

(ORIGINAL)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, 392358
IN AND FOR THE COUNTY OF LOS ANGELES

(Name of Filing)

(For Clerk's Filing Stamp)

CHARLOTTE STEELE,

COMPLAINT FOR DAMAGES
FOR LIBEL

Plaintiff

HEATH & CO., INC., a Corporation,

and J. LAWRENCE PAGE,

Defendant

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2017 Donald Ross
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SIMPSON & SIMPSON

Attorneys at Law

Los Angeles, California

Attorneys for Plaintiff

Received copy of the within this day of 19

Attorney for

Received copy of the within this day of 19

Attorney for

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
2 IN AND FOR THE COUNTY OF LOS ANGELES.
3
4

392358

5
6 CHARLOTTE SHELBY,

7 Plaintiff,

8 -vs-

COMPLAINT FOR DAMAGES FOR
LIBEL

9 BLYTH & CO., INC., a Corporation,
10 and J. LAWRENCE PAGEN,

11 Defendants.
12

13 Plaintiff complains of defendants and alleges:

14 FOR A FIRST CAUSE OF ACTION

15 I.

16 Blyth & Co., Inc. is, and at all times herein
17 mentioned was, a corporation organized under the laws of Delaware,
18 and is, and at all times herein mentioned was, licensed to do
19 business in the State of California. At all times herein mention-
20 ed Blyth & Co., Inc. was engaged in business in and had an office
21 in the County of Los Angeles. Plaintiff is informed and believes,
22 and on such information and belief alleges, that defendant
23 J. Lawrence Pagen is a resident of the State of New York.
24

25 II.

26 On July 11, 1933, and at all subsequent times here-
27 in mentioned, there was pending in the Superior Court of the
28 State of California, in and for the County of Los Angeles, an action
29 entitled, "Charlotte Shelby, Plaintiff, vs. The Holding Company, et
30 al, Defendants", being numbered 355220 in the civil files of said
31 Court, wherein plaintiff Charlotte Shelby was the plaintiff therein,
32 and defendants, Blyth & Co., Inc., and J. Lawrence Pagen, were

1 among the defendants therein. Said action is hereinafter sometimes
2 referred to as the "civil action". On said date, to-wit, July 11,
3 1933, and prior thereto, and since on or about December 9, 1932,
4 there was pending in the said Court an action entitled, "The People
5 of the State of California, Plaintiff, vs. Leslie B. Henry, Defend-
6 ant", said action being numbered 80897 in the criminal files of said
7 Court. Said action is hereinafter sometimes referred to as the
8 "criminal action". Neither plaintiff nor any of the defendants here-
9 in was a party to the said criminal action. In the said criminal
10 action Leslie B. Henry, defendant therein, did on or about April 10,
11 1933, enter a plea of guilty to certain counts of an indictment
12 pending against him in the said criminal action. In the said civil
13 action the defendants herein named, to-wit, Blyth & Co., Inc., and
14 J. Lawrence Pagen, pursuant to notice, on or about June 27, 1933,
15 did call and examine said Leslie B. Henry as a witness on behalf
16 of the defendants in the said civil action, including the defend-
17 ants herein, by deposition before a Notary Public. Said examination
18 continued from day to day thereafter to-wit, on June 27, June 28,
19 June 29, June 30, July 1, July 5, July 10, July 11, 1933, and there-
20 after.

21 III.

22 On July 11, 1933, the defendants herein, to-wit,
23 Blyth & Co., Inc., and J. Lawrence Pagen, through their attorney
24 Milton Schwartz, elicited from the said witness Leslie B. Henry,
25 as part of said deposition, the statements hereinafter in this
26 paragraph set forth. Plaintiff is informed and believes, and on
27 such information and belief alleges, that said defendants, and
28 each of them, well knew what the answers of the said witness would
29 be to the questions propounded to him, and well knew at the time
30 of the said examination, and before the witness made the state-
31 ments hereinafter set forth, what his testimony would be. Said
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examination was conducted by the defendants with malicious intent and for the purpose of injuring the plaintiff in her name and reputation, and for the purpose of exposing her to hatred, contempt, ridicule, and obloquy. Said examination and the testimony elicited thereby were, and each part of the same was, irrelevant to the said civil action and to any issue therein. Said statements so made by said Leslie B. Henry in response to the examination conducted by the defendants as aforesaid, were, and each of them was, made by the said Leslie B. Henry of and concerning the plaintiff, maliciously, with ill will toward the plaintiff, and with the intent, design and purpose of injuring the plaintiff in her good name and reputation, and of exposing plaintiff to hatred, contempt, ridicule, and obloquy. Said statements so made by said Leslie B. Henry of the plaintiff, as aforesaid, were in words and figures as follows:

Henry & Brown
Attorneys at Law
St. Louis, Mo.

1 "A. [By Leslie B. Henry] Some time within
2 a month or two of Mrs. Shelby leaving, I think it
3 was along in March or April, 1926, Mrs. Shelby
4 called me and asked me to come to the house; that a
5 situation had developed that was of a very serious
6 nature, and to please not fail to come.

7 Q. [By Mr. Schwartz] Did you go?

8 A. I did.

9 Q. What was your conversation, if you
10 had one?

11 A. To the best of my recollection,
12 Mrs. Shelby told me that District Attorney
13 Keyes was on his way to New York in connect-
14 ion with the Taylor murder case, and that she
15 was convinced that Mary - She told me that Mary
16 would probably lie about her, and wanted to
17 know what she should do under the circumstances.
18 I asked Mrs. Shelby, had she talked to Mr. Mott
19 about it, and she told me that she had not talked
20 to Mott, and told me that, 'A friend of mine
21 on the Examiner' had given her the information.

22 Q. A friend of yours?

23 A. I mean a friend of hers. I told
24 Mrs. Shelby I saw nothing that could be done
25 about it until Mr. Keyes' return. She was
26 in a hysterical state - I cannot describe it.
27 She told me, 'This will kill me.' I told
28 Mrs. Shelby, 'You haven't anything to fear in
29 this. You need feel no sense of guilt.' She
30 said, 'I don't know what Mary will tell him.'
31 And whether it was just that conversation or
32 a series - I don't know. This thing occupied
33 weeks in there.

34 Q. You mean you had a number of con-
35 versations on the subject?

36 A. Yes. I had conversation after
37 conversation with Mrs. Shelby about this partic-
38 ular incident, and it became absolutely criti-
39 cal - well, Mrs. Shelby told me, 'I can't wait
40 for this thing. I have got to get out, and
41 get out now.' I told Mrs. Shelby that if
42 there was any information got out that Keyes
43 had gone to New York for the purpose of mak-
44 ing an investigation of this matter, that for her
45 to make a move at that particular time would be
46 probably to be caught, and put in an absolute-
47 ly impossible position, so far as the Taylor
48 case and other matters were concerned. The
49 matter got into the newspapers -

50 * * * * *

51 Q. Do you have a recollection of any
52 newspaper articles on the subject of the su-

1 called Taylor murder case at that time?

