conveyance," and consented to a decree setting the same aside, provided an equitable adjustment of the accounts between it and the Knoxville & Ohio Railroad Company is decreed and appropriately enforced. The Central Trust Company of New York entered its appearance, and demurred to the complainant's bill, on the ground that complainant had not brought the case within the requirements of the ninety-fourth rule—recently promulgated by the supreme court—to-wit, that complainant had not averred any request, or shown other effort, to induce the Knoxville & Ohio Railroad Company to take steps to redress the wrong alleged to have been done to said corporation,—of which the city was a stockholder,—and of which it complained. But before any action was had upon this demurrer, the suit was, upon the application of said trust company, removed to this court. The demurrer was here considered and sustained, and, the complainant admitting that it could not amend so as to bring its case within the purview of the rule, a decree was passed, dismissing its bill. From this it will be seen that the controversy left rests upon the cross-bill of the Knoxville & Ohio Railroad Company, and the answers thereto of the East Tennessee, Virginia, & Georgia Railroad and the Central Trust Companies, and the evidence adduced by the parties in support of their respective positions.

In behalf of the Central Trust Company it is contended (1) that the deed of July 8, 1881, vested the East Tennessee, Virginia & Georgia Railroad Company with a good title to the property it purports to convey; or (2) if it does not vest such title, the complainant, by its acquiescence, is estopped from denying the fact; and (3) that the *cestuis que trust* represented by the complainant are innocent holders, for value, of the bonds secured by the mortgages in question, and that their equities are superior to those of the dissenting stockholders, for whose benefit this suit is being prosecuted.

The determination of these questions necessitates an inquiry into the powers of the Knoxville & Ohio Railroad Company. Was it legally endowed with power to make said conveyance? The powers of corporations are only such as are conferred by law. Everything done by a corporation in excess of such authority is voidable at the instance of the parties interested in and injuriously affected thereby. The powers of the complainant corporation are prescribed by the original and amendatory acts which constitute the Knoxville & Kentucky Railroad Company's charter. These contain the contract (1) between the state and said corporation, and (2) between the stockholders therein. Under their provisions the complainant was authorized to complete, and impliedly charged with the duty of operating, its road. But there is no provision of any one of these acts which, by implication or otherwise, authorized it to transfer its immunities and obligations, as by its conveyance it assumed to do, to the East Tennessee, Virginia & Georgia Railroad Company; and this is one ground upon which it is insisted, in complainant's behalf, that nothing passed under said deed.

We concede that no such divestiture of title and transfer of the obligation to complete and operate a railroad could have been made without legislative permission; but such permission, we think, was given by the acts of November 9 and December 11, 1871, (see pages 21 and 59 of the acts of that session,) which authorizes any railroad company in Tennessee to purchase any railroad in the state. The authority thus given to any railroad company to buy necessarily implies authority to other companies to sell, inasmuch as there could be no purchase without a corresponding sale. But it was not competent for the legislature to do more in this respect than to waive the public rights. It could not divest or impair the rights of the shareholders, as between themselves, as guarantied by the company's charter, without their consent. It was upon the faith of the stipulations contained in said charter that the shareholders subscribed to the capital stock, and thereby made themselves members of the corporation. These stipulations, as we have already seen, contemplated and provided for the construction of a railroad between the *termini* named, to be governed by the shareholders, in the manner and upon the terms prescribed. Each corporator is entitled to have the contract fairly interpreted and honestly enforced. The charter invests the owners of a majority of the capital stock with the right to control the corporate business within the scope of its provisions. Within this limit the power of a majority, when acting in good faith, is supreme. But complainant's charter does not, by any reasonable intendment, clothe the majority with authority to sell the company's franchise and property, and in this way coerce the minority and protesting shareholders into another and different corporation, owning and operating another and different railroad, under another and different charter, imposing other and different obligations, and governed by a different set of corporators. To so hold would be to divest them of their vested rights and force them into a relation, and subject them to duties and obligations, which they have not, and probably, would not, have voluntarily assumed.

