.*
Defendant.

Quell & Quell
Plaintiff's Attorney.

J. W. Root
Defendant's Attorney.

Date of Entry *Sept. 12th*, 19*06*

Register of Actions *"D"* Page *456*

Term Tried.....19.....

Judgment for.....

Amount of Judgment \$.....

Date of Judgment.....19.....

Judgment Book.....Page.....

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Date of Docketing.....19.....

STATE OF MINNESOTA }
COUNTY OF CARVER } SS.

DISTRICT COURT,
EIGHTH JUDICIAL DISTRICT.

Theresia Kesler, Rosa Schmidt, Joseph
Kesler, Frank Kesler, Barney Kesler, Anna Dibos
and Victoria Kesler,

Plaintiffs,

-vs-

The Chicago, Milwaukee & St. Paul Railway
Company,

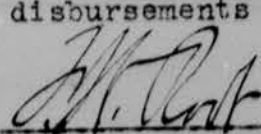
Defendant.

SUPPLEMENTAL ANSWER.

The defendant, by way of supplement to its original answer, served herein on the 14th day of September, 1906, alleges that thereafter and on the 9th day of August, 1907, the plaintiffs, by warranty deed, dated on said last named day, granted, bargained, sold and conveyed unto John Hudinski, of the County of Carver, State of Minnesota, all that tract, or parcel, of land lying and being in the County of Carver and State of Minnesota, described as follows, to wit:-

The West Half of Northwest quarter ($W\frac{1}{2}$ of $N.W.\frac{1}{4}$) and the Northwest quarter of Southwest quarter ($N.W.\frac{1}{4}$ of $S.W.\frac{1}{4}$) of Section Twenty-Nine (29) and the Northeast quarter of Southeast quarter ($N.E.\frac{1}{4}$ of $S.E.\frac{1}{4}$) of Section Thirty (30), all in Township One Hundred and Sixteen (116), Range Twenty Three (23), containing 133.73/100 acres, more or less; excepting therefrom the South Twenty (20) acres off of said $NW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 29 and off of $NE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 30, and also excepting 6.27/100 acres heretofore sold to the H. & D. Ry. Co. for right of way, which said tract, or parcel, of land, so granted, bargained, sold and conveyed, is the same tracts, or parcels, of land described in the complaint in this action.

WHEREFORE, the defendant demands judgment against said plaintiffs that their complaint and action be dismissed, and that the defendant recover its costs and disbursements of said action.


Attorney for Defendant.

25 Milwaukee Station,
Minneapolis, Minn.

STATE OF MINNESOTA }
COUNTY OF HENNEPIN } SS.

F. W. Root, being duly sworn on his said oath, says, that he is the Attorney for the Defendant in the above entitled action; that the foregoing Supplemental Answer is true to the best of his knowledge and belief; and that the reason why this verification is not made by said Defendant is that it is a corporation duly organized under the laws of the State of Wisconsin and absent from, and has no officer acquainted with the facts and capable of making this verification within, the County of Ramsey, in said State of Minnesota, wherein resides its said Attorney.

F. W. Root

Subscribed and sworn to before me
this 3rd day of February, A.D. 1909.

J. A. McFarland

Notary Public,

Ramsey County, Minnesota.

My commission expires May 17, 1915

(SEAL)

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STATE OF MINNESOTA	}	DIST COURT.
COUNTY OF CARVER		

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Theresia Kesler, Rosa Schmidt,
Joseph Kesler, Frank Kesler, Barney
Kesler, Anna Dibos and Victoria
Kesler,

Plaintiffs,

-vs-

THE CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

Defendant.

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SUPPLEMENTAL ANSWER.

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Due service of the within Supple-
mental Answer is hereby acknowledg-
ed this _____ day of _____, 1909.

Attorneys for Plaintiffs.

CARVER COUNTY,
FILED

FEB 13 1909.

H.O. Mueller Clerk.
(456)

W. ROOT,

Res. 1904 Marshall Avenue, St. Paul.

ATTORNEY FOR *Defendant*

Office 25 Milwaukee Station, Minn.

STATE OF MINNESOTA)
COUNTY OF CARVER) SS.

DISTRICT COURT,
EIGHTH JUDICIAL DISTRICT.

Theresia Kesler, Rosa Schmidt, Joseph
Kesler, Frank Kesler, Barney Kesler,
Anna Dibos and Victoria Kesler,

Plaintiffs, and

John Hudinski, substituted therefor,

-vs-

The Chicago, Milwaukee & St. Paul Railway
Company,
Defendant.

This cause came on for trial before the court without a jury on the 8th day of November, 1906, the testimony of the several witnesses produced was taken, and, on the 6th day of February, 1909, arguments were made by the respective counsel, and the cause submitted.

It was stipulated orally by the counsel that the restraining order theretofore made and served in said cause, should be vacated, and an order entered by the court to that effect.

Having duly considered the testimony, and listened to the arguments of counsel, the court finds the following facts:

FINDINGS OF FACT.

October 11th, 1880, Michael Kesler and wife, then being owners and in possession of the land described in the complaint, conveyed by warranty deed, without reservation, to the Hastings and Dakota Railroad Company, a One Hundred (100) foot right-of-way strip, running in a northeasterly and southwesterly direction, through the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section Twenty-nine (29), and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section thirty (30), which deed is recorded, in the office of the Register of Deeds of said Carver County, in Book "D" of deeds, at page 497.

Thereafter, and on the 28th day of December, 1882, said Hastings and Dakota Railroad Company conveyed the said right-of-way to the Chicago, Milwaukee & St. Paul Railway Company, the defendant in this action.

The line of railroad was constructed upon said right-of-way strip in the year 1880, leaving a part of said land upon either side thereof.

. Upon the said right-of-way strip there was a low wet place or marsh, which permitted water to pass from one side thereof to the other, and, in constructing said line of railroad, the Railway Company, as was usual in such case, constructed a trestle about Eighty (80) feet in length, with two openings in the center, in the clear about Sixteen (16) feet in width and Twenty (20) feet high across said low ground or marsh, upon which its track was laid.

In the year 1886 the defendant constructed fences upon either side of its said right-of-way across said land, but, as was usual in such case, connected said fences with the ends of said trestle, instead of continuing them across said low ground or marsh.

Michael Kesler continued to live upon the land until his death, in February 1882.

Upon the death of the said Michael Kesler, the plaintiffs in this action succeeded to the title, and continued to live upon and cultivate said land as one farm.

During all said time the Railway Companies maintained, for the benefit of the occupants of said farm, two farm crossings at grade, one thereof being located, about, upon the section line between Sections 29 and 30, and the other some distance westerly thereof.

In addition to making use of these crossings, the occupants of said farm, during all said years, used the easterly of said two openings of said trestle to go to and from the farm buildings, located on the north side, to that part of the farm located on the south side of the track.

In the Fall of the year it was customary to drive the stock to and from the pasture, upon the south side of the track, through said easterly opening.

There was also a private road-way leading from said opening northerly to the public high-way, which road-way was used in hauling wood and crops from the land south of the track to the buildings upon the north side.

There was no part of the land upon the south side of the track, that could not be reached by crossing from the north side upon the main farm crossing, so called, located near, or upon, the section line between said Sections 29 and 30, but it was more convenient to use said easterly opening.

It was without dispute that the difference in the value of the farm, with and without the passage way, was between \$900.00 and \$1000.00.

At the time of the commencement of this action defendant was about to fill the space with earth and thereby completely obstruct further passage under the track.

Plaintiffs brought this action to establish an easement by prescription under the track at this point, and to compel defendant to keep open and maintain such opening for the use of plaintiffs, and for other relief.

Subsequent to the commencement of this action, and on the 9th day of August, 1907, the plaintiffs by warranty deed, sold and conveyed unto John Hudinski, of the County of Carver, and State of Minnesota, without reservation, the land described in the complaint herein.

Thereafter, and by verbal stipulation between the Attorneys, the said John Hudinski, as successor in interest to said plaintiffs, was substituted as plaintiff in said action.

CONCLUSIONS OF LAW.

As conclusions of law the court finds:

That the possession or use relied upon by plaintiffs was neither hostile in its inception nor under color or claim of right; was permissive only and in subservience to the superior right and title of the defendant.

The true rule is stated in the case of Omodt vs. C.M. & St.P. Ry. Co., 118 N.W. 798.

The facts in that case cannot be distinguished from those in the case at bar.

That there is a total failure on the part of the plaintiffs to establish any easement, by prescription or otherwise, or any right, in, upon or to any part of the 100 foot right-of-way strip, conveyed by the said Michael Kesler and wife as aforesaid.

That the defendant is entitled to judgment vacating and setting aside the restraining order, heretofore made and served herein; that the plaintiffs take nothing by their said action, and that the defendant recover its costs and disbursements of said action.

Let judgment be entered accordingly.

Dated February 10th, 1909.

By the Court,

R. W. Morrison, Judge.

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STATE OF MINNESOTA	}	DIST COURT.
COUNTY OF CARVER		

=====

Theresia Kesler, Rosa Schmidt,
Joesph Kesler, Frank Kesler, Barney
Kesler, Anna Dibos and Victoria
Kesler,

Plaintiffs,

-vs-

THE CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY,

Defendant.

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FINDINGS & ORDER.

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CARVER COUNTY, -
FILED

FEB 13 1909

H.O. Mueller Clerk.

(456)

STATE OF MINNESOTA.

COUNTY OF CARVER.

DISTRICT COURT.

EIGHTH JUDICIAL DISTRICT.

Theresia Kesler, Rosa Schmidt, Joseph
Kesler, Frank Kesler, Barney Kesler,
Anna Debos and Victoria Kesler,
Plaintiffs, and
John Hudinski, substituted therefor,

-vs-

The Chicago, Milwaukee & St. Paul
Railway Company,
Defendant.

Upon the application of said plaintiff all proceedings on the part
of the defendant are hereby stayed for a period of forty days from the
date of the filing of the decision herein to enable plaintiff to prepare
and serve a proposed case in said action.

Dated March 1, 1909.

P. W. Morrison
Judge of said Court.

District Court
County of Carver.

John Hudinski, substituted
for Theresa Kessler and
Plaintiff

-vs-

The Chicago, Milwaukee and
St Paul Railroad Co
Defendant

Order Staying Proceedings.

CARVER COUNTY.
FILED

MAR 1 1909

H.O. Muehlberg... Clerk.

(456)

STATE OF MINNESOTA.
COUNTY OF CARVER.

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

John Hudinski, substituted in the place
of Theresia Kessler, Rosa Schmidt, Joseph
Kessler, Frank Kessler, Barney Kessler,
Anna Debos and Victoria Kessler,

Plaintiff.

against

The Chicago, Milwaukee & St. Paul
Railway Company,

Defendant.

The above entitled cause of action came duly on for trial
at the Adjourned General September, A. D. 1906, Term of the Dis-
trict Court in and for said County, at the Court House, in the
City of Chaska, Minnesota, on the 8th day of November A. D. 1906,
before the Honorable P. W. Morrison, Judge of said Court, without
a jury, whereupon, the following proceedings were had:

A P P E A R A N C E S :

Odell & Odell, Esquires, appeared as counsel for the Plaintiffs;
Fred W. Root, Esquire, appeared as counsel for the Defendant.

B A R N E Y K E S L E R, one of the plaintiffs, called as a
witness in his own behalf, being first duly sworn, testified as
follows:

Direct Examination.

By Mr. Odell:

Q Your name is Barney Kesler, is it?

A. My name is Bernard, but ~~it~~ is gone all over the United States
for the last 25 years Barney.

Q. You are one of the plaintiffs in this case, are you?

A. Yes, sir.

Q. How old are you?

A. I am 43.

Q. Are you a son of Michael Kesler, deceased?

A. I am.

Q. Theresia Kesler is your mother?

A. Yes.

Q. And the other plaintiffs are your brothers and sisters?

A. Yes, sir.

Q. When did your father die?

A. In 1882.

Q. You remember what time in 1882?

A. The 28th of February; no, the 24th of February.

Q. At the time of his death, where did he live?

A. On the farm where I used to live,

Q. The premises which are described in the complaint in this action?

A. Yes, sir.

Q. How long had he lived there before his death?

A. Four years; he lived on the farm, that is first, then he came on the farm; about thirty years.

Q. Were you born on that farm?

A. Yes, sir.

Q. Did your father leave a will?

A. No.

By Mr. Root: Just state what you have on that line; I have no objection to that.

By Mr. Odell: That the plaintiff Theresia is the widow and the other plaintiffs are the children and heirs at law of Michael Kesler, deceased, and that they succeeded to the title to the premises mentioned in the complaint as the widow and heirs at law of Michael Kesler.

By Mr. Root: That is admitted by the defendant.

Q. Now, after your father died, how long did you continue to live upon the farm?

A. Until a year ago.

Q. A year ago?

A. Yes, in 1882 he died; twenty three years, I guess.

Q. After your father's death?

A. Yes.

Q. Did your mother live there with you?

A. Yes, sir.

Q. Now, you know the Chicago, Milwaukee & St. Paul railway as it is located thru that farm, do you?

A. Yes, sir.

Q. And you know the location of the trestle which is mentioned in the complaint in this case, do you?

A. Yes.

Q. Now, in what way was that trestle or opening under the trestle upon the right of way of the railroad company used by your father up to the time of his death, if you know?

A. For a crossing and cattle pass.

Q. About how many acres of the farm lie upon the south side of the track?

A. About 60.

Q. And for what purpose is the land which lies south of the track used?

A. For hay and grain; wood.

Q. There are some cultivated fields upon that side?

A. Yes.

Q. Some meadow land?

A. Yes.

Q. Any pasture land?

A. Yes; well, no pasture land; it is wood land, tamarack swamp.

Q. Woodland. Is there any portion of the land which lies south of the track marsh land?

A. No; that is, you mean slough land?

Q. Slough land, yes?

A. No.

Q. What is your answer? A. No.

Q. Is there any portion of the land which lies south of the track which is not capable of being used for some beneficial purpose?

A. No.

Q. At the point where the railroad enters your farm upon the east line of it, what is the distance to the public highway?

A. It is about two rods.

Q. Two rods; isn't it a little more than that; about four?

A. It may; I can't state exactly,

Q. Well, it is somewhere from two to six rods, and not further than six rods?

A. No.

Q. Now, this public highway runs in a northerly and southerly direction along the east side of your farm?

A. Yes.

Q. Upon which side of the railway track are the farm buildings?

A. On the north side.

Q. Now, how many crossings are there over the railway track upon your farm?

A. There is two crossings, but one of them is no good, can't be used for only about seven acres.

Q. Now, going along the track west of the trestle, how far do you go before you strike the first crossing over the track?

