practice on that line where the deceased worked. What was done, if on other roads, was immaterial and incompetent.

91 Mich. 527.

Further it was not confined to men who knew engine 299, or to men who knew engines with like brake beams. So far as the question can be said to be material, it was not a question of what could be prudently done on engines generally, but what was prudent on this engine, constructed as it was, running as it was, where it was, with the deceased employed for the purpose he was. And the questions were incompetent, as they called for opinions without reference to the facts in the case. The objections found on pages 153 and 154 of the record, covered by the fourth assignment, shows that the assignment is well based on them. As to the objection found on page 155 that may be said to be covered by the argument already made.

XIV.

In the interest of all the railroad companies and railroad employes, and of all people who travel on railroads, the defendant should be held liable for its negligence in this case. It will prompt the companies to keep their tracks clear of like dangers, and not only save lives but also save the companies from loss.

We respectfully submit that the judgment below should be reversed and a new trial granted.

P. P. Pealer & Geo. C. Miller and Bishop & Anderson Attorneys for Plaintiff & Appellant.

Continued Apr 6/94.

STATE OF MICHIGAN.

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SUPREME COURT.

APRIL TERM.

1894.

JOSEPH A. THIBAULT,
Plaintiff and Appellee
vs
HERBERT A. SESSIONS and
W. ARTHUR PHIPPS,
Defendants and Appellants.

RECORD.

CHADBOURNE & REES,
Attorneys for Plaintiff.

W. F. RIGGS,
Attorney for Defendants.

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JOSEPH A. THIBAULT
vs
HERBERT A. SESSIONS.
and
W. ARTHUR PHIPPS.
} In Supreme Court.

STATE OF MICHIGAN

CIRCUIT COURT

FOR THE

COUNTY OF HOUGHTON

DECLARATION.

Joseph A. Thibault.

vs

Herbert A. Sessions, and
W. Arthur Phipps.

State of Michigan.

In the Circuit Court for the County of Houghton.

County of Houghton, ss.

Joseph A. Thibault, the plaintiff in this suit complains of Herbert A. Sessions and W. Arthur Phipps the defendants herein, they having been duly summoned to answer the defendants herein, of a plea of trespass on the case;

For that, Whereas, the said plaintiff before and on the 18th day of February. 1893. was a person of good name, credit and reputation, and deservedly enjoyed the esteem and good opinion of many persons; and that previous to the said date, namely, from about the month of September, 1890, to the month of June, 1892, was one of the teachers in the parochial school at the village of Lake Linden in said county of Houghton and has since then been engaged at the city of Chicago in the state of Illinois in the study and practice of Dental Surgery and Dentistry; and that during all of said time was of good name, credit and reputation and deservedly enjoyed the esteem and good opinion of many persons as such teacher as aforesaid and in his last profession;

Yet the said defendants, well knowing the premises, but contriving and maliciously intending to injure the plaintiff and bring him into public scandal and disgrace, heretofore, to wit, on the 18th day of February, 1893, at the county aforesaid, falsely and maliciously did compose and publish and cause to be composed and published of and concerning him, the said plaintiff, a certain false, scandalous and malicious libel, containing the false scandalous and malicious matters following, of and concerning the said defendant, that is to say:

DEVILS.

(Meaning thereby said plaintiff and others.)

Hanging is too good for them.

(Meaning thereby said plaintiff and others.)

Worse than Brutes.

(Meaning thereby said plaintiff and others.)

Gignac run out of Lake Linden.

Two Lake Linden School Teachers guilty of Horrible Crimes. (Meaning by said two Lake Linden School Teachers the said plaintiff and others.) Over Thirty Children Outraged.

Proofs and Particulars.

From several Lake Linden parties came to the CONGLOMERATE the piti cry, "Come down and help us." And none of the wicked cities of history could recite a more revolting story of crime and bestiality. A CONGLOMERATE reporter set to work on the case and besides confirming many rumors and obtaining absolute proof of them, unearthed facts still more revolting. that had not been even whispered among those most deeply concerned. But a small part of the terrible story, because of its horrible filth, can be repeated in these columns, but proofs so certain and sure of the most damnable crimes, are held in this office that were they known by the general public, the prepetrators would not now be alive.

August Joyal was interviewed by a CONGLOMERATE reporter. He stated that his boy and others that he know of were implicated. Sons of M. Marchand, M. Amie Lanctot, Mr. Golden, M. N. Gregory. Messrs. Marchand and Golden finding their boys very sick, questioned them closely as to the cause of it. At first they would tell nothing, and after severe threats they told how they had been used by Gignac, the head teacher. He had been guilty of the most atrocious proceedings against their persons. Last Sunday evening he first found about his own boy by information given by Messrs. Marchand and Golden. He couldn't face his own boy to ask him the questions but cautioning to tell nothing but the truth—he trusted the task of questioning the boy to a friend. The boy confessed that he too had been treated in the same manner. He added too that his son's health and constitution was ruined. On getting his son's confession, Mr. Joyal and his friend, after demands, found that Mr. Gregory's boy had been treated the same way. A committee of five waited on Fr. Mesnard, who was utterly prostrated by their statements.

The committee sent Gignac a letter which did not reach him. Receiving no response, Mr. Joyal called on Gignac and stated his business. The brute turned white at the statement. Joyal told him of the confession of the boys and the worst of the story, and then asked:

'Are you guilty or not guilty?"

Gignac responded "I am not guilty." and abjectly added "but the boys are all against me—what can I do." Joyal said, "If you are an innocent man you will stay here and I'll help you fight it. If you are guilty we'll have justice and hang you like a dog."

Gignac showed such conclusive signs of guilt that Joyal ordered him to leave the town immediately on peril of his life. The following morning the committee found that Gignac had not gone and at half past four they again waited on Fr. Mesnard. They asked the reverend gent'eman why Gignac had not gone and insisted that he must go or they would serve him as they did McDermott.

It will be remembered that McDermott was driven

Naked in the dead of winter

from Lake Linden to Dollar Bay and lashed with heavy whips. His crime was inhumanly torturing his wife on her death bed, by pouring alcohol on her setting fire to it, biting great pieces of flesh from her body with steel pinchers and showing other such proof of conjugal affection.

It is needless to add that Gignac stood not on the order of his going but took the five o'clock train for parts unknown.

The CONGLOMERATE reporter unearthed proofs that over twenty-five other cases, both

Girls and Boys

have been so used by these teachers (meaning thereby the said plaintiff and others) striking some of the most respectable families of Lake Linden. These children range in age from 8 to 13 years. This work has been going on for four years according to the information received by the CONGLOMERATE. Gignac has been ably assisted in his horrible work

Two devils, Vandestine, Thibeau,

(meaning by the sa id hibeau, the said plaintiff) the latter (meaning the said plaintiff) is now in Canada. In addition to these atrocities Gignac has even advised the children that it was no harm to commit incest and in two cases his hellish advice has been acted upon by children under ten years of age. Van—— seems to have paid more especial attention to the girls and not only the little girls from 8 to 12 came under his baneful influence but older daughters of respectable families have been his toys. He was ordered to leave last night.

In consequence of the committing of which said acts by the said defendants, the said plantiff has been and is damaged and injured in his good name, credit and reputation, and in his good name credit and reputation as a teacher as aforesaid and in his said profession of dental surgery and dentistry; and has been and is brought into public scandal and disgrace, and has been and is shunned and avoided by many persons, and has been and is damaged and injured in his said business and profession and has been and is otherwise greatly damaged and injured. To the damage of the said plaintiff ten thousand dollars; and therefore he brings suit, etc.

CHADBOURNE & REES,
Attorneys for plaintiff.

PLEA AND NOTICE.

State of Michigan.

In the Circuit Court for the County of Houghton.

Joseph A. Thibault.
vs
Herbert A. Sessions, and
W. Arthur Phipps.

And the said defendants in this suit, by W. F. Riggs their attorney, come and demand a trial of the matters set forth in the Plaintiff's declaration.

