upon a highway;" but it is obvious that in this context the words were not used with that significance, but as a figurative expression to indicate that the plaintiff had availed himself of the necessities of the municipality to drive a hard and perhaps unconscionable bargain. The words, taken in their natural significance, are not capable of a meaning actionable per se.

The same remarks apply to the fifth count. What is there complained of is the statement—somewhat modified in the evidence—that the plaintiff had appealed from the assessment of certain property as being too high and afterwards sold the property for a much larger sum than it had been assessed for. This is described as being "another of his hold-up games." Clearly this is not actionable per se.

What is complained of in the sixth paragraph is a statement that the plaintiff desired "to get back into the council so that he could sell the town some more of his dry goods, as he did in the past. He sold the town all the goods they needed for the Elks' celebration and decorations for the King's funeral, at handsome profits, and now he wants to be mayor."

It may well be that this charges the plaintiff with misfeasance in office; but the plaintiff's own evidence discloses that what is charged is substantially true. The municipal council voted a certain sum to be used for the purpose of decoration. The plaintiff was in charge on behalf of the municipality. He made a contract with a third person. That third person purchased certain of the goods used for the decoration from the plaintiff. This is the very thing prohibited by sec. 80 of the Municipal Act; and it is quite immaterial whether the plaintiff made a profit or not; although it appears from his own evidence that he did sell at a profit."

The truth of the statement complained of being thus established by the plaintiff's own evidence, this count ought not to have been allowed to go to the jury.

The seventh paragraph charges the making on another occasion of substantially the same statement as that already referred to with reference to the street opening.

For these reasons, we think that the learned Judge ought not to have allowed the action to go to the jury except upon the first slander charged—that contained in the third paragraph—and that as to the slander charges in paragraphs 4, 5, 6, and 7, the action should be dismissed; and, as the damages were not separately assessed, there must be a new trial with reference to the remaining charge.