

The Supreme Court of Judicature Acts, 1873 and 1875
APPENDIX (C)

In the High Court of Justice
Division _____.

Between A. B. Plaintiff,
and
C.D. Defendant.

Statement of Claim.

1. Between the 1st of January and the 28th of February, 1875, the plaintiff supplied to the defendant various articles of drapery; and accounts and invoices of the goods so supplied, and their prices, were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant.
 2. On the 28th of February, 1875, a balance remained due to the plaintiff of £ 75, and an account was on that day sent by the plaintiff to the defendant showing that balance.
 3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque £ 25 on account of the same. The residue of the said balance, amounting to £ 50, has never been paid.
- The plaintiff claims £ 50.

In the High Court of Justice
Chancery Division

In the matter of the estate of A. B., deceased.

Between E. F. Plaintiff,
and
G. H. Defendant

Statement of Claim.

1. A. B., of K., in the county of L., duly made his last will, dated the 1st day of March, 1873, whereby he appointed the defendant and M. N. (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life ; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.
2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.
3. The testator was at his death entitled to real and personal estate ; the defendant entered into the receipt of the rents of the real estate and of the personal estate ; he has sold some part of the real estate.

The plaintiff claims —

1. To have the real and personal estate of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

In the High Court of Justice
Division ____.

Between A. B. and Company Plaintiffs,
and
E. F. and Company Defendants.

Statement of Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at ____, in the county of _____.
2. The defendants are commission agents, carrying on business in London.
3. In the early part of the year, the plaintiffs commenced, and down to the 1872, continued to consign to the defendants, as then-agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs.
4. No agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at ____ per cent, on all sales effected by them, which is the rate of commission ordinarily charged by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not.
5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances hereinafter mentioned liable as ordinary agents.
6. On the ____, the plaintiffs consigned to the defendants for sale a large quantity of goods, including tons of _____.
7. On or about the _____, the defendants sold tons of part of such goods to one G. H. for £ ____, at three months credit, and delivered the same to him.
8. G. H. was not, at that time, in good credit, and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.
9. G. H. did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of £ ____, or any part thereof.

The plaintiffs claim :

1. Damages to the amount of £ _____.
2. Such further or other relief as the nature of the case may require.

Statement of Defence.

1. The defendants deny that the said commission of ____ per cent mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers.
2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.
3. With respect to the eighth paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said G. H. was a person in good credit. If it be true that the said G. H. was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

In the High Court of Justice
Division_____

Between A. B. and C. D. Plaintiffs,
and
E. F. and G. H. Defendants.

Statement of Claim.

1. The plaintiffs are merchants, factors, and commission agents, carrying on business in London.
 2. The defendants are merchants and commission agents, carrying on business at Hong Kong.
 3. For several years prior to the 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents ; and each party always received the price of the goods sold by him for the other ; and a balance was from time to time struck between the parties, and paid.
On the _____ of _____, the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of £ _____ was accordingly due to the plaintiffs from the defendants.
 4. On or about the 1875, the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as the balance due to the plaintiffs from the defendants and the defendants agreed to the said statement of accounts as correct, and to the said sum of £ ____ as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.
 5. The defendants requested the plaintiffs to give them three months time for payment of the said sum of £ _____, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.
 6. The plaintiffs thereupon drew two bills of exchange upon the defendants, one for £ _____ and the other for £ _____, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.
The said bills became due on the _____, and the defendants have not paid the bills, or either of them, nor the said sum of £ _____.
- The plaintiffs claim :
£ _____ and interest to the date of judgment.

In the High Court of Justice
Admiralty Division.

Between A. B. and C. D. Plaintiffs,
and
E. F. and G. H. Defendants

Statement of Claim.

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine "Katie", of 194 tons register of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from

Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42' W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under double reefed mainsail, reefed main staysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. J N., and proceeding at the rate of about five knots and a half per horn.

3. At such time a steamship under steam and sail, which proved to be the screw steamship "American", was seen at the distance of three or four miles from the "Katie", broad on her port bow, and steering about E. or E. by S. The master of the "Katie," not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the "American", caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie", and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American" with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie".