W. F. RIGGS,
Attorney for Defendants.

To the above named Plaintiff:

Please take notice, that on the trial of the above cause the defendants will give in evidence in their defence under the general issue above pleaded,

1:—That the "Calumet Conglomerate" is a public newspaper, printed and published in said county.

2:—That before the publication of the article complained of, and in the months of January and February, 1893, the statements and charges therein contained were rumored in and about Lake Linden in said county and came to the knowledge of these defendants.

That neither the public authorities, nor the authorities of the said School had taken any action to learn of the truth or falsity of the said charges, although the People of the State of Michigan, and more especially the People of Houghton County were largely interested in the good name, fame and credit of the said School, and in the pupils attending said School.

That these defendants in a proper way and manner caused an investigation of such rumors, and from such investigation learned that gross immorality, wickedness and crime were prevalent in the said school, and had extensively prevailed therein for a long space of time.

That these defendants learned that all the teachers roomed in the said School, and had regularly lodged therein during the period of time they were engaged therein as teachers, and that this practice had existed ever since the existence of said School.

That spirituous and intoxicating liquors were constantly kept and used in the said School by teachers and scholars.

That teachers in the said School were in the habit of sending to saloons for liquors to be taken to the said school to the knowledge of plaintiff and the other teachers therein.

That Teachers and Pupils, at various times and on various occasions were drunk together in said School.

That these drunken debauches took place in the day time as well as in the night time. That the detestable crime of sodomy was practiced by the Principal upon the Pupils attending said School.

That these defendants well knowing the premises and the injury such reports would have upon the said School, and the actual injury being done, and believing the attention of the People should be called to the matter published the alleged libelous article as a matter of great public interest and concern; and therefore insist that the article was privileged.

3:—That these defendants were credibly informed of the grossly immoral conduct of this Plaintiff as a Teacher in said School, and of his habit in having intoxicating liquors in said School, and of his immoral conduct in other respects while engaged as such Teacher and the foregoing facts existing in said School, and believing the said facts to be true, published the alleged libelous article as a matter of great public interest and concern, and therefore insist that the article was privileged.

4:—That Edward Vandestine, one of the said Teachers in said School referred to in the alleged libelous article, and being a co-teacher with plaintiff in said School commenced and prosecuted these defendants in an action of criminal libel for the publication of said alleged libelous article, which last mentioned action was tried before a jury in justice court before M. Finn, Esq., one of the justices of the peace in and for said county, and these defendants were acquitted.

5:—That the statements in the alleged libelous article were true.

W. F. RIGGS,
Attorney for defendants.

Bill of Exceptions.

State of Michigan.
In the Circuit Court for the County of Houghton.

Joseph A. Thibault.
vs
Herbert A. Sessions, and
W. Arthur Phipps.

At a session of said court, held at the court house in said county on the 5th day of September, A. D., 1892, before the Hon. N. W. Haire, judge of the 32nd judicial circuit, presiding, the issue joined between the parties in this cause came on to be tried by a jury of the said county for that purpose duly empanneled, good and lawful men of the said county, at which day came there as well the said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid also came and were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid. And upon the trial of the issue aforesaid Counsel to maintain and prove the said issue on the part of plaintiff opened the case to the said jury as follows:

May it please the Court; and Gentlemen of the jury. I am not going to read all this; just a little of it.

It will devolve upon you before you get through with this matter. You will try this case, having been sworn to do so, and will have to pass upon the question, and for the purpose of giving you an understanding of the questions involved in this case, I will make my opening just as short as possible, without attempting to make any speech about the matter, but give you the bare facts of what we are here for. It is a case as you all know, in which we do not sue Mr. Sessions and Mr. Phipps for a certain number of dollars that they owe us on account, as an ordinary assumpsit suit, nor for a certain number of dollars damages done to property, which would be an ordinary trespass suit, but we are suing them for what is called a libel. It is a trespass, but not a trespass to property. It is a trespass to a man's reputation and it is for you, within the limits claimed by us ($10,000) it is for you to say what amount shall be

paid, if anything for a damaged reputation. Damaged we claim, as Mr. Thibault's has been by this article; and we are suing because Mr. Sessions and Mr. Phipps as the publishers of the "Calumet Conglomerate," and who are, I think it will be admitted, wholly responsible for what is published in that paper with regard to Mr. Thibault. Now this article is about other people as well as Thibault. It is about a man by the name of Gignac, who was also a school teacher with Mr. Thibault, who was principal of the school, about a man by the name of Vandestine, who was a teacher there and Mr. Thibault. Now I want to call your attention in the start in this trial to the fact that we have nothing whatever to do with Gignac, or with Vandestine or with anybody else, nor with what they did, nor with the truth or falsity of any other allegation or charges that were made in this paper against them or about them, but simply and solely to the truth of this article so far as it affects Thibault.

Now I think one or two of you testified that you had read this article or heard about it. I will read it to you the first time.

(Article complained of read to jury.)

That is the article about which this suit is brought. You will notice that it charges not only Gignac, but charges these teachers with the commissions of crimes, which they say are too horrible to mention, and which we do not want to mention; the most horrible of all crimes directly charged against these teachers, against this plaintiff, a charge of the most heinous nature.

So far as Mr. Thibault is concerned, and he is the only one we are interested with in this case, we will let that issue stand with the presumption that it is not true. The defendants have the right to prove the truth of this if they can, if they see fit. Until they do prove it, it stands before you as an untruth, as a false statement, and we are not even permitted to give proof, in regard to that, because the law presumes, both in court, and what they ought to presume out of court, that Mr. Thibault was a man of good reputation and good behavior.

In addition to the original publication which I will give in evidence when the time comes, and which I shall not take time to read to you, some further articles published in the Conglomerate on the 25th of February following, and then on the 29th of April, and on the 15th day of July referring to this same matter.

For this publication, which we say is untrue, and which we say was without any regards to the rights of others and which we expect to prove was without any investigation at all and without any knowledge as to whether it was true or not, for such conduct on the part of these publishers, for such disregard and trampling upon the rights of others—although we do not say that the liberty of the press is to be hampered here or anywhere else—yet we say they must be liable when they commit such a breach of the law, such a breach of what is due to their fellow man as this is. I say they must be liable for it, and in this case are liable to this plaintiff.

We have also, gentlemen of the jury, under the statute, demanded a retraction of these statements from the newspaper, and it has declined. That has a bearing upon the amount of damages.

I understand, your honor, it to be admitted in this case, that the defendants, Sessions and Phipps were the publishers on the 18th of February of the Calumet Conglomerate and have been ever since, and that the paper then and ever since then has circulated in the County of Houghton and elsewhere, as papers usually circulate.

Mr. Riggs.—You will put the plaintiff on the witness stand?

Mr. Rees—Yes.

Mr. Riggs—You honor, we will admit the publication of the paper at that time.

Mr. Rees—We will offer in evidence if your honor please——

Mr. Riggs—Before you commence your evidence, I wish to make my opening.

The Court—Very well, you may open now.

Mr. Riggs—May it please the court, and gentlemen of the jury. The defence in this case will be of a two fold nature. You have heard the article read by Mr. Rees. Previous to this time we will show to you from the evidence, uncontradicted, from evidence that cannot be contradicted, that certain rumors concerning that school down at Lake Linden came to the publishers of this paper, and the editors sent their reporter down—I am not certain but one of themselves went, but they took the usual course to investigate the matter. We will show to you that school has been conducted somewhere about two or three years by the head teacher named Gignac, assisted by another teacher named Vandestine; and until a short time previous to that article, by the plaintiff in this case as one of the teachers. We will show to you that it has been the constant habit of these teachers to associate themselves together, that they all lived in that school, roomed in the school building.