2 * * * *

3 A. Yes, I know.

4 * * * *

5 MR. SCHWARTZ: Did you see articles
6 appearing in the newspapers at that time?

7 * * * *

8 A. I did.

9 * * * *

10 MR. SCHWARTZ: Did you discuss any of
11 these articles with Mrs. Shelby?

12 A. On the appearance of any article
13 that had any new development in that case Mrs.
14 Shelby would call me and have me come to the
15 house to talk with her regarding the new phases
16 of it.

17 * * * *

18 MR. SCHWARTZ: Will you go ahead and
19 give us your best recollection of the conversa-
20 tions you had in the series of talks, when you
21 say you went out there frequently, when the mat-
22 ter was under discussion?

23 A. The question of the passport, and
24 the citizenship and everything came very much
25 to the front in connection with this. I am
26 trying to segregate them. I can only tell you
27 this, that Mrs. Shelby called me to her house
28 many times during the period I believe of I think
29 it was March, April and May - it was right near
30 the time of sailing, in connection with, as I
31 said, new developments in the case. Mrs. Shelby
32 would call me and tell me, 'The papers called
33 up today and asked me' such and such a question, and
34 among other things they asked her whether she was
35 a crack shot with a revolver, and whether she had
36 a revolver in the house, and Mrs. Shelby said,
37 'The only revolver that ever was in the house
38 as far as I know was one that Mary one time
39 tried to get to shoot me.'

40 Q. Shoot whom?

41 A. Mrs. Shelby. She on some of these
42 occasions asked me - on all occasions, asked me
43 how she was going to stop this situation from
44 the papers, particularly just before Mr. Keyes
45 got back, and I told her on each occasion, 'Mrs.
46 Shelby, you are going to have to wait until the
47 District Attorney is here.' She told me she
48 had talked with Mr. Mott, and Mr. Mott had told
49 her the same thing.

1 I talked with Mr. Mott, and Mr. Mott said
2 the same thing. 'There is not a thing that can
3 be done on this until Mr. Keyes is here, and we
4 can talk to him.'

5 I said to Mrs. Shelby on one occasion,
6 'You are perfectly convinced that you can tell a
7 connected and witnessed story of what you were
8 doing on that night?' She told me - I can't
9 repeat it, but it was exactly the same story she
10 told me right after the Taylor murder, of what
11 she had done that night. I said, 'I can't see
12 why you should continue to worry about it.' She
13 was just distraught upon each of these oc-
14 casions.

15 I said, 'Put faith in your own innocence
16 in the situation.' She said, 'I don't know
17 what that girl will tell Keyes.' I told her
18 that after all there was nothing she could tell
19 Keyes that must not be subjected to investi-
20 gation and study and search. She said, 'All
21 Mary is doing is trying to ruin me, in ad-
22 dition to the financial situation.' Mrs.
23 Shelby said, 'And after all she may be lying
24 for herself.' I said, 'You don't mean, Mrs.
25 Shelby, that Mary had anything to do with that?'
26 And she said, 'She may have been damned fool
27 enough to have done it.'

28 Incidentally there was a similar remark
29 made after the actual death of Taylor. In try-
30 ing to relieve her of fear I told her, 'You
31 have just got to stand on your own conscious-
32 ness of your innocence, and the nature of the
33 story that you have told me, and if it will stand
34 up the district attorney will do nothing to
35 you.'

36 When Mr. Keyes returned -

37 Q. Did you have any further conversa-
38 tions with Mrs. Shelby on the same subject after
39 Mr. Keyes returned?

40 A. Yes, I did.

41 Q. At the same place?

42 A. Yes.

43 Q. Will you give us the conversation?
44 First, did Mrs. Shelby, if you know, remain in
45 the City during this period of time, or did she
46 go out of the City at any time?

47 A. During this period of February until
48 June, 1966, I was going to tell you that I am
49 trying to place the time -

50 MR. DENISON: That is not a complete
51 answer. Trying to place the time, of what?
52

1 THE WITNESS: Oh, I had not answered the
question. No, she did not remain in the City.

2 MR. SCHWARTZ: Do you know where she
3 went?

4 A. Mrs. Shelby told me when Keyes
5 was expected here, and that she was not going
6 to stay here and be indicted for the murder of
7 Taylor. That she was going to get out then.
8 And I told Mrs. Shelby, 'If you leave under
9 these circumstances it will be quite possible
10 in my estimation for you to be indicted. If ever
11 there was a time when you should be on the ground,
12 this is it, at this time.'

13 She told me that to follow that kind of
14 advice would be just to 'Sit here and not only
15 be indicted but probably find myself confronted
16 with framed testimony.' She said, 'I can show
17 legitimate reasons for leaving the City. They
18 can't indict me on the score of a departure, be-
19 cause if either you or Mr. Mott get any inquiry
20 you can tell them I am away on business relating
21 to my mother's affairs, my mother's estate.

22 Mrs. Shelby told me she was having absolute-
23 ly no contact with the newspapers, and hid herself
24 away from any association with anybody.

25 Q. You mean this was in a conversation?

26 A. Yes, and Mrs. Shelby told me, 'I am
27 going to get out of here, and whatever has to
28 come through you or through Mr. Mott it can be
29 stated that I am out of the City in connection
30 with my mother's affairs.' To the best of my
31 knowledge Mrs. Shelby - She told me that she was
32 going down to Louisiana, and that in the small
33 towns there it would not be possible for anybody
34 to locate her.

35 Q. Do you know how long she remained away?

36 A. I don't remember whether it was several
37 or three weeks. I cannot tell you.

38 Q. Did you see her when she came back?

39 A. I did.

40 Q. Did you have any conversations with
41 her?

42 A. Yes.

43 Q. On this same subject matter in connect-
44 ion with the death of Taylor?

45 A. Yes.

46 Q. Go ahead and give us your best re-
47 collection of any conversations she had in the

1 period before she left for Europe.

2 A. After I returned there was a constant
3 rehash of this same situation, of apprehension,
4 not knowing what was going to happen, and she told
5 me that Mr. Mott assured her that if the matter
6 had not been taken up with the grand jury it was
7 not going to result, in his estimation, in any
8 action at that time. That Keyes was apparently
9 not prepared to go ahead with it.

10 Mrs. Shelby told me that Mr. Mott told
11 her that Keyes had, I believe, told him that he
12 had insufficient evidence, despite what he had
13 learned in New York, to bring an indictment with-
14 out further investigation.

15 Mrs. Shelby told me, 'I am going to
16 demand that the district attorney's office make
17 a statement exonerating me in this and call this
18 thing off now, or it will surely be reopened
19 again, and it may stop me from going abroad, or
20 bring me back when it would be to my greatest
21 embarrassment.' I asked her how she was going
22 to get that kind of a statement. She said, 'I
23 have demanded of Mott that he talk with Keyes and
24 get that kind of a statement from him.' She
25 said, 'Don't you think I should be exonerated?'
26 And I said, 'Unquestionably. If there is any
27 possible way of getting you clear on this thing
28 I would surely leave no stone unturned in order
29 to get it.' She asked me if I knew Keyes,
30 and I told her that I did not. But I told her
31 that I knew a deputy in the district attorney's
32 office, Pitts, and she said, 'Can't you talk to
33 him and see whether he can - You tell Pitts what
34 kind of a man I am' - beg pardon, 'what kind of
35 a woman I am, and let him carry that word to
36 his superior.' I told her I would do that if
37 Mott was unsuccessful with Keyes.

