

ing to show where the defendants' counsel came from, except the statement of the plaintiff's counsel that he came from Nashua, made the statement illegal, it in and of itself furnishes no sufficient reason for disturbing the verdict.

In other words, while a verdict will be set aside on account of the statement of irrelevant facts which are intended to excite prejudice when it is probable they had their intended effect, *Shea v. Hillsborough Mills*, 78 N. H. 57, that will not be done when, as in this case, it is improbable that the statement produced the verdict. *Parker v. New Boston*, 79 N. H. 54.

Exceptions overruled.

All concurred.

Merrimack, }
May 3, 1921. }

FLORA A. LEBEAU v. EUGENE LEBEAU.

Under P. S., c. 175, s. 18, an order decreeing alimony, though made in accordance with the agreement of the parties, may be re-examined and revised.

MOTION, to bring forward a decree in a libel for a divorce for extreme cruelty. The court heard the motion at the October term, 1918, and made the following decree: "Divorce for extreme cruelty. Care, custody, education, and earnings of minor child, Eugene Osborn LeBeau, decreed to the plaintiff. Libelee is to pay the libelant \$1,000 forthwith, as alimony." Previous to the decree the parties presented to the court a written agreement in which they stipulated that the libelee should pay the libelant one thousand dollars, to be in lieu of any and all obligations to support the libelant, and that the custody of the child should be granted to the libelant.

It is alleged that since the decree the libelant has to a limited extent had the care and custody of the minor child, and has expended for his care, clothing, and education about three hundred dollars; that the libelee, although requested, refused to reimburse the libelant or to provide for the care and education of the child.

The prayer in the petition is for further alimony, or that the libelee should pay the expenditures above set forth and to be incurred for the care and education of the child. The court having heard the parties, and found in substance that the libelant's allegations were true, ordered the libelee to pay the libelant three

hundred and nineteen dollars and forty-five cents, and the libelee excepted.

Transferred from the October term, 1920, of the superior court by *Sawyer, J.*

Foster & Lake (Mr. Lake orally), for the libelant.

Nathaniel E. Martin (by brief and orally), for the libelee.

PLUMMER, J. The sum, which the court ordered the libelee to pay to the libelant, is really alimony. To this the parties agree. Therefore, the question presented by the exception is whether the court had the power to give the libelant additional alimony. "The court upon proper application and notice . . . may revise and modify any order made by it, may make such new orders as may be necessary," respecting alimony. P. S., c. 175, s. 18.

"Applications under this statute . . . may be made at any time, and when an application is properly made, it is the duty of the court to hear and consider it. . . . On an application for a revision of a decree for alimony, the right to a hearing is expressly granted by the statute, and the question is, not whether the petitioner shall be allowed a hearing, but whether, being heard, a case is made for relief; — not whether the evidence shall be received, but whether, being received and considered, it calls for a modification of the decree. . . . Whether justice requires a modification of the decree must be determined from all the facts in the case." *Ela v. Ela*, 63 N. H. 116, 121, 122.

It is contended by the libelee that the court cannot order him to pay the libelant additional alimony, because there was an agreement between them, upon which the decree was based, that he should pay her one thousand dollars as alimony, which should be in lieu of any and all obligations for her support. This agreement does not affect the power of the court under the statute to revise and modify any order made, or to make such new orders respecting alimony as justice may require. In *Wallace v. Wallace*, 74 N. H. 256, there was an agreement for alimony similar to the one in this case, but it was held that the court had power to revise and modify the decree for alimony made in accordance with the written agreement.

In the opinion the court said: "As under the statute any order respecting alimony may be re-examined and revised, the court has no power to except from the operation of the statute an order

decreeing alimony in accordance with the agreement of the parties. If the question were at all in doubt, the liberal construction heretofore given the statute would resolve it in favor of the maintenance of the petition. . . . As the case stands, the parties pending the divorce made an agreement as to alimony. Upon that agreement and evidence satisfactory to the court, a decree as to alimony was made. Upon a new hearing, the question will be whether a different decree should now be made."

Upon a proper application the court has heard the parties and their evidence, and has decreed that the libelee shall pay the libelant additional alimony. The power of the court to make such a decree is beyond question.

Exception overruled.

All concurred.

Hillsborough,)
May 3, 1921.)

ELIAS OSTROFF *v.* JAMES H. HUSTIS, *Receiver.*

Under the act of congress of June 29, 1906 (34 U. S. Stat. 584), the initial carrier is responsible for the safe delivery of goods accepted for interstate transportation though loss occurs through the fault of a subsequent carrier; and a bill of lading requiring the giving of notice "to the originating or delivering carrier," in case of failure to deliver, is valid.

ASSUMPSIT, to recover the value of a case of woollen goods shipped by the Amoskeag Manufacturing Company over the defendant's railroad to Philadelphia, and which arrived in that place over the Pennsylvania railroad.

There was a trial by the court and verdict for the defendant, to which the plaintiff excepted. Transferred from the January term, 1920, of the superior court by *Kivel*, C. J.

Patrick H. Sullivan and *Albert H. White*, for the plaintiff.

Warren, Howe & Wilson, for the defendant.

PLUMMER, J. The case was heard by the court upon depositions taken and introduced by the plaintiff. The defendant offered no evidence and did not question the credibility of the plaintiff's proof. It was in effect conceded that the goods for which suit was brought