The sale, therefore, made by the complainant company to the defendant the East Tennessee, Virginia & Georgia Railroad Company, was without authority, and is, consequently, voidable, unless the right to avoid it has been lost by the laches of the dissenting shareholders, or defeated by the alleged superior equities of the holders of the bonds secured by the mortgages which the complainant seeks to have declared a cloud upon its title, and removed therefrom. There has, we think, been no such laches as will preclude the complainant from asserting the rights of its dissenting stockholders; nor do we think that its rights have been defeated by the mortgages made to the Central Trust Company.

The principle upon which this last contention is predicated is a familiar one, which has been clearly defined by numerous adjudications. A party who has paid a fair consideration for a piece of prop-

erty or thing of value, and taken a conveyance to himself of the legal title thereof without negligence or fault on his part, or notice of an outstanding equitable title in some one else, will be protected in his legal estate against such outstanding equity. Now, we do not doubt but that the holders of the bonds in question are, in a restricted sense, innocent holders; that is to say, there is every reason to believe that they acquired their respective holdings in the belief—if, in fact, they had at that time ever heard of the matter—that the deed impugned by the complainant's bill was a valid conveyance, and vested the bargainer with a good title to the franchise and property described therein; but the defect in said deed arises from a want of power in the vending corporation to make it. This defect is apparent on the face of the deed, of which all persons claiming under it were, in law and equity, bound to take cognizance; and if, from negligence or any other cause, they have failed to do this, the court is bound to deal with them as if they had had actual notice of all the facts. In view of this principle, they are not innocent holders, and the facts relied on by their trustee is no sufficient obstacle to the relief prayed for. A decree will therefore be entered, rescinding said sale, and removing said mortgages, as clouds upon the complainant's title. But the complainant and the defendant the East Tennessee, Virginia & Georgia Railroad Company will be required to account with each other; the former, for all the advances of money made by the latter in extending, improving, repairing, maintaining, equipping, or operating its road, and for other purposes, and also for all debts or obligations assumed, paid, or taken up for it by said last-named company, including said 7 per cent. first mortgage bonds and unpaid coupons, with interest thereon; and the defendant the East Tennessee, Virginia & Georgia Railroad Company will be charged with all payments made by the complainant, if any have been made, and with the earnings of the Knoxville & Ohio Railroad Company, since the first day of July, 1881, (the date at which it took possession and began to operate said road,) and with the value of any and all personal property belonging to complainant, which it may have appropriated to its own use, less the value of such property, if any, as it has or may return to the complainant.

And the parties may adjust the accounts aforesaid between themselves, provided they do so without unreasonable delay; but they will be required to submit the same to A. R. Humes, who is appointed a special master for that purpose, for the inspection and revision by him, (if he shall deem a revision thereof necessary,) and for the approval of this court. But if the parties shall fail to promptly adjust their accounts, as herein provided and required, the said Humes shall, as special master, proceed to hear proof and report upon the same to the next regular term of this court. If there shall be found a balance due the East Tennessee, Virginia & Georgia Railroad Company, as now seems probable, it will be entitled to a decree therefor against the