38 Mrs. Shelby told me that she felt very
39 certain that Mr. Mott could get that kind of a
40 statement from Mr. Keyes. I asked her whether
41 Mr. Mott had given her that kind of an assur-
42 ance, and she said she was confident that by rea-
43 son of Mr. Mott's position in the community that
44 he could obtain such a statement.

45 I told Mrs. Shelby that I could not be-
46 lieve that Mr. Mott had made any such assurance
47 to her, because I could not conceive of the
48 district attorney coming out with a public
49 statement, or even a secret signed letter to
50 her exonerating her of a crime, especially in
51 a situation where they evidently were all at sea,
52 where new developments might at some future time
53 make the district attorney appear in an absolute-
54 ly impossible position.

55 I told her that seeing Mr. Pitts was
56 just about as purposeless, and that I would be
57 very much surprised if Keyes signed any such

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statement.

I cannot differentiate these conversations. Mrs. Shelby told me on more than one occasion after that, in conversations at her home, that she had not been able to get anything out of Mott. That Mott had not gotten this statement which he had promised to try to get for her. And finally, I believe it was within a month of the time she sailed, she told me that Mott had told her that Keyes would not sign such a statement, and she told me, 'Without that exoneration I cannot stay in this country safely. You must speed up everything for me to get away from here before something happens.'

That was about the substance of those conversations at that time.

Q. Did you have conversations with her in New York on that same subject?

A. That was in New York, when that came up. I am trying to place -

MR. LEWINSON: Mr. Schwartz, I don't understand whether that question has been answered yes or no, whether he had conversations in New York.

MR. SCHWARTZ: He said yes. Did you answer, Yes?

A. Yes.

Q. You say you are trying to place when and where it occurred?

A. Yes, whether in the express office, or coming away from the express office - I don't remember.

Q. Was there anyone present besides the two of you?

A. I don't remember whether Barbara was with me or not. I cannot really place Barbara in that picture. Mrs. Shelby asked me, did I think that she could be caught before she left on the boat, by a warrant from the district attorney's office in connection with the Taylor murder case. She said, 'I seem to have gotten by the Government as far as my passport is concerned, but can the district attorney at Los Angeles pick me up here in New York on a warrant for my arrest?'

Q. On a 'warrant for my arrest?'

A. Yes. I told her that I did not think a warrant could be issued against her

1 unless she had been indicted, or a complaint
2 had been filed, and it had been very evident
3 before she left Los Angeles, from informa-
4 tion Mr. Mott had given her, and from what Mr.
5 Mott had told me, and that I told her, that
6 they were not going to take any chances on
7 indicting Mrs. Shelby without better evidence
8 than they had, or they would have done it
9 when they came back from New York. She
10 said, 'They might do it, if it is found out
11 in Los Angeles that I am out of the City with
12 this property, because no action can be taken
13 by Mr. O'Melveny against me here. Mr. O'Melveny
14 might use the district attorney's office to stop
15 me in some way.' I told her I thought that
16 was ridiculous, and not to worry herself in
17 the few hours before she was to sail, over a
18 matter of that kind.

19
20 One of the last things she asked me
21 in New York was, 'Can they extradite me in
22 Europe without indicting me?' I told her
23 I was certain they could not. She said, 'Well,
24 I can't get caught off-guard,' and I told her if
25 there was any indictment developed in the case
26 that I was certain that Mr. Mott would have
27 early acquaintance with it, and that while he
28 would on discovery that she was in Europe be
29 very, very angry over having been left in a
30 somewhat embarrassing position of her as her
31 attorney not having been informed of her de-
32 parture; that I thought Mr. Mott would be the
33 first one to be informed as to anyone that
34 could reach her, telling her of any danger
35 of that nature, and that it would probably
36 be in the newspapers, and certainly there
37 would be speedy enough information to in-
38 form her, so that before the service of a
39 warrant, or any extradition proceedings she
40 would know what her situation was. She told
41 me, 'Well, they will have to find me if you
42 or Margaret get word to me that an indictment
43 has come.' I told her to forget the indict-
44 ment. That was about the substance of the
45 talk."

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IV.

By the said statements and testimony the said Leslie B. Henry meant and charged, intended to be understood as meaning and charging, and was understood by all who heard or read his testimony, including the defendants, and each of them, to mean and charge, that plaintiff had committed the crime of murder; that plaintiff desired and planned to flee the jurisdiction of the State of California because she had committed a crime in connection with the death of William Desmond Taylor; that plaintiff had fabricated false reasons for her desire to leave the jurisdiction, and that the true reason was that she had guilty knowledge concerning the death of William Desmond Taylor and that she feared that she would be prosecuted for, and convicted of, the murder of the said Taylor; that plaintiff had cause to fear an investigation of the facts surrounding the death of the said Taylor; that plaintiff had information which, if discovered, would lead to her indictment for, and conviction of, murder; that for the purpose of concealing her conduct on the night of the death of William Desmond Taylor, plaintiff fabricated a false story of her activities on said night; that plaintiff had made false statements relative to the death of said Taylor; and that plaintiff had committed a crime on the night of the death of said William Desmond Taylor. Defendants, and each of them, understood Leslie B. Henry to mean and intend, by his statements hereinabove set forth, each and every charge and meaning hereinabove alleged. Plaintiff is informed and believes, and on such information and belief alleges, that defendants, and each of them, knew that the said statements would be understood by every person who read or heard said statements to mean the charges and meanings hereinabove alleged.

V.

Said charges and meanings were and are, and each of them was and is, wholly false, as the said Leslie B. Henry then

1 and there well knew. Plaintiff is informed and believes, and on
2 such information and belief alleges, that the defendants, and each
3 of them, knew on July 11, 1933, and at the time the said Leslie B.
4 Henry made the statements hereinabove set forth, and at all sub-
5 sequent times, that said charges and meanings were, and each of them
6 was, wholly false.