The report came that horrible crimes were committed day and night in that school. Crimes that you could not imagine were being enacted. Scenes that you could not look upon were being enacted down there. Children attending that school were being outraged down there. We will show you more; we will show you that those teachers had so far forgotten themselves that they were bringing intoxicating liquors into that school and giving it to the scholars, boys and girls. When that report came to these publishers they started to investigate it; went down and called upon the parents of the scholars, to know if it could be true; without malice toward this man, without malice toward the other teachers, and they were informed in Lake Linden under the shadow of that school that there were proof to it.

Now this article commences—it is not like what counsel red—"Devils, Hanginging to good for them." It says, "Two Lake Linden School Teachers," There were three teachers in the school.

Now counsel says it has reference to them, but before we get through we will show you whom it has reference to.

Now they went down there, and after a fair investigation, found how it was reported, all these facts, and these men as publishers of the newspaper published it believing it to be true, and they had good reasons to believe it to be true.

If it was true, and they had good reasons to believe it to be true, it is not a libelous article by any means.

We will show to you that these teachers, three of them, associated themselves together, that they roomed in that school, and that they were responsible for the conduct that took place in that school.

We will show to you, beyond dispute, that scholars in that school were drunk, beastly drunk, on one occasion, and the teachers with the scholars. They were all alike. True, the article is a little sensational, but is not sensational enough.

We will show to you that the man Gignac was in the habit of sending for liquors to take to that school. That Vandestine brought criminal libel for this same publication, and the defendants were justified,

Mr. Rees.—The verdict of the jury was not guilty.

Mr. Riggs.—Published for good cause, and justifiable ends.

That the horrible crimes that had taken place there had reference to the man the paper said it did.

We are going to give you the truth of the article. It is that truth every father and mother sending their boys and girls to that school ought to known. They have known it, and there are now good teachers there as a result of it.

Mr. Reese.—The statement made by the counsel makes it pertinent, with reference to how far he is to go in this case, the motion which we have made to strike from the files the notice given under the plea of the general issue.

We have also served upon him a demand for a bill of particulars under a plea of justification, in other words, that he must inform us either in his notice or by a bill of particulars the precise facts which he expects to prove.

Our motion to strike from the file s the plea in the case, or the notice in con nection with the plea, by being disposed of now may shorten the case a good deal, and also save the expense of getting a good many witnesses here.

The Court.--I don't think under the first paragraph, that would amount to anything. I don't think under the second head that is material at all. So far as any such article being privileged, I don't think it could be, unless it is true. Of course a truth is always a justification. And I don't see either how this suit of one of the teachers can be brought into this case. The truth can be shown as a justification of the article, and I think I shall so hold. I think the statement in their notice where they claim there were two would put you upon your proof. I think for the present I will let the fifth stand. I don't see as the others are material. The second, third and fourth are stricken out.

Mr. Riggs.—Give us an exception.

Mr. Rees.—Plaintiff offers in evidence a copy of the Calumet Conglomerate dated February 28th, 1893, containing the article alleged in the declaration. We have given notice to them to produce a certain letter. Have you that letter?

Mr. Riggs—We object to the introduction of the article for the reason that the declaration takes no cause of action; and for the further reason that the declaration does not allege any specific facts which are libelous, and there is no alleged libel pleaded.

The Court.—I will over-rule the objection.

Mr. Riggs.—Exception.

Mr. Rees.—We gave the defendants notice to produce a certain letter written to the Calumet Conglomerate Printing Co., dated February 22nd, 1893, signed by the plaintiff. I will ask them if they wish to produce it or wish us to prove it.

Mr. Riggs.--You can prove it. We will admit we received the letter and didn't retract anything.

Mr. Rees.—You will admit that this is the letter? That is a letter press copy.

Mr. Riggs.---I haven't got the letter here. You may read it.

Mr. Rees reads the letter referred to as follows:

"To the Conglomerate Printing Company, Calumet P. O., Mich.

GENTLEMEN:

In your issue of February 18th, 1893, of the Calumet Conglomerate, you published an article under the heading, "Devils," charging certain persons with various heinous crimes and in said article you state that the subscriber was guilty with such persons of aiding and abetting the same, and engaged with them in a criminal offense in words as follows: Gignac has been ably assisted in his horrible work. Two devils, Vandestine and Thibault, the latter now in Canada, (meaning by said Thibault the undersigned). Such statement, and the incertation to be drawn therefrom in connection with the remainder of said article are wholly false, malicious and libelous, and this is to notify you to at once publish in the same type and the same edition of the paper as the above original libel, and so far as practicable in the same position, a retraction of the same and to make such amends as are proper.

Yours, etc.,

J. H. THIBAULT.

Dated February 22nd, 1893. Chadbourne and Rees, attorneys."

Mr. Rees-- I understand that it is admitted that they received that letter and did not retract. We will offer in evidence a copy of the Calumet Conglomerate dated February 25th, 1893.

Mr. Riggs--To that we object as incompetent. It was after the article was written.

Objection over-ruled and defendant excepted.

Mr. Rees---I also offer in evidence a publication of the same nature in a copy of the Calumet Conglomerate of April 29th, 1893.

Mr. Riggs—We make the same objection, as incompetent at this time.

Objection over-ruled and defendant excepted.

Mr. Rees—We offer in evidence also the issue of July 15th, 1893. It is in substance a reiteration of the libel. I will read these to the jury now, that they may have the matter before them.

The articles offered in evidence were read by a plaintiff's counsel and marked exhibits A B C and D respectively and the court then adjourned until to-morrow at 9 o'clock.

WEDNESDAY MORNING, SEPTEMBER 6, 1893.

Mr. Rees—We will offer in evidence and the notice filed by the defendants in this case, as bearing upon the question of malice.

Mr. Riggs—I submit it as a part of the record in the case. How does that affect the question argued yesterday? Do you allow it all to stand now.

Mr. Rees—No sir, we offer it all in evidence. Part of it was stricken from the files.

Mr. Riggs.—Well, it is not competent to show malice we object to it on that ground.

Objection sustained and plaintiff excepted.

Mr. Riggs.—Do I understand the court's ruling yesterday that all the notice of justification is stricken out except the fifth paragraph?

The Court—The first one I didn't say anything about that, because it is admitted on both sides. The other three I passed on last night. They are not material.

Joseph Thibault sworn in his own behalf testified as follows: Examined through an interpreter by Mr. Rees: Q.—Where do you live? A.—At Lake Linden. Q.—Where were you born? A..—Saint John, the Baptist, Upper Canada. Q.—How old are you. A.—24. Q. When did you go to Lake Linden first? A. In 1890. Q. You came to Lake Linden from Canada, did you? A. Yes sir. Q. What time in the year was it that you came? A. The first part of September. Q. Before you came to Lake Linden what business were you engaged in, or what were you doing? Objected to as immaterial; objection over-ruled. A. I was clerking before I came up to Lake Linden. Q. After you came to Lake Linden what business did you engage in, if any? A. I hired out as a teacher. Q. In what school? A. St. Anne's School, Catholic school at Lake Linden. Q. That is the church school in Lake Linden? A. Yes sir. Q. When did you begin teaching at that school? A. 8th of September, 1890. Q. How long did you teach there? A. Two years. Q. When did you get through with your teaching; when was the last of it?

A. The last of June, 1892. Q. That is over a year ago you mean? A. Yes sir. Q. Now between September 1890 and June 1892 you were the teacher there in the Catholic school during all the time that school was going on, were you? A. Yes sir. Q. During that time who were teaching in the school besides yourself? A. Gignac, Mrs. Pichette, Miss Bailey. Q. Anyone else? A. No sir. Q. Vandestine---was he a teacher there? A. Not the first year. Q. You are speaking now of the first year, are you? A. Yes sir. Q. Only the first year? A. The first year I was there Gignac was there, and Mrs. Pichette and Vandestine and Miss Bailey—that was the second year. The first was Gignac, Mrs. Pichette and Mrs. Bailey. Q. What else were you doing that time besides teaching? Objected to as incompetent and immaterial: objection over-ruled and defendant excepted. A. I wasn't doing anything else except teaching. Q. With reference to studying any profession? Same objection; over-ruled and exception. A. The second year I studied to be a dentist. Q. Since you left the school, or after you got through with your teaching in June 1892, how long did you stay in Lake Linden? A. About 13 days. Q. From Lake Linden where did you go? A. To Canada. Q. How long were you in Canada? A. One month. Q. From there where did you go? A. I came back to Lake Linden. Q. Did you then stay in Lake Linden? A. I stayed in Lake Linden until the latter part of September. Q. Then where were you? A. Chicago. Q. What were you doing in Chicago? Objected to as incompetent and immaterial. A. I was studying to be a dentist there.