A. About thirty acres.

Q. Across about thirty acres. Now, there is a road, a farm road, leading to that crossing, on both sides, is there not?

A. Yes.

Q. And that crossing is used?

A. Yes.

Q. Now, farther west there is another crossing over the track, is there not?

A. Yes, sir.

Q. And how is that crossing; is that put to any use, or much use,

on the farm?

A. No.

Q. That crossing affords access to about how many acres of land lying on the south side of the track?

A. About seven.

Q. Now, can you reach all the land which lies upon the south side of the track by using the crossing which you say is about thirty acres from the trestle?

A. Yes.

Q. That crossing gives you access to the entire sixty acres of land, does it?

A. Yes.

Q. Now, in what way did your father use this trestle or opening under the trestle, during his lifetime?

A. For a cattle pass, and crossing for hay and grain and wood.

Q. Did he in his lifetime have under that trestle a roadway of any kind?

A. Why, yes.

Q. Now, how many bents are there under the trestle, if you know?

A. There is only one particular one.

Q. The trestle is built on piles?

A. Yes, sir.

Q. And one bent in the center of the trestle?

A. Yes.

Q. Now, on which side of the center bent did your father have his road way?

A. On the east side.

Q. Then your father's road way was in the opening east of the center bent of piles?

A. Yes.

Q. Now, you say that he used that for hauling hay and grain from one side of the track to the other?

A. Yes, sir.

Q. And also as a pass, underground pass, for his cattle?

A. Yes..

Q. For what purposes did he pass his cattle under that trestle, and what seasons of the year?

A. For eating on the other side of the track, in the fall of the year.

Q. Well, you may state whether or not he pastured any portion of the land which lay south of the track?

A. No, he didn't pasture it all the year around.

Q. Well, did he pasture it at all?

A. In the fall, yes.

Q. In the fall of the year?

A. Yes, sir.

Q. Then he used it for what is known as a stubble pasture, did he?

A. Yes.

Q. Did he use that portion of the farm for that purpose during all the time he lived, after the building of this railroad?

A. Yes.

Q? Is the railroad as it runs thru the farm, and was it at the time of your father's death, fenced both sides?

A. It wasn't fenced when my father died.

Q. Was it fenced after his death, and is it fenced now?

A. Yes, sir.

Q. And for about how many years has it been fenced upon both sides of the right of way?

A. Oh, say about twenty years.

Q. Now, when the railroad company built its fences, how did it build the fence upon both sides of this trestle?

A. They built it to the trestle, and then onto the piles, to the piles.

Q. Built it to the piles at both ends?

A. Yes.

Q. In other words, the railroad company built its fences so as to

leave the opening under the trestle; is that it?

A. Yes.

Q. And the company has maintained its fences in that condition ever since they were built?

A. Yes, sir.

Q. Now, after your father's death, your mother and the children continued to occupy that farm, did they?

A. Yes.

Q. And in what way was the opening on the east side of the center bent under the trestle used by your mother and the children during the years that they lived there?

A. In what way?

Q. Yes; how did you use it? What use did you make of it?

A. For crossing hay and grain, manure, and a cattle pass.

Q. You used it as a way to travel from one side, from the land lying upon one side of the track, to that lying on the other side?

A. Yes.

Q. And for the passing of your cattle from one side to the other?

A. Yes, sir.

Q. Now, was it used continually during all the time that your mother and you lived upon the farm?

A. Yes, sir.

Q. And after your father's death for how many years did you use that continually and uninterruptedly?

A. Twenty three years.

Q. And the opening that you made use of under the trestle, at that time, you say was the opening lying east of the center bent?

A. Yes.

Q. What is the width of that opening, about?

A. About 16 feet.

Q. And how high is the trestle above the natural surface of the ground at that point?

A. About twenty feet.

Q. Calling your attention to the crossing which is over the track and next west of this trestle, you may state whether or not there are any openings in the fences upon both sides of the crossing, the railroad fences?

A. On the railroad crossing?

By Mr. Root: Yes, you mean gates?

A. Yes.

By Mr. Root: Suppose we indicate that as the main surface farm crossing as distinguished from the one farther west.

Q. Well, that is the main crossing on the farm over the track?

A. Yes.

Q. Now, at that crossing there is an opening in the fences upon both sides of the right of way?

A. Yes.

Q. And in crossing from one side of the track there to the other side it is necessary to open and close those gates?

A. Yes, sir.

Q. Now, when the cattle are turned out upon the stubble in the fall of the years in order to pass thru from one side of the track to the other, in using that crossing, it would be necessary for somebody to go out to the crossing and open the gates to let them pass thru?

A. Yes.

Q. And how is it as for getting from one side of the trestle to the other?

A. There is a free pass there.

Q. Now, is there any portion of the farm lying south of the track that you can reach with a team and wagon by using this opening under the trestle that you can't reach with team and wagon by using this main crossing?

A. No.

Q. The hay grown upon the meadows can be hauled from the meadow

to the farm buildings on the north side of the track by using the main crossing over the track, as well as it can be by using the pass under the trestle?

A. No.

Q. Why not?

A. Because it is too far, and soft places all over the field.

Q. The distance would be greater?

A. Yes.

Q. And what is there about the character of the ground over which you have to pass, if anything, which would interfere with using the main crossing?

A. Well, low places, soft places.

Q. Low, soft places. What crossing has been made use of upon the farm ever since the building of this railroad for the purpose of getting the hay grown or raised upon the south side of the track over to the farm buildings?

A. The trestle.

Q. The crossing under the trestle?

A. Yes.

Q. And can you get the hay over to the farm buildings by the use of any other trestle, any other crossing?

A. Yes, we can.

Q. But it wouldn't be so good a route?

A. No.

Q. How many bents or tiers of piles are there under that trestle?

A. Three.

Q. One at each end and one in the center?

A. Yes, sir.

Q. Now, in building the fences upon both sides of the right of way, you say that at a point opposite, or nearly opposite the trestle the fence runs from the edge of the right of way down to the row of **piles**, down to each end of the trestle?

A. Yes.

Q. In using this opening on the east side of the center bent under the trestle, did you do anything upon the ground, and, if so, what, for the purpose of making a road or way there on the east of the bent?

A. Yes, I did.

Q. What did you do?

A. Hauled some hay and straw in there some times to get thru when it was a little soft.

Q. Well, did you do anything to build a road so that you could pass thru there?

A. Yes, with hay and straw.

Q. Is there a road upon the farm leading from the buildings, or from the public highway down to that opening under the trestle?

A. Yes, sir.

Q. A farm road?

A. Yes, sir.

Q. And is there a farm road upon the south side of the track leading to the opening under the trestle?

A. Yes.

Q. And how long has that farm road been there?

A. Twenty six years.

Q. And has it been used as a farm road during all that time?

A. Yes, sir.

Q. You may state whether or not during all that period of time to which you have referred, you have claimed the right to use that opening under the trestle as a way?

By Mr. Root: Wait a moment. That is objected to on the ground that it calls for the opinion of the witness. Of course, they can testify, if there is any foundation for this at all they can show it by acts or language. The fact he had in his mind or claimed it without making known to the defendant, would be calling for an opinion.

By the Court: The objection is overruled; I think the party can

show his intention.

Q. Just answer the question?

A. What was it?

Q. Read the question?

A. Yes, sir.

Q. And have you used it as such with the knowledge of the employees of the railroad company, the section boss and road boss?

A. Yes.

By Mr. Root: Well, may I have an exception to that last?

By the Court: There was no objection.

By Mr. Root: Well, I meant objection, of course, there is no jury; I was rolling my map at the time. I would like to interpose an objection to that, whether he used it with the knowledge of the section men, as being irrelevant and immaterial.

The Court overruled the objection.

Cross Examination.

By Mr. Root:

Marked defendant's exhibit 1.

Q. Mr. Kesler, I am showing you a map here marked defendant's exhibit 1, and I will describe it a little bit to you first, so you will understand it. That square marked up there in the north side of the map, marked farm house is supposed to be your house?

A. Um, hum.

Q. That doesn't show your other farm buildings?

A. No.

Q. Now, these lines running from the northeast corner of the map in a southwesterly direction across the map, that is supposed to show the line of the railroad.

A. Um, hum.

Q. You see the fences are indicated by a line, drawn on either side, with cross marks?

A. Yes.

Q. And the two lines in the center are supposed to show the track?

A. Yes.

Q. Now, a part of the highway is indicated; it doesn't show where it passes opposite your house, but it shows where it comes down across the railroad track, shows cattle guards on either side?

A. Um, hum.

Q. Then it also shows this trestle which is indicated here, and also shows a roadway or way of some sort leading from the highway down towards this trestle, down into low grounds?

A. Yes.

Q. Then, on the south side of the track it shows what is swamp land, this large portion at the southeast corner of your premises; it also shows what has been made use of as hay land.

A. Um, hum.

Q. Then it also shows the roadway that leads from this low ground up to this main farm crossing that we have talked about; that is here, indicated main farm crossing; it says here farm crossing, gate, gate, on either side. Now, it is indicated here that that roadway leads from the low land following round in a kind of a water way up to that crossing; then it is indicated on the north side where it leads up toward the farm buildings. You recognize that, do you, as showing the location of the track and of the house and the trestle and the highway?

A. Yes,

Q. That shows it fairly well, does it, as you recollect it?

A. Shows it fairly well; but I can't see no swamp land on the farm.

Q. Well, I don't mean to say, Mr. Kesler, it isn't such land as would prevent you going in to get wood, but it isn't cultivated land, this swamp land?

A. Well, it is hay land.

Q. I mean you don't cultivate it, don't plow it?

A. No, no.

Q. Well, is there any timber on this land?

A. Yes.

Q. On this land indicated at the southeast corner of your land, indicated a s swamp land, that has timber on it?

A. Yes, sir.

Q. Now, on the south side of the track and near the east line there is a little tract of land indicated as cultivated land; there is a lot there right in there at the corner of the railroad and the east line?

A. Yes.

Q. And the distance that Mr. Odell asked you about, between your east line here on the south side of the track and the highway is indicated as shown on this map, it is from 2 to 4 rods, something like that, isn't it?

A. Yes.

Q. Now, this crossing which we have called the main crossing is a grade crossing, that is, crosses the railroad track on the level of the track?

A. Yes.

Q. And it is a plank crossing as well?

A. Yes.

Q. Plank either side of the rails and between the rails?

A. Yes.

Q. And there is a gate in the fence, the right of way fence, on either side?

A. Yes.

Q. That is the crossing which you have used during all these years to haul the grain and products raised on this high knoll of cultivated land on the south side to the barn?

A. Oh, no, not always.

Q. Well, principally, used that principally?

A. Some hauled to that crossing and some by the trestle.

Q. But if you want by the main crossing you wouldn't have to go

on this wet land?

A. There was no wet land there.

Q. Well, if you haul from this cultivated land by way of this main crossing you wouldn't have to go into any wet land, would you?

A. No, not that way.

Q. That would all be hauled by the main crossing on dry, hard ground, wouldn't it?

A. No, not all.

Q. Where is there any part of this roadway that you haul over this main crossing from this cultivated land, where does that roadway go into any wet land?

A. The roadway on the north side of the track?

Q. From the south side of the track going across to the north side by way of the main crossing?

A. This road by the creek.

Q. Yes?

A. Well, right around here there is a soft, wet place.

Q. Oh, there is a soft, wet place along the creek leading up to this main crossing?

A. Yes.

Q. Now, you say that when you hauled by the trestle, after going under the railroad track you then go in a northeasterly direction to the highway?

A. Yes, sir.

Q. And then go along the highway to your buildings; that is right, is it?

A. Yes.

Q. Now, you say that this trestle work had two openings, did it?

A. Yes.

Q. And it was thru the east of these two openings that you usually passed in going back and forth?

A. Um, hum.

Q. That trestle work is about eighty feet long, is it?

A. I think so.

Q. And that trestle work was put in there when the railroad was constructed?

A. Yes, sir.

Q. See, that railroad was constructed in about what year?

A. 1880.

Q. 1880? A. Yes.

Q. You were then about how old?

A. 17 years.

Q. 17 years old; you are 43 years old, are you?

A. I am 43 years old.

Q. And you lived on the farm at that time?

A. Yes, sir.

Q. The location of this trestle was at the lowest point in that low land?

A. Yes.

Q. So that whenever there is water upon the north side of the trestle that should flow to the south side, it would naturally go thru that opening under the trestle?

A. Sure.

Q. And isn't it a fact in most years, especially in wet seasons such as we have had for two or three years past, that the land on either side of the railroad track and thru this trestle is wet?

A. Why, yes, it is a little wet, sure.

Q. In some years, you say, it is so wet that you had to put on hay and straw in the east opening so that you could drive thru with loads?

A. Yes, sir.

Q. But other than putting hay or straw in wet seasons in the openings so that you could drive thru, you have done no work to prepare it for driving thru?

A. Not in this particular bent.

Q. Well, the only thing you have done with either or any bent of that trestle work is to drop, as you say, hay or straw into the wet places?

A. Yes.

Q. Then you could drive over the wet places on the hay and straw?

A. Sure.

Q. That is the only thing you have ever done, as I understand it?

A. Yes.

Q. Now, you take this main crossing and that has been used so much during all these years that it has worn a well defined traveled way leading across the railroad track there, hasn't it?

A. No.

Q. Have you been there this year?

A. Well, yes, I have been there this year, sure.

Q. About how long ago were you out there on the main crossing?

A. Some time in September.

Q. Isn't there now a worn way across that crossing just as worn--like a highway?

A. Now it is, sure, when that is dry, but right here there is a soft place there where you can't get thru.

Q. But, Mr. Kesler, this soft place that you speak of is south of the railroad fence?

A. Yes, inside of the railroad fence, too.

Q. But now, what I am asking you is this, isn't there--I have been out there so I know.

A. Yes, I know.

Q. Isn't it true that now, this fall, and during all those years, this main crossing across the right of way, from one side to the other, has been used to such an extent by your people that there has been a worn, well-defined way leading across there?

A. Yes.

Q. That is what I mean, yes. In fact, it is worn so much now this fall that there isn't any grass growing in the track,

is there?

A. No.

Q. And that is about the way that main crossing has been used during all those years since the fence was built?

A. Um, hum.

Q. But when you get down here to this trestle work, that has been used, for instance take it in the fall after the crops are taken off, that has been used so that you could turn your cattle loose and they wander down thru there, or you could drive them down thru there under that trestle and into the field below?

A. Yes.

Q. But that could be done only in the fall after the crops were taken off?

A. After the crops were taken off.

Q. This land south of the track isn't fenced at all?

A. It is fenced along the line.

Q. Oh, the main right of way and along your east line, but the cultivated portion of the field isn't fenced off from the wet land, grass and other land?