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiff claims —

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for.

2. That the bail given by the defendants be condemned in such damage, and in costs.

3. That the accounts and vouchers relating to such damage be referred to the Registrar assisted by merchants to report the amount thereof.

4. Such further and other relief as the nature of the case may require.

Statement of Defence.

The defendants say as follows :

— Defence.

1. The "American" is a screw steamship, of 1368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of forty hands all told, laden with general merchandise, and bound from Port-au-Prince to Liverpool.

2. At the 8.5 a.m. on the 28th of November 1874, the "American" was in latitude 46° N, longitude 38° 16' W, steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie", was observed on the "American's"

starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the "American".

3. The "American" kept her course, and when the "Katie" was about three miles distant her ensign was observed by those on board the "American" run up to the main, and she was seen to have altered her course, and to be bearing down towards the "American." The "American's" ensign was afterwards run-up, and her master, supposing that the "Katie" wanted to correct her longitude, or to speak the "American", continued on his course expecting that the "Katie", when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the "American".

4. The master of the "American" watched the "Katie" as she continued to approach the "American", and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the "American", the helm of the latter was immediately put to starboard and engines stopped and reversed full speed; but notwithstanding, the "American" with her stem came into collision with the port side of the "Katie", a little forward of the main rigging.

5. The "American" engines were then stopped, and when the crew of the "Katie" had got on board of the "American", the latter's engines were reversed to get her clear of the "Katie", which sunk under the "American's" bows.

6. The "Katie" improperly approached too close to the "American".

7. Those on board the "Katie" improperly neglected to luff, and to pass to windward of the "American".

8. Those on board the "Katie" improperly attempted to cross the bows of the "American".

9. Those on board the "Katie" improperly ported her helm before the said collision.

10. Those on board the "Katie" improperly neglected to starboard her helm before the said collision.

In the High Court of Justice
Division _____.

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at and for six months before and up to the 22nd August 1872, the plaintiff was in the defendant's employment as a journeyman painter.
 2. On the said 22nd August 1872, the plaintiff came to work as Pleadings, usual in the defendant's yard, at about six o'clock in the morning.
 3. A few minutes after the plaintiff had so come to work the defendant's foreman X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.
 4. The defendant was present at the time when the plaintiff was given into custody, and authorised and assented to his being so given into custody ; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.
 5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.
 6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.
- The plaintiff claims £ _____ damages.

Statement of Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorised or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.
2. At some time about five or six o'clock on the evening the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.
3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near, the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.
4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

In the High Court of Justice
Division_____.

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. In or about March 1875, the defendant caused to be inserted in the Daily Telegraph Newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 sacks a week. The advertisement directed application for particulars to be made to X. Y.
 2. The plaintiff having seen the advertisement applied to X Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.
 3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 sacks a week.
 4. On the 5th of April 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for £ 500, and paid to him a deposit of £ 200 in respect of the purchase.
 5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.
 6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business ; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of £ 500, or any saleable value whatever.
 7. The defendant made the false representations herein-before mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.
- The plaintiff claims £ _____ damage.

Statement of Defence.

1. The defendant says that at the time when he made the representations mentioned in the third paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 sacks a week. And the defendant denies this (sixth paragraph of the statement of claim).
2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own. inquiries and investigations, and not upon any statement or representation whatever of the defendant.

In the High Court of Justice
Probate Division.

Between A. B. Plaintiff,
and
C. D. Defendant.

Statement of Claim.

1. M. N., late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on the day of _____, at No. 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

2. The plaintiff is the cousin-german, and one of the next of kin of the deceased.

The plaintiff claims : —

That the Court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next of kin.

Statement of Defence.

1. The defendant admits that M. N. died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew.

2. The deceased had a brother named G. B., who died in his lifetime.

3. G. B. was married to E. H. in the parish church of in the county of _____ on the day of _____ and had issue of such marriage, the defendant, who was born in the month of _____ and is the nephew and next of kin of the deceased.