7 VI.

8 On or about the said 11th day of July, 1933, the
9 statements of Leslie B. Henry hereinabove in paragraph III set
10 forth were transcribed in typewriting upon paper, and legible copies
11 made thereof. On or about the 12th day of July, 1933, defendants,
12 and each of them, published the said statements by causing to be de-
13 livered to the Honorable Charles S. Burnell, Judge of the Superior
14 Court of the State of California, in and for the County of Los
15 Angeles, and to F. K. English, Probation Officer of the County of
16 Los Angeles, one of the said copies of the transcript of the deposi-
17 tion of July 11, 1933, including the statements of said Leslie B.
18 Henry hereinabove set forth. At the time of its delivery as afore-
19 said said transcript had not been read, corrected or signed by the
20 witness, Leslie B. Henry, and was not filed in the said civil action.
21 At the time of the delivery of the said transcript as aforesaid,
22 the said deposition had not been completed in this, that the direct
23 examination of the said witness had not been concluded and no cross-
24 examination or opportunity therefor had been had. Defendants, and
25 each of them, acted maliciously in causing the said statements to
26 be published, in this, that they, and each of them, intended to
27 injure plaintiff in her name and reputation, and to expose her to
28 hatred, contempt, ridicule and obloquy; and, further, said de-
29 fendants, and each of them, intended that said transcript should
30 be read by the said Honorable Charles S. Burnell and F. K. English,
31 and by many other persons, and further intended that said state-

1 and "B", and by reference set forth at length herein.

2
3 FOR A SECOND CAUSE OF ACTION

4 I.

5 Plaintiff hereby refers to and reincorporates
6 paragraph I of her FIRST CAUSE OF ACTION, and hereby realleges each
7 and every allegation therein contained as though set out herein at
8 length.

9 II.

10 On June 27, 1933, and at all subsequent times here-
11 in mentioned, there was pending in the Superior Court of the State of
12 California, in and for the County of Los Angeles, an action entitled,
13 "Charlotte Shelby, Plaintiff, vs. The Holding Company, et al, De-
14 fendants", being numbered 355220 in the civil files of said Court,
15 wherein plaintiff Charlotte Shelby was the plaintiff therein, and
16 defendants, Blyth & Co., Inc., and J. Lawrence Fagen, were among
17 the defendants therein. Said action is hereinafter sometimes re-
18 ferred to as the "civil action". On said date, to wit, June 27,
19 1933, and prior thereto, and since on or about December 9, 1932,
20 there was pending in the said Court an action entitled, "The People
21 of the State of California, Plaintiff, vs. Leslie B. Henry, De-
22 fendant", said action being numbered 50897 in the criminal files
23 of said Court. Said action is hereinafter sometimes referred to
24 as the "criminal action". Neither plaintiff nor any of the de-
25 fendants herein was a party to the said criminal action. In the
26 said criminal action Leslie B. Henry, defendant therein, did on
27 or about April 10, 1933, enter a plea of guilty to certain counts
28 of an indictment pending against him in the said criminal action.
29 In the said civil action the defendants herein named, to wit, Blyth
30 & Co., Inc., and J. Lawrence Fagen, pursuant to notice, on or about
31 June 27, 1933, did call and examine said Leslie B. Henry as a
32

1 witness on behalf of the defendants in the said civil action, in-
2 cluding the defendants herein, by deposition before a Notary Public.
3 Said examination continued from day to day thereafter, to wit, on
4 June 27, June 28, June 29, June 30, July 1, July 10, 1933, and
5 thereafter.

6
7 III.

8 On June 27, 1933, and on July 10, 1933, the de-
9 fendants herein, to wit, Blyth & Co., Inc., and J. Lawrence Fagen,
10 through their attorney Milton Schwartz, elicited from the said
11 witness, Leslie B. Henry, as part of said deposition, the statements
12 hereinafter in this paragraph set forth. Plaintiff is informed
13 and believes, and on such information and belief alleges, that said
14 defendants, and each of them, well knew what the answers of the
15 witness would be to the questions propounded to him, and well knew
16 at the time of the said examination, and before the witness made
17 the statements hereinafter set forth, what his testimony would be.
18 Said examination was conducted by the defendants with malicious
19 intent and for the purpose of injuring the plaintiff in her name
20 and reputation, and for the purpose of exposing her to hatred,
21 contempt, ridicule and obloquy. Said examination and the testimony
22 elicited thereby were, and each part of the same was, irrelevant
23 to the said civil action and to any issue therein. Said statements
24 so made by said Leslie B. Henry in response to the examination
25 conducted by the defendants, as aforesaid, were, and each of them
26 was, made by the said Leslie B. Henry of and concerning the plain-
27 tiff, maliciously, with ill will toward the plaintiff, and with
28 the intent, design and purpose of injuring the plaintiff in her
29 good name and reputation, and of exposing plaintiff to hatred, con-
30 tempt, ridicule and obloquy. Said statements so made by said Leslie
31 B. Henry of the plaintiff on June 27, 1933, as aforesaid, were in
32 words and figures as follows:

1 A. [By Leslie B. Henry] Well, I told
2 Mrs. Shelby that I did not want to take the
3 money that she was offering me; and she urged
4 it as something that I couldn't refuse on ac-
5 count of the youngster; that after all she
6 was not giving it to me - she was giving it to
7 the youngster; and I still did not like to
8 take it; I told her so. She told me that
9 throughout the year, aside from investments
10 which I had made for her, in talking with
11 Mary on her behalf, in making it possible
12 for her to meet her obligations - or Mary's
13 obligations - with regard to Margaret and
14 Mrs. Miles and at the same time have the
15 advantage of a lower income tax return, and
16 in this matter of establishing these losses
17 with her, together with the purchase of the
18 opal in Australia, that I had turned over to
19 her and which she had been able or tried at
20 least to make useful in promoting a friend-
21 lier attitude between Mary and herself and
22 myself, that she felt that I should have it
23 and that I couldn't refuse it, particularly
24 so far as the child was concerned; and on my
25 saying that I wouldn't take it she showed an
26 element of irritation.

14 Q. [By Mr. Schwartz] How did she show
15 the element of irritation?

16 A. Well, I say 'element of irritation' -
17 not by speech, but by her manner; and stating
18 'Well, if you won't take it I will give it to
19 Mrs. Henry; she won't refuse it - for the
20 youngster.' I finally agreed to take it;
21 and Mrs. Shelby prepared a check for \$10,000
22 and asked me to deposit that in my bank.

20 * * * * *

21 Q. Now, will you continue, Mr. Henry,
22 with your recital of the substance of the
23 conversation, and what was done, if anything,
24 in pursuance to the conversation?

24 A. Mrs. Shelby wrote out this check
25 for \$10,000 on the First National Bank of
26 Los Angeles - made it to me personally.

26 Q. Was it signed or was it not?

27 A. It was signed.

28 Q. By whom?

29 A. By Charlotte Shelby - and asked me
30 to cash it at my bank and bring her \$9,500
31 in cash - retaining the \$500 as this gift.
32 I protested this --

31 Q. You will have to tell us, if you
32 can, substantially what was said.

1 A. Mrs. Shelby told me that the can-
2 celled check, with my endorsement on it, would
3 be useful to her in making an income tax de-
4 duction, and I protested it.

5 Q. Give us what you said, please.

6 A. I told Mrs. Shelby that I was afraid
7 that she would find herself seriously challenged
8 on the procedure, because I was receiving a
9 salary from Blyth, Witter & Company; and that
10 I thought the government would challenge the pay-
11 ment to me of \$10,000 when I was presumed only
12 to be a bond man, working with her. And she
13 said that there was no danger of that from
14 her point of view; that she was paying
15 publicity men thousands of dollars - and
16 others in connection with the obtaining of
17 contracts - and various other items that every
18 moving picture star or manager of a moving
19 picture star was expected to pay; and the
20 fact that she had a financial manager at
21 \$10,000 a year wouldn't cause her any trouble
22 so far as any investigation was concerned.
23 She stated furthermore that she was going
24 to take the matter up with Miss Berger, and
25 that if it couldn't be safely used, it
26 wouldn't be used.