A. Oh, no.

Q. So that if you turn the cattle off south of the track in the summer season, there would be nothing to prevent them going on the grain fields and corn there?

A. No.

Q. So that the only time you use that is in the fall of the year after the crops are taken off?

A. Yes.

Q. Now, you have no fence along the highway of your property, have you?

A. No.

Q. So that if you turn the cattle loose on the south side, why there is nothing to prevent them coming back onto the north side and going onto the highway and going anywhere?

A. No.

Q. And there hasn't been during all these years?

A. No.

Q. And if you turn your cattle loose at your house they would go on the field on the north side, and can go along the highway anywhere or they can go thru this trestle to the south side?

A. Sure.

Q. Yes; but if you wanted to put them onto the south side you would have to drive them down thru that trestle?

A. Yes.

Q. And if you wanted to put them in the south side, if that trestle was closed up, you would have to drive them by this main crossing down onto the south side?

A. Um, hum.

Q. Now, in the spring of the year this ground underneath that trestle at the railroad tracks, of course is more wet than it is in the summer season when it is dried out?

A. Why, that's always.

Q. Yes, always that way. And in the spring of the year, in cultivating this land on the south side of the track, you go rather more by the main crossing that we have spoken of than you would to go under thru this wet place under the trestle, wouldn't you?

A. Not always.

Q. Oh, not always, but I mean you use---what I mean by this is you use the main crossing in the spring when it is wet more than the trestle, simply because the main crossing is dry?

A. Yes, sure.

Q. That is what I mean; why, I suppose we would all know that but I want to get it in the record; we have all been farmers more or less. There has never at any time been travel enough thru that trestle, thru either of those bents, so as to wear the grass away so that there was dry, hard ground?

A. I guess there never was no grass in the center bent.

Q. Well, what prevents it coming up?

A. That was worn just as much as the other crossing for hauling the grain.

Q. Now, Mr. Kesler, was you out there a year ago?

A. Yes, sir.

Q. Was you out there this fall?

A. This fall I wasn't out there.

Q. Is there anything indicating now, this fall, that there is any grass worn away under that trestle?

A. I guess they couldn't this fall, because that box was put in there.

Q. But isn't there a road to drive thru on the east side, the other side of this opening?

A. I don't know.

Q. Have you been out there?

A. I have been there once.

Q. Did you go down to these boxes?

A. Yes, sir.

Q. How wide are those boxes?

A. Four and a half by four and a half, on the inside.

Q. Well, I suppose they are five feet on the outside. Now, those boxes are placed one on each side of the piling that supports those two openings?

A. Um, hum.

Q. Then the box on the east side and the box on the west side would take out five feet of each of those openings?

A. Well, it takes out six and a half.

Q. That would leave nine feet and a half of way on either side?

A. Yes, but there is a ditch on one side.

Q. Well, on which side is the ditch, east or west?

A. The west opening.

Q. Well, there isn't any ditch in the east opening?

A. No.

Q. Well, now, what was to prevent them driving thru the east opening?

A. They have dug down four or five feet in order to get thru the bent; that was filled up already.

Q. But you say it was the east opening you have been using all this time?

A. Yes.

Q. Well, now, let me ask you, Mr. Kesler, have you ever seen at any time driving enough thru there to wear the grass away so that there was a defined way?

A. Yes, sir.

Q. Well, when you cut thru the grass you cut right thru the mud?

A. Well, I didn't cut into the mud.

Q. Isn't it, in the seasons when you use that for driving thru, so wet that if you wear the grass away it would be right in the mud?

A. No, only the last couple of years it was a little wet.

Q. The last couple of years it was a little wet. Oh, yes, that's different. Now, this land on the south side has been cultivated this year, this last season, just the same as any other season?

A. Yes.

Q. This little piece on the east line and south of the track marked cultivated land, that has been cultivated this year, too?

A. Yes.

Q. And you cut hay in the hay meadow this year?

A. Yes.

Q. And that has all been hauled over this crossing?

A. That was the second crop, but the first crop was all hauled under the trestle, the second crop of all that land.

Q. Some of the field has been hauled this fall over the main crossing?

A. Just the hay.

Q. Well, the hay. The hay, then, has been hauled across that

main crossing?

A. Yes.

Q. Well, now, what is there--any corn on the south side?

A. No, not this year, I don't think there was any on the south side.

Q. Was this grain on the south side cut and hauled to the barns before that trestle work was closed up?

A. Yes, sir.

Q. It was. What was on this small piece that is marked cultivated land, along the east line south of the railroad right of way?

A. That's more than I can tell you, what kind of grain.

Q. Was it corn?

A. No, it wasn't, it was small grain, but what kind I don't know.

Q. There are some places, you say, along this hay meadow, where it would be difficult to drive across from the east side to the west side in order to get to this road way that leads across the main crossing?

A. There is what?

Q. There are some places along this hay meadow where that is so wet that it would be difficult to drive across from the woodland, say, to the west side, so as to reach this road way that leads across the main crossing?

A. Well, here is no road way at all.

Q. Well, you did drive, and you have all these years, to reach this main crossing, you have driven along this creek?

A. Never; never before except this fall.

Q. Well, when you have, when you have driven to the main crossing from this cultivated land on the south side, you have had to go somewhere, haven't you, to get to the main crossing?

A. Well, I guess you know a farmer drives all over his field when he farms.

Q. He don't make any particular way?

A. Certainly not.

Q. I thought you told Mr. Odell that; but it isn't true, you say?

A. No.

Q. If you wanted to drive from this wood land marked swamp land on this map, across the hay land, and then across the cultivated land to reach this farm crossing, are there some places along there?

A. Why, yes.

Q. Wait a moment. Are there some places along there that is so low and wet you couldn't drive across?

A. Wet places, yes, in wet years.

Q. But you have never had any difficulty in driving across from this land that is marked swamp land across to the other land called cultivated land?

A. No.

Q. So that every year, during the last twenty five years, so far as you can recollect, you could drive across this hay land from one side to the other with your teams with loads?

A. Yes, sir.

Q. And get from the east to the west side of the hay meadow?

A. Yes, sir.

Q. And during all that time you could, if you wanted to, drive from this swamp land or wood land underneath this trestle too, if you wanted to?

A. Yes, sir.

Q. Or, as you say, if you didn't want to drive underneath the trestle, you could drive across the hay land and go over this main farm crossing? if you wanted to?

A. Yes.

Q. Now, you said during all those years you had claimed the right to use this trestle?

A. Yes.

Q. How had you claimed that right?

A. Because it was made out that way from the first place.

Q. Because what?

A. Because it was made out that way from the first place.

Q. Because it was made out that way from the first place. How was it made out?

A. It was made out to be a crossing there.

Q. Well, what do you mean by saying that it was made out that there was to be a crossing there?

A. The talk was that way.

Q. You thing the talk was that way. Did you have any talk with anybody about that?

A. No.

Q. Do you know--did anybody have any talk that way in your presence?

A. Yes, when the road got built.

Q. Did you hear anybody talk that way, or did your father tell you that that was the talk?

A. Well, I heard it.

Q. Well, now, who did you hear talk that way?

A. That I couldn't tell that; it is too long ago; and I was a young boy then.

Q. Well, who was the persons that did the talking, or don't you know?

A. No, I couldn't---

Q. You heard someone talk to someone that that was to be you say a what?

A. A crossing.

Q. A crossing. But you don't know who talked, you don't know who was present at the time the talk was going on except that you was there?

A. It was settled when they settled for the farm with the railroad company that it was made out there should be an opening for a crossing.

Q. Well, how was it made out, in the deed?

A. No, it wasn't written down.

Q. Have you ever seen any writing or did you ever hear of any writing that you was to have a crossing there?

A. No.

Q. Well, now, I will ask you again. You said you couldn't tell who was there at the time the talk was going on, can't name anybody that was present at the time the talk was going on?

A. No, no.

Q. Can't do it, not a single person?

A. My own father was along with me.

Q. Well, that's what I asked you?

A. But I don't remember any others.

Q. Well, your father was there at the time the talk was going on?

A. Yes.

Q. But you don't remember anybody else?

A. No.

Q. You don't know; did you ever see these others or this other man before or since?

A. No, not since, not since the talk was there.

Q. Well, had you ever seen this man before?

A. Not before they started to build the road.

Q. Well, was it a man who was building the road?

A. Well, it was the contractor.

Q. Oh, it was the contractor who was building the road; that was the man, was it?

A. I suppose so.

Q. Well, now, let's see, you said it was the contractor; let's see if that is right?

A. I suppose it was.

Q. The man that was going to see your father about this crossing you suppose was the contractor, is that right?

A. I suppose so.

Q. And he was the man who was building the road there?

A. Well, I couldn't tell you.

Q. But you said a few moments ago it was the man who was building the road; is that right?

A. Well, when they settled for the land there that talk was going on.

Q. Then was it the contractor?

A. I say I couldn't swear to that.

Q. Was it the man who built the road?

A. I wouldn't swear to that; I couldn't tell.

Q. Then, whether it was anyone who was building the road or contracting for the road, or anything else, you don't know?

A. No.

Q. Well, what you understood was, that somebody told your father that he might have a farm crossing there; is that right?

A. Um, hum.

Q. That is right, is it?

A. Yes.

Q. But who it was that said it, or when it was said, you don't know anything about?

A. I can't remember.

Q. Now, let's see if I understand you, and by understanding I mean I want to get everything I can that you know about this, what your understanding is, that someone told your father that he might have a crossing there where that trestle is, is that right?

A. Yes.

Q. Yes, and when you say that you have claimed the right, you have claimed it because they told your father, somebody told your father that he might have a crossing there?

A. Yes.

Q. You claim that you have taken the right that he had before; is that right?

A. Sure.

Q. And that's what you mean by saying that you have claimed the right; is that right?

A. Yes.

Q. Um, hum. Now, you told all you can remember about what occurred at that time?

A. Yes.

Q. You have told just exactly why you claim the right?

A. Yes, sir.

Q. You understand my question, and you can't make it any plainer?

A. No.

Q. You have simply, your father, as you understood it, drove under there, and let his cattle go back and forth under that trestle---

A. Yes.

Q. --because somebody had told him that he could use that for a crossing, and that is what you understood, was it?

A. Yes.

Q. And your people have used it since your father died---

A. Yes, sir.

Q. ---because somebody told your father that he could use that as a farm crossing; that is right, is it?

A. Yes.

Q. And that is the only right that you have ever claimed, is it?

A. Yes.

Q. Until this fall when the railroad company began preparations to fill up that trestle, you never had known that the company intended to fill it up, had you?

A. Well, I heard last January.

Q. Well, until last January, then, as you say; up to that time then you had never told anybody that you claimed any right because you had no reason to expect that you would have to-- that you would be prevented from using it?

A. No.

Q. Then, up to last January, as you say, you never had had any reason to expect but what you might continue to use it?

A. No.

Q. And up to that time you had never told anybody you claimed any right, had you?

A. Why, no.

Q. And you never heard your father or anybody connected with your family say that they claimed any right, had you?

A. No.

Re-Direct Examination.

By Mr. Odell:

Q. Now, you may state whether or not that way under the trestle is any benefit to your farm?

A. Yes, sir.

Q. And you may state whether or not the closing of it up as the railroad say they are going to, would damage or injure that farm in any way?

A. Yes.

Q. Now, in what way is it a benefit to the farm?

A. For a cattle pass and crossing, and road.

Q. And to what extent and in what way would the closing of it damage ther farm?

A. To what extent?

Q. Yes?

A. Because I wouldn't have no road to my hay and wood land there.

Q. And in what way would the closing of it be a damage to the farm; would it lessen the value of the farm?

A. Yes, sir.

Q. And how much?

A. A thousand dollars at least.

Q. Now, I understood you to say that this road which is indicated upon the plat to which Mr. Root has called your attention running from the tract of land which is marked grass land, over to this main crossing is not a road?

A. Never has been a road there.

Q. Never has been a road there?

A. No, sir.

Q. And if there is any there now it was made this fall since the crossing was closed?

A. Yes, sir.

Q. But during the time that the opening under the trestle was in such a condition that it could be used as a way, there wasn't any road at the point indicated by this map?

A. No.

Re-Cross Examination.

By Mr. Root:

Q. You stated to me that the first crop of the land on the south side was taken off before the railroad company placed any obstruction under the trestle?

A. Yes.

Q. Do you mean to say that there has been hauling enough of second crop this fall up along that creek and to that main crossing to make that worn driveway that we find there now?

A. Along the creek?

Q. Yes, sir?

A. If there is one, yes, it has been done this fall.

Q. Do you mean---because I am going to investigate?

A. Yes.

Q. Do you mean to say there hasn't been driving along that creek every year for the last twenty years?

A. If I mean to say? Yes, I say there hasn't been any.

Q. You say there hasn't been any?

A. Yes.

J O S E P H S C H N E I D E R, a witness called on the part of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Odell:

Q. Mr. Schneider, where do you live?

A. In Chanhassen town.

Q. How old are you?

A. 43 years.

Q. Do you know the Kesler farm which is referred to in this case?

A. Yes, sir.

Q. And you know the railroad as it is located thru that farm, do you?

A. Yes, I do.

Q. How far do you live from that farm?

A. Oh, about half a mile, not quite.

Q. In what direction?

A. Northwest, just about, pretty near west.

Q. In going to town from your farm, you use the public highway which runs thru the Kesler farm, do you not?

A. Yes, sir.

Q. How long have you lived upon the premises which you now occupy?

A. I lived there forty three years.

Q. Born there, were you?

A. Born there; raised there; been there all the time.

Q. Did you know the Kesler farm before the railroad was located thru it?

A. Yes, sir.

Q. And you have known it ever since, have you?

A. Ever since.

Q. Now, calling your attention to this trestle which has been referred to, you know that trestle, do you, and its location?

A. Yes, I do.

Q. And you know the manner in which the fences on both sides of the right of way are constructed, do you?

A. Yes, I do.

Q. You may state whether or not the railroad company, in building its fences, its right of way fences, so constructed its fences as to leave an opening under the trestle?

A. Yes, sir.

By Mr. Root: We will admit that these fences are as located on the map and have been maintained in that manner for a good many years, Mr. Robinson?

By Mr. Robinson: Yes, sir.

By Mr. Root: We'll admit that.

Q. Do you know the farm roads upon the Kesler farm?

A. Yes, I do.

Q. You may state whether or not there is a farm road from the land lying north of the railroad track leading down to the opening underneath the trestle?

