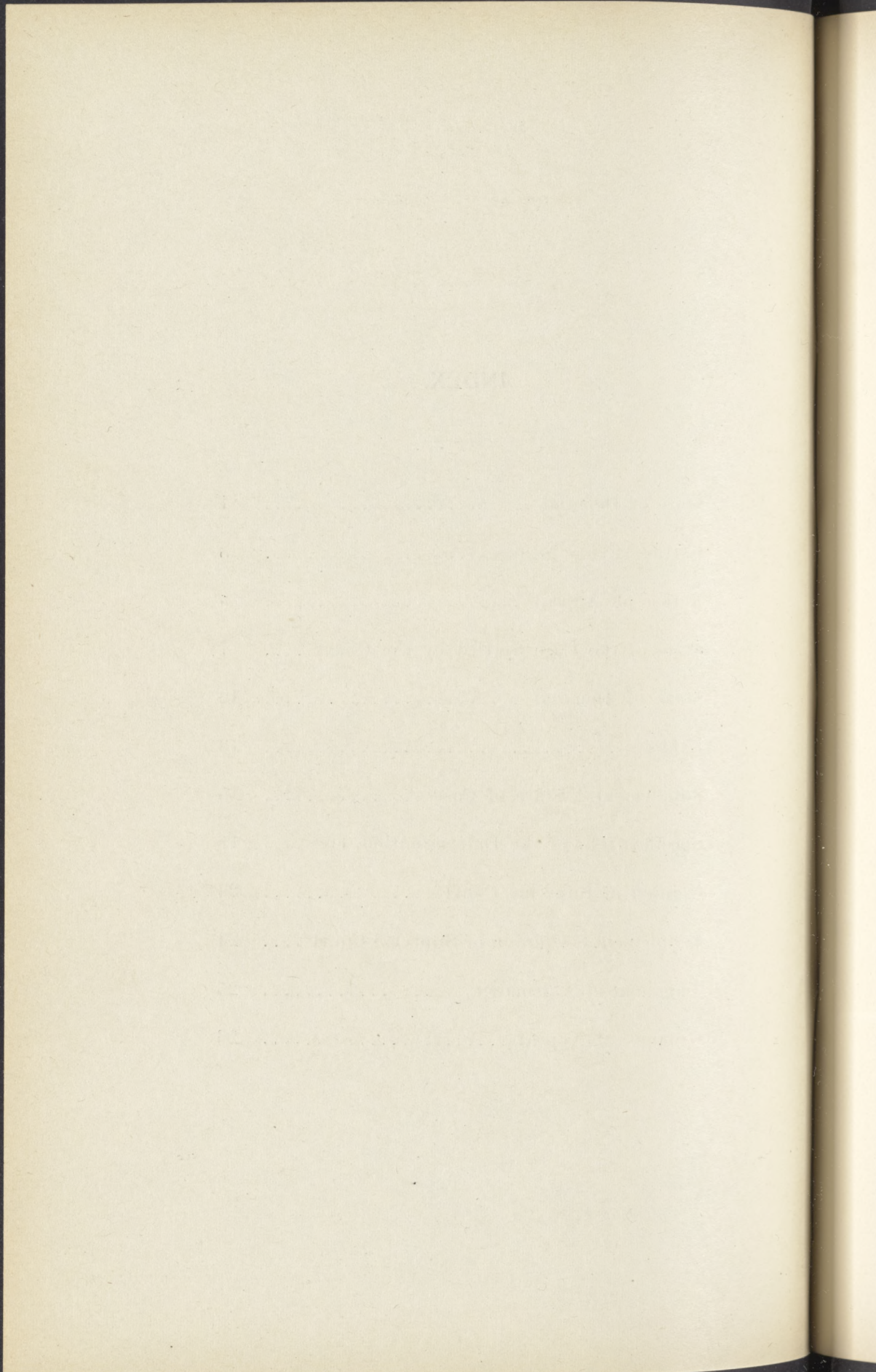


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ORANGE DISTRICT COURT.

On Contract.

---

BLACK & WHITE OPERATING CO., INC., a  
New Jersey corp., 10  
Plaintiff,  
vs.  
EMIL GROSBART,  
Defendant.