The Court—I don't see as it is objectionable. I don't see how it could injure in any way; I will allow it. You can have an exception.

Q. You were in Chicago studying dentistry?. A. Yes sir. Q. In what school? A. In the Chicago dental college.

Mr. Riggs—My objection applies to all this testimony as to his business out of the state.

Q. When did you come back to Lake Linden from Chicago? A. I came back to Lake Linden on a visit News Year's. Q. After what? A. I went back to school again. Q. And you have been in Lake Linden lately since when?

Mr. Riggs—We make the objection that there is no time given—whether it was subsequent to the filing of this declaration or previous.

The Court—When?

Mr. Rees—Since he came back from Chicago this last spring.

A. I got back from school the 23rd of March, and I have been in Canada since.

Mr. Riggs.—I object to that.

The court—I think I will strike that out, if it was subsequent to the filing of the declaration.

Mr. Rees—Note an exception

Q. Was there another teacher in Lake Linden by the name of Thibault.

Objected to as incompetent: objected over-ruled and defendant excepted.

A. No sir; I was the only one. Q. Was there another teacher in the same school with you by the name of Thibault? A. No sir. Q. And all the time that you were a school teacher, I understand from your testimony, you were with a teacher by the name of Gignac? A. Yes sir. Q. And Vandestine for the last year? A. Yes sir. Q. Who was the principal of the school, who was in charge? A. Mr. Gignac.

CROSS EXAMINATION.

By Mr. Riggs

Q. You have been teachar down there ever since the school started. up to the time you quit? A. Yes sir, I have been teacher there for two years, but they had a school there before I came there. Q. You commenced in 1890 and quit there in June, 1892? A. Yes sir. Q. Subsequently you were back there again? A. Yes sir.

Mr. Rees—Back where?

Mr. Riggs—Back to Lake Linden.

Q. Your brother taught there in the school after you went away? A. He taught school only a month or two after I left. Q. Three or four months? A. After I

left Lake Linden. I wasn't in Lake Linden. Q. Was your brother teaching there in February 1893? A. I don't remember; I wasn't there; I don't exactly remember the date. Q. He was there teaching, though, after you quit? A. That was a year after I left? Q. He was teaching at the time of the publication of this article that you speak of—where was your brother teaching then? A. He was in Canada then. Q. How long had he been in Canada? A. He was always in Canada before he came here. Q. What time did he come here? A. I don't know. Q. You quit teaching in 1892. You think in July or August? A. Yes sir, I quit about the latter part of June. Q. Who taught there the winter following when you were back there? A. I don't know all the teachers that were there in the winter after. Q. Didn't you visit the school when you went back there? A. Yes sir. Q. When you went back in January you visited the school? A. February. Q. Well. February? A. Yes sir, I visited the school then. Q. Your brother was teaching there then, wasn't he? A. No sir Q. Had he quit teaching? A. He hadn't started there. Q. During the time that you were teaching there, were did you room? A. Right in the school. Q. Which floor? A. On the lower floor. Q. Where did Vanderstine sleep? A. Vandestine roomed on the second floor. Q. Where did Gignac room? A. On the third floor, the last floor. Q. During the time that you were teaching there you were very friendly with Mr. Vanderstine, were you not?

Objected to as immaterial. Objection sustained and defendant excepted.

The Court—That question itself might not be immaterial, but it has a tendency to lead to other questions which are immaterial.

Q. During the time that you were teaching there you were friendly with Mr. Gignac?

Objected to as immaterial. Objection sustained and defendant excepted.

Mr. Chadbourne—I understand the counsel, from what he has previously said, to intend to go on with evidence tending to prove that Gignac committed the crime of Sodomy with some boys in that school, without evidence tending to show that the plaintiff did it.

Mr. Riggs--I make the offer of evidence for the purpose of showing the character and reputation of this man as a teacher there in that school.

The Court--How would that have any tendency to show the character and reputation of that man? The objection is sustained.

Mr. Riggs--Exception.

Q. Now you say that during the time that you were teaching there you roomed below. Did you notice any liquors being taken into that school?

Objected to as immaterial. Objection sustained.

Q. Did you, as a teacher, during the time that you were teaching there, send out and bring in liquors to be used in that school. Among yourself and scholars.

Objected to as immaterial.

The Court. Let me be clear as to whether the article refers to bringing liquors into the school?

Mr. Rees. It does not.

The Court. Objection sustained.

Q. During the time that you were teaching there did you have any medical works up in your school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. Yes sir, I had dentist's books. Q. In that book you had plates of the human body?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. Yes sir. *Q.* Did you ever call any of the scholars up to look at those plates?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. No. sir. *Q.* Did you ever send after any of the girls and boys, or either of them, to come up and see those pictures?

Mr. Chadbourne. I don't know, but I may be mistaken. I understand counsel not to profess to have in his possession, or to be bound to produce any evidence tending to show that this plaintiff committed the offense alleged against him in this article, viz: the offense of sodomy.

The Court. I don't understand that he went that far. That is why I allow these preliminary questions.

Mr. Riggs. My position is this: That the only part of this article here which has reference to this man is with reference to his character as a teacher and beyond that the article does not go. There is no insinuation in this article that this man was guilty of that offense, but if this offense was carried on there to this man's knowledge——

The Court: The article says he assisted in the acts.

Mr. Riggs. Your honor puts an interpretation on it that they have not put on it by innuendo.

The Court. Well, there is nothing before the court now. I have allowed those questions, and they stand as a part of the testimony.

Mr. Chadbourne. I understand counsel now again to say that he has no such evidence. I challenged him upon that subject and in reply he says the article doesn't charge anything against the plaintiff. Surely the court will not permit counsel to introduce general evidence touching offenses of this sort. Counsel might as well be frank about it, and say whether he expects to produce any such evidence.

The Court. Under the statement of counsel that he does not intend to follow this up by showing that this man did anything wrong, I sustain the objection. As a preliminary question it is proper.

Mr. Riggs. I propose to follow it up by proof. We propose to show t he conduct of this case in that school and the result of the teaching in that school that lead to these matters. We don't charge in this article here that this plaintiff committed that offense. That was the other teacher. It is alleged so and is pointed out in the plea.

The Court. Well, that would be a question of law upon another point. Of course they are out of court if they don't show that.

Mr Riggs. Your honor we claim this article doesn't refer to this man.

The Court. I think I will allow the question and see what the subsequent developments are.

Mr. Riggs. We further propose to show how those children were brought up under this teacher here, and to connect it with the line as the result of that teaching that leads to drunkeness there in the school, and that of course was the ruination of the school.

The Court. Well, that might be one thing, and sodomy might be another.

Mr. Riggs. We don't claim we charge him with that.

The Court. Under that last statement I think the objection should be sustained.

Mr. Riggs. I don't think Your Honor understands the position, my position is this.

The Court. I have ruled in your favor two or three times the only way I can get at it will be to allow this question to stand. Answer the question. It is a preliminary question anyway. It is admissable, it is leading up to something else? I will over-rule the objection for the time being. That is the third ruling I have made, but I think it is necessary for me to understand what the position of counsel? I over-rule the objection. You can answer the question.

Mr. Rees. Note an exception.

A. No sir. Q. Didn't you have Alvinia Longto and Lille Kirby come up to see those pictures?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

Q. And see that book? A. No sir. Q. Didn't you send the boy, Peter Marchand, for those girls to come up there and see those pictures?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

Q. Or to come to your room where that book was? A. No sir. *Q.* Were you in the habit of keeping liquors up in your school room?