A. Why, yes, there is the road from the highway down to the trestle, ever been there.

Q. How long has that farm road been there on the north side, to your knowledge?

A. Long as I know of.

Q. Now, is there any farm road, a road on the south side of the track from the opening on that way?

A. Yes, sir.

Q. How long has that road been there?

A. Always been there as long as I know of.

Q. Was there at the time Mr. Kesler died?

A. You mean the road?

Q. The farm road?

A. Yes, yes, sir, under the trestle.

Q. It was there at the time of Mr. Kesler's death, was it?

A. Yes, sir, it was.

Q. And has been there ever since?

A. Yes, sir.

Q. In working that farm, you may state in what way the Keslers have used the opening under the trestle, if you know?

A. Well, they used it to haul out hay and tamarack posts, and all kinds of stuff; that is the only road they had to haul hay out.

Q. It is the only road, you say, that they have had for hauling

out hay?

A. All I know of; they can't get out any other way.

Q. Well, they have used it every year for that purpose?

A. Yes, sir.

Q. Have they made use of it for any other purpose each year since the road was built?

A. Well, a cattle pass; they was driving cattle thru and hauling wood out and hay.

Q. Now, their wood lot lies in what part of the farm?

A. The southeast corner, I guess; the tamaracks.

Q. And that wood lot lies south of this trestle, does it not?

A. Yes, sir.

Q. And for the purpose of hauling their wood from the wood lot out to the buildings upon the farm, they have been using this way under the trestle?

A. They have used that trestle.

Q. Now, has there been during all of these years a well-defined track continuing under that trestle?

A. Always been a road thru there.

Q. A road that was visible, so that anyone could see it?

A. Yes, sir.

Q. All the years since Michael Kesler died?

A. Yes, sir.

Q. Is that way under the trestle the way that Barney Kesler has described it here of any benefit to the farm?

A. Well, I should say.

Q. Well, is it or not?

A. Why, yes.

Q. In what way is it a benefit to the farm?

A. Because to take his stuff out there, take his hay out there.

Q. And in what other way, if any?

A. Well, get his cattle thru there.

Q. It is a benefit as a way from one side of the railroad track to the other?

A. Why, of course.

Q. And will the closing of it be any injury to that farm?

A. I should say so.

Q. To what extent would the closing of that way damage the farm?

A. Well, it will close him up entirely unless he have to go around about thirty or forty acres to that crossing and go up hill.

Q. Well, that would be an inconvenience to him in working the farm?

A. Why, yes.

Q. Now, would it be any injury to the farm so far as the value of the farm is concerned?

A. I guess it would.

Q. To what extent would the value of the farm be lessened by closing the crossing?

A. I think about \$900 to \$1000.

Q. What is your market town, principal market town?

A. I do most of my trading here in Chaska and Victoria.

Q. And in passing, going from Chaska, going to your farm, you pass right along thru the Kesler farm?

A. Yes, I pass there.

Q. And have all the years you have referred to?

A. Yes, sir.

Q. Now, to what extent has that crossing under the trestle been used as a farm crossing upon the farm during those years, to your knowledge?

A. Well, hauling out his hay, some of his grain, his tamarack wood, driving his cattle thru there.

Q. Has it been used as much as a farm road upon the farm is ordinarily used?

A. Well, I guess he did; he used it every summer right along; he got his hay out of there, that is, the hay on the south side, this side.

Q. Did he use it any in the winter?

A. Why, yes, taking out his fire wood or tamarack, tamarack posts.

Q. And during the winter there has been a public road running thru the trestle?

A. I used it last winter some, a dozen times.

Q. Did you ever see it used before?

A. Yes.

Q. Every winter?

A. Yes, that is he didn't take out posts every winter, I don't mean; but he could twenty years ago, and could ever since.

Cross Examination.

By Mr. Root:

Q. Do you know what that farm rents for?

A. What he gets rent for it?

Q. Yes?

A. I think about \$300.

Q. Do you think that farm would rent for any less if that trestle was closed?

A. Well---

Q. You don't believe that it would rent for one penny less?

A. I wouldn't give as much if it was closed.

Q. Can you tell if there is any difference at all in the rental value with that open or closed?

A. Probably some people wouldn't care much, but I would.

Q. Yes, you would. Now, how do you arrive at the damage of 9- or \$1000 dollars; how do you arrive at that; what is that farm worth?

A. Well, it seems it ought to be worth as other farms out there.

Q. Well, take the entire farm.

A. Nine or ten thousand dollars.

Q. Well, how do you figure it would be worth a thousand dollars less?

A. If I had to use the crossing every other day, and had to go

around a mile, it would be worth something.

Q. Well, has the crossing been used in summer or winter every other day?

A. I don't say every other day, but just as they need it.

Q. You mean that simply as a guess, in your own opinion, that is all?

A. No, I don't.

Q. Well, how can you figure up if any man was to buy that farm he would pay a thousand dollars less, from nine hundred to a thousand dollars less if that was closed; how do you figure?

A. I figure that out if I got to quit driving thru there and got to drive around forty acres, that is quite a good deal for a life time.

Re-Direct Examination.

By Mr. Odell:

Q. You may state whether or not in your judgment that would be worth nine hundred to a thousand dollars less with that closed, permanently closed, than it is now?

A. Well, I should judge about a thousand dollars less.

Q. That's the best of your judgment, is it?

A. Yes, sir.

Q. You own a farm in that immediate vicinity, do you?

A. I own the next farm to it.

Q. And you know the value of farm lands in that vicinity?

A. I do know something about it.

Re-Cross Examination.

By Mr. Root:

Q. Is your farm intersected by a railroad?

A. No, sir.

At this time Court takes a recess until 1:30 p.m. of the same day, at which time it reconvenes.

C H A R L E S W A R T M E N, a witness called on the part of plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Odell:

Q. Where do you live, Mr. Wartmen?

A. Chanhassen town.

Q. How old are you?

A. I am 46 years.

Q. How long have you lived in Chanhassen?

A. About forty years.

Q. Do you know the Kesler farm referred to in this case?

A. Yes, sir.

Q. How far do you live from that farm?

A. About half a mile.

Q. In what direction?

A. It is about northeast.

Q. Does your farm adjoin the Kesler farm?

A. Just at the corners, yes.

Q. Cornering. How long have you lived on the premises you now occupy?

A. Oh, it is 38 years.

Q. And you say you are forty six years old?

A. Yes, sir.

Q. How long have you known the Kesler farm?

A. Oh, for forty years.

Q. Did you know Michael Kesler in his life time?

A. Yes, sir.

Q. And did you know the farm during his life time and up to the time of his death?

A. Yes, sir.

Q. Do you know the farm roads upon that farm?

A. The farm roads, yes, sir.

Q. Do you know the railroad as it is located thru the farm?

A. Yes, sir.

Q. You know the location of the trestle to which reference has been made?

A. Yes, sir, I do.

Q. Now, how long have you known that farm road which leads down to the trestle?

A. Well, I have known that a good many years.

Q. Did you know it during the life time of Mr. Michael Kesler?

A. Yes, sir.

Q. And have you known it ever since?

A. Ever since, yes.

Q. Now, for what purposes has that road been made use of during the time that you have known it?

A. Well, always used to haul hay thru and grain and wood.

Q. Has it been used for the general purposed of a farm road?

A. Yes, sir.

Q. During all of those years?

A. Yes, sir.

Q. Do you know where it crosses the right of way of the railroad company?

A. Yes.

Q. And you may state whether or not there has been a visible road across that right of way under that trestle during those years?

A. There was always a road there, yes.

Q. A road that you could see?

A. I have traveled that yes.

Q. You have traveled it?

A. I have been working there, yes.

Q. Now, for how many years has there been a visible road under that trestle across the right of way, to your knowledge?

A. Well, as long as I can remember they always used to haul the hay out that way.

Q. Well, has there always been a road that you could see across the right of way under the trestle?

A. From the public way, yes.

Q. Or do you mean leading from the public way down?

A. Yes, sir.

Q. Has any other use been made of that way under the railroad track, to your knowledge?

A. Well, they used it for the cattle, they used- the stock used to go under there, thru there to the other side.

Q. Then it has been used as a way of passage as a farm road and as a cattle pass?

A. As a cattle pass, yes.

Q. Has it been used continually ever since the road was built?

A. As long as I can remember, yes.

Q. Is that road of any benefit to the farm?

A. Well, I should think it was.

Q. Will the closing of it up damage the farm?

A. I should think it does, yes.

Q. And to what extent?

A. Well, because it is very unhandy to go round, that is with the hay, and even with the stock; you have got to go quite a ways in the other direction to get over the hill.

Q. In other words it is a convenience in the operating of the farm?

A. That is what it is.

Q. Well, if it was closed up will it damage the farm so far as the value of the farm is concerned?

A. Well, to my knowledge I think it does damage the farm.

Q. To what extent; how much?

A. I should say quite a little, that is, oh, about a thousand dollars.

Q. You think it would be worth a thousand dollars less?

A. Yes.

Q. Have you seen the boxes that have been placed there by the railroad company?

A. No, sir.

Q. Do you know when they were put there?

A. No.

Cross Examination.

By Mr. Root:

Q. Don't you live out there now?

A. Yes, I live out there now.

Q. Well, do you drive right by there, then?

A. No, I don't.

Q. Do you live in the same place you have all these years?

A. I lived there yes all those years except two years, the last two years.

Q. And you haven't driven by there since these boxes were in?

A. No, I have not.

Q. You don't drive by this place very often?

A. I have not just now, no.

Q. How do you know about these farm roads?

A. Because I worked on the farm.

Q. How long did you work on the farm?

A. That was different times.

Q. How many different times?

A. Maybe about fifty different times.

Q. Now, you say there are different farm roads there, one of these, as I understood also from what Mr. Kesler said, one of these roads leads from the trestle from either side?

A. Yes, sir.

Q. Then there is another farm road that leads to the main crossing, you know where that is?

A. Main crossing?

Q. You know where it is, where the gates are?

A. Yes, sir.

Q. To the west of the trestle?

A. Yes, sir.

Q. There is a road that leads from either side of that crossing, too, is there?

A. Yes, sir.

Q. And that road, those roads, the one leading from either side of

the trestle, and the one leading from either side leading to the farm crossing, has been there all these years?

A. Yes, separate roads.

Q. But they have been there during all those years?

A. As long as I can remember.

Q. They were there when you worked on the farm?

A. Yes, they were there when I worked on the farm.

Q. Now, the hay principally is hauled thru the trestle?

A. That is hauled thru the trestle.

Q. But a large portion of the grain that was raised on the upland there, the grain raised on the south side, is hauled over this main crossing?

A. The upper side, yes.

Q. This trestle opening was used principally for the hay and for wood and to let the cattle go thru?

A. Cattle and for grain.

Q. Well, of course, if there was any grain raised over next to the east line and south of the railroad track, that would be hauled thru this opening?

A. Yes, and part of the west.

Q. And the other, too?

A. Part of the other side, yes.

Re-Direct Examination.

By Mr. Odell:

Q. What work did you do on the farm?

A. General farm work.

Q. Different years?

A. Yes, sir.

Q. How many different years have you worked there?

A. Well, of course I just worked there times when they needed a man to help them out; and I hired out for a couple of months too, that was one summer.

Q. How long ago?

A. Well, that was in 1888.

Q. What? A. In 1888.

Q. 1888. Had you worked on the farm at odd jobs before that?

A. Yes, I used to.

Q. Did you work there during the lifetime of Michael Kesler?

A. No, sir, not at that time.

Q. Not until after his death?

A. Yes, sir.

Q. How soon after his death?

A. Well, about three or four years after.

B A R N E Y K E S L E R , one of the plaintiffs, recalled,
testified as follows:

Direct Examination.

By Mr. Odell:

Q. Mr. Kesler, what work has been done by the railroad company
in the opening which you claim you use as a way?

By Mr. Root: Well, now, we will admit that the railroad company,
preparatory to filling this trestle has placed---do you know
how big those culverts are?

By Mr. Robinson: They are 4.5 feet inside, square.

By Mr. Root: ---has placed two drains, two box culverts, one on
either side of the center bent, running across the--part way
across the right of way, that they are four feet and a half
openings on the inside, for the purpose of permitting the water
to pass from one side to the other, and with the intention of
filling up the balance of the opening of said trestle.

By Mr. Odell: Making a solid embankment?

By Mr. Root: Making a solid embankment with the exception of the
openings thru the box culverts.

By Mr. Odell: Now, then, when did you do that?

By Mr. Root: And they began operations, and those box culverts
were placed there in July last, July or August last.

By Mr. Odell: Yes, before this case was commenced. Well, that

is all, with that admission.

Cross Examination.

By Mr. Root:

Q. Mr. Kesler, I think that you answered this, not perhaps directly, this morning, but it would amount to the same thing; Is there anybody that you know of, living today, whether mother, brothers, sisters, or anybody else, that knows any more about this talk that you testified to, than you do?

A. My mother is living yet, but she don't know nothing about it; she is 74 years old.

Q. She don't know anything about it?

A. No.

Q. And you have no brother?

A. I have got a brother living in town here.

Q. And he don't know anything about it?

A. Not directly.

Q. And have you any sisters living?

A. Yes, sir.

Q. And do they know anything about it?

A. Not any more than I do.

PLAINTIFF RESTS.

By Mr. Root: Now, Mr. Odell, will you admit that Michael Kesler and wife deeded the 100 foot right of way strip mentioned in the complaint to the Hastings & Dakota Railroad company by warranty deed dated October 11, 1880; that will save bringing up the book.

By Mr. Odell: October 11, 1880 they conveyed the strip?

By Mr. Root: Yes, I said the right of way line mentioned in the complaint. And we might give the page on which the deed is recorded, in book D of deeds page 497 of Carver County, Minnesota, recorded within a short time after the execution of the deed; and then that the Hastings & Dakota railway company deeded to the Chicago, Milwaukee & St. Paul Railway company,

the defendant in this action, by deed dated December 28, 1882, and that such deed was recorded in book Y of deeds on page 464, shortly after the execution of said deed, and that in neither such deed is there any reservation or qualification or condition?

By Mr. Odell: Yes, I will admit that.

T H O M A S D. R O B I N S O N, a witness called on the part of the defendant, being first duly sworn, testified as follows:

By Mr. Root:

Q. Mr. Robinson, for how many years have you been engaged in either the construction or operating of railroads; about how many years; you needn't be particular?

A. Thirty six years.

Q. What is that?

A. 36 years.

Q. You are at present the road master of this defendant company, and as part of your district, or rather, your district includes that portion of the line which crosses this property in question, and included this trestle?

A. Yes, sir.

Q. About how many years have you been road master in that division or district?

A. 17 years last past.

Q. See, 38 years, that dates back of this construction?

A. Thirty six years.

Q. Mr. Robinson, state whether or not at the time this road was constructed in 1882, I think Mr. Kesler said it was, in 1880, ever since and now it was and has been and is now the custom to construct trestles at places similar to this in question rather than to fill up with solid embankment at the time of construction, regardless of any question of farm crossings or otherwise?