---

**State of Demand.**

Plaintiff, a corporation created by and existing 20  
under the Laws of the State of New Jersey,  
says that:

1. On or about January 15, 1927, the defend-  
ant, a Constable in and for the County of Essex,  
and acting as agent for the Black & White Oper-  
ating Co., under a Writ of Attachment, issued  
out of the Second District Court of Newark, levied  
upon the goods and effects of one Eva Fay, a non- 30  
resident of the State of New Jersey, in a Contract  
action for money due to the plaintiff, Black &  
White Operating Co., from the said Eva Fay.

2. That on or about January 15, 1927, the  
said Eva Fay paid over to the said defendant,  
the sum of Seventy-eight Dollars and Seventy-five  
Cents (\$78.75) whereupon the proceedings under  
the Writ of Attachment were discontinued.

*State of Demand.*

3. Subsequently, to wit, on February 23, 1927, the said Eva Fay, secured a Judgment against the plaintiff and defendant, as joint defendants in the Orange District Court, in the sum of Seventy-eight Dollars and Seventy-five cents (\$78.75) for the illegal conduct of the defendant at the time of the levy under the Writ of Attachment.

4. Plaintiff, Black & White Operating Co., paid the Judgment of Seventy-eight Dollars and Seventy-five cents (\$78.75) to said Eva Fay.

5. Plaintiff has requested the defendant to turn over to it the sum of Seventy-eight Dollars and Seventy-five cents (\$78.75) collected as aforesaid on or about the fifteenth day of January, 1927, but the defendant has continuously refused and still refuses to pay over the said money.

WHEREFORE the plaintiff demands judgment in the sum of Three Hundred Dollars (\$300.00) and costs.

GEORGE F. SEYMOUR, JR.,  
Attorney for Plaintiff.

30

40

**Extract From Minutes.**

ORANGE DISTRICT COURT.

#31223

---

BLACK & WHITE OPERATING CO., INC., a New Jersey Corporation,	10
vs.	
EMIL GROSBART,	Plaintiff,  Defendant.

---

In Sum's is'd Aug. 8th 1927. 20  
 On Contract Ret'ble Aug. 19th, 1927.  
 Demand \$300.00.  
 George F. Seymour, Jr., Pltf's Att'y.  
 Harry Levin, Deft's Att'y.

Summons Returned as Follows:

I served this Sum- mons Aug. 11th 1927 by reading the same to the defendant, and deliver- ing to him a copy there- of.	The said defendant not being found, I Served this Summons 192 <span style="float: right;">30</span> by leaving a copy there- of at _____ place of abode in presence of a person of the family of the age of fourteen years who was informed of the contents thereof.
---	---

JOHN E. GALLAGHER,  
 Sergeant-at-Arms.

Sergeant-at-Arms 40  
 Constable

*Extract From Minutes.*

	Plaintiff's Costs	I Served the within Summons 192
	Summons, 2.10	on he
	Mileage, .32	being the of
	Listing fee 1.50	s a i d Corporation by
10	Witness fee,	reading the same to
	Venire, \$11.75	and delivering to ,
	Attorney's Fee, 3.56	a copy thereof.
	Total Cost, 7.48	Sergeant-at-Arms
		Constable

Execution,  
Mileage,  
Statement,

---

Aug. 19, 1927:—No  
Appearance Replaced on  
calendar by stipulation,  
filed Aug. 25, 1927.

June 6, 1928:—Trial  
had :—the following jury  
was sworn and served:

- 1—Nelson Blount
- 2—William A. North
- 3—Arthur W. Mason
- 4—Charles C. Gardner
- 5—Charles F. Condit
- 6—Richard H. Davis
- 7—Frank Wolfinger
- 8—Edward B. Annette
- 9—Harry Knox
- 10—Albert L. Rich
- 11—William H. Schnei-  
der
- 12—William F. Townly

Motion for direction of verdict for defendant  
denied. Harry Levin added as party defendant by  
consent. Frank Kane sworn and testified. Rec-  
ords and letters in evidence marked Ex—P-1, P-2,

*Extract From Minutes.*

P-3, P-4, P-5, and P-6. John E. Gallagher sworn and testified. Execution in evidence marked Ex—P-7. Plaintiff rests, Motion for non-suit as to Emil Grosbart denied. Emil Grosbart, Isadore V. Davis and Harry Levin, sworn and testified. Defendant rests. Motion for direction of verdict denied. In accordance with the verdict judgment was rendered for the plaintiff against the defendant Emil Grosbart, for Seventy-one Dollars Twelve cents Debt, and Seven Dollars Forty-eight Cents Costs. 10

Notice of Appeal filed June 25, 1928.