Objected to as immaterial. Objection sustained.

Q. For the purpose of giving to the boys and girls attending your school?

Objected to as immaterial. Objection sustained and defendant excepted.

Q. Did you yourself give spirits, intoxicating liquors to the boys and girls while you were there as teacher—boys and girls attending that school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. No sir. *Q.* You are sure of that? A. No sir. I had medicine for the teeth, but no other medicine. Q. Wasn't that laudanum?

Objected to as immaterial.

Mr. Riggs. We expect to show this in connection with this testimony that boys there were given liquors—

The Court. By this man?

Mr. Riggs. Well, he may have aided and assisted; we don't know. We claim that his conduct was aiding and assisting when they were stupefied.

Mr. Chadbourne. By what conduct?

Mr. Riggs. By keeping liquors in that school-room. We propose to follow it up by showing that liquors were given to the scholars by Mr. Thibault and Mr. Gignac both.

Mr. Rees. We object to it as immaterial.

(The last question read.)

A. All the medicine in use for the teeth. Q. Well, did you have any medicine there particularly adapted for making boys and girls stupid?

Objected to as immaterial.

The Court. The mere fact of his having medicine—

Mr. Riggs. We propose to show the illegal use of that medicine by Mr. Thibault.

The Court Objection over-ruled.

A. No sir. *Q.* What kind of medicine did you have?

Objected to as immaterial and question withdrawn.

Q. How often have you noticed boys and girls going up into Gignac's room on Saturdays, when there was no school—or I will say boys alone. How often have you noticed boys going up into Gignac's room on Saturdays when there was no school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. I don't know. *Q.* Have you ever seen boys going to Gignac's room at night after school? A. Yes sir, I have seen some go up. Q. Didn't you and Mr. Vandestine talk about those boys going up into Gignac's room in the night.

Objected to as immaterial.

Q. At the same time that these boys were up there in that condition?

The Court. What condition?

Mr. Riggs. Being outraged by Gignac.

Mr. Rees. You haven't shown they were ever outraged.

Mr. Riggs. We will by this examination.

The Court. I will over-rule the objection.

Mr. Rees. Exception.

A. If we talked about it, we haven't said anything about it. *Q.* You and Vandestine were talking about these boys going up into Gignac's room in the night? A. Yes sir, we might have spoke something about it, but I don't hardly remember now. Q. You spoke something about it, you think? A. Yes sir, we may have talked something about it. Q. Can you give us about what hour in the night they were in the habit of going up there and coming down?

Mr. Rees. I would like to ask for a distinct statement rom counsel, are they going to connect the plaintiff with this.

The Court. He says they are.

Mr. Rees. I don't understand it—simply that he knew they were going up there, and they mentioned it between themselves. Now, I would like to have counsel state what connection he is going to show with this plaintiff.

The Court. Of course, he is not obliged to state that. Go on.

A. I don't know the hours that they used to go up there. Q. Can't you tell this jury sometimes what hours they were? A. Nor sir. *Q.* Well, didn't it run all the way from 6, 7, 8, 9 and 10 o'clock, and up to 11 12 o'clock? A. I don't know. Q. Will you swear that you don't know of boys going us there at 10 o'clock or coming down at 10 o'clock at night? A. I never paid any attention to it. Q. You might have remembered it at the time?.

Objected to as immaterial.

A. I don't remember. *Q.* When you say you can't remember, do you mean to say that it might have been true, and you have known it at the time but it has past your mind? A. I have never remarked the time that they have come down. Q. But you have frequently seen them coming down in the night. A. I have seen some coming down, but I don't know if they came from

Gignac's room or where they came from. You don't know whether they came from Gignac's room or where they came from; but Gignac's room was up there; Gignac's room was up there in that direction.

The Court. He testified where he was.

A. Gignac was on the third floor and Vandestine was on the second floor. Q. Have you seen any boys coming down out of that room drunk or stupid either from the effects of liquor or drugs.

Objected to as immaterial.

A. No sir.

The Court. He has answered it. I will let it stand.

Q. Now isn't it true that you frequently heard riotous noises by boys up in Gignac's room both on Saturdays out of school and in the night.

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. I don't remember. *Q.* Could that have taken place in the school without your knowledge when you were in the school-room?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. In my room I didn't hardly hear anything way up stairs. Q. Do you say that riotous noises could take place up on the third floor in that school-room in the night without your knowing it, you in your bed-room? A. They would have to make quite a bit of noise. I haven't heard any. Q. Any noise more than walking around in the school-room, or something of that nature, you would be apt to hear would you not; any noise louder than ordinary talking or walking around, you would be apt to hear in your bed room? A. What rooms do you mean—school-rooms? *Q.* Yes, in your school-room. Any loud noise, more than ordinary noise, walking around and talking, you could hear from Gignac's room in your room? A. No, when I am busy I don't hear. Q. That is when you are busy? A. If there wasn't very much noise up stairs I couldn't hear it from my room. Q. But in the still hours of the night you could hear any noise up there could you not? A. I never noticed it. Q. You don't answer my question.

In the night, when there is no school, if any noises are made in that school house do you say that you couldn't have heard it in your school-room? A. If they had made noise enough I would have heard them, but I haven't heard it. Q. If they had made any noise up there, such as talking loud or dancing or stamping, you could have heard it plain? A. Perhaps I would, I am not sure: maybe. *Q.* Now if the boys were hollering up there, talking loud, could you have heard them in your bed-room--I refer now to in the night or Saturdays when there was no school? A. I don't know. Q: What do you mean by "You don't know?" A: I must hear it to understand it. Q. When you and Vandestine were talking about these boys going upstairs in that way, was it because you heard them talking aloud up there?

Objected to as immaterial.

The Court. You assume something in the question He don't know for certain whether he did talk with Vandestine about the boys or not.

Q. Have you seen boys coming down out of that room intoxicated and talking loud? Objected to as immaterial.

The Court. He answered "no" to that.

Q. Have you seen them coming down from his room intoxicated? Objected to as immaterial.

The Court. I will make the same ruling, although I am quite sure it was answered. Objection over-ruled and plaintiff excepted. A. No sir. Q. Did you see Gignac give boys liquor? A. I don't remember. *Q.* Don't you know that Gignac had some kind of stupefying drug in his room? Objected to as immaterial.

Mr. Riggs: I will follow it up by showing that he knew what use it was put to. Objection over-ruled and plaintiff excepted. A. No sir. Q. You understand the conduct of Gignac down there in that school?

Objected to as immaterial. Objection sustained. *Q.* You understand the conduct of Gignac in that school?

Mr. Rees. When do you mean that he understood it?

The Court. Fix the time.

Mr. Riggs. Well, while he was teaching in that school.

Mr Rees. His conduct with reference to what? We are entitled to some definite question. We object to it unless it is made more definite.

Q. Well, his conduct getting boys drunk and stupid; Objected to as immaterial. There is nothing in the article about getting them drunk and stupid. Objection over-ruled, exception. A. I always knew him as a perfect gentleman while I was there. Q. He was always a perfect gentleman while you were there? A. Yes sir, that is what I knew about him: *Q.* You were teaching in the same building with him until you quit in the month of June? A. Yes sir, in the same building. Q. Did you and Mr. Gignac give any liquor to the boys there attending that school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. No sir. *Q.* Do you know Rose Varier, who attended that school? A. I know the name, I am not very well acquainted with her. Q. Do you remember that apple scene?

Objected to as immaterial.