27 And I pointed out to her that my own
28 income was such that to receive and show a
29 \$10,000 return, which she told me she would
30 pay the tax on (such excess tax as I had to
31 pay) would, I thought, possibly cause trouble.
32 I also told her that I was afraid that Miss
33 Berger, of whom she had talked as one of
34 whom she was somewhat afraid of talking about
35 her business, and the like, might say some-
36 thing about my doing such a thing; and I
37 would be in anything but an enviable posi-
38 tion by reason of it. Mrs. Shelby told me
39 that she wanted me to do this as a favor to
40 her, and that if anything developed out of
41 it, that so far as I was concerned she and
42 Miss Berger would be responsible for what
43 resulted from it. I told her that I was
44 not interested in the responsibility for it;
45 and, without being able to go any further so
46 far as the conversation is concerned, I
47 finally agreed to do what she said.

48 Q. Will you tell us substantially what
49 you said, which was culminated in the final
50 agreement?

51 A. I told Mrs. Shelby that I would do
52 it. But I told her I did not like to be in the
53 position of taking a check into a Pasadena
54 bank and depositing it in my account and
55 then drawing out \$8,500 in cash in a lump
56 sum. Mrs. Shelby said, "Well, then, you
57 give me your check for \$8,500 now in
58 exchange for my check for \$10,000;" and
59 I don't remember whether I had a check of

1 my own or whether one of Mrs. Shelby's checks
2 which I changed to be drawn on my own bank
or what; but I gave her my check for \$9,500.

3 Q. Made out to whom?

4 A. Made out to Charlotte Shelby - I then
took her check for \$10,000.

5 Q. You took it with you that night, you
6 say?

7 A. I took it with me that night.

8 Q. What did you do with the \$10,000
9 check?

10 A. I deposited it in my bank in
Pasadena; I think it was the National Bank
11 of Pasadena then, or the Pasadena National
Bank, at Colorado and Broadway.

12 * * * * *

13 Q. Now, was there any further con-
14 versation between you and Mrs. Shelby as
or about the time of the delivery to you of
15 this \$10,000 check as to what it was for or
supposed to be for?

16 A. Well, Mrs. Shelby told me that she
17 intended using it as a deduction on her in-
come tax; as compensation to me, as fiscal
18 agent for her. And when I was protesting,
when I was telling her that I did not wish
19 to accept it, she told me, she said, 'Well,
if this were not my daughter's money that I
20 am handling - if this were my own funds -
I would consider that you had earned it and
21 I would pay you \$10,000; but this is Mary's
money and I can't do more for you than I
22 have done in the way of a gift to the young-
ster.' I think that was about all the
23 conversation.

24 * * * * *

25 A. Some time after this conversation
on December 13th and before the tax day -
26 it would be in - I can't place the time -
in 1921 - before tax day in March of 1921 -
27 Mrs. Shelby told me --

28 Q. Are you able to tell us where the
conversation was or who were present?

29 A. I believe that this conversation
30 occurred in the bungalow at 701 New Hampshire,
or the bungalow at the Ambassador Hotel.

31 Q. Bungalow?

32 A. Bungalow at 701 New Hampshire, or

1 Ambassador Hotel.

2 Q. Was there a bungalow there then?

3 A. It was attached to the main house,
4 701 New Hampshire.

5 Q. I see; who was present?

6 A. Again, Mrs. Shelby and myself and
7 Miss Margaret Shelby, and possibly her mother,
8 Mrs. Miles.

9 Q. What was this conversation in sub-
10 stance?

11 A. Mrs. Shelby told me that Miss
12 Berger had refused to use the \$10,000 check
13 as a deduction and that she - Mrs. Shelby -
14 had told Miss Berger that I was permitting
15 myself to be used for the purpose of a de-
16 duction and that \$10,000 had not been paid;
17 and that she had told Miss Berger that she
18 had paid me a thousand dollars, and that Miss
19 Berger had stated that she felt safe and felt
20 that she could defend a deduction of \$1,000
21 made by Mrs. Shelby on the basis of my acting
22 as fiscal agent for her. Mrs. Shelby asked
23 me whether I had filed my income tax return
24 and I told her that I had not, and asked me to
25 include the figure \$1,000 as received from her -
26 Mrs. Shelby - as salary for services as fiscal
27 agent.

28 Q. Did you do that?

29 A. I did.

30 * * * * *

31 MR. LEVINSKY: May I interrupt, so
32 as to follow this - I want to be sure that I
33 understand it: as I understand the testi-
34 mony of the witness, he states that he in-
35 cluded in his 1920 income tax return an in-
36 come - or alleged income - figure of \$1,000
37 which he did not actually receive, as com-
38 ing from Charlotte Shelby as fiscal agent;
39 is that correct?

40 A. Yes.²

41 Said statements so made by said Leslie B. Henry
42 of the plaintiff as aforesaid on July 10, 1933, were in words
43 and figures as follows:

44 * Q. [By Mr. Schwartz] Out from where?

45 A. From New York. Well, as I say, in
46 August and September, when Mrs. Shelby came very

1 definitely on this point of leaving. I told
2 Mrs. Shelby that the moment that she left Los
3 Angeles, that I would be just simply a center
4 of inquiry so far as Mr. Mott and Mr. O'Melveny
5 were concerned; that I would just be in the
6 position of having to lie to them as to what
7 she was doing and where she was going; and
8 that I frankly did not believe that when either
9 Mr. Mott or Mr. O'Melveny discovered what she
10 had actually done - converting property into
11 securities or into cash and getting away with
12 it - I knew that they would be critical of
13 me, with my firm, and that I would be in the
14 position of probably being pinned down by the
15 officers of the firm as to what had happened,
16 if I knew, with Mrs. Shelby's funds. I told
17 her that I would never tell them, but on the
18 other hand, that I was going to be in the posi-
19 tion of being suspected by Mr. O'Melveny and
20 by Mr. Mott of absolute double-dealing so far
21 as they were concerned. I told Mrs. Shelby
22 that I was satisfied that the extent of con-
23 sideration that had been given to her at
24 that time - so far as a strict accounting by
25 accountants shewed into Blyth, Hitter & Co's
26 office - had been largely due to the feeling
27 that Mr. O'Melveny had toward me personally;
28 and that my own attitude had been a mask for
29 her situation; and that if she left without
30 some reasonable explanation for it, that these
31 attorneys would really accept, that I was
32 going to be in a very serious situation because
of her action; but, more important than that,
I felt that her own situation was going to be
serious because of the certainty that Mott, in
my opinion, would not feel any incentive to
fight where he had been deserted by his client;
and on the other hand that Mr. O'Melveny would
probably drive harder than ever for an issue
in the case.