complainant, and to a lien—to be hereafter defined—upon the complainant's property to secure the payment thereof, and to such a sale of complainant's property as may be hereafter ordered; and the same, when collected, shall be paid into this court, subject to such disposition thereof in favor of the defendant the Central Trust Company of New York as the equities of the case shall, in the judgment of this court, hereafter require; or, if the parties in interest agree, the complainant may issue its bonds for an amount sufficient to pay off and discharge the amount that may be found due the East Tennessee, Virginia & Georgia Railroad Company, upon the accounting hereinbefore ordered, or for such amount as may be agreed on between them, and execute a mortgage securing the same. But all agreements made by said parties, touching the foregoing matters, shall be filed with the special master aforesaid, for the inspection and approval of the court, and for such further action in regard thereto as may then appear to be just and equitable; the object being, so far as it is practicable, to secure to the beneficiaries of said mortgages a lien upon the money or bonds that may be realized by the East Tennessee, Virginia & Georgia Railroad Company from the complainant, in lieu of the mortgages herein declared invalid and ordered removed as a cloud upon complainant's title. And as it appears that some of the stockholders in the complainant corporation have surrendered their stock therein, and accepted, in lieu thereof, stock in the East Tennessee, Virginia & Georgia Railroad Company, said last-named company is, in the opinion of the court, entitled to be substituted to their rights in the complainant company; and the decree will provide for such substitution of said defendants to the rights of said surrendering stockholders.

All other matters will be reserved for future consideration.

AMERICAN EMIGRANT CO. *v.* CALL and others. (Cross-Bill.)

(*Circuit Court, S. D. Iowa, C. D.* January 19, 1885.)

VENDOR AND VENDEE—RECORD OF AGREEMENT—ENTRIES IN INDEX—NOTICE.

C. and the American Emigrant Company owned certain interests in swamp lands, under the Iowa swamp-land act, and C. entered into a written agreement with the company, which was, in effect, a conveyance of his interest. The agreement was duly recorded, and in the index C.'s name was written in the grantor column, the company's name in the grantee column, in the column headed "character of instrument" was written "agreement," and in the description column was the entry "with regard to swamp and overflowed lands." Subsequently, S. purchased a portion of the lands. *Held*, that the entries upon the index were sufficient to put him on inquiry, and that he was bound thereby.

Demurrer in Equity.

Harvey & Davis, for complainant.

J. H. Call and *W. S. Clark*, for defendants.

SHIRAS, J. In this cause complainant seeks to quiet the title to a large quantity of lands situated in Kossuth county, Iowa, as against the adverse claims of Asa C. Call and J. Volney Sweeting. The last-named defendant files a cross-bill, in which he avers that he is the owner of the realty in question, and asks a decree quieting the title in him as against the complainant. The latter demurs to the cross-bill, and the case is now before the court upon the demurrer thus filed. It is averred by both parties that the lands in controversy form part of the swamp lands, the title to which vested in Kossuth county by virtue of the act of Congress of 1850, commonly known as "the swamp-land act," and the act of the general assembly of the state of Iowa, passed in 1853, by virtue of which the swamp lands were granted to the several counties in which the same are located. Both parties claim title, therefore, through these grants to Kossuth county.

In 1862 the county entered into a written contract with Asa C. Call, whereby said Call bound himself to act as agent for the county in procuring for the county the swamp lands to which it was entitled, and for his service in this behalf he was to receive "one average fourth of all swamp and overflowed lands now or hereafter claimed by said county." On March 24, 1866, complainant entered into a contract with Asa C. Call, which recites that complainant was then the owner of three-fourths of the swamp lands belonging to Kossuth county; that said Call has a contract with the county for the remaining one-fourth; that the company has purchased all of said Call's interest, and agrees to pay therefor a certain named price; it being also stated that "this contract is to operate as a conveyance of all remaining interest, of whatever character, which the said Call now has or may hereafter acquire in any of said lands or claims for indemnity (which interest and claim has been duly examined and is understood by the company) by virtue of his contract with the county before alluded to."

In the case of *American Emigrant Co.* v. *Clark*, 17 N. W. Rep. 483, the supreme court held that this contract is, in effect, a conveyance, under which all the right and claim then remaining in said Call to the swamp lands in Kossuth county passed to the complainant.