Q. Well, do you remember of throwing up an apple in that school and when it came down rubbing it over your private parts and laughing with the girls? A. No sir. Q Did you not do it? A. I don't think. *Q* What do you mean by "You don't think"—you may have done it? A. No sir. Q: At the time, didn't the little girl go out doors and say "Oh, how dirty he is?" A: No sir, I never done anything of the kind. Q Were you in the habit of using filthy language there in that school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. No sir. Q. Have you talked with Father Latelier about this matter? A. Yes I have talked with Father Latelier. Q. Answer my question "yes" or "no." What is your answer to that? A. Yes sir. Q. How long ago was it? A. I don't exactly know. Q. Whereabouts were you when you were talking with Father Latelier? A. In Father Latelier's office. Q. He has only been there at Lake Linden three or four months, has he? A. I don't know exactly, just about that; I guess about two or three months. Q. Have

you had more than one conversation with Father Latelier about this trial of yours? A. No sir. *Q.* In that conversation, did you admit to Father Latelier that you were guilty of this affair for which you have sued Sessions and Phipps and are seeking to recover damages.

Mr. Rees. Objected to, because it doesn't show whether it is intended to draw out something material to this case or not.

Q. Well, improper conduct with the boys and girls in that school?

Mr. Rees. Objected to. There are a good many kinds of improper conduct, There is only one kind charged.

Q. Giving them liquor?

Mr. Rees Objected to as immaterial. That is not charged here.

The Court. I have allowed all this about liquor, thinking perhaps it would lead to something else; but I don't see as yet that you have shown anything. If he has admitted that he had improper connection with these children, that is, meaning the crime charged here sodomy.

Mr Riggs. We don't claim that this man is charged with sodomy.

The Court. Now you are getting back to another question. I think the question is objectionable. I will sustain the objection.

Q. Did you have a conversation with Father Latelier concerning your guilt or innocence of this charge.

Mr. Rees. Of what charge.

Mr. Riggs. The charge contained in this declaration.

The Court. I will allow that if he understands what the charge is.

Mr. Rees. I think we ought to know.

Mr. Riggs. He probably does. He has made the claim. He ought to know.

Mr. Rees. He did not draw the declaration.

The Court. I will over rule the objection.

Mr. Rees. I think he ought to be informed as to what charge the attorney is talking about.

The Court. He is supposed to know what he has brought suit about. Go on.

A. No sir. Q. Now you say positively that you didn't have any conversation with Father L atelier concerning your charge against these defendants?

The Court. He didn't state that.

Q. Well, as to your guilt or innocence.

Mr. Rees. Guilt or innocence of what?

Q Now you say positively that you haven't had any conversation with Father Latelier concerning your claim against the defendants in this suit?

Mr. Rees. That is objected to.

The Court. He hasn't testified to any such thing. If you ask him that question I will allow it. He said he did have conversation.

Q. The conversation was between you and Father Latelier concerning your guilt or innocence was it not?

Mr. Rees. Guilty or innocent of what.

The Court He has fixed that by referring to this charge.

Mr. Rees. That leaves it wide open.

A. Father Latelier talked to me about it and he spoke about the trial in general. *Q.* Now sir, you related something to Father Latelier of your connection there in that school?

Mr. Rees Objected to as immaterial and assuming something.

Q. Well, did you relate to Father Latelier something concerning your conduct there in the school? A. Yes sir, I spoke about the classes and all that kind of stuff in general. Q. In general. Wasn't it concerning this libel suit particularly? A. We spoke of everything—about the classes and about this suit. Father Latelier was the first person that started to speak to me bout that. Q. Father Latelier started to speak to you first about the suit? A. Yes sir. *Q.* Do you say that Father Latelier came to you to speak to you about the suit first. A. Yes sir. *Q.* You have only had one conversation with Father Latelier about it. A. Yes sir, I think I have had only one conversation with Father Latelier. Q. Didn't you go yourself to Father Latelier directly and to get his aid and assistance.

Objected to as immaterial.

The Court What has this got to do with it.

Mr. Riggs. We wish to show the circumtances.

The Court. Go on. I suppose it is a preliminary question.

Q. Didn't you go direct to Father Latelier yourself. A. When I went there there were strangers in the house; I went out and was going away and Father Latelier called me back. Q. How far had you got A. About half way; about a quarter of an acre from the house and Father Latelier called me back. Q. Now that is the time that you had this conversation, is it. A. Yes sir. Q. That is the time that you rehearsed your conduct in that school to Father Latelier, is it not.

Objected to as immaterial.

Mr Rees. There has been no such testimony.

Q. Well, did you then rehearse your conduct there in that school, bearing upon the claim for damages in this declaration.

Mr. Rees. Objected to as immaterial, and as being too vague and indefinete.

Objection over-ruled and plaintiff excepted.

A. I have not talked anything about any damages. I spoke to Father Latelier about my conduct in the school. Q Did you talk about giving the boys liquor there in the school?

Objected to as immaterial. Objection over-ruled and plaintiff excepted.

A. Yes, I spoke to Father Latelier about it. When the children's folks came to visit them I would give the boys wine if they wanted it, but nothing stronger than wine, when their parents were there. Of course the old folks would drink whatever they wanted. Q. That is in the school? A. Yes sir, in my room. Q. Now mention what parents were there in the school at the time you gave their children liquors.

Mr. Rees. I object to this as wholly immaterial. What he has been talking about now, his conversation with Father Latelier, the witness has told something that he said to Father Latelier. Even that as it turns out is wholly immaterial in this case.

The Court. I don't see that it has anything to do with this charge in the declaration.

Q. Now at the time of this talk with Father Latelier wasn't it admitted by you to Father Latelier that you were guilty of the charge for which you have sued Sessions and Phipps for damages?

Mr. Rees Guilty of libel, do you mean?

The Court What do you intend to ask? The question as it stands is not proper.

Q. Was this expression used by you or Father Latelier at that time, that you were guilty?

Mr. Rees I object to that.

The Court Guilty of what?

Mr. Riggs That you were guilty of the charge that that you accused Sessions and Phipps of libeling you.

Mr. Rees I don't know what that means.

The Court The intention of the question is probably to find out whether he is guilty of what Sessions and Phipps charge him with. It seems to me you can get that question so that it is perfectly clear. The question is too involved.

Q. After your relating this to Father Latelier, didn't Father Latelier tell you you were guilty? Objected to as immaterial. Objection sustained. The court here took a recess until 2 o'clock P. M.

AFETRNOON SESSION.

Joseph Thibault recalled for further examination. Examined by Mr. Riggs.

Mr. Riggs May it please the court: This forenoon, I understood counsel for the plaintiff that they solely relied for recovery in this case upon the charge contained in the declaration, which was the charge of sodomy imputed to the plaintiff by these defendants; and I understood from the court that that was their sole and only ground of recovery. If that be true, I now ask counsel for the plaintiff to admit before this jury the truth of every article and charge and insinuation contained in the declaration not referring to Mr. Thibault, the plaintiff in this case. That counsel claims their one innuendo only refers to the fact of the charge of this crime of sodomy against the plaintiff, and are urging that we are not allowed to prove a state of facts showing before this jury that this is not a proper innuendo. If we are debarred from proving all the facts that we

allege in our defense, and at the same time the court will instruct the jury that they must find the truth of the innuendo, as claimed by the plaintiff, and we are not allowed to put in the proof properly bearing upon this case, the jury will have no evidence upon which they can properly judge that fact—and that is a fact for the jury to determine, whether this innuendo is properly applied or not, as set forth in the declaration. I therefore ask them for that purpose to admit the truth of every matter and thing contained in the declaration that the jury will say and can say may be applied to the other two school teachers there in Lake Linden and that the matters and things are true, and everything contained in the article is true except insofar as it refers to Mr. Thibault. Now I waited all the forenoon, and I understand it, counsel was taking that ground and saying that there is only one charge contained in that declaration. They are suing upon one charge, and therefore all of the matters in that declaration are immaterial. If that be true, then we ask counsel that they admit the truth of them; otherwise we shall claim the right to prove those under the declaration and the plea, to show to this jury that the counsel have not drawn the proper innuendo; as I claim on the part of the plaintiff in this case.