Mrs. Shelby told me, 'This just can't
be, so far as a settlement is concerned; I
won't give the securities to Mary; I won't
give the securities to Mr. O'Melveny to handle
for her; I will not put any securities in
trust, where I am going to lose any benefits
from them for the rest of my life.' And
Mrs. Shelby told me, furthermore, that if a
settlement did not materialize and a suit
was prosecuted, the income tax situation was
such, with what was developing at the time,
that she felt in danger personally, as well
as felt that the results of the income tax
investigation would lay her open to a lia-
bility so great, so far as Mary was concern-
ed, that settlement would be unthought of.
Mrs. Shelby told me what she stated she had
learned of Russell's activities in the city;
she told me that Russell had simply combed
the stores downtown for information that would

1 be used against her in attempting to maintain
2 the expense items charged against Mary; and
3 that if Massell's information extended to
4 the Government, particularly with Pyle pres-
5 ing as he was at the time, that she saw the
6 possibilities of criminal prosecution in con-
7 nection with the tax matter - aside from the
8 liability financially.

• • • • •

9 A. Mrs. Shelby, now that she was planning
10 to leave, wanted to go over with me every feature
11 of her proposed departure for Europe.

12 Q. At that time, before she left, in
13 'January' 1926, had there been some talk
14 about her going to Europe?

15 A. Yes. As I say, this conversation
16 covers about all of it. Mrs. Shelby told me
17 that she would go to Louisiana, and file cer-
18 tain papers there in connection with Mrs.
19 Miles' estate, and while she was there she
20 would go to New Orleans and arrange for a
21 passport. She told me had a friend there
22 by the name of Mr. Bauman --

23 Q. How do you spell it?

24 A. B-a-u-m-a-n, I think.

25 Q. What was his first name?

26 A. He was an officer, I believe vice-
27 president, of a bank in New Orleans, she call-
28 ed him Sid, that she had known him as a little
29 girl and that she could rely on him absolute-
30 ly to assist her in anything she wanted to
31 do. That he would say nothing to anyone.
32 She told me she had not made up her mind whether
33 she would go from there to New York and sail
34 from New York, or sail from New Orleans to
35 Cuba, and take a vessel from Cuba that would
36 not touch in the United States, for Europe.
37 She told me that in taking the passport out
38 there that she felt - at New Orleans - that
39 she felt she would not be detected in so far
40 as the income tax people were concerned, nor
41 would Mr. O'Melveny have any possible knowledge
42 of her leaving, and that if she went from New
43 Orleans to Cuba, and sailed from there, that
44 that would be her speediest outlet from the
45 country, and from possible detention or
46 stoppage by Federal officials.

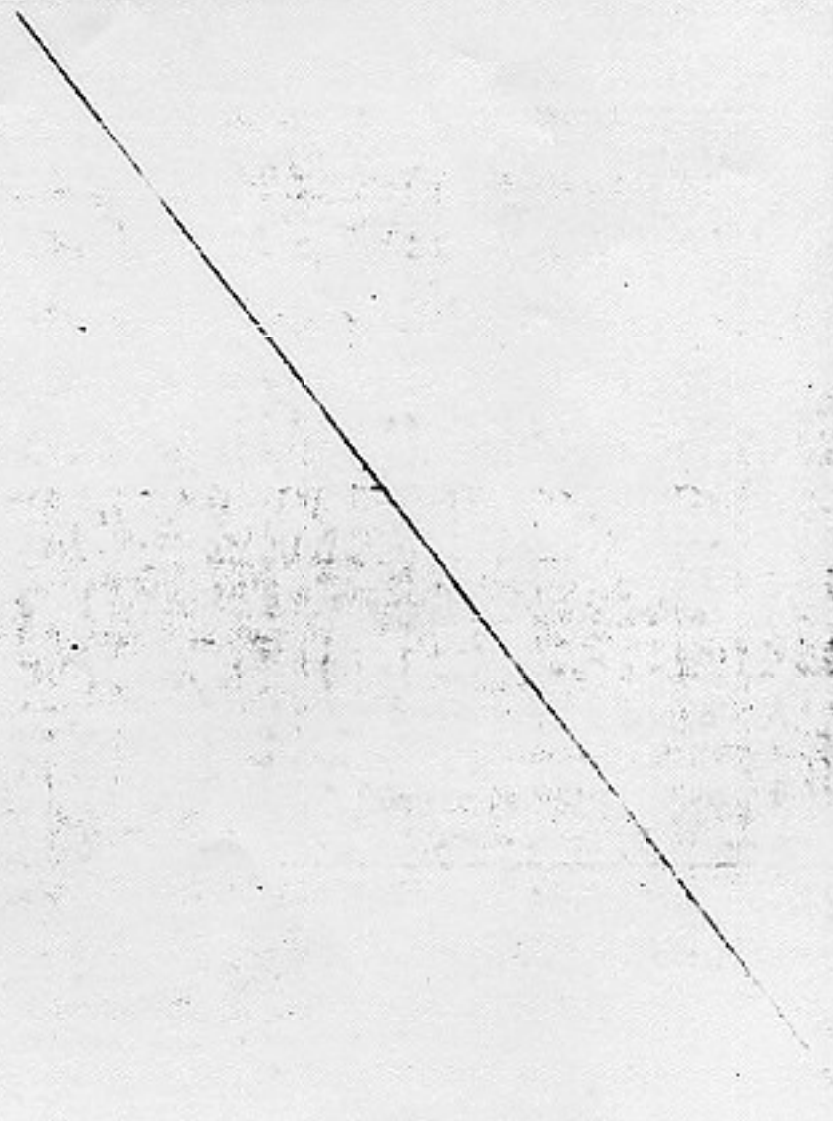
• • • • •

47 A. I think it was in the same conversa-
48 tion, when I asked what I was to say to
49 O'Melveny or Mott in the event of inquiry.
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Mrs. Shelby told me that after all, all I actually knew was that she was going to Louisiana to take care of her mother's estate. That is all I had to tell them, and that I was satisfied that in due time she would be back.

She said, 'That might be a white lie, but after all I cannot stay here and either be wrecked by the court action - I cannot afford to make the kind of a settlement I would have to make under any settlement basis, and I cannot stay here and face the Federal income tax people with Hassell reinforcing the government in its inquiry, so if you tell Mott or O'Melveny a story of that nature, then if afterwards they discover I have gone - when they do discover I have gone abroad, after all, you can appear as badly cheated as they have been.'



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IV.