Bond on Appeal filed, June 26, 1928.

Order filed, June 28, 1928:—Order filed, July 23, 1928. 20

A True Copy.

HAROLD J. TRABOLD,  
Clerk.

30

40

**Notice of Appeal.**

ORANGE DISTRICT COURT.

On Contract.

10

---

BLACK & WHITE OPERATING CO., INC., a New  
Jersey corp.,  
Plaintiff,

vs.

EMIL GROSBART,  
Defendant.

---

20

To:  
GEORGE F. SEYMOUR, JR., ESQ.,  
Attorney for Plaintiff.

*Sir:*

30

TAKE NOTICE, that the defendant, Emil Grosbart hereby appeals to the New Jersey Supreme Court from the judgment of the Orange District Court rendered in the above stated action on the 6th day of June, 1928.

HARRY LEVIN,  
Attorney for Defendant.

40

**State of the Case Settled by the Court.**

ORANGE DISTRICT COURT.

On Contract.

On Appeal.

10

---

BLACK & WHITE OPERATING CO., INC., a corporation of N. J.,

Plaintiff,

vs.

EMIL GROSBART,

Defendant.

20

---

GEORGE F. SEYMOUR, JR., Attorney for Plaintiff.

HARRY LEVIN, Attorney for Defendant.

The parties, or their respective attorneys, being unable to agree upon the state of the case on appeal, and having applied to me, D. A. Dugan, Judge of said Court, I do hereby settle the case as follows:

The case was tried before the Court with a jury and was an action on contract for \$300.00 and costs. 30

Counsel for both sides opened.

Upon request of the attorney for the defendant, Harry Levin, was also made a defendant and it was agreed that he and Emil Grosbart be the defendants, the said Harry Levin expressly waiving process.

40

*State of the Case Settled by the Court.*

The attorney of the defendants moved for a direction of a verdict for the defendant, Grosbart on the opening of the attorney for the plaintiff, which motion was denied. Exception taken and granted.

- 10 Frank Kaul, witness for the plaintiff, testified that he was the manager for the plaintiff corporation; that in January, 1927, he was owed a bill for \$62.00 by one Eva Fay, an actress, for taxi hire, which bill he took to the office of a Constable named Satsky where the defendant Grosbart also had his office, at #24 Commerce Street, Newark, N. J.; that he left the bill for collection; that an attachment was issued out of the Second District Court of Newark, on the effects of the said Eva
- 20 Fay, and she settled it by paying the amount claimed under protest to the said Grosbart; that she later brought an action in the Orange District Court for the recovery of the money and obtained a judgment against his Company, to satisfy which the Company was obliged to pay \$93.15 to her; that the money paid by Eva Fay was paid to Grosbart, which money the said Grosbart never paid to the Black & White Operating Co., nor did any other person pay the Company for him.

- 30 (The records of the Orange District Court in the case of Fay vs. Black & White Operating Co., were offered in evidence. Objection was made on the ground that they were irrelevant and immaterial, they were admitted in evidence. Exception was taken and granted. The records show judgment and costs to be \$93.15.)

- 40 Upon cross examination the witness testified he saw Harry Levin in the offices at 24 Commerce

*State of the Case Settled by the Court.*

St., Newark, but that he did not employ him to take the attachment case, or to collect the claim against Eva Fay, but that he employed only the Constable and did not want an attorney.

Plaintiff rested.

The attorney for the defendant, Grosbart, 10  
moved for a non-suit.

The motion for a non-suit for Grosbart was denied. (Exceptions taken and granted.)

The Court ordered a non-suit ordered in favor of defendant, Harry Levin, as nothing had been shown in the testimony showing he had any liability in the matter.

Emil Grosbart, the defendant, for the defense, testified that he was a Constable for Essex County, 20  
that he handled the Fay case at the request of Harry Levin, attorney; that he collected from Eva Fay after the issuance of the writ of attachment around \$70.00, which she paid under protest; that the work in Levin's office in relation to the attachment was by I. V. Davis, an attorney with desk room in the office of Mr. Levin, the attachment taken out in the Second District Court, Newark; that subsequently, Eva Fay sued the plaintiff in the Orange District and obtained a judgment 30  
against the plaintiff; that he paid the money collected from Eva Fay on the attachment to Harry Levin. No examination.