Mr. Chadbourne Let me ask you a question. How would that help the matter—if we haven't drawn the proper inference from the language you use? That is a question to be decided from the language. The facts have nothing to do with it.

Mr. Riggs You have to prove a line of facts to establish that. How could the jury decide it without evidence?

Mr. Chadbourne. If we haven't drawn the proper inferences from the language that is for the jury and the court to say, and they can determine from the language itself, can't they?

Mr. Riggs. Evidently, where the charge is full and explicit, it is a question upon its face but I say that you have to prove, and it is for this jury to find either from the declaration or the proof that that is a proper innuendo that you apply, and that is a question of the fact for the jury.

The Court. What difference does it make to you whether Gignac is guilty or not—what has it to do with the case?

Mr. Riggs. It is this bearing upon the case: if this article is true, except insofar as it relates to this plaintiff, then up to that point, we say there is a justification complete without any question. If it is admitted to be true, and most surely could be published for justifiable ends. Now if that be true, then the question comes up I ask them to say—we don't claim that they have took the proper innuendo on the other part of it there. We claim that it doesn't have reference to that question.

The Court. What have you got to say to that proposition, gentlemen?

Mr. Chadbourne. It doesn't made any difference whether the facts are true or whether the facts are false as to whether we have rightly concluded from the charge that these defendants have imputed the plaintiff with being an aider and abettor or principal in the crime of sodomy. The question is to be gathered from the language in which the charge is made by the defendants, and that language is here in cold type nor can that question be affected or solved by knowing whether the facts stated are true or not.

The Court. You do not admit then that he asks you to?

Mr. Chadbourne. Oh, certainly not. In my view of it there is no sense in it.

The Court. Go on with your cross examination.

Q.—I believe about the last question that was put to you and which you answered and said that the time that you gave liquor to the scholars in the school was when their parents were present? A.—Yes sir,

that is the only time that I gave liquor to the children—when their parents were there. That is I gave them wine—nothing stronger than wine, when their parents were at the school with the children. Q.—That was in the school? A.—Yes sir, in my room. Q.—Now do you swear positively that you never gave liquors to any of the scholars except in the presence of their parents or guardians? Objected to as immaterial. Objection overruled and plaintiff excepted. A—Yes sir, I swear that is the only time I gave liquor to the scholars—whiie their parents were there. Q.—At the time that this article was published on the 18th of February, how many school teachers were engaged in that school?

Mr. Rees. I object to to that because the witness has already testified that he was not there at that time.

The Court. Ask him first if he knows.

Q.—Who was teaching in the school on the 18th of February, when this article was published? A.—I don't know. Q.—Was Gignac teaching there at the time? A.—I don't know for sure whether he was teaching or not. Q.—Was Mr. Vandeistine there at the time? A.—I don t know; I was not there at the time. Q.—When were you there previous to this? A.—Around about the 24th of March; I am not sure; somewhere around there. Q.—(By Mr. Rees) Before or after? A.—After. Q.—Who was teaching then? A.—At the time I was there there was Mrs. Pichette, Mr. Vandestine and the others, with some of the nationality, I don't remember who they were. Q. Was Vandestine there in January when you were there in the school? A. Yes sir. Q. And Vandestine taught from January up until the time you came back in March? A. I think so. Q. Was Gignac there in January? A. Yes sir. Q. When did Gignac quit teaching school there? A. I don't know. Q. He quit about the time this article was published. Isn't that so?

The Court. He says that he doesn't know anything about that except from hearsay. It simply prolongs the examination, that is all. He can answer the question if he has any way of knowing.

A. I don't know. Q. Now sir, when you say you don't know, you mean that you were not present in Lake Linden at the time. Is that so? A. I was not present at Lake Linden then but learned afterwards. Q. Then as a historical fact, you learned and know that Gignac left about the time that article came out?

Objected to as immaterial and incompetent.

The Court. He would know it from hearsay. Go on and inquire.

Mr. Rees. Exception.

A. I read it in the paper, that Mr. Gignac was gone, after that thing occurred. Q. Now as a matter of fact do you understand what was the cause of his going away? Objected to an immaterial.

The Court. What has that got to do with the case?

Mr. Riggs. I propose to show by this witness that Gignac, before leaving St. Anne's School outraged over 30 boys and girls.

Mr. Rees. He is just seeking to show that this witness heard so.

Mr Riggs. And that Vandestine, the other teacher there at the time was a party to that fact, and that Vandestine brought suit charging this libel against the defendants, when this whole matter was investigated in Justice court in the presence, I think, of those gentlemen, and that it is true that Gignac and Vandestine outraged over 30 boys and girls in that school

The Court. That wouldn't affect this man. The objection is sustained.

Mr. Riggs. I further offer to show by this witness—

Mr Rees. I don't like to have these offers coming in in this form.

Mr Riggs. I wish to have it upon the record.

The Court. You have no right to make an offer, if it is going to prejudice the case.

Q. You quit teaching there, you say, some time in August or September?

Mr. Rees. No, June 1892.

Q. The last of June 1892. That is the time you quit teaching? A. Yes sir. Q. Is it not true that the crime of sodomy was practiced there by Gignac in that school upon the scholars previous to the time you left and at the same time you were teaching in that school? Objected to as immaterial. Objection sustained and defendant's excepted. I believe you sent word to these publishers

did you or did you not, previous to the time that you left, a letter that Mr. Chadbourne and Rees—did you send some notice to these publishers? A. I have not sent any letters to any publishers. Q. Do you know whether your brother did in your behalf? A. I gave orders to Mr. Chadbourne and Mr. Rees that they should work the case up. Q. During the time that you were teaching there as a teacher, didn't you go up in Gignac's room and get some of that black liquor up there? Objected to as immaterial.

The Court. What has that got to do with it? I have allowed all these questions, with the understanding that it would lead to something else. Thus far I haven't seen that they lead to any of the charges set forth in this declaration. We have been at it all the forenoon, and now, unless it can be shown that you can in some way connect this man with this charge alleged in the declaration, I will sustain the objection.

Mr. Riggs. The charge we wish to show, and claim here is this: That those crimes were not started spontaneously down there in that school; that they are the outgrowth of bad example set by the teachers, and they are the outgrowth of having liquors in that school; and so far as the article charges against Gignac, is is true, and that this teacher, by the uses that he made of liquors in that school, is responsible in part for the conduct of Gignac, and that he knew of these facts and ought to have known what was taking place in that school.

The Court. I will sustain the objection.

Mr. Riggs. Exception.

RE-DIRECT EXAMINATION.

By Mr. Rees.

Q. You have spoken of your brother teaching there at one time. What brother is that?

Mr. Riggs. That we object to as incompetent. It is evidently after the article.

Mr. Rees. If you say so all right. I was going to prove that one fact.

The Court. You may show that. Go on.

Q. When did your brother go to Lake Linden, whether it was before or after this publication? A. It was after I left Lake Linden to go to Chicago that my brother came. Q. Do you know when your brother came, with reference to this article that was published in the Conglomerate? A. I am not sure that my

brother was teaching there, but I think it was after: I hardly think that my brother was there then.

Q. For what purpose did you have medical books in your room. A. It was to prepare myself for the class as a dentist Q. In other words, you studied your profession A. Yes sir, I am studying for a doctor too

Q. What did you use this room for that you had there in the school building? A. I had a library there, school library. They used to consult those library books, and they used to practice for singing there. Q. That is in the room that has been called your room? A. Yes sir, I studied and practiced there Q. Practiced dentistry there? A. Yes sir. Q. What did you do in the way of practicing dentistry there in the room. Mr. Riggs. To that we object, unless it was shown that he was a dentist at the time. Objection over-ruled and defendants excepted. A. I practiced fixing teeth: I had a few patients there.

Mr. Riggs.—I move to strike that out. Motion over-ruled and defendants excepted.