The defendant therefore claims : —

That the Court pronounce that he is the nephew and next of kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

Reply.

1. The plaintiff denies that G. B. was married to E. H.

2. He also denies that the defendant is the issue of such marriage.

In the High Court of Justice
Division _____

Between A. B. Plaintiff,
and
C. D. Defendant.

Statement of Claim.

1. On ____ day of ____ the plaintiff, by deed, let to the defendant a house with premises No. 52, Street, in the City of London, for a term of 21 years from the day of at the yearly rent of £ 120, payable quarterly.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved whether demanded or not should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June 1872 a quarter's rent became due, and on the 29th of September 1872 another quarter's rent became due; on the 21st October 1872 both had been in arrear for 21 days, and both are still due.

5. On the same 21st October 1872 the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims : —

1. Possession of the said house and premises.

2. £ _____ for arrears of rent.

3. £ _____ damages for the defendant's breach of his covenant to repair.

4. £ _____ for the occupation of the house and premises from the 29th of September 1872 to the day of recovering possession.

In the High Court of Justice
Division _____

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. The plaintiff is a shoemaker, carrying on business at _____. The defendant is a soap and candle manufacturer, of _____.
2. On the 23rd May 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross _____ Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a dangerous pace out of Fleet Street into _____ Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.
3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.
The plaintiff claims £ _____ damages.

Statement of Defence.

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonging to Mr. John Smith, of _____, a carman and contractor employed by the defendant to carry and deliver goods for him; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.
2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.
3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.
4. The defendant does not admit the statements of the third paragraph of the statement of claim.

In the High Court of Justice
Division _____.

Between A. B. Plaintiff,
and
E. F. Defendant

Statement of Claim.

1. The defendant on the day ____ of 1874 made his promissory note, whereby he promised to pay to the plaintiff three months after date.
2. The note became due on the day ____ of 1874 and the defendant has not paid it.

The plaintiff claims : —

The amount of the note and interest thereon to judgment.

Statement of Defence.

1. The defendant made the note sued upon under the following circumstances : — The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.
2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded £ 10,000, and that the liabilities of the firm were under £ 3,000, whereas the fact was that the assets of the firm were less than £ 5,000, and the liabilities of the firm largely exceeded the assets.
3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

In the High Court of Justice
Common Pleas Division.

Between A. B. Plaintiff
and
C. D. Defendant

Statement of Claim.

1. On the day ____ of ____ the plaintiff let to the defendant a house, No. 52, Street _____, in the city of London, as tenant from year to year, at the yearly rent of £ 120, payable quarterly, the tenancy to commence on the day _____ of _____.
2. The defendant took possession of the house and continued tenant thereof until the day _____ of last _____, when the tenancy determined by a notice duly given.
3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims : —

1. Possession of the house.
2. £ _____ for mesne profits from the day of the notice.

In the High Court of Justice
Common Pleas Division.

Between A. B. and C. D. Plaintiffs
and
E. F. Defendant

Statement of Claim.

1. K. L., late of Sevenoaks in the county of Kent, duly executed his last will, dated the 4th day of April 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.
2. K. L. died on the 3rd day of January 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February 1875.
3. K. L. was at the time of his death seized in fee of a house at Sevenoaks, and two farms near there called respectively the Home farm containing 2700 acres, and the Langton farm containing 700 acres, both in the County of Kent.
4. The defendant, soon after the death of K. L., entered into possession of the house and two farms, and has refused to give them up to the plaintiff.

The plaintiff claims : —

1. Possession of the house and two farms.
2. £ _____ for mesne profits of the premises from the death of K. L. till such possession shall be given.

In the High Court of Justice
Division _____.

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. The plaintiff was on the 5th March 1876, and still is the owner and occupier of a farm called Highfield Farm, in the parish of _____ and county of _____.
2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.
3. For a long time prior to the 5th March 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.
4. On the 5th March 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to lie placed across the same.
5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims:

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

Statement of Defence.

1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th March 1876, the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway.
2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the plaintiff lawfully to use the highway.