By the said statements and testimony the said Leslie B. Henry meant and charged, intended to be understood as meaning and charging, and was understood by all who heard or read his testimony, including the defendants, and each of them, to mean and charge, that plaintiff had violated criminal laws of the United States relative to federal income tax; that plaintiff had committed a crime by falsifying her income tax return; that plaintiff had persuaded, and conspired with, Leslie B. Henry that Leslie B. Henry violate the criminal laws of the United States relative to federal income tax; that plaintiff and Leslie B. Henry had conspired to violate criminal laws of the United States relative to federal income tax; that plaintiff had persuaded Leslie B. Henry to file a false and fraudulent federal income tax return; that plaintiff had created a fictitious and false appearance of payment of salary to Leslie B. Henry, for the purpose of defrauding the United States of income tax lawfully due and owing to the United States from the plaintiff; that plaintiff had fabricated expenditures and other disbursements which were false and untrue, for the purpose of taking deductions in making federal income tax returns; that plaintiff had committed perjury by falsely, fraudulently and knowingly making a false income tax return; that plaintiff had cause to fear prosecution for, and conviction of, violation of the criminal laws of the United States relative to federal income tax; that plaintiff desired to, and did, flee the jurisdiction of the United States for the purpose of escaping prosecution for, and conviction of, violation of the criminal laws of the United States relative to federal income tax; that plaintiff had cause to, and did, fear an investigation by officers of the Revenue Department of the United States; that plaintiff had fabricated a false and untrue story as to her

1 reasons for leaving the United States; that plaintiff had per-
2 suaded Leslie B. Henry to commit a crime; that plaintiff was dis-
3 honest, corrupt and depraved; that plaintiff was wicked and guid-
4 ed by no principle other than the desire for money; and that plain-
5 tiff was of a low, mean and criminal character, and had used
6 Leslie B. Henry as her tool and agent in the commission of crimes.
7 Defendants, and each of them, understood Leslie B. Henry to mean
8 and intend, by his statements hereinabove set forth, each and every
9 charge and meaning hereinbefore alleged. Plaintiff is informed
10 and believes, and on such information and belief alleges, that
11 defendants, and each of them, knew that the said statements would
12 be understood by every person who read or heard said statements
13 to mean the charges and meanings hereinabove alleged.

V.

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16 Said charges and meanings were and are, and each
17 of them is and was, wholly false as the said Leslie B. Henry then
18 and there, at the respective times he made the statements herein-
19 above set forth, well knew. Plaintiff is informed and believes,
20 and on such information and belief alleges, that the defendants,
21 and each of them, knew on the respective days and at the times
22 the said Leslie B. Henry made the statements hereinabove set forth,
23 that said charges and meanings were, and each of them was, wholly
24 false.

VI.

25
26 On or about the said 27th day of June, 1933, the
27 statements of Leslie B. Henry made on that day, as hereinabove
28 in paragraph III set forth, were transcribed in typewriting upon
29 paper, and legible copies made thereof. On or about the 10th
30 day of July, 1933, the statements of Leslie B. Henry made on that
31 day, as hereinabove in paragraph III set forth, were transcribed
32 in typewriting upon paper, and legible copies made thereof. On

1 or about the 26th day of June, 1933, defendants, and each of them,
2 published the statements of Leslie B. Henry made by him of and
3 concerning plaintiff on or about the 27th day of June, 1933, by
4 causing to be delivered to the Honorable Charles S. Burnell, Judge
5 of the Superior Court of the State of California, in and for the
6 County of Los Angeles, and to F. K. English, Deputy Probation
7 Officer of the County of Los Angeles, one of the said copies of
8 the transcript of the deposition of June 27, 1933, including the
9 said statements of Leslie B. Henry made of the plaintiff on the
10 said 27th day of June, 1933, as hereinabove set forth. On or
11 about the 11th day of July, 1933, defendants, and each of them,
12 published the statements of Leslie B. Henry made by him of and
13 concerning plaintiff on or about the 10th day of July, 1933, by
14 causing to be delivered to the Honorable Charles S. Burnell, Judge
15 of the Superior Court of the State of California, in and for the
16 County of Los Angeles, and to F. K. English, Deputy Probation Of-
17 ficer of the County of Los Angeles, one of the said copies of the
18 transcript of the deposition of July 10, 1933, including the said
19 statements of Leslie B. Henry made of the plaintiff on the said
20 10th day of July, 1933, as hereinabove set forth. At the re-
21 spective times of the deliveries of each of said transcripts,
22 neither had been read, corrected or signed by the witness, Leslie B.
23 Henry, nor had either been filed in the said civil action. At
24 the respective times of the deliveries of each of said transcripts
25 as aforesaid, the said deposition had not been completed in this,
26 that the direct examination of the said witness had not been con-
27 cluded, and no cross-examination or opportunity therefor had been
28 had. Defendants, and each of them, acted maliciously in causing
29 the said transcripts, and each of them, to be published, in this,
30 that the defendants, and each of them, intended to injure plaintiff
31
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1 in her name and reputation, and to expose her to hatred, contempt,
2 ridicule and obloquy; and, further, said defendants, and each of
3 them, intended that said transcripts, and each of them, should be
4 read by the said Honorable Charles S. Burnell and F. K. English,
5 and by many other persons, and further intended that said state-
6 ments should be printed in newspapers circulated in and about the
7 City of Los Angeles. Said statements were thereafter read by
8 the said Honorable Charles S. Burnell and F. K. English, and on
9 or about June 28, 1933, the said statements made by the said Leslie
10 B. Henry of plaintiff on June 27, 1933, as aforesaid, were printed
11 and published in the Los Angeles Times, Los Angeles Examiner, Los
12 Angeles Evening Herald and Express, Illustrated Daily News, and
13 The Record, each being a newspaper of general circulation in the
14 City of and County of Los Angeles. On or about said date, to wit,
15 June 28, 1933, and thereafter, the said newspapers containing the
16 said statements and charges were, and each of them was, circulated
17 in the City of and County of Los Angeles; throughout the United
18 States, and in foreign countries. Plaintiff is informed and be-
19 lieves, and on such information and belief states, that said news-
20 papers on said date had an aggregate circulation of to exceed
21 750,000 copies. On or about July 11, 1933, the said statements made
22 by the said Leslie B. Henry of plaintiff on July 10, 1933, as aforesaid,
23 were printed and published in the Los Angeles Times, Los Angeles
24 Examiner, Los Angeles Evening Herald and Express, Illustrated Daily
25 News, and the Record, each being a newspaper of general circulation
26 in the City of and County of Los Angeles. On or about said date,
27 to wit, July 11, 1933, and thereafter, the said newspapers contain-
28 ing the said statements and charges were, and each of them was, cir-
29 culated in the City of and County of Los Angeles, throughout the
30 United States, and in foreign countries. Plaintiff is informed
31 and believes, and on such information and belief states, that said

1 newspapers on said date had an aggregate circulation of to exceed
2 750,000 copies.

3 VII.

4 By reason of the said publication of said state-
5 ments by the defendants, and each of them, as aforesaid, plaintiff
6 has been subjected to grievous mental suffering, and has been, and
7 is, greatly injured in her good name and reputation, and has been
8 brought into public scandal, infamy and disgrace, and has been held
9 up to public ridicule, hatred and contempt with and among people
10 of the County of Los Angeles and of the United States of America
11 and foreign countries; to the plaintiff's damage in the sum of
12 One Hundred Thousand Dollars (\$100,000.00).