Q You said, at one time, that there was a bed in the room that had curtains in front of it. Is that right. A. Yes sir, there was a partition, just merely curtains and my bed was there. Q. Where did you sleep during the time that you were teacher in that school? A. I slept there not quite during the first year, and then after that I slept over to Fr. Menard's Q. Then, we will say from the spring of 1891 until you left there, you slept at Fr. Menard's, did you? A. Yes sir about that time. Q. Then when was it that you made use of this room—in the day time or nights? A. Most of the time day times: only a few evenings that we used to practice, that is to sing Q Can you draw on a piece of paper a diagram showing the arrangement of that building, the first second and third floors A Yes sir Q I will ask you to do it hereafter

RE CROSS EXAMINATION by Mr Riggs

Q—What book was the medical work that you had there A—Anatomy Q—Whose was it, was it the same one that was used in Montreal in? the college A—It is not the one that they used there: it is a small one Q. About this size (indicated) was it? A—No sir Q—It had all the pictures of the generative organs of the body? Objected to as immaterial Objection

sustained and defendants excepted Q—A teacher that would give liquors to children attending school unknown to their parents you would consider disreputable, would you not? Objected to as immaterial and as assuming a thing not in evidence Objection sustained and defendants excepted Q—Did you go up to Gignac's room and get a bottle of some black medicine, or black liquid? Objected to as immaterial.

The Court. You asked that question once and it was ruled upon. I sustain the objection to it unless it can be shown that it had some connection with the crime of sodomy.

Mr. Riggs. We expect to prove that as the same liquor that Gignac used to drug the boys with.

The Court. Do you expect to show that this man used it on the boys for the purpose set forth in this declaration? If you do I shall let you show it. If you cannot do it I will not.

Mr. Riggs. We haven't claimed that we will show that this man committed that crime.

The Court. Then I sustain the objection.

Q. Did you get any of that medicine that you had there, did you give any to any of the girls? Objected to as immaterial. Objection overruled and plaintiff excepted. A. No sir.

Earnest Thibault sworn for the plaintiff testified as follows: Examined by Mr. Rees.

Q. You are the brother of Joseph Thibault are you? A. Yes sir. Q. Something has been said with reference to another brother besides Joseph being up here at one time teaching in that school at Lake Linden. Do you know anything about that? A. Yes sir. Q. What is your brother's name? A. O. D. Thibault. Q. Did you ever teach there yourself in that school? A. No, I never did. Q. When was it with reference to the time of the publication of this article on the 28th of February that O. D. Thibault taught in that school?

Mr Riggs. To that we object as incompetent and immaterial.

The Court. You brought it into the case. If you want to strike out all this testimony, then I will sustain the objection, otherwise the testimony may come in. Objection overruled and defendants excepted.

A. He came to Lake Linden on the 18th of February, If I remember well. That was on the day that that article came out in the paper. Q. When did he teach in that school there? A. He commenced to teach the next monday after. Q. I think you have already answered that he never taught in that school? A. No sir.

CROSS EXAMINATION.

By Mr. Riggs.

Q. Shortly after the publication of this article you went up to see the editor? A. Yes sir. Q. Something about having them say something in their paper about it? A. I wanted to know, I asked—

Mr. Rees. I object to that as immaterial—what this witness went up and told the editor.

Mr. Riggs. It is only preliminary.

The Court. Go on.

A. I went up and asked the publishers who had given their names the two young men, Vandestine and Thibault, and he didn't want to tell me who did. Q. That was shortly after the publication? A. Yes sir, that was two or three days after. Q. You went up in the interest of your brother? Objected to as immaterial.

The Court. That doesn't cut any figure in the case. The shortest way out probably out of it is to answer the question. Go on.

Mr. Rees. Exception.

Q. Who did you go up there for? A. In my brother's interest. Q. When you got there you told the editors that all the fault that you found with the article was the use of the words "Two Devils?" Objected to as immaterial Objection sustained. Q. What did you say to the editors, in the interest of your brother?

The Court. Do you wish to show an offer of settlement, something of that sort.

Mr. Riggs. No.

The Court. Then I can't see how it is the theory.

Mr. Riggs. Exception. The plaintiff here rested his case.

Joseph Joyal sworn for the defendants testified as follows: Examined by Mr. Riggs.

Q. Where do you reside Joseph? A. Lake Linden. Q. How long have you lived there? A—Oh, about 10 or 11 years. Q—Were you acquainted with that school

down there, St. Anne's Academy? A— Yes sir. Q--I believe you went to school there at one time? A—Yes sir, I did. Q—To which teacher? A—I went a while to Mr. Thibault and a while to Gignac. Q—At that time, you were janitor of the school some of the time too? A—Yes sir. Q - About how long did you go to Mr. Thibault? A –I went about 2 months and a half. Q – How long did you go to Gignac? A—I went there about two years. Q –Do you know of Gignac having spirits and intoxicating liquors there in the school building? Objected to as immaterial. Q –Do you know of Mr Thibault having spirits and intoxicating liquors in the school? Objected to as immaterial.

The Court. Unless you can show that it led up to or had something to do at the same time with this charge

Mr. Riggs. We claim it did, gentlemen.

Mr. Rees. I understand the claim to be the use of liquors corrupted these boys so it was possible for Gignac to commit this crime.

The Court. I can't tell what the attorney means until I allow some questions. It may show this man Thibault did have something to do with this crime charged in the declaration.

Mr. Rees. The evidence may be prejudicial. It is immaterial, unless connected with his claim and where reason exists for it, the connection should be shown before the testimony is admitted.

The Court--If you are not able to show that this man Thibault had anything to do with this witness I shall sustain the objection The mere fact that he did have intoxicating liquors is no evidence tending to show that he committed the crime of sodomy If you can show however, that this was all in a drunken debauch and this man did commit this crime, or helped the two others to commit it, as a part of the res gestae of this drunken debauch I will allow it.

Mr. Riggs. That is just the ground that we are putting it on. We expect to show that he used liquors as I stated this forenoon, getting these scholars and pupils drunk and in that condition that this man— the plaintiff here was a teacher in that school; he was a guardian over these children, and that is how he carried out his guardianship. That would have a tendency to prove the truth of this whole article; that in these drunken debauches these crimes were

committed and they were committed right along, and you might say partly induced by this teacher and it is for the jury to say whether he knew it or not.

The Court. You don't answer my question yet. As I intimated once before if you do not propose to show that this man committed the crime then I shall sustain the objection.

Mr. Riggs. We claim he was aiding and assisting and abetting the others in preparing the children for it.

The Court. That is too far fetched, Mr. Riggs. I sustain the objection.

Mr. Riggs. Exception.

Q—Where was Thibault's room in that school? A. Which, his office or school-room. Q. His school-room and office both. A. His office was right outside the kitchen, and Gignac's room and the school-room was right up stairs. Q. When Mr. Thibault was there in the building, his office is that where his bed-room was? A. Yes sir. Q. His office and bed room was one and the same? A. Yes sir. Q. Have you been around that building in the evening after school was out? A. I was there quite a few times with Pete Marshall. Objected to as immaterial. Q. After school is it an easy matter to hear any walking around up in Gignac's room down on the lower floor, if any took place— could you hear it down from one floor to the other? A. Yes sir you could. Objected to as immaterial.

The Court. The testimony might have a tendency to lead up to something, so I shall have to overrule the objection.

Q. So that any transaction on the upper floor, such as walking or loud talking could be easily heard down in Thibault's room? A. Yes sir.

Mr. Rees. Which upper floor?

Mr. Riggs. In Gignac's room.

A Yes sir. Q. Vandestine's room? A. I don't know nothing about Vandestine's room. Q I suppose during the time that Gignac was teaching there you frequently saw Thibault visit Gignac's room? Objected to as immaterial. Objection overruled and plaintiff excepted. A. Yes sir, I seen them quite a few times together. Q. Do you know anything about drugged liquor being there in the building? Objected to as immaterial, unless he makes it more definite. Objection overruled exception A. Yes sir. Q—Where was that drugged liquor? A—In the office. Whose office? A- In Gignac's bed-room, in his office, and Thibault's office.