I. V. Davis, testified for the defendant; that he is an attorney at law of New Jersey with desk room with Harry Levin, attorney; that he saw Frank Kaul at his office with reference to the Fay matter; that he handled the matter; that Kaul told him to go ahead with the writ of attachment; that Levin was not present; that he called Gros- 40

*State of the Case Settled by the Court.*

bart and instructed him to take out the writ of attachment; that Kaul told him Satsky was not in and he had to have immediate action.

10 Harry Levin, for the defense, testified that he is an attorney at law of New Jersey, with offices at 24 Commerce Street, Newark; that Davis handled the Fay matter; that Grosbart turned over to him the money paid by Miss Fay under protest; that Miss Fay having paid, there was nothing further to do in the matter of the writ of attachment; that the witness told Kaul that Miss Fay would probably bring suit, but Kaul seemed satisfied; that later he sent a check for the money to the plaintiff, less a fifty dollar fee,

20 The defendant rested.

Motion for direction of verdict for the defendant on the ground that the proof showed the Constable has no money that belongs to the plaintiff, and that the money was paid to the plaintiff's attorney, was denied.

Exceptions taken and granted.

Mr. Levin summed up.

Mr. Seymour summed up.

30 The Court charged the jury, that Eva Fay had a right to bring her action for the moneys which she paid under protest, and which she claimed had not been owed by her; that they could find what the fact was as to the employment of Grosbart by the plaintiff; also ascertain as well from the evidence whether there had been an employment by the plaintiff of Mr. Levin as Attorney; that if there was an employment of the Constable Grosbart, by the plaintiff, the Constable was under legal obligation to pay to the plaintiff such

40 moneys as he might collect and it was not his

*State of the Case Settled by the Court.*

business to pay such moneys to an attorney unless that attorney had, as a matter of fact, been employed in the matter by the plaintiff; that there is a claim of an attorney in this case and a direct denial, and the jury must ascertain the fact from the evidence; that the Constable had a right to institute the attachment proceedings if he were employed to do so; that the plaintiff did not necessarily have to employ a lawyer in the attachment proceedings, such employment being a voluntary act on its part; that if the plaintiff did employ an attorney, that he, the plaintiff, would be bound by such actions as he might take in the court proceedings; that if a person walking into a suite of offices, occupied by various persons pursuing independent occupations or businesses separately, to see a certain individual and discuss matters in a general way to one who spoke up to him, that there was no implied contract of employment or agreement of hiring, except where a conference is held or action required by request, all of which are matters of dispute in this case and must be decided by the jury as to the facts. 10 20

The jury rendered a verdict of \$71.12 for the plaintiff against the defendant. 30

Exceptions to the charge of the Court to the jury taken and granted.

Exception to the verdict of the jury taken and granted.

Case settled and signed by me this 24th day of July, D. A. Dugan, Judge.

Attest:

HAROLD J. TRABOLD  
Clerk 40

**State of Demand.**

ORANGE DISTRICT COURT.

Action at Law. *E. P. 1*

EVA FAY,

Plaintiff,

vs.

EMIL GROSBART and BLACK & WHITE OPERATING  
Co., INC.,

Defendant.

Plaintiff, residing at the City of Newark, County of Essex and State of New Jersey, says that:

1. On January 15, 1927, plaintiff paid to defendant, Emil Grosbart, a Constable in and for the County of Essex and agent for the defendant, Black & White Operating Co., Inc., the sum of \$78.75 under protest.

2. A suit in attachment of defendant, Black & White Operating Co., Inc., against plaintiff, Eva Fay, was voluntarily non-suited by said Black & White Operating Co., Inc., in the Second District Court in the City of Newark, on February 16, 1927; said suit involving the sum of \$62.30 which sum, together with other charges demanded by said defendant, Emil Grosbart, was paid to him as agent for said Black & White Operating Co., Inc., by this plaintiff on the day and date aforesaid.

3. Plaintiff does not owe to said defendant, or either of them, the sum of \$78.75 or any other sum.

Plaintiff demands as damages the sum of \$300.00.

HOWE & DAVIS,  
Attorneys for Plaintiff.

Exhibits. *Ex. P. 2*

March 24, 1927.

Black & White Operating Co.  
217 Milford Ave.,  
Newark, N. J.