On the sixteenth of October, 1866, Kossuth county executed a deed conveying all the swamp lands, including those in controversy, to the complainant. The defendant claims title under deeds from Asa C. Call to defendant, bearing date January 10, 1881, claiming to be an innocent purchaser, for value, without notice, actual or constructive, of the adverse claims of complainant. Under the ruling of the supreme court of Iowa, that the contract of March 24, 1866, was, in effect, a conveyance on part of Call to complainant of his title and right to the swamp lands coming to him by virtue of his contract with Kossuth company, it follows that the lands in controversy then became the property of complainant as between said Call and complainant. If the defendant Sweeting had notice of this conveyance, and of the rights of complainant under the same, when he received

his deeds in January, 1881, then he cannot be said to be an innocent purchaser, nor has he a title which would avail him as against the rights of complainant. In the cross-bill it is expressly averred that Sweeting had no actual notice or knowledge of the adverse rights of complainant, and the question presented upon the demurrer is whether it must be held that he is chargeable with knowledge from the record under the registry law of the state. The agreement between complainant and Call was filed for record, in the recorder's office of Kossuth county, on the twenty-first of December, 1863, and duly entered upon the records of deeds. In the index, Asa C. Call is named as grantor, and American Emigrant Company as grantee, and in the column headed "Character of Instrument," the entry is "Agreement;" and in the column headed "Description," the entry is "With regard to swamp and overflowed lands."

It is urged in argument that these entries upon the index are not sufficient to put a person examining the record upon inquiry as to the meaning thereof. It will be remembered that the defendant Sweeting knew that the lands that he purchased of Call were part of the swamp lands of the county, and that the only title which his grantor had was under the swamp-land act. Under such circumstances can it be supposed that if, in examining the title of the lands he was about to purchase, he should find upon the index of deeds an entry showing that his proposed grantor had made an agreement with reference to swamp and overflowed lands, he would not have examined the instrument to which his attention would thus be directed? It would certainly have been negligence on his part had he failed to do so. The entry upon the index was certainly sufficient to warn him that Call had made an agreement about swamp lands in Kossuth county, and as he knew that the lands he was about to buy were swamp lands, he was not justified in shutting his eyes to the warning that the index gave him. Had he examined the record to which the index referred him, he would have found that Call had already parted with his interest in the lands he was about to purchase.

The decisions of the supreme court of Iowa on this question are clear and decisive. In *Calvin* v. *Bowman*, 10 Iowa, 529, and *White* v. *Hampton*, 13 Iowa, 260, it was held that the index was sufficient to charge notice, although no description of the property was entered on the index, but simply the words "See record." In *Bostwick* v. *Powers*, 12 Iowa, 456, the entry upon the index was "Certain lots of land," and it was held that this was sufficient. In *Barney* v. *Little*, 15 Iowa, 535, it is said to be the settled law of the state that "it is not necessarily and essentially a prerequisite to a valid registration that the index should contain a description of the lands conveyed; it is sufficient if it points to the record with reasonable certainty." In *Jones* v. *Berkshire*, 15 Iowa, 248, the rule is stated to be that "if the index discloses enough to put a careful and prudent examiner on inquiry, and if, on such inquiry, the adverse title would have been as-

certained the party will be held to notice." Under the doctrine of these cases it is evident that it must be held that Sweeting, when he was about to purchase these lands of Call, was charged with knowledge of the fact that Call had already entered into an agreement with the American Emigrant Company, whereby he had bound himself to convey all the swamp lands in which he had any interest. Being chargeable with notice and knowledge of the existence of the contract between the Emigrant Company and Call, he cannot be said to be an innocent purchaser.