13 VIII.

14 Plaintiff hereby refers to and reincorporates
15 paragraph VIII of her FIRST CAUSE OF ACTION, and hereby realleges
16 each and every allegation therein contained as though set out at
17 length.

18 WHEREFORE, plaintiff prays judgment against said
19 defendants, and each of them:

20
21 1. On her FIRST CAUSE OF ACTION, in the
22 sum of One Hundred Thousand Dollars (\$100,000.00)
23 by way of compensatory damages, and in the further
24 sum of One Hundred Fifty Thousand Dollars (\$150,000.00)
25 by way of exemplary or punitive damages.

26 2. On her SECOND CAUSE OF ACTION, in the
27 sum of One Hundred Thousand Dollars (\$100,000.00)
28 by way of compensatory damages, and in the further
29 sum of One Hundred Fifty Thousand Dollars (\$150,000.00)
30 by way of exemplary or punitive damages.

31 3. For costs of this action.
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4. For such other and further relief as to
this Court may seem just and proper.

SIMPSON & SIMPSON
By W. C. Simpson
Attorneys for Plaintiff

1 STATE OF CALIFORNIA)
2 (ss
3 COUNTY OF LOS ANGELES)

4 CHARLOTTE SHELBY being by me first duly sworn, de-
5 poses and says: That she is the Plaintiff in the above entitled
6 action; that she has read the forgoing COMPLAINT FOR DAMAGES
7 FOR LIBEL and knows the contents thereof; and that the same is
8 true of her own knowledge, except as to the matters which are there-
9 in stated upon her information or belief, and as to those matters
10 that she believes it to be true.

11 *Charlotte Shelby*
12 _____
13

14
15 Subscribed and sworn to before me
16 this 29th day of August, 1938.

17 *Sam Campbell Nelson*
18 _____
19 Notary Public in and for the County
20 of Los Angeles, State of California
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ELYTH & CO., INC.

New York
Chicago
Boston
San Francisco
Los Angeles
Seattle
Portland

215 West Sixth Street

Los Angeles

Cable Address

ELYTECO

April 23rd, 1935.

Mr. Joseph L. Lewinson,
733 Rowan Building,
Los Angeles, Calif.

Dear Sir:

The undersigned, Blyth & Co. Inc., is advised by its counsel that you have informed them that your client, Mrs. Charlotte Shelby, intends to institute against the undersigned, and possibly other persons, a suit for libel and/or slander based upon the publication or purported publication of certain parts or portions of the deposition of Leslie B. Henry, taken in that certain suit, pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled, Charlotte Shelby, Plaintiff, vs. Blyth & Co. Inc., et al., Defendants, No. 555,220, and that for certain reasons you have thought it would be advisable to defer the filing of such action for the present but would be prevented from doing so by the running of the statute of limitations, and the undersigned has, by two separate agreements, extended the time for the bringing of this action until the 1st day of May, 1935, that is to say, has agreed that if the action were brought on or before the 1st day of May, 1935, the undersigned would not plead the statute of limitations.

The undersigned understands that you further asked attorneys for the undersigned that the time limit be extended to and including the 1st day of September, 1935. The undersigned is willing to agree to this, but only upon condition that if you bring action at any time hereafter on or before the 1st day of September, 1935, any reasonable time within which to appear, move, and/or plead therein will be granted to our attorneys up to a period of at least sixty days.

Therefore, this is to advise you that subject to and dependent upon the conditions stated, so far as the undersigned Blyth & Co. Inc. is concerned, it is willing to and does agree that the statute of limitations as to the said proposed action may be extended to and including the 1st day of September, 1935, and that if such action is brought by said Charlotte Shelby against the undersigned

April 23rd, 1935.

on or before the 1st day of September, 1935, the undersigned agrees that it will not plead or claim the bar of the statute of limitations. This agreement is conditioned and dependent upon the plaintiff in such action, by and through her counsel, granting to counsel for the undersigned any and all requests made by them for extensions of time in which to appear, move and/or plead, up to sixty days.

Nothing herein contained is to be deemed or taken as any extension of the time to bring such action beyond the date specified, to-wit, the 1st day of September, 1935, nor as any admission or concession that Mrs. Shelby has such action or any right to institute the same, nor in any way waiving any defense which the undersigned may have to enter in such proposed action other than the agreement herein not to plead the statute of limitations if such action be brought on or before the 1st day of September, 1935, and the waiver of said statute of limitations, as herein agreed to, is to be understood as applying only to the said action of the kind and character as above described.

Yours truly,

BLYTH & CO. INC..

By D. T. Babcock
Vice President

April 23rd, 1935.

Mr. Joseph L. Lewinson,
733 Rowan Building,
Los Angeles, Calif.

Dear Sir:

The undersigned, J. Lawrence Fagen, is advised by his counsel that you have informed them that your client, Mrs. Charlotte Shelby, intends to institute against the undersigned, and possibly other persons, a suit for libel and/or slander based upon the publication or purported publication of certain parts or portions of the deposition of Leslie B. Henry, taken in that certain suit, pending in the Superior Court of the State of California, in and for the County of Los Angeles, entitled, Charlotte Shelby, Plaintiff, vs. Blyth & Co. Inc., et al, Defendants, No. 355,240, and that for certain reasons you have thought it would be advisable to defer the filing of such action for the present but would be prevented from doing so by the running of the statute of limitations, and the undersigned has, by two separate agreements, extended the time for the bringing of this action until the 1st day of May, 1935, that is to say, has agreed that if the action were brought on or before the 1st day of May, 1935, the undersigned would not plead the statute of limitations.

The undersigned understands that you further asked attorneys for the undersigned that the time limit be extended to and including the 1st day of September, 1935. The undersigned is willing to agree to this, but only upon condition that if you bring action at any time hereafter on or before the 1st day of September, 1935, any reasonable time within which to appear, move, and/or plead therein will be granted to his attorneys up to a period of at least sixty days.

Therefore, this is to advise you that subject to and dependant upon the conditions stated, so far as the undersigned, J. Lawrence Fagen, is concerned, he is willing to and does agree that the statute of limitations as to the said proposed action may be extended to and including the 1st day of September, 1935, and that if such action is brought by said Charlotte Shelby against the undersigned on or before the 1st day of September, 1935, the undersigned agrees that he will not plead or claim the bar of the statute of limitations.

Exhibit "B"

April 23rd, 1936.

This agreement is conditioned and dependent upon the plaintiff in such action, by and through her counsel, granting to counsel for the undersigned any and all requests made by them for extensions of time in which to appear, move, and/or plead, up to sixty days.

Nothing herein contained is to be deemed or taken as any extension of the time to bring such action beyond the date specified, to-wit, the 1st day of September, 1936, nor as any admission or concession that Mrs. Shelby has such action or any right to institute the same, nor in any way waiving any defense which the undersigned may have to enter in such proposed action other than the agreement herein not to plead the statute of limitations if such action be brought on or before the 1st day of September, 1936, and the waiver of said statute of limitations, as herein agreed to, is to be understood as applying only to the said action of the kind and character as above described.

Yours truly,

J. Lawrence Pagon