10

Re. Black &amp; White vs. Eva Fay

Gentlemen:

I have in my hands for you, the sum of \$12.17  
in the above matter, made up as follows:

Received	\$67.10	
Paid out for attachment		\$4.93
Drawing papers, adjournments, appearance in court at Newark, amending return, etc., appear- ance at East Orange		20
		50.00
Balance		12.17
		<hr/>
	\$67.10	

Very truly yours,

HARRY LEVIN.

HL/DM

*Ex. P. 4*

March 25, 1928.

30

George F. Seymour, Esq.,  
24 Commerce St.,  
Newark, N. J.

Dear Sir:

Mr. Emil Grosbart has handed to me your letter  
of March 24th.

As you know, I represent the Black & White  
Cab Company in the attachment suit, received

40

*Exhibits.*

10 the money in the attachment suit, less \$5.00 from Emil Grosbart, amended the writ, which you can see for yourself, discontinued the attachment suit, because in my opinion, it was then and still is, that the money had been paid voluntarily, and I believe my letter of a few days ago to the Black & White Cab Co. is self-explanatory.

If you think, on behalf of your client that I was negligent in handling the attachment suit, I have no objection to your instituting suit.

I do wish, however, that you would stop writing letters and making the threats, as in your last letter.

Very truly yours,

HARRY LEVIN.

20 HL/AK

*Ex. P. 5*

March 28, 1928.

Black & White Cab Operating Co.  
217 Milford Ave.,  
Newark, N. J.

Re. Eva Fay

Gentlemen:

30 Answering yours of the 25th inst. it is of course too ridiculous to answer seriously, but I doubt whether you can seriously mean that you never retained me. However, some of us make good losers.

For further information, I refer you to Mr. Seymour, to whom I wrote a few days ago.

Very truly yours,

HARRY LEVIN.

40 HL/DM

*Exhibits.**Exp. 3*

BLACK and WHITE CAB  
 Operating Company  
 217 Milford Avenue

Newark, N. J., March 25th, 1927.

Harry Levin, Esq.,  
 24 Commerce St.,  
 Newark, N. J.

10

Dear Sir:

I have your letter of yesterday in which you account for having received \$67.10, in the matter of the Black & White Cab Co. v. Eva Fay.

I never engaged you and did not know that you had done anything or was interested in this matter until after the attachment had been made. I explained to Mr. Sasky of your office that Eva Fay owed us \$62.30, and it was at his suggestion that I signed an affidavit in Attachment. I learned later that this Attachment was served by Mr. Grosbart and that he collected \$77.10. I was told afterwards by Mr. Sasky that he would go to the Second District Court in this case and he told me that it had been completed.

20

Later, we were sued by Eva Fay in the Orange District Court and because the Attachment case had not been properly handled, a judgment was rendered against us and Mr. Grosbart.

30

I am therefore writing you now to say that at no time did I ever engage your services or authorize anyone else to do so, and unless the money that Mr. Grosbart took illegally from Eva Fay is returned and we are held harmless, it is my inten-

40

*Exhibits.*

tion to sue Mr. Grosbart for the return of that money. I never received any of the money collected by Mr. Grosbart and do not intend to pay for services that have not benefited us in any way but have caused us a great deal of trouble and annoyance.

10

Yours very truly,

FRANK KAUL.

FK/C

20

30

40

### Supplemental State of Case.

NEW JERSEY SUPREME COURT.

On Appeal.

---

BLACK & WHITE OPERATING CO. INC., 10  
 a New Jersey Corporation,  
 Plaintiff-Appellee,  
 vs.  
 EMIL GROSBART,  
 Defendant-Appellant.

---

I, DANIEL A. DUGAN, Judge of the Orange District Court, having been applied to, by Harry Levin, attorney for the defendant, to supplement the state of the case as settled by me, do so as follows: 20

1. Emil Grosbart, the defendant, testified that the attachment proceeding was issued out of the Second District Court, and the papers were endorsed with the name of Harry Levin, as attorney for the plaintiff. 30

2. In the testimony of I. V. Davis, the testimony was that Kaul told him that Seymour (his old attorney) was not in, and he had to have immediate action, and the first state of the case which said that it was "Satsky", was a typographical error.