It is also urged in argument that, granting that Sweeting must be held charged with knowledge of the agreement in question, it does not follow that he is to be held chargeable with knowledge that the American Emigrant Company had any prior right or equities in the land, because the contract does not describe any specific lands, and is void for uncertainty of description. This objection was made to the validity of this contract in the case of *American Emigrant Company* v. *Clark*, *supra*, but the supreme court of Iowa held that it could be made specific by reference to the deed of the swamp lands made by the county in 1862. When Sweeting took his deed from Call he knew that these lands were swamp lands, and therefore within the provision of the contract or conveyance executed by Call. The recitals of this agreement were clearly notice that Call had contracted with the county for the purchase of one-fourth of the swamp lands, and that the complainant had become the purchaser of all the rights and title which said Call then had, or might thereafter acquire in said lands, by virtue of his contract with the county. Having knowledge, either actual or constructive, of the facts recited in the agreement between his grantor, Call, and complainant, he was thereby put upon inquiry in order to ascertain the real facts. He was not compelled to purchase the lands, but when about to do so he was charged with the duty of exercising diligence in making proper examination touching the rights and equities of others, when the record showed that others had such rights in the lands he was about to purchase. 3 Washb. Real Prop. 328; *Brush* v. *Ware*, 15 Pet. 110. If, upon such examination and inquiry, he should learn that the lands he was about to buy were, in fact, part of the swamp lands coming to said Call by virtue of his contract with the county, then he would at once know that the complainant had the prior right to the lands, and that Call had no right to sell them to a third party in violation of his written contract with complainant. On the other hand, if it should appear that Call had not acquired the lands in question by virtue of his contract of February 8, 1862, with the county, but had obtained title thereto through some other purchase or source, then it would appear that the lands were not part of those affected by the contract between Call and complainant, and in that event Sweeting would be justified in buying the same, in the belief that complainant had no interest or right therein.

The allegations in the cross-bill are not explicit upon the point, and

the ruling upon the demurrer is based upon the assumption that, in fact, all the right and title which Call had in these lands was acquired by virtue of his contract with the county of February 8, 1862; the deed from the county to Call being made by reason of the terms of this contract. The demurrer to the cross-bill is sustained, but with leave to amend the same by averring the facts showing that Call obtained title to the lands, not by virtue of the contract of February 8, 1862, but through some other source or purchase, if such facts exist; such amendment to be filed by March rules.

BLAIR *v.* ST. LOUIS, H. & K. RY. CO. and others.[1]

In re MERRIWETHER and others, Intervenors.[1]

(*Circuit Court, E. D. Missouri.* January 19, 1885.)

RAILROAD MORTGAGES—LIEN OF MATERIAL-MEN—STATUTE OF FRAUDS.

Where supplies used for rebuilding bridges, building side tracks, and in making repairs were furnished a railroad company from time to time under a continuous verbal contract made after default in the payment of the company's bonded interest, and which was not terminated until the appointment of a receiver,—more than two years after the first supplies were furnished,—*held* that, notwithstanding the statute of frauds, the material-men were, under the circumstances, entitled to judgment for the balance due them, and to a lien superior to that of the mortgage creditors, for the amount due, on the earnings of the road.

In Equity.

Exceptions to master's report on the intervening petition of Merriwether & Co. The claim of the petitioners is for ties, piling, and other timber furnished from time to time from the fourth day of November, 1881, to December 18, 1883, for services in loading ties on cars, and for money paid for repairs on an engine belonging to said road. Said supplies were furnished said railroad in pursuance of a verbal contract to continue for from two to three years, or until the firm got all of its materials out, but determinable by either party at notice if desired. This contract was entered into about the first of November, 1881. It was substantially as follows:

"In consideration of the firm of Merriwether & Co. furnishing the railroad company such ties, piling, and bridge timber as might be needed, at cost price, the railroad company would give them a rate from a point south of Eolia to Hannibal for $12 per car, and from Eolia to points north at $10 per car, for shipments of the firm's own lumber and materials. The company was to pay them along in money or freights as it was able until the termination of the contract."

[1] Reported by Benj. F Rex, Esq., of the St. Louis bar.