A. Yes, sir.

By Mr. Odell: To that I object as immaterial.

The Court overruled the objection.

Q. You have heard Mr. Kesler testify as to how these fences were built and are maintained?

A. Yes, sir.

Q. I show you defendant's exhibit 1, and ask you if this is substantially a correct representation of the manner in which they are built on either side of the right of way, and the way they are connected or built to the ends of the trestle?

A. Yes, sir, as near as a man can draw it.

Q. Now, I will ask you whether, during all these years, and now, it is the custom of railways in the northwest to build the fences in that way to the ends of the trestle rather than to continue them on either side?

By Mr. Odell: Objected to as immaterial.

The Court overruled the objection.

A. Yes, sir.

Q. And that is regardless of any question of a crossing or its use by anybody?

A. Yes, sir.

Q. So that this trestle work then, so far as it is constructed, and the manner in which it is constructed, and the manner in which the fences are built, leaving an opening so that one may pass back and forth, is no different than trestle works of railroads are constructed generally thruout the northwest?

By Mr. Odell: To that I object as immaterial.

The Court overruled the objection.

A. ~~Yes.~~ No.

By Mr. Root: I want to introduce this plat in connection with his testimony.

By Mr. Odell: Yes, I think there is sufficient foundation for

that.

DEFENDANT RESTS.

Proofs Closed.

STATE OF MINNESOTA.
COUNTY OF CARVER.

DISTRICT COURT.
EIGHTH JUDICIAL DISTRICT.

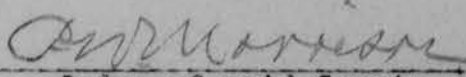
John Hudinski, substituted in the place of
Theresia Kesler, Rosa Schmidt, Joseph Kesler,
Frank Kesler, Barney Kesler, Anna Debos and
Victoria Kesler,
Plaintiff.

-vs-

The Chicago, Milwaukee & St. Paul Railway
Company,
Defendant.

The foregoing document, consisting of forty-four pages of
typewritten matter and one plat therein referred to, having been
duly proposed for settlement and allowance as a "Settled Case" in
the action therein entitled, and the same having been duly exam-
ined and found conformable to the truth, is hereby allowed and
signed as and for a Settled Case in said action, and I hereby cer-
tify that the same contains all objections, rulings and exceptions
taken upon the trial of said action, all evidence received upon
such trial and all proceedings had thereon.

Dated April 21, 1909.


Judge of said Court.

District Court
County of Carver.

John H. Sinski
Plaintiff

- vs -

The Chicago, Milwaukee &
St Paul Railway Company.
Defendant.

Settled Case.

CARVER COUNTY,
FILED

APR 27 1909.

H. O. Muehlberg, Clerk.

(456)

No. 13. 3040

DISTRICT COURT

CARVER COUNTY, MINNESOTA

August Blackner
Plaintiff

vs.

Fred Dietzel
Defendant

John J. Fahy
Plaintiff's Atty.

Thos. F. Craven
Defendant's Atty.

Date of Entry Sept 17 1906

Register of Actions, D. Page 457

Term Tried 190

Judgment for

Amount of Judgment, \$

Date of Judgment 190

Judgment Book Page

Default Judgment Book Page

Date of Docketing 190

Case Dismissed by Plff

STATE OF MINNESOTA
County of Carver.

DISTRICT COURT
Eighth Judicial District.

August Plackner,
- VS. -
Fred Dietzel,
Plaintiff
Defendant.

Now comes said defendant and, for his answer to the complaint of the plaintiff in said above entitled action, respectfully alleges:

That defendant denies said complaint and each and every allegation matter and thing in said complaint contained.

WHEREFORE, Defendant prays judgment that said action be dismissed and defendant's costs and disbursements herein.

Witness my hand and seal this 7th day of September 1908.

Thos F. Craven
Attorney for said Defendant,
Chaska, Minn.

Original
STATE OF MINNESOTA,

County of Carver

District COURT.

August Placemer
Plaintiff.

Fred Ditzel
vs
Defendant.

Answer

Due and personal service of the within
this FILED is hereby admitted
day of SEP 2 1906

A. D. 190

H. O. Muehlberg Clerk.

Attorney for

Thos F Craven
Attorney for Defendant
Chaska Minn.

C. F. GREENWOOD, MANKATO, MINN

mailed Sept 7, 06
(457)

State of Minnesota,
County of Carver,

In District Court,
Eighth Judicial District.

August Plackner, Plaintiff. :
-vs- : NOTE OF ISSUE .
Fred Dietzel, Defendant. :

- 1. Issues of fact for trial by jury.
2. Last pleading served Sept. 8, 1906.

John J. Fahey, Esq.,
Attorney for Plaintiff.

Thos. F. Craven, Esq.,
Attorney for Defendant.

The clerk will please file this note of issue and enter the
cause on the calender for the next general term of the court to
be held, Monday, Sept. 24, 1906.

John J. Fahey
Attorney for Plaintiff,
Norwood, Minnesota.

(13.)

August Placker
-vs-
Fred Dietzel

Note of Issue.

CARVER COUNTY,
FILED

SEP 17 1906

H.C. Muehlberg, Clerk

(457)

STATE OF MINNESOTA,

IN DISTRICT COURT,

County of Sibley,

Eighth Judicial District.

August Plackner,

Plaintiff.

-vs-

Fred Dietzel,

Defendant.

S U M M O N S .

THE STATE OF MINNESOTA to the above named DEFENDANT:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which complaint is hereto annexed and herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office in the Village of Norwood, in the County of ^{Carver} Sibley and State of Minnesota within twenty days after the service of this summons upon you exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in said action will take judgment against you for the sum of Five hundred and No/100 together with the costs of this action.

Dated Aug. 25, 1906.

John J. Fahy
Plaintiff's Attorney,
Norwood, Minn.

STATE OF MINNESOTA,

IN DISTRICT COURT,

County of Carver,

Eighth Judicial District.

-----oooOooo-----

August Plackner,

Plaintiff. :

-vs-

Fred Dietzel,

Defendant. :

: C O M P L A I N T .

-----oooOooo-----

The plaintiff complains of the defendant in the above entitled action and alleges:

For a first cause of action:

1. That sometime in the month of February, 1901, the plaintiff entered into an oral contract with the defendant, wherein and whereby the defendant agreed to dig and construct and complete a tubular well for ~~defendant~~ for plaintiff on the premises of the plaintiff in Benton Town, Carver County, Minnesota, for and in consideration of the sum of two hundred and twenty five dollars (\$225.00) to be paid by plaintiff to defendant, and that said defendant guaranteed that said well when constructed and completed would furnish said plaintiff with sufficient water for his household purposes and uses and for the use of his horses, cattle and other farm stock for a period of 10 years from the completion of said well.
2. That subsequently and a few days after said oral contract as hereinabove set forth was entered into between plaintiff and defendant, said oral contract was modified ^{whereby} said defendant agreed to dig and construct said tubular well as aforesaid, if said plaintiff paid said defendant the sum of Two hundred dollars (\$200.00) sometime during the year 1901 to which provision and agreement said plaintiff assented and agreed.
3. That sometime in March, 1901, said defendant commenced to dig and construct said well on the said premises of said

plaintiff for said plaintiff. That sometime during the year 1901 plaintiff paid defendant the said sum of two hundred dollars.

4. That said defendant worked on said well on the said premises of said plaintiff from the time of commencement at different times until sometime about the middle of February, 1905, when said defendant wholly abandoned the digging and constructing of said well and has since refused to go ahead and dig and construct and complete said well as he had agreed to do.

5. That said defendant has never completed said well as he agreed to do, that said well is now useless to said plaintiff and of no value whatsoever to said plaintiff.

6. That plaintiff has complied with all the terms, conditions and agreements set forth in said contract and that said defendant has failed to carry out or perform his part of said contract.

7. That by reason of the failure of said defendant to carry out and perform his part of said contract to be carried out and performed by said defendant plaintiff has been damaged in the sum of Three hundred dollars (\$300.00).

For a second cause of action plaintiff alleges:

1. That he realleges each and every allegation and statement in the first six paragraphs of ~~xx~~ the first cause of action contained.

2. That sometime during the year 1901 said plaintiff paid said defendant the sum of two hundred dollars in money which sum was paid to defendant by plaintiff at the request of said defendant and in consideration ~~xxx~~ that said defendant would dig, construct and complete a tubular well for plaintiff on the premises of said plaintiff in the Town of Benton, Carver County, Minn., and that said defendant guaranteed that said well when completed would furnish sufficient water for the household purposes and for the use of defendant's cattle, horses and other farm stock.

3. That plaintiff has complied with all the terms, conditions and agreements of said contract as set forth in paragraphs 1 and 2 of the first cause of action herein.

Ts 6

4. That plaintiff has duly, and often demanded said sum of two hundred dollars from said defendant. That no part of said sum of two hundred dollars has been paid.

For

W H E R E F O R E the said plaintiff demands judgement against the said defendant upon said two causes of action, for the sum of Five Hundred and No/100 Dollars together with the costs and disbursements of this action.

John J. Fahren
Plaintiff's Attorney,
Norwood, Minnesota.

Original

District Court
Carver County

August Flackner

-vs-

Fred Dietzel

Summons and Complaint.

John J. Fahey,
Plaintiff's Attorney,
Norwood, Minn.

CARVER COUNTY,
FILED

SEP 24 1966

H.O. Muehlberg, Clerk

(467)

3041

No. ~~3041~~ 6.

DISTRICT COURT

CARVER COUNTY, MINNESOTA

Anna Karme

Plaintiff

Fred K. Proehl

Defendant

Odell & Odell

Plaintiff's Atty.

J. F. Crann & H. J. Peck

Defendant's Atty.

Date of Entry *Sept. 17* 190*6*

Register of Actions *D.* Page *458*

Term Tried 190

Judgment for

Amount of Judgment, \$

Date of Judgment 190

Judgment Book Page

Default Judgment Book Page

Date of Docketing 190

State of Minnesota, } ss.
County of Carr
6th day of July 1906, at the Town of Benton
in the County of Carr in said State, I served the within Summons
and Complaint upon the within named defendant, Paul H. Brock
by then and there handing to and leaving with him a true
copy of said Summons & Complaint
Dated this 7th day of July 1906
Sheriff's Fees, Return, \$ 1.00
Mileage 30 \$ 3.00
Total \$ 4.00
Paul
By G. A. Gatz Sheriff Carr County, Minn.
Deputy.

STATE OF MINNESOTA
County of Carver

DISTRICT COURT
Eighth Judicial District

-----::-----
Anna Harms

Plaintiff

vs

SUMMONS

Fred K. Proehl

Defendant
-----::-----

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve your answer to the complaint of plaintiff in the above entitled action, which complaint is hereto attached and herewith served upon you, by copy, on the subscribers at their office in the City of Chaska in the County of Carver and State of Minnesota, within twenty days after service of this Summons upon you, exclusive of the day of such service; and if you fail so to serve your answer within the time aforesaid the plaintiff in this action will apply to the Court for the relief demanded in said complaint, together with the costs and disbursements herein.

Odell & Odell
Attorneys for Plaintiff,
Chaska, Minn.

STATE OF MINNESOTA
County of Carver

DISTRICT COURT
Eighth Judicial District

Anna Harris

Plaintiff

vs

Fred X. Proehl

Defendant

Said plaintiff for her complaint in the above entitled action respectfully states
it shows to the Court:

(1). That said plaintiff is about thirty one years of age, a widow with three
small children, and resides on a farm situated in Section No. 23 of the Township of
Benton in said County and State where she has resided for many years past and during
the entire period of her married life and ever since the death of her deceased husband.

(2). That Otto Wesenbrink hereinafter mentioned and referred to is a farmer re-
siding with his wife and family upon a farm situated in said Township of Benton and
is one of the near neighbors of plaintiff.

(3). That said defendant is also a resident of said Township of Benton and is
and for many years past has been one of the leading and most influential citizens of
said Township and is worth, as plaintiff is informed and believes and charges the fact
to be, forty thousand dollars in real and personal property situated in said Township
and elsewhere.

(4). That on, to-wit, the 8th day of April 1903, in a saloon in the Village of Col-
lins in said Township of Benton, said defendant wickedly intended and designed to in-
jure plaintiff in her good name and to bring her into scandal and disgrace with and
among her neighbors and other good and worthy citizens of the community in which she
resides unlawfully and maliciously spoke, uttered and published of and concerning this
plaintiff to and in the presence and hearing of Henry Wirtz and Alfred Sanguist the

following false, scandalous and defamatory words in the German language, that is to say: "Jetzt glaube Ich auch sicher Wesenbring hatte so etwas mit die frau zu thun wie der junge Shud sagt Er habe Sie auf die lounge liegen sehen, Ihr Kleid ueber den Kopf geschmissen und Er hat Sich fertig gemacht Ihr zu springen. Und letzten Sonntag war Er mit seine beiden frauen nach der Methodist Kirche, mit frau nummer eins and frau nummer zwei".

(5). That said words so spoken in the German language by said defendant when translated into the English language have and bear the following meaning and are as follows, that is to say: "I now believe myself for sure Wesenbring (meaning and referring to Otto Wesenbring hereinbefore mentioned) had something of the kind to do with a woman (meaning and referring to this plaintiff) as the young Shud said he saw her (meaning this plaintiff) lying on the lounge, her (meaning this plaintiff's) clothes thrown over her (meaning this plaintiff's) head and he (meaning said Otto Wesenbring) had made himself (meaning said Wesenbring) ready to jump her, (meaning this plaintiff) and last Sunday he (meaning said Wesenbring) was with both of his (meaning said Wesenbring's) women to the Methodist Church, with wife number one and wife number two".

(6). That at the time said defendant so spoke and published the German words aforesaid he, said defendant, was engaged in a conversation with said Henry Wirtz and said Alfred Sanquist relating to this plaintiff and to said Otto Wesenbring in which this plaintiff was expressly mentioned and referred to by her name and said words were spoken of and concerning this plaintiff and of and concerning her relations with said Otto Wesenbring, and said Henry Wirtz and said Alfred Sanquist, the persons to and whose presence and hearing said words were so spoken as aforesaid, and each of them, could and did understand the German language and could and did understand said words when so spoken in the German language and well knew the meaning of said words. That the German words "Ihr zu springen", meaning when translated into the English language "to jump her" when used together and in the connection in which the same were used when so spoken by said defendant mean, and are taken and understood by all persons con-

versant with the German language to mean "to have sexual intercourse with her", and by the use of said words in the connection and under the circumstances in which the same were so used by said defendant as aforesaid said defendant intended that said words should mean and be understood by those to whom and in whose presence the same were spoken as aforesaid to mean "to have sexual intercourse with her" and the same were so understood by such persons, and by said words and the words used in connection therewith and preceding the same as so spoken by said defendant as aforesaid said defendant intended to and did charge, and intended to be understood as charging and was so understood by the persons aforesaid, to-wit, by said Henry Wirtz and Alfred Sanguist, that this plaintiff had had illicit sexual intercourse with said Otto Mesenbrink and had thereby committed the crime of Fornication.