3. Harry Levin, for the defense, testified that after Mrs. Fay paid Grosbart, that he attended at the Second District Court on the return date of 40

*Supplemental State of Case.*

the writ, and that Kay (Kaul) also attended, and that in the presence of Kaul, when the case came up, he discontinued the action, stating that as the moneys had been paid, there was no need for going on further

- 10 4. The exceptions to the charge taken by the defendant's attorney were taken separately, to the following portions of the Court's charge, each on the ground that the charge was erroneous in law and in fact, on immaterial matter not in the case, and prejudicial to defendant's case, the portions of the charge excepted to being as follows:

20 "That Eva Fay had a right to bring the action for the moneys which she paid under protest, and which she claimed owing by her".

"That they could find what the fact was as to the employment of the defendant Grosbart, by the plaintiff?

'Also ascertain as well from the evidence whether there had been an employment by the plaintiff of Mr. Levin as attorney.'

30 'That if there was an employment of the Constable Grosbart by the plaintiff, the Constable was under legal obligation to pay to the plaintiff such moneys as he might collect, and it was not his business to pay such moneys to an attorney unless that attorney, had, as a matter of fact, been employed in the matter by the plaintiff.'

40 'That there is a claim of an attorney

*Supplemental State of Case.*

in this case and a direct denial, and the jury must ascertain the fact from the evidence.'

'That the Constable had a right to institute the attachment proceedings if he were employed to do so.'

10

'That the plaintiff did not necessarily have to employ a lawyer in the attachment proceedings such an employment being a voluntary act on its part.'

'That if a person walked into a suite of offices occupied by various persons pursuing independent occupations or businesses separately, to see a certain individual, and discussed matters in a general way to one who spoke to him, that there was no implied contract of employment or agreement of hiring, except where a conference is held or action required by request, all of which are matters of dispute in this case and must be decided by the jury as to the facts.'

20

Dated, Sept. 27, 1928.

DANIEL A. DUGAN,

Judge. 30

**Specifications of the Determination, Etc.**

NEW JERSEY SUPREME COURT.

On Appeal.

---

10 BLACK & WHITE OPERATING CO., INC., a New Jersey corporation,  
 Plaintiff-Appellee,  
 vs.  
 EMIL GROSBART,  
 Defendant-Appellant.

---

20 The following are specifications of the determination of the District Court in which appellant is dissatisfied in point of law:

1. At the close of the plaintiff's opening to the jury (the opening being as set forth in the state of demand), the appellant's attorney made a motion for a non-suit, and also for a direction of a verdict, on the ground that the opening set forth no cause of action, and on the contrary, showed that the plaintiff was not entitled to recover.  
 30 The Court denied the motion, and appellant asked for exception, and the same was granted. The Court denied the motion, and appellant asked for exception, and the same was granted.

The Court erred in this determination, and the appellant is dissatisfied with the same in point of law.

2. The records of the Orange District Court in the case of Eva Fay vs. Black & White Oper-  
 40

*Specifications of the Determination, Etc.*

ating Co., Inc., were offered in evidence by the plaintiff. Objection was made by the appellant's attorney on the ground that they were irrelevant and immaterial; objection was overruled, exception taken and granted.

The Court erred in this determination and the appellant is dissatisfied with same in point of law. 10

3. The attorney for the defendant-appellant at the conclusion of the plaintiff's case, moved for a non-suit, on the ground that plaintiff had failed to prove cause of action, and on the contrary showed that it was not entitled to recover. The Court denied the said motion; exception was taken and granted.

The Court erred in this determination and appellant is dissatisfied with same in point of law. 20

4. At the conclusion of the plaintiff and defendant's case, the defendant-appellant moved for a direction of a verdict for the defendant on the ground that proof showed that the plaintiff was not entitled to recover; that the defendant had nothing that belonged to the plaintiff and that the money sued for was paid to the attorney who instituted the attachment proceeding. The Court denied the said motion; exception was asked and granted. 30

The Court erred in this determination and appellant is dissatisfied with same in point of law.

5. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted as follows:

"That Eva Fay had a right to bring the 40

*Specifications of the Determination, Etc.*

action for the moneys which she paid under protest, and which she claimed owing by her."

10 The Court erred in this determination and appellant is dissatisfied with the same in point of law.

6. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

"That they could find what the fact was as to the employment of the defendant Grosbart, by the plaintiff."

20 The Court erred in this determination and appellant is dissatisfied with same in point of law.

7. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

"Also ascertain as well from the evidence whether there had been an employment by the plaintiff of Mr. Levin as attorney."

