

FERGUSON, J.A., reading the judgment of the Court, said that the plaintiffs' allegation as to damages and claim for relief were as follows: "In consequence of the slanders hereinbefore set forth and the publication and circulation thereof, the plaintiffs were injured in their credit and reputation as produce dealers and butter manufacturers and in their said business, and they lost the services of the said Edward J. Trewartha and Elmer Finch as cream and milk gatherers, they having left the employ of the plaintiffs to become employees of the defendants and taken over with them all their customers and patrons, and the plaintiffs also in consequence of the said wrongs lost many other customers and patrons, and since the uttering of said slanders and in consequence thereof the plaintiffs have suffered a general decline in their said business and a considerable loss of profits, amounting to \$2,000. The plaintiffs therefore claim \$2,000 damages for slander."

Pursuant to demand, the plaintiffs named a number of customers who had, as the plaintiffs alleged, in consequence of the alleged slanders, ceased to deal with them, but they did not call these customers as witnesses. They sought to establish their damages by calling Finch and Trewartha, both of whom stated that they left the employ of the plaintiffs in consequence of the slander. The plaintiffs proved the amount of butter-fat that each gatherer had collected for the defendants, and then sought to give evidence of the profit that the plaintiffs would have made if that butter-fat had been collected by Finch and Trewartha for the plaintiffs, instead of for the defendants. The trial Judge refused to allow this evidence or any amendment of the statement of claim for the purpose of permitting evidence of such profits to be given. From this ruling the plaintiffs appealed.

The evidence appeared to have been excluded on two grounds: (1) that the plaintiffs' allegation and prayer amounted to a claim for damages for general loss of business only, and not for loss of particular business; (2) that the plaintiffs had not laid the foundation necessary for the giving of the testimony rejected, in that they did not, by calling their customers or by any other evidence, establish that the slander caused the loss of the plaintiffs' customers, and the weight of testimony was that these customers left the plaintiffs because the two gatherers of fat persuaded them to do so.

The ruling of the trial Judge was right. Before the plaintiffs could give evidence of the profits which they would have derived from the butter-fat which they did not get from their former customers it was necessary for them to prove, not only that they had lost the butter-fat, but that the fat was lost by reason of