(7). That by the words "Und letzten Sonntag war Er mit seine beiden Frauen nach der Methodisten Kirche, mit Frau Nummer eins and Frau Nummer zwei", which words when translated into the English language mean "And last Sunday he was with both of his women to the Methodist Church, with wife number one and wife number two", said defendant referred to this plaintiff and to her as one of Otto Mesenbrink's women and as one who sustained to said Otto Mesenbrink the relations which a wife sustains to her husband, and by the use of said words in the connection and under the circumstances in which the same were spoken as aforesaid said defendant intended to and did charge and intended to be and was understood by those to whom and in whose presence the same were spoken as aforesaid as charging that plaintiff was in the habit of having illicit sexual intercourse with said Otto Mesenbrink and that she sustained to said Otto Mesenbrink the same sexual relations that a wife sustains to her husband.

(8). That said charges and accusations so made by said defendant of and concerning this plaintiff, and each and all of them, were and are false and defamatory, and were well known by said defendant to be false and defamatory at the time he so made the same, and said charges and accusations were made by said defendant wilfully and maliciously and with the wicked intent and design on the part of him, said defendant, to humiliate and disgrace this plaintiff and to injure this plaintiff in the estimation

-4-

of her neighbors and friends and of the community in which she resides and to cause it to be believed that plaintiff was a lewd and unchaste woman, and in consequence thereof plaintiff has been out to great humiliation, shame and suffering and has sustained damage in the sum of ten thousand dollars.

Wherefore plaintiff demands judgment against said defendant for the sum of ten thousand dollars, together with her costs and disbursements herein.

Orell & Orell

Attorneys for Plaintiff,

Chaska, Minn.

State of Minnesota,
County of Carr } ss.

Anna Harris being first duly sworn
upon oath says that she is the Plaintiff in the
foregoing within entitled action; that she has heard read the foregoing Complaint
that the same is true. of her own knowledge, except as to matters
therein stated on information and belief, and as to such matters she believes it to be true to the best of
her knowledge information and belief, and that the reason why this verification is not made by the
herein is that said is absent from
this County wherein resides this affiant, her attorney.

Subscribed and sworn to before me this 5th day of July 1906.
{ NOTARIAL }
{ SEAL }

Notary Public W. S. Saele Carr County, Minnesota.
My Commission expires July 15, 1907

State of Minnesota,
County of _____ } ss. _____ Court,

against

Plaintiff.

SUMMONS.

Defendant.

The State of Minnesota to the above named Defendant:

You _____ are hereby summoned and required to answer
the Complaint of the Plaintiff in the above entitled action, which complaint is hereto annexed and here-
with served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at
_____ office, _____
in the _____ of _____, in the said County of _____
within twenty _____ days after service of this summons upon you, exclusive of the day of such
service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this
action will apply to the Court for the relief demanded in said complaint—have the amount Plaintiff
entitled to recover, ascertained by the Court or under its direction, and take judgment
against you for the amount so ascertained—take judgment against you for the sum of _____
Dollars, (\$ _____)
with interest at the rate of _____ per cent per annum since the _____
_____ 100

ORIGINAL.

State of Minnesota,

County of Carver

District Court.

Anna Harris Plaintiff,

vs.

Fred K. Proehl Defendant.

Summons and Complaint

Due and personal service of the within
admitted
this _____ day of _____ 19____

CARVER COUNTY,

Attorney for FILED

MAR 14 1907

H. O. Marshall Clerk.

Osceola & Co.
Attorneys for Plff.

Charles M. Munn

MILLER-DAVIS PRINTING CO., MINNEAPOLIS

458.

STATE OF MINNESOTA

County of Carver

DISTRICT COURT

Eighth Judicial District

Anna Harms

Plaintiff

vs

Fred K. Proehl

Defendant

Said plaintiff for her reply in the above entitled action respectfully states and shows to the Court that she denies each and every allegation of new matter contained in defendant's answer herein.

Wherefore she demands judgment as in and by her complaint herein.

Odell & Odell
Attorneys for Plaintiff.
Chaska, Minn.

State of Minnesota,
County of Carver } ss.
Anna Harris being first duly sworn
upon oath says that she is the plaintiff in the
foregoing within entitled action; that she has heard read the foregoing reply
that the same is true. of her own knowledge, except as to matters
therein stated on information and belief, and as to such matters she believes it to be true to the best of
her knowledge, information and belief, and that the reason why this verification is not made by the
herein is that said is absent from
this County wherein resides this affiant, her attorney.
Subscribed and sworn to before me this 31st day of August 1906.
{ NOTARIAL {
{ SEAL {
W. E. Odell,
Notary Public Carver County, Minnesota.

State of Minnesota, } ss. Court,
County of _____
_____ }
_____ against _____ Plaintiff.
_____ } SUMMONS.
_____ Defendant.

The State of Minnesota to the above named Defendant:

You _____ are hereby summoned and required to answer
the Complaint of the Plaintiff in the above entitled action, which complaint is hereto annexed and here-
with served upon you, and to serve a copy of your answer to the said complaint on the subscriber, at
_____ office,
in the _____ of _____, in the said County of _____
within twenty _____ days after service of this summons upon you, exclusive of the day of such
service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this
action will apply to the Court for the relief demanded in said complaint—have the amount Plaintiff
entitled to recover, ascertained by the Court or under its direction, and take judgment
against you for the amount so ascertained—take judgment against you for the sum of _____
Dollars, (\$ _____)
with interest at the rate of _____ per cent. per annum since the _____ day of _____ 190 _____
together with Plaintiff's costs and disbursements herein.
Dated _____ 190 _____

Plaintiff's Attorney.

ORIGINAL.

State of Minnesota,

County of Carver

District Court.

Anna Hansen
Plaintiff,

vs.

Fred H. Proehl
Defendant.

Reply

Due and personal service of the within
admitted
this..... day of..... 19.....

CARVER COUNTY,

Attorney for FILED

MAR 14 1907

H. O. Muehlberg Clerk

Ozell & Ozell
Attorneys for Plff

Charles Munn

MILLER-DAVIS PRINTING CO., MINNEAPOLIS

458.

State of Minnesota,
County of *Lacoo*

IN DISTRICT COURT OF SAID COUNTY,

ss.

8th

Judicial District

September

Term, 1908

IN THE MATTER OF

Anna Harms

vs.

Plaintiff

Fred K. Proehl

Defendant

We, The Jury impaneled and sworn in the above entitled action, find for the defendant

William Maw Jr.
Foreman.

Dated at *Chaska* this *3rd* day of *October* A. D. 1908

DISTRICT COURT,

8th Judicial District
September Term, 190*8*

State of Minnesota, }
County of *Carver* } ss.

VERDICT FOR DEFENDANT

IN THE MATTER OF

Anna Harms
vs. Plaintiff

Fred W. Proch
Defendant

Filed in open Court the *3rd*
day of *October* 190*8*
H. O. Muehlberg
Clerk.

No. 864

STATE OF MINNESOTA,

DISTRICT COURT,

County of Carver

Eighth

Judicial District.

Anna Karme

No. 3

Plaintiff

Against

List of Jurors.

Fred K. Proehl

Defendant

Attorneys Mark Here	NAMES	REMARKS
	1 Alfred Nord	excused
	2 J. E. Holt	
	3 W. H. D. Mielke	D 3
	4 Barney Kessler	excused
	5 Chas. Cornell	
	6 August Kasse	
	7 Henry Kasse	excused
	8 J. P. Brinkman	excused
	9 Frank Wanta	
	10 Peter Klevan	
	11 Ernest Kunze	D 1
	12 H. K. Gunn Berg	excused
	13 C. M. Shepote	excused
	14 John Holl	P 2
	15 Chas. Lundeen	
	16 Otto Preper	P 1
	17 Cooper Roth	
	18 Peter Staasen	
	19 John Watzen Jr	
	20 L. J. Della	excused
	21 W. H. Mielke	D 2
	22 Albert Grunde	
	23 B. Anhalt	
	24 Fred Guethling Sr	
	25 Herman Kuder	P 3
	26 Geo. Hebrisen	
	27	
	28	
	29	
	30	

No.

STATE OF MINNESOTA,

County of *Carver*

DISTRICT COURT.

Anna Harne

Plaintiff

Against

Fred Troehl

Defendant

JURY LIST.

CARVER COUNTY,
FILED

MAR 14 1907

H. O. Muehlberg Clerk

PIONEER PRESS CO., ST. PAUL, MINN.

(458)

Anna Harms vs Fred Proehl.

The plaintiff requests the court to instruct the jury as follows:

Refused (1) That under all of the evidence in this case the verdict of the jury must be for the plaintiff in some amount.

(2) To entitle the plaintiff to a verdict in this action it is not necessary that she prove the use of all of the words set out in her complaint and therein charged as slanderous. It is sufficient to entitle her to a verdict for her to satisfy the jury that the defendant at the time and place referred to in the complaint spoke of and concerning the plaintiff the language charged in the complaint or in substance and if you find from the evidence that the defendant used the words set out in the complaint or so many of them as constitute a slander then the plaintiff is entitled to a verdict at your hands.

Issue (3) Every speaker is the publisher of what he speaks, and is solely liable therefor. That the words spoken have been previously published by another can neither relieve the subsequent speaker from his liability for the publication made by him nor impose any liability on the previous publisher. The act of publication is, as to each publisher, an entirely distinct act.

(4) It is no defense in an action of slander to show that a rumor existed as to matters published, or that the information upon which the charge was made was derived from another, even though the defendant at the time believed the matter to be true, and the rule is not altered though the defendant in making the charges stated that he was only repeating a rumor, or that he relied upon information from another whose name he mentioned.

(5) Where the publication of slanderous words is shielded by no privilege, it will be no defense, either in a civil or criminal proceeding, that the defendant, in good faith, believed the charge to be true and otherwise acted without malice. Nor does the fact that defendant had probable cause for such belief alter the rule.

Issue (6) Where, as in this case, the defendant relies upon a previous publication of the slanderous charges in mitigation of damages it is necessary for him to

satisfy you not only that there had been a prior publication of such charges and that he heard such publication but that he believed them to be true and relied thereon in making the charges which he made.

Wm. F. Sullivan, D.R.
OCT 3 1908
RECEIVED
CHIEF CLERK

CARVER COUNTY,
FILED

OCT 3 1908

H. O. Muehlberg Clerk.

(458)

separately done to collectible being a need had already that also for now which
has been at all ready collected at that but collectible does have at left has
other at doing separate and taken at records before

STATE OF MINNESOTA

Carver County

DISTRICT COURT

Eighth Judicial District

Anna Harms

Plaintiff

vs

Fred K. Proehl

Defendant

State of Minnesota

ss

County of Carver

John Knotz, being first duly sworn, says that he is a physician and surgeon and engaged in the practice of his profession in the Village of Cologne in said County and State; that he knows the plaintiff, said Anna Harms and has several times within the last few years attended her in a professional capacity. That on the evening of the 2nd day of October 1906 he was called to her home in the Town of Benton and found said plaintiff suffering from an attack of acute diarrhoea. From the examination into the physical condition of said plaintiff which he made at that time he is of the opinion that it would be extremely dangerous to the health of said plaintiff to attend court for some weeks; that the disease from which said plaintiff is now suffering is likely to be attended with complications and to seriously affect said plaintiff's health if said plaintiff is obliged to attend court, and affiant has advised said plaintiff not to attend court but to remain confined to her home for some time.

Subscribed and sworn to before me
This 3rd day of October A.D. 1906.

W. D. O'Connell

Notary Public, Minn.

J. Knotz

District Court
County of Carver.

Ama Harris,

- vs -

Fred H. Proehl.

Attendant for Continuance

CARVER COUNTY,
FILED

OCT 3 1906

H. O. Muehlberg, Clerk.

(458)

Adell & Adell
Attys for Plaintiff.

State of Minnesota,
County of *Carver*

IN DISTRICT COURT OF SAID COUNTY.

5th Judicial District*March* Term, 190*7*~~IN THE MATTER OF~~

Anna Hames
vs. Plaintiff

Fred K. Proehl
Defendant

We, The Jury impaneled and sworn in the above entitled action, find for the defendant

Peter Klevorn
Foreman.

Dated at *Brook* this *13th* day of *March* A. D. 190*7*

DISTRICT COURT,

8th Judicial District

March Term, 190*7*

State of Minnesota,
County of *Cass* ss.

VERDICT FOR DEFENDANT

IN THE MATTER OF

Anna Hansen
vs. Plaintiff

Gred K. Proehl
Defendant

Filed in open Court the *14th*
day of *March* 190*7*
H. O. Muehlberg Clerk.
No. 864

State of Minnesota,
County of Carver,

District Court.
Eighth Judicial District.

Anna Harms,

Plaintiff,

vs

Fred K. Proehl,

Defendant.

Sirs:

You will please take notice that at a Special Term of said Court to be held at the Court House in the City of Chaska in said County and State on the 25th day of June, A.D. 1907, at the opening of court on that day or as soon thereafter as counsel can be heard, said defendant will move said court for an order setting aside and vacating the verdict and for a new trial herein, with costs, upon the following grounds, viz:

1. That the verdict is not justified by the evidence and is contrary to law.
2. Errors of Law occurring at the trial and then duly excepted to.
3. Errors of Law occurring at the trial to which no exception was then taken and which are herein specified as follows, viz:

- a. The ruling of the court over-ruling plaintiff's objection to the admission in evidence of defendant's Ex C, and admitting such Exhibit in evidence.

- b. The ruling of the court over-ruling plaintiff's objection to the admission in evidence of defendant's Ex D, and admitting such Exhibit in evidence.

- c. The ruling of the court over-ruling plaintiff's objection to the admission in evidence of defendant's Ex E, and admitting such Exhibit in evidence.

- d. The ruling of the court refusing to permit plaintiff's counsel to enquire of witness Meuwissen as to what he heard William Zahl say respecting the character of plaintiff for ~~charity~~ *charity*

- e. In charging the jury as follows: "It is proper and the law recognizes the right of the defendant to come into court and state generally that he heard somebody else say it, or had reason to believe it" and that such evidence could be considered in mitigation of damages.

- f. In charging the jury as follows: The court also instructs the

jury that the defendant contends he had heard this matter talked of at some church trial.. Now the jury would have the right to take that into consideration for the purpose of mitigating the damages."

