

1897 to 1905, and during that time a large number of pipe organs were successfully constructed under his supervision. These organs were of approved excellence, and plaintiff asserts that the credit of the work was chiefly due to his skill. In particular as to two organs, testimonials were given in which the merit of the plaintiff was recognized. The first in 1897, in connection with the Metropolitan Church organ, was given by Mr. Leman, a distinguished musician and organist. . . . The other, given in the shape of a letter from a well-known organist, Mr. Jeffers, with reference to an organ in the Central Methodist Church, Toronto, in 1905, addressed to plaintiff, wherein he was congratulated on having "solved the problem of a thoroughly satisfactory electro-pneumatic action." Before plaintiff became connected with defendants they did not manufacture the church pipe-organ. He left the defendants for the purpose of setting up an independent business in the line of church organs, and defendants, after he left, continued to make such organs. So that now the plaintiff and defendants are rival makers and dealers, at arm's length in business competition.

The gist of plaintiff's grievance is that defendants have issued a pamphlet containing these two recommendations, but so altered as to apply solely and only to defendants. As to Mr. Leman's report, this is done by omitting the words "and Mr. Charles J. Warren," so that the sentence reads, "I am sure the builders have every reason to congratulate themselves on the success;" and as to Mr. Jeffers's letter, by striking out the introductory, "My dear Mr. Warren," and substituting "The D. W. Karn Co.,— Gentlemen."

Plaintiff admits that he received the testimonials as agent or superintendent of defendants, and that the possession of and property in the documents is with defendants.

Plaintiff will be content if defendants use and print the testimonials in their original unmutilated shape. But defendants claim the right to use such parts as they please and to quote as much as serves their own purpose. To print the testimonials as framed by the writers, would carry commendation to both parties, and they are now rival dealers— and that would not be "business."

The writers of the testimonials (in whatever shape they are), by sending them to the plaintiff or the company, intended that they should be published. And as between the super-