The claim filed is for a balance of $2,762.06. The master found that the materials furnished were used for rebuilding bridges, building new side tracks, and for repairs; that said contract continued in force down to the date of the receiver's appointment; and that, though being verbal, it was within the statute of frauds, yet it was sufficient in equity, under the circumstances, to entitle the intervenors to a lien, and that they were entitled to a judgment for $2,759.94, with interest at the rate of 6 per cent. per annum from the date of the receiver's appointment, and to an equitable lien for said sum, prior in right to that of the mortgage sued on, to be paid out of the earnings of the company. The first default in the payment of the company's bonded interest was on April 1, 1881. The receiver was appointed February 7, 1884. The master does not refer specifically in his report to the item for money paid for repairing the locomotive or that for loading the cars, but as substantially the whole amount claimed was allowed, it is presumed that he considered both items due under said contract.

Walter C. Larned and *Theo. G. Case*, for complainants.

John O'Grady, for receiver.

Dyer, Lee & Ellis, for intervenors.

TREAT, J. It may be considered as an established rule of equity that where receivers are appointed the court may determine, under all the facts and circumstances, what demands prior to such appointment may be allowed as prior in right to the mortgage. In this case, Judge BREWER, reviewing the authorities, cursorily intimated that demands which had accrued within six months prior to the appointment of a receiver, if they pertained to betterments, or the current necessary operations of the road, should be considered as equitable demands prior in right to the mortgage. There are two propositions underlying the rulings of the courts: *First.* When, under the conditions of a mortgage, the mortgagee, after default, permits the corporation to still operate the road, the operations thereafter must be considered for the benefit of the mortgagee, and all others in interest, especially if betterments accrue therefrom. *Second.* To prevent the indefinite extension of such claims, the courts limit the time within which such demands may be pursued.

The case before the court presents this condition of affairs, viz.: that under an indefinite contract the intervenors, subsequent to default in the mortgage, continued to furnish materials for the equipment of the road; the account, debit and credit, continuing to the appointment of a receiver. The question is not within the narrow rules governing statutes of frauds, but as to the rights of the parties under the equitable principles stated. The mortgagee could have taken possession of the road under default, had he so elected. He preferred that the corporation should still continue to operate the road, certainly as much for his benefit as that of other parties. Why, then, as after-acquired property is to be included within his mortgage,

should he not deal with said betterments according to equitable rules? True, there should be, as stated by Judge BREWER, some limit to the enforcement of such alleged obligations,—fixed in this case at six months. But if the contract was a continuous one, to the benefit of all concerned, mortgagee included, and final settlement not made until the appointment of a receiver, should this case fall within the six-months rule? The distinction is an obvious one. Where a person furnishes, from day to day, ordinary supplies to a corporation, he is, as to the same, a creditor at large. When a default as to a mortgage subsequently occurs, such general demands cannot be treated as prior in right to the mortgage, except under the special circumstances named in adjudged cases, viz., where such demands are current, and essential to maintain the corporation as a going concern, such as continuous labor, etc. This rule pertains to such demands existing prior to the mortgage defaults.

The other class of cases, of which that before the court is one, rests on an additional reason, namely, that if the mortgagee, instead of enforcing his rights, elects to have the corporation operate the concern, he must be considered in equity as estopped from disputing that such operations were for his benefit, and to be accounted for in the final adjustment of the rights of all concerned. Hence, in this case, it appears that long subsequent to the default, and continuously thereafter down to the intervention of the mortgagee for the appointment of a receiver, the demand in question was progressing for the betterments of the road, without objection from any one. Ordinarily, demands as to items accruing prior to the time limited (as, in this case, for six months) would be excluded, as heretofore stated. But here the contract was incomplete until the appointment of a receiver, and consequently must be treated as falling within the equitable rule. The exceptions to the report overruled. Report confirmed.

LOCKE *v.* BRADSTREET CO.[1]

(*Circuit Court, D. Minnesota.* January, 1885.)