You will also take notice that upon the hearing of said motion and in support thereof said plaintiff will read the records and files in said action, including the Settled Case, or so much thereof as she may deem pertinent.

Yours etc.,

Chas. H. Hall

Attorneys for Plaintiff

W. C. Hall

Of Counsel.

To

Thos. F. Craven and H. J. Peck, Esqrs.,

Attorneys for Defendant.

District Court
County of Carver,

Anna Harris
Plaintiff

-vs-

Fred K. Prohl
Defendant.

Notice of Motion
ORIGINAL.

CARVER COUNTY,
FILED

JUL 9 1907

H. O. Muehlberg, Clerk

Edell Thell
Attorney for Plaintiff
W. C. Paul
of Counsel
(458)

STATE OF MINNESOTA,
SUPREME COURT.

MANDATE.

The State of Minnesota,

To the Hon. Judge and Officers of the District Court of the Eighth Judicial District,
sitting within and for the County of Carver Greeting:

Whereas, Lately in your court, in an action therein pending, wherein
Anna Harms was
Fred K. Proehl was
Plaintiff, and
Defendant

a certain order was entered therein September 4, 1907,
from which order said Plaintiff
appealed to this Court,

And Whereas, The same was duly argued, heard and submitted at the General April
Term, A. D. 1908, of our Supreme Court. After mature deliberation thereupon had, our Supreme
Court did adjudge, determine, decree and ORDER "That the order of the
Court below, herein appealed from, be, and the same hereby is, in all things reversed,
and a new trial granted,

and that the Appellant-Plaintiff above named have judgment accordingly."
A copy of the entry of Judgment thereupon in this Court is herewith transmitted, and made part of
this Remittitur.

Now, Therefore, This MANDATE is to you directed and certified, to inform you of these
proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby
and herewith REMANDED to your Court for such other or further record and proceedings therein as
may be by law necessary, just and proper, under and by virtue of the said Order herein made.

Witness, The Hon. CHARLES M. START, Chief Justice of the
Supreme Court aforesaid, and the seal of said Court,
at St. Paul, this 4th
day of June A. D. 1908
C. A. Ridgman
Clerk of the Supreme Court.

SUPREME COURT,
STATE OF MINNESOTA.

MANDATE

TO THE DISTRICT COURT OF

Carver County.

Anna Harms,
Appellant

AGAINST

Fred K. Proche,
Respondent

CARVER COUNTY,
FILED

SEP 16 1908

H. O. Muehlberg, Clerk.

W. C. Cull

Attorney for

Appellant

(458)

State of Minnesota,
County of Carver.

DISTRICT COURT,
Eighth Judicial District.

Anna Harms — Plaintiff.

-VS-

Fred K. Proehl — Defendant.

BOND ON APPEAL.

Know all Men by these Presents, That we Anna Harms, said
plaintiff, as principal and Otto Mesumbring
and Henry Schleuter sureties,
are held and firmly bound unto Fred K. Proehl, defendant

in the above entitled action, in the sum of Two Hundred and Fifty
Dollars, lawful money of the United States, to be paid unto the said Fred K. Proehl, his

heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind
ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this September day of September A. D. 1907

The condition of this obligation is such that, WHEREAS, the said Anna Harms,
said plaintiff, appeal to the Supreme Court of the State
of Minnesota, from that certain order made by said District Court
in the above entitled action and dated on the 3rd day of September
1907 and filed in the office of the Clerk of said Court on the 4th
day of September 1907 wherein and whereby the motion of said
plaintiff for an order setting aside the verdict in said action
and for a new trial thereof is denied.

Now, Therefore, if said appellant, said plaintiff, shall well
and truly pay the costs of said appeal and the damages sus-
tained by said respondent, said defendant, in consequence
thereof if said order or any part thereof shall be affirmed or
the appeal shall be dismissed, and shall abide and satisfy
the judgment or order which the appellate court may give
therein.

then this obligation shall be void, otherwise of force.

Signed, Sealed and Delivered in Presence of

W. H. Bell

Ada Weier

Mrs Anna Harms Seal
Otto Mesumbring Seal
Henry Schleuter Seal

STATE OF MINNESOTA,

County of Carver } ss.

Be it Known, That on this _____ day of

September A. D. 1907, before me personally appeared Anna Harris,
Otto Mesumbring and Henry Schlueter

to me known to be the same persons described in and who executed the foregoing bond, and each for himself acknowledged the same to be his own free act and deed.

STATE OF MINNESOTA,

County of Carver } ss.

Wm. L. Simon
Notary Public Carver Co.
My Comm. expires Aug 6 1914

Otto Mesumbring and Henry Schlueter,
the sureties named in and who executed the foregoing bond, being first duly sworn, doth, each for himself, depose and say that he is a resident and freeholder of the State of Minnesota, and worth the amount of Two Hundred and Fifty Dollars

above his debts and liabilities, and exclusive of his property exempt from execution.

Subscribed and sworn to before me on this _____ day of September A. D. 1907

Otto Mesumbring
Henry Schlueter

Wm. L. Simon
Notary Public Carver Co.

DISTRICT COURT,

Eight Judicial District.

County of *Carver*,

Anna Harris
Plaintiff

-23-

Fred H. Prohl
Defendant

BOND ON APPEAL

The within Bond, being in the sum and
with the sureties by me directed, is
hereby approved this *19th*
day of *Sept* A. D. 1907

R. T. Morrison
Judge of said Court

W. C. Dull
Plaintiff's Attorney.

PIONEER PRESS, ST. PAUL, MINN.
Served hereof by copy the 20th
day of September 1907. *Thos. J. Adams*
H. J. McKel & J. E. Cravens
Attys. for Defendant

CARVER COUNTY,
FILED

SEP 20 1907

H. O. Muehlberg Clerk

(458)

State of Minnesota.

County of Carver.

District Court.

Eighth Judicial District.

Anna Harms, Plaintiff.

against

Fred K. Proehl, Defendant.

Sirs:

You will please take notice that the above named Anna Harms, said plaintiff, hereby appeals to the Supreme Court of the State of Minnesota from that certain order of said District Court made and entered in said above entitled action on the 3rd day of September 1907 and filed in the office of the Clerk of said court on the 4th day of September 1907, wherein and whereby the motion of said plaintiff for an order setting aside the verdict in said action and for a new trial thereof was denied and from the whole of said order.
Dated this 12th day of September 1907.

Yours etc.,

W. C. Bell

Attorney for Plaintiff.

To

Thos. F. Craven and H. J. Peck, Esqrs., and

To

Attorneys for said Defendant.

H. O. Muehlberg, Esq.,

Clerk of said District Court.

District Court
County of Carver.

Anna Karms
Plaintiff

-vs-

Fred K. Revell
Defendant.

Notice of appeal.

Service of the within notice
of appeal hereby admitted
this 20th day of September 1907.

H. P. Revell & H. Cropper
Attys for Defendant

H. O. Muehlberg
Clerk Dist Court,

CARVER COUNTY,
FILED

SEP 20 1907

H. O. Muehlberg, Clerk.

W. C. Odell
Attorney for Plaintiff
(458)

No. 3043.

(9)
DISTRICT COURT,

Eight Judicial District,
County of Cannon

Anna Harris - Plff.

- vs -
Fred H. Roehl
Def.

NOTE OF ISSUE

Issue of Fact
LAST PLEADING SERVED
August 20 1906

Odele Odell
Attorney for Plaintiff

J. F. Brown Fred H. Roehl
Attorney for Defendant

Will the Clerk please file this Note of
Issue, and enter the cause on the Calen-
dar for the September
A. D. 1906 General Term
of this Court.

Yours respectfully,

Odele Odell
Attorney for Plff.

Filed Sept 17th 1906

WILLER-DAVIS PRINTING CO., MINNEAPOLIS

(458)

100 ft
1-11

Cologne Minn Dec 18, 1905

I Alfred Schug hereby testify; that
I was in May 1905 at August Zepen
tunes, and have seen Otto Mesentring
at Mrs Anna Harms, through the
keyhole downstairs in the
house and have seen that Mesen-
tring had widow Harms on
his lap and embraced and squeezed
in presence of }
Harry Mattfeld } Signed Alfred Schug
Johann Zabel }

~~LPS~~ Co
Co

Def Co

[illegible]

No.

DISTRICT COURT,

Carver County.

Anna Harris

Plaintiff

Fred K. Proell

against

Defendant

NOTE OF ISSUE.

LAST PLEADING SERVED,

August 4th 1906

J. W. Edgell Case.

Attorney for Plaintiff.

Thos. J. Brown H. J. Peck

Attorney for Defendant.

Will the Clerk please file this Note of Issue, and enter the cause on the Calendar for the

September A. D. 1906

Term of this Court.

Yours, etc.,

J. W. Edgell

Attorney for Plaintiff.

Filed Sept. 19th 1906

H. O. Muehlberg Clerk.

The \$3.00 deposit required by Sec. 2, Chap. 48, General Laws of 1888, must be paid before any action will be entered in Clerk's Office.

No. 83.—Pioneer Press Co., St. Paul, Minn.

(458)

STATE OF MINNESOTA,

DISTRICT COURT,

County of Carver

Eighth

Judicial District.

Anna Harms

Plaintiff

No. 2.

Against

List of Jurors.

Fred K. Proehl

Defendant

Attorneys Mark Here	NAMES	REMARKS
	1 J. H. Rausch	
	2 Frank Weismueller	
	3 William Allmann	
	4 Frank Kerber	
	5 William Lundstrom	
	6 Frank Fabel	
	7 A. E. W. Anderson	X 2
	8 J. A. Hartig	X 1
	9 W. A. Willens	
	10 J. Thuesmann	
	11 Theodore Kowalke	
	12 William Man	
	13 J. J. J. J. J.	
	14 Levin Nelson	
	15 Edwin Akim	
	16 Henry J. Eider	
	17 E. W. Johnson	
	18 Mrs. Rauschkowsky	P 1
	19 Joseph Fick	
	20	
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No.

STATE OF MINNESOTA,

County of *Carver*

DISTRICT COURT.

Anna Harms

Plaintiff

Against

Fred K. Proehl

Defendant

JURY LIST.

CARVER COUNTY,
FILED

OCT 3 1908

H. O. Muchlberg Clerk.

PIONEER PRESS CO., ST. PAUL, MINN.

State of Minnesota,
County of Carver.

District Court.
Eighth Judicial District.

____—0—____
Anna Harms, Plaintiff,
against
Fred K. Preehl, Defendant.
____—0—____

At a special term of the District Court duly held in and for said Carver county, at the City of Chaska, in said District, on the 9th day of July, A.D. 1907, the plaintiff in the above entitled action moved the Court for an order setting aside ~~the~~ and vacating the verdict rendered in the above entitled action and for a new trial of said cause, upon the grounds,—

1. That the verdict is not justified by the evidence and is contrary to law;
2. Errors of law occurring at the trial and then duly excepted to;
3. Errors of law occurring at the trial to which no exception was then taken, and which are specified in the notice of motion from "A" to "F", inclusive.

Said motion was made upon all the records and files in said cause, including the settled case.

Odell & Odell, Esquires, appeared as counsel for the plaintiff in support of such motion;

Thos. F. Craven, Esquire, and H. J. Peck, Esquire, appeared as counsel for the defendant, in opposition thereto.

After hearing the arguments of counsel for the respective parties, duly considering the same, and giving all matters and things involved in said cause due consideration, it is ~~hereby~~

O R D E R E D, that the said motion of the plaintiff be, and the same hereby is, *denied*.

Dated at Norwood, Minnesota, this *3rd* day of September, A.D. 1907.

R. M. Loppin

Judge of said Court.

*All proceedings as per my affidavit signed
in 20 days.*

State of Minnesota
County of Carver
In District Court

Anna Hansen

- vs - Deft

Fred R. Proehl

Deft

Order Denying
Motion for a New
Trial

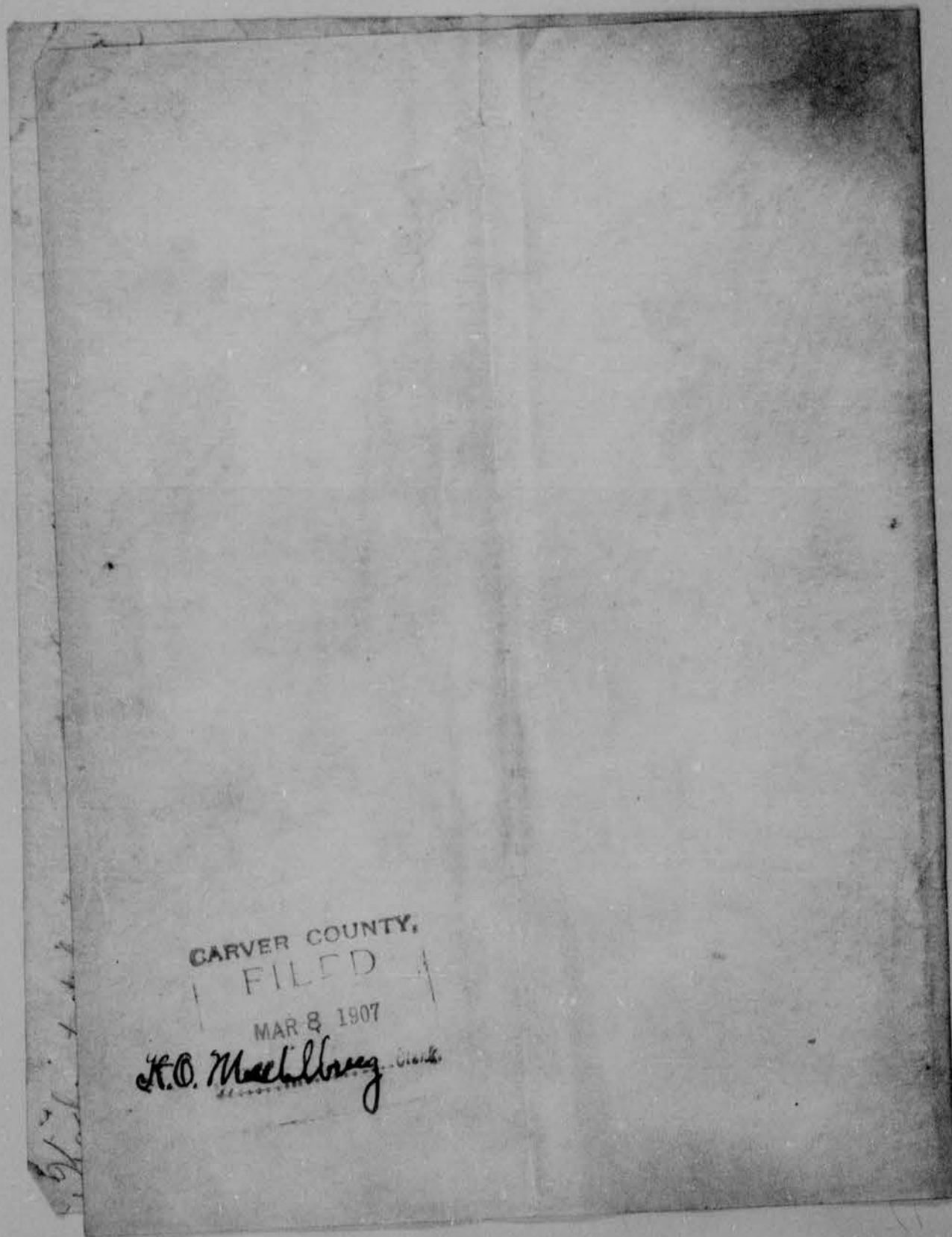
CARVER COUNTY,
FILED

SEP 4 1907

H.O. Muehlberg, Clerk

(458)

