the stand-point of view from which they are taken. The evidence for the plaintiff here affords an illustration. He calls the assessor for the years 1859, '60 and '61. In this last year the oath of qualification had been made. This witness, we have just seen, assessed its yearly value at $36, thus representing its actual value at $600. At present he says it may be worth $300 more, but he had never been inside the house at all; and yet the yearly value of a house, as well as its absolute value, must in a considerable degree depend upon its internal appearance and finish. Nor does he say how it is that it is worth more now than in 1861; but in this country property out of business situations will seldom rent to pay six per cent. of its value.

Another witness values it at $700 to $800; but he had never been up stairs and never had looked at it with a view to its value. Another says it was, he thinks, worth $600 before it was repaired but he has not seen it since; he should not, however, like to give over $900 now for it, although some might give more. If these estimates of value by the witnesses for the plaintiff were weighed in scales nicely balanced, there could be but indefinite justice. No proper valuation can be made of a house without seeing it inside; for some men disregard the exterior, who are lavish of internal finish, and *vice versa;* and what one or another would give as speculative amounts cannot be a safe rule of value, unless they have examined the property, or are intending purchasers. The defendant's witnesses represent the value of it to be $1,200 or more on given data, and on a reasonable knowledge of what the property was. If the plaintiff had met this by data more definite, by a comparison of the value of land in the immediate neighborhood, or by a detailed estimate of the value of the buildings and their state of repair, external and internal, there might have been ground for finding fault with the direction; but when the evidence is vague, where it might have been more definite, we think the learned judge laid down the only rule which was safe, at least under the circumstances of the case.

In the affidavits before us on this motion, for and against it, the same differences of opinion exist. One witness for the plaintiff who had sworn, he would build now just such a house for $450, in an affidavit for the defendant corrects this and says, he could not do it for less than $600. We infer he had omitted to take into consideration the value of the verandah. On the one side they represent it as worth $1,200, on the other as of less value.

Then as to the express misdirection, "that any reasonable doubt as to value should be in favor of the defendant." When the defendant had made a *primâ facie* case, sustaining his oath, his conduct, and his obedience to an act of the legislature, by evidence based upon tangibe data, and when the plaintiff threw a doubt upon it, by evidence of speculative opinion, without given data, and without the knowledge of the thing valued, and without laying down any rule of general application, we can safely say that, under all the circumstances of this case, the learned judge was right in his direction. The plaintiff undertook to make out that the defendant had been guilty of dereliction of duty, if not of positive crime; but the presumption is always in favor of right acting, rather than of wrong doing.

The grounds for a new trial, on the score of surprise, we need hardly discuss: the plaintiff supposed the defendant's estate was a leasehold, which the latter answers by producing under oath his conveyance in fee. On the whole we think the plaintiff's rule should be discharged.

A. Wilson, J.—It is reported that the learned judge at the trial directed the jury that "they ought to be fully satisfied as to the value of the defendant's property before they found a verdict for the plaintiff; that they should not weigh the matter in scales too nicely balanced; and that any reasonable doubt should be in favor of the defendant."

The first part of the charge I understand to mean, that the jury should be fully satisfied that the value of the property *was not* what the defendant represented it to be, before they should find a verdict against him.

The statute provides, "that no person (except when otherwise provided for by law,) shall be a Justice of the Peace, or act as such, who has not in his actual possession, to and for his own proper use and benefit, a real estate, &c., of or about the value of $1,200 over and above what will satisfy and discharge all incumbrances," and the act further provides, that in any action, suit, or information brought against a person for acting as a Justice of the Peace, not being so properly qualified, "the proof of his qualification shall be upon the person against whom the writ is brought."

The evidence in this case was contradictory. The evidence given by the plaintiff's witnesses was, that the property was worth $700 or $800, and that given by defendant's witnesses was, that it was worth $1,200.

I think the effect of the charge was, that the plaintiff had failed to sustain his case, because the jury might assume he had not successfully impeached the correctness of the defendant's valuation; instead of directing the jury that if the defendant had not satisfactorily made out that he did possess the necessary qualification they should find against him, because the law had cast upon him the burden of exonerating himself by proving affirmatively, as he was the proper person to do it and the one who could best do so, his own qualification.

As I think there was a misdirection, I think there should be a new trial, and this may be ordered for such a cause in a penal action. Whether it would be attended with a different result on any other charge which might be given, it is for the plaintiff to consider.

Richards, C. J., concurred with J. Wilson, J.

Rule discharged.

COMMON LAW CHAMBERS.

(*Reported by* Robt. A. Larkison, Esq., *Barrister-at-law*)

Smith v. Roe.

Attorney and agent—General agent and particular agent—Service of papers—Ratification of agency.

The fact that a man employs another to do a specified act for him at a particular time, raises no presumption whatever that the person so employed has authority to do a similar act at a different time.