1. LIBEL—MERCANTILE AGENCY.
   A corporation, carrying on the business of a mercantile agency, is not exempt from legal responsibility, and is subject to the same rules of law as other persons who have a just occasion for making statements which are charged to be libelous.
2. SAME—PUBLICATIONS INJURIOUS TO MERCANTILE CREDIT—PRIVILEGED COMMUNICATIONS.
   Every willful and unauthorized publication, written or printed, which imputes to a merchant or other business man conduct which is injurious to his character and standing as a merchant or business man, is a libel, and implies

[1] Reported by Robertson Howard, Esq., of the St. Paul bar.

malice; but whenever the author or publisher acted in the *bona fide* discharge of a public or private duty, legal or moral, or in the prosecution of his own rights and interests, that which is communicated in writing under such circumstances is a privileged communication, unless actuated by malice.

3. SAME—PRIVILEGE A QUESTION OF LAW.
Whether an alleged libel is within the protection afforded to privileged communications is a question of law.

4. SAME—COMMUNICATION, WHEN PRIVILEGED.
A communication is privileged, within the rule, when made in good faith, in answer to one having an interest in the information sought; and it will be privileged, if volunteered, if the party to whom the communication is made has an interest in it, and the party by whom it is made stands in such relation to him as to make it a reasonable duty, or at least proper, that he should give the information.

5. SAME—ACTUAL MALICE.
If a communication is privileged, then, although the statements are defamatory, actual malice must be proved to entitle the aggrieved party to recover damages.

6. SAME—INFORMATION FURNISHED BY MERCANTILE AGENCY, WHEN PRIVILEGED.
Written information as to the standing of a merchant or business man, furnished by a mercantile agency to its subscribers voluntarily, or in answer to inquiries from them, is a privileged communication.

7. SAME—QUESTION FOR JURY—CHARACTER OF COMMUNICATION.
It is for the jury to determine whether such a privileged communication is defamatory and actuated by malice, or not.

8. SAME—EVIDENCE OF MALICE.
In determining whether actual malice existed, the jury can take into consideration the alleged libelous publication, in connection with other testimony tending to show the falsity of the charge and the want of probable cause, and thus determine if malice is proved.

9. SAME—AGENCY, WHEN LIABLE.
Where the published statement was calculated to affect injuriously the character of a merchant or business man, and was false, and the mercantile agency, without exercising ordinary care and caution in collecting it, unfairly and without reason to believe its truth, imparted the information to others recklessly, it will be liable.

At Law.

Rea, Kitchel & Shaw and *Chas. E. Flandrau*, for plaintiff.

White & Palmer, (*C. K. Davis*, of counsel,) for defendant.

NELSON, J., (*charging jury.*) This action is brought for libel. The plaintiff is a resident of Minneapolis, and a citizen of the state of Minnesota, and the defendant is a corporation created by the laws of the state of Connecticut, and has an agency located in the city of Minneapolis. The business of the defendant is to obtain information of the financial standing and character of business men throughout the United States, and for a consideration it enters into an agreement with its patrons to furnish them the information received. It does this in its own way, and gives the information in such form as it may deem advisable, and to its subscribers only. The corporation is engaged in a serviceable and useful business, unless there is abuse in its management. The corporation is not exempt from legal responsibility, and is subject to the same rules of law as other persons who may have a just occasion for making statements which are charged to be libelous. It has extensive facilities for securing information, and is of great service to the mercantile and financial interests of the country;

but if its opportunities are abused, and it is negligent in obtaining and imparting information, and reckless in its conduct, great injury results to the class of men whose interest its purpose is to advance. The information imparted in writing to the patrons of the defendant, reflecting upon the business conduct of the plaintiff, and charged to be a malicious statement injurious to his character and reputation, is the following:

"Their elevator has been condemned as unsafe, and the chamber of commerce decline to accept or do business with their wheat checks. The facts of the case seem to be that *Locke* has misled the other investors, and put up a building which is unsafe for business, and stands idle. The investors seem to regard themselves as having been victimized. The company cannot be considered as having a basis of any credit."