Kocher testified among other things that he had seen Mesenbring come from Mrs Harnis Stairs and had asked him how much Tax he had to pay, the same was very high this year. -
He Mesenbring had just now looked up Mrs Harnis. -
Another time Kocher looked for Mr Mesenbring in his house. It was told him, Mr Mesenbring had gone to the School house to post Notice, but I saw him ride over to Mrs Harnis's Dwelling. - This Mr. Mrs and Wm Grogan had also seen. I talked to him about this, but he denied every thing. -
That I talked to him about this, I can prove by E Honebring



CARVER COUNTY,
FILED

MAR 8 1907

H.O. MacIlhenny Clerk

Kocher bezieht sich auf die Ma. von Mrs. Schenck,
Hans Pern in seiner majestätischen
seiner Taxation nachgefragt
in seiner Person & nicht nach der
Dinge & Sachen, die in der Person
beizubringen sind, da er die Person
nicht persönlich an der Person
nach der Ma. von der Ma. von
an der Person, die in der Person
in der Ma. von der Ma. von
Gerichte die Person, die in der Person
in der Person, die in der Person
Lernung der Person, die in der Person
Daher in der Person, die in der Person

Christ Kocher
6.26 Brunnhofs

Office of Clerk of Court,
Carver County.
Anna Harms
vs.
Fred K. Proehl

CLERK'S FEES	No.	Amount
Entering action,		50
Indexing cause, Pl'ff, Def't,		20
Entering appearance, Pl'ff, Def't, Att'ys,		40
" retraxit,		
" default, or nonsuit,		
" discontinuance,		
" continuance,		10
" cause on calendar, (2)		40
" demurrer,		10
" motions, orders, rulings,		
" verdict and filing,		30
" judgment in court minutes,		
" appeal or trans. from jus. court,		
" satisfaction—debtors,		20
" judgment, folios,		
Copy of judgm't attached to judgm't roll,		
Docketing judgment debtors,		
Taxing costs,		50
Certificate to taxation of costs,		
Issuing execution, ent., ret. and filing,		
" subpoena, " " (7)		4 90
" writ att'ch " " "		
" writ of injunction,		
Making transcript,		
Filing 13 papers,		65
Calling and swearing jury,		2 30
" " " officer,		20
" " " 15 witnesses,		1 50
Total,	\$	12 25

Office of Clerk of Court,

Carver County.

Anna Harms

vs.
Fred K. Pochl

CLERK'S FEES

	No.	Amount
Entering action,		50
Indexing cause, Plff, Def't,		20
Entering appearance, Plff, Def't, Att'ys,		40
" retraxit,		
" default, or nonsuit,		
" discontinuance,		
" continuance,		
" cause on calendar,		20
" demurrer,		
" motions, orders, rulings,		10
" verdict and filing,		30
" judgment in court minutes,		
" appeal or trans. from jus. court,		
" satisfaction-debtors,		20
" judgment, folios,		1 00
Copy of judgm't attached to judgm't roll,		1 00
Docketing judgment debtors,		20
Taxing costs,		50
Certificate to taxation of costs,		
Issuing execution, ent., ret. and filing,		
" subpoena, " " " /		70
" writ att'ch " " "		
" writ of injunction,		
Making transcript,		
Filing <i>18</i> papers,		55
Calling and swearing jury,		1 90
" " " officer,		20
" " " <i>9</i> witnesses,		70
<i>2 Notices of filing</i>		30
<i>Postage like paid</i>		53
Total,		<i>\$ 9.68</i>

STATE OF MINNESOTA
County of Carver.

DISTRICT COURT
Eighth Judicial District.

ANNA HARMS,

Plaintiff

- VS. -

(ANSWER)

Fred K. Prechl,

Defendant.

The said defendant for answer to the complaint of the plaintiff, in the above entitled action, states and shows to the Court:

1. Defendant admits that said plaintiff is a widow residing in the township of Benton in said County; admits that Otto Mesenbring, referred to in said complaint, is a farmer residing in the said Township of Benton, as in said complaint set forth.
2. Defendant further answering denies each and every allegation, statement, matter and thing in said complaint contained, not hereinafter or hereinafter expressly admitted.
3. For a second and other defense to said action defendant alleges: That up to the time of bringing said action, and for a number of years last past, this defendant, said Otto Mesenbring and the said plaintiff were all residents and farmers of said township of Benton in said County; and for many years last past they, and each of them, have been members of the same Church, to-wit, The German Lutheran Zion Church located in said township and in the neighborhood of said parties; that said plaintiff is, and for about three years last past has been, a widow and is of the age stated in said complaint. That during the year 1905, and at times prior thereto, the said Otto Mesenbring was a frequent and constant visitor at the residence and home of said plaintiff, and so frequent and at such hours were the said visits of said Mesenbring with the said plaintiff during said time that the relationship and the intimacy between said Mesenbring and said plaintiff was the common talk and scandal of said neighborhood, and especially said relationship and intimacy was the common talk and scandal among the entire congregation of said Church during the year 1905 and since. That as a result of said relationship and intimacy between said plaintiff and said Otto Mesenbring and as a result of said talk and scandal so rife as aforesaid among the people of said community and congregation, on or about the 13th day of December 1905 charges were preferred against said Otto Mesen-

bring in said church congregation whereby the relationship and intimacy between said Otto Mesenbring and said plaintiff were the subject for a "Church Trial" and investigation, and that on said 13th day of December 1905 said Otto Mesenbring was charged with lewd and lascivious conduct with said plaintiff and was actually tried by said Congregation at a "church trial" held in said Church hall for the purpose of investigating said relationship and intimacy. That upon said Church trial and investigation, in the presence and hearing of upwards of sixty of the members of said church, including this defendant, it was shown by many witnesses that on different occasions, both in the day time and in the night time, the said Otto Mesenbring had visited the said plaintiff alone in her house; and upon said church trial August Graepentine and Mrs. August Graepentine each testified that in the year 1905 they had seen this plaintiff clad in her night dress lying on a lounge in her house and that said Otto Mesenbring was standing in front of the lounge; that at said trial other witnesses testified that during said year 1905 they had seen plaintiff sitting on Otto Mesenbring's lap and that this plaintiff and said Otto Mesenbring at such time embraced and kissed each other. Whereupon, after hearing all the proofs offered, including the proofs offered at said Church trial by said Otto Mesenbring and this plaintiff, it was determined by said Congregation that said charges were true; that said Church trial aforesaid was continued from time to time and the final hearing therein was held by said Church congregation on the 2nd day of April 1906. That this defendant was present and heard all the evidence given upon said Church trial, and in common with a large number of the congregation defendant believed, and has ever since believed, the evidence given at said trial as aforesaid to be true.

That shortly after the close of said Church trial aforesaid, and on the 6th day of April 1906 this defendant was in the saloon of one Henry Wirtz in the village of Cellegne in said County and there was present at said time in said saloon said Henry Wirtz, Alfred Sanquist and this defendant, and no other person or persons whomsoever, when, upon the questions of said Alfred Sanquist, the following conversation was then and there had, in the German language, between said Alfred Sanquist and this defendant, to-wit:

Said Sanquist asked Defendant, "Wie wir mit dem Mesenbring entlang thaeten kommen in der Kirche?"

Defendant answered, "Ich glaube jetzt dass das Zeugnis von Graepentine und Mrs. Graepentine und Schuck wahr ist sonst wuerde er ans Gericht gehen

"und die Leute verklagen."

Said Sanquest asked defendant, "Was sie die drei zeugen bezuagt haetten?"

Defendant answered, "Das haben sie bezeugt, dass die Frau Harms in Nachtkleid auf der Leunge lag, und er hat daver gestanden".

Said Sanquist asked Defendant, "Hat er sich fertig gemacht zum Springen?"

Defendant answered, "Das weiss ich nicht."

Said Sanquest then asked defendant, "Kommit er noch bei euch zur Kirche?"

Defendant answered, "Nein, ich habe geheert, dass er mit seiner Frau und der Mrs. Harms nach der Methodisten Kirche gegangen".

That a true and literal translation in the English language of the said German words so uttered by said defendant and said Sanquist in said conversation aforesaid is as follows, to-wit:

Sanquist asked Defendant, "How we get along with Mesenbring (meaning said Otto Mesenbring) in the church?" (meaning the said Lutheran Church).

Defendant answered, "I now believe that the testimony of Grapentine Mrs Grapentine and Schuck (meaning three of the persons who furnished testimony at said Church trial aforesaid) is true, else he (meaning said Otto Mesenbring) would go to the Court and sue the people". (meaning said August Grapentine Mrs August Grapentine and Alfred Schuck).

Said Sanquest asked Defendant, "What they (meaning the witnesses at said church trial) had testified?"

Defendant answered, "They (meaning the witnesses at said Church trial) have testified that Mrs. Harms has been lying in her nightdress on the lounge and he (meaning said Otto Mesenbring) was standing before it".

Then said Alfred Sanquest asked defendant, "Had he (meaning said Otto Mesenbring) made himself ready to jump?"

Defendant answered, "That I don't know".

Said Sanquest then asked defendant, "Does he (meaning said Mesenbring) come to your church (meaning the said Lutheran church aforesaid) yet?"

Defendant answered, "No, I (meaning defendant) have heard that he (meaning said Mesenbring) with his (meaning said Mesenbring's) wife and Mrs Harms (meaning said plaintiff) went to the Methodist church".

That there was no other or different conversation than that in this answer heretofore set forth, and this defendant made no other or different statements at that or any other time than as in this answer alleged. That each and all the words so spoken by this defendant on said occasion and at said time were a fair and true report of said Church trial hereinbefore

alleged, that this defendant relied upon the information which he had received as aforesaid at said Church trial aforesaid and had reasonable grounds to believe, and did so believe at said time, each and all the said words so spoken by him were true; that the words uttered and spoken by defendant on said occasion on said 8th day of April aforesaid were spoken without malice toward said plaintiff and were only spoken in answer to the questions aforesaid put to defendant by the said Alfred Sanguist; that in so answering said questions on said occasion this defendant but fairly repeated and reported a minor portion of the evidence actually given upon said Church trial aforesaid. That said conversation, between said Sanguist and this defendant, in this answer hereinbefore set forth is the same and identical conversation referred to and alleged in the complaint herein and not otherwise.

4. Further Answering and in mitigation of any damages to which said Plaintiff might otherwise appear entitled by reason of the publication of said alleged libelous matter set forth in said complaint, this defendant repeats and re-alleges all and singular the matters stated under the second defense in this answer alleged, and, upon the trial of said cause, will give evidence thereof in mitigation of damages as well as in justification and vilage.

Further answering and in mitigation of any damages to which said plaintiff might otherwise appear entitled by reason of the publication of said alleged libelous matter set forth in said complaint, defendant alleges that by reason of the facts brought out by the testimony at said Church trial, hereinbefore alleged, and otherwise that on and prior to the said 8th day of April 1906 the character and reputation of the said plaintiff for chastity had been and was entirely destroyed and was bad in the community in which she lived and the surrounding country, and defendant expressly denies that plaintiff was in any way or manner injured or damaged by any words spoken by him.

Wherefore defendant demands judgment that plaintiff take nothing by this action, and that said action be hence dismissed with costs.

H. J. Beck
Shakopee, Minn
- and -
Thos. E. Graves
Omaha, Minn
Attorneys for said defendant.

State of Minnesota,

County of

Carver

ss.

Fred Proehl being first duly sworn
 upon oath, says that he is the *Defendant* in the foregoing
 within entitled action; that he has heard read the foregoing *Answer*; that the
 same is true. *of his own knowledge, except as to matters therein*
 stated on information and belief, and as to such matters he believes it to be true, to the best of his
 knowledge, information and belief, ~~and that the reason why this verification is not made by the~~
~~herein, is that said~~
~~is absent from this County wherein resides this affiant, he~~

Subscribed and sworn to before me this *28th* day of *July* 19*06*

(NOTARIAL
SEAL.)

Fred Proehl
Shos & Co.
 Notary Public, *Carver County, Minnesota*
(My Com. expires Aug 16 1906)

State of Minnesota,

County.

COURT,

JUDICIAL DISTRICT.

AGAINST

Plaintiff

SUMMONS.

Defendant.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to answer the complaint
 of the Plaintiff in the above entitled action, which complaint—is hereto annexed and herewith served upon
 you—has been filed in the office of the Clerk of said Court,
 at the County of and State of
 Minnesota, and to serve a copy of your answer to the said complaint on the subscriber, at
 office, in the of, in the said County of
 within twenty days after service of this summons upon you,
 exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid,
 the Plaintiff in this action will—apply to the court for the relief demanded in said complaint—have the
 amount Plaintiff entitled to recover, ascertained by the Court or under its direction,
 and take judgment for the amount so ascertained—take judgment against you for the sum of
 Dollars, (\$) with interest at the rate
 of per cent, per annum since the day of 19
 together with the Plaintiff's costs and disbursements herein.

Dated A. D. 19

Plaintiff's Attorney, Minn

STATE OF MINNESOTA,

County of

Carver

District COURT.

Anna Harms

Plaintiff.

vs. Fred K. Proehl

Defendant

Answer (Original)

Due and personal service of the within

Answer is hereby admitted

this 25 day of July

A. D. 1906

W. G. O'Connell

Attorney for

Plaintiff

H. J. Beck, Shakopee Minn.
and Thos. H. Croon, Chaska Minn.

Attorney for

Defendant

Minn.

C. F. GREENWOOD, MANKATO, MINN

(458)

State of Minnesota,

County of

ss.

CARVER COUNTY, MINN.

FILED

SEP 2 1906

H. D. Muehlberg

being first duly sworn upon oath, deposes and says, that at the day of 1906, he served the within upon the therein named, personally, by leaving at the house of the usual abode of said a person of suitable age and discretion, then resident therein, a true and correct copy of said with