It is my duty to instruct you that every willful and unauthorized publication, written or printed, which imputes to a merchant, or other business man, conduct which is injurious to his character and standing as a merchant or business man, is a libel, and implies malice; but "whenever the author or publisher acted in the *bona fide* discharge of a public or private duty, legal or moral, or in the prosecution of his own rights and interests," that which is communicated in writing under such circumstances is a privileged communication, unless actuated by malice. If it is a privileged communication, then, although the statements are defamatory, actual malice must be proved to entitle the aggrieved party to recover damages. It is a legal question for the court to first determine if the alleged libel is within the protection afforded to privileged communications. "A communication is privileged, within the rule, when made in good faith in answer to one having an interest in the information sought, and it will be privileged, if volunteered, if the party to whom the communication is made has an interest in it, and the party by whom it is made stands in such relation to him as to make it a reasonable duty, or at least proper, that he should give the information." *Sunderlin* v. *Bradstreet*, 46 N. Y. 191. Applying the rule laid down to this case, and it is in proof that the information charged to be a libel was communicated to subscribers in the city of Minneapolis and Duluth, who had an interest in knowing it; and the communication is also volunteered to other persons who stood in such relation to the defendant as to make it a reasonable duty, or proper, that such information should be given; so that the conduct of the plaintiff consists of answers in writing to inquiries made, or volunteer information given to those who had an interest in it, and there was just occasion for imparting it to them. Therefore I instruct you that the information given was a privileged communication. You must now determine whether the privileged communication is defamatory and actuated by malice. The publication is submitted for your interpretation, and it is for you to settle the meaning and determine the character and effect of the statement complained of, and whether malice, in fact, is proved.

In a case like this, falsehood of the statement, and the absence of probable cause, will amount to proof of malice; and if you find from the evidence that the published statement was calculated to affect injuriously the plaintiff's character, and was false, and that the defendant, without exercising ordinary care and caution in collecting it, unfairly, and without reason to believe its truth, imparted the information to others recklessly, your verdict should be for the plaintiff. But if you find the plaintiff has not removed the presumption which attaches to this statement as a privileged communication, then the defendant is entitled to a verdict. In determining whether actual malice existed, you can take into consideration the alleged libelous publication, in connection with other testimony tending to show the falsity of the charge and the want of probable cause, and thus determine if malice is proved. If the plaintiff is entitled to a verdict, you are to fix the amount of damages, which must be reasonable and just.

The jury found a verdict for defendant.

See *Trussell* v. *Scarlett*, 18 FED. REP. 214, and note, 216.

SINGER *v.* CHARTER OAK INS. CO.[1]

(*Circuit Court, E. D. Missouri.* June 5, 1882.)

LIFE INSURANCE—PAID-UP POLICY ON HUSBAND'S LIFE FOR BENEFIT OF WIFE—AGENCY—AGREEMENT BY HUSBAND IN WIFE'S NAME TO REDUCTION OF AMOUNT OF INSURANCE.

Where a wife is in the habit of leaving all business affairs to her husband, and he, without her knowledge, insures his life for her benefit, and keeps possession of the policy, and pays all premiums himself until the policy is fully paid up, without action or interference on her part, and, after the policy is paid up, the insurance company becomes financially embarrassed, he has implied authority to bind her, by an agreement in her name, to a reduction of the amount of the insurance.

This was an action by the plaintiff, Regina Singer, as widow of Ferdinand Singer, and as beneficiary in a policy of life insurance for $5,000, taken out in the defendant company by her husband, and made payable to her. The policy was dated April 25, 1866, and was on the 10-year plan; that is, after payment of fixed premiums for 10 years it was a paid-up policy, payable to the beneficiary on death of the assured. After the lapse of this 10 years, the insurance company, being financially embarrassed, upon regular and formal procedure, proposed to its policy-holders that its outstanding policies

[1] Published by special request. Reported by Benj. F. Rex, Esq., of the St. Louis bar.