30 The Court erred in this determination and appellant is dissatisfied with same in point of law.

8. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

40 "That if there was an employment of the Constable Grosbart by the plaintiff, the Constable was under legal obligation to pay to the plaintiff such moneys as he might col-

*Specifications of the Determination, Etc.*

lect, and it was not his business to pay such moneys to an attorney unless that attorney had, as a matter of fact, been employed in the matter by the plaintiff."

The Court erred in this determination and appellant is dissatisfied with same in point of law. 10

9. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

"That there is a claim of an attorney in this case and a direct denial, and the jury must ascertain the fact from the evidence."

The Court erred in this determination and appellant is dissatisfied with same in point of law. 20

10. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

"That the Constable had a right to institute the attachment proceedings if he were employed to do so."

The Court erred in this determination and appellant is dissatisfied with same in point of law. 30

11. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

"That the plaintiff did not necessarily have to employ a lawyer in the attachment proceedings, such an employment being a voluntary act on its part." 40

*Specifications of the Determination, Etc.*

The Court erred in this determination and appellant is dissatisfied with same in point of law.

10 12. The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, as follows:

20 "That if a person walked into a suite of offices occupied by various persons pursuing independent occupations or businesses separately, to see a certain individual, and discussed matters in a general way to one who spoke to him, that there was no implied contract of employment or agreement of hiring, except where a conference is held or action required by request, all of which are matters of dispute in this case and must be decided by the jury as to the facts."

The Court erred in this determination and appellant is dissatisfied with same in point of law.

HARRY LEVIN,  
Attorney for Defendant-Appellant.

30

40

**Opinion of Supreme Court.**

NEW JERSEY SUPREME COURT.

No. 443—October Term, 1928.

BLACK & WHITE OPERATING CO., INC., a New Jersey  
corporation,

Plaintiff-Respondent, 10

vs.

EMIL GROSBART,

Defendant-Appellant.

Submitted October Term, 1928. Decided Feb-  
ruary , 1929.

On appeal from Orange District Court.

For Appellant: HARRY LEVIN.

20

For Respondent: GEORGE F. SEYMOUR, JR.

Before—JUSTICES TRENCHARD, KALISCH and  
LLOYD.

PER CURIAM.

The Black & White Operating Company, Inc., obtained a judgment against Eva Fay for taxicab hire. The money was paid to the defendant, but the plaintiff claimed never accounted for to it. The present action was brought to recover the moneys so paid. There was a judgment for the plaintiff and the defendant appeals contending that a motion for non-suit was improperly denied and that the Court erred in its charge to the jury. 30

Our examination of the case satisfies us that the non-suit could not properly have been granted. The defendant is a constable and the account was placed in his hands for collection. He issued an attachment out of the District Court and after the issuance of summons the money was paid by Mrs. Fay under protest. Defendant then turned the money over to Harry Levin, an attorney occupying the same office as the defendant, who 40

*Supplemental Opinion of Supreme Court.*

in turn sent his check to the plaintiff for \$12.50, retaining \$50 as his fee. This the plaintiff refused to receive and declined to recognize the payment by the defendant to Levin and the present action resulted.

10 The case was tried before the Court and a jury and there was contradictory evidence as to the employment of Levin. This raised a question of fact which the jury alone could determine.

The general exception taken to the charge cannot be considered as it brings nothing before us and we cannot, therefore, consider the numerous errors alleged to exist in the instructions given to the jury.

The judgment is affirmed.

**Supplemental Opinion of Supreme Court.**

20 NEW JERSEY SUPREME COURT.  
No. 443—October Term, 1928.

---

BLACK & WHITE OPERATING CO., INC., a New Jersey corporation,

Plaintiff-Respondent,

vs.

EMIL GROSBART,

Defendant-Appellant.

---

30 Submitted October Term, 1928. Decided May , 1929.

On appeal from Orange District Court.

For Appellant: HARRY LEVIN.

For Respondent: GEORGE F. SEYMOUR, JR.

Before—JUSTICES TRENCHARD, KALISCH and LLOYD.

40 PER CURIAM.

Since the per curiam opinion was filed in this case our attention has been called by counsel to

*Judgment of Affirmance.*

a supplemental state of the case which appears to have been signed by the trial Judge two months after the original state of the case had been signed.

Without passing on the sufficiency of such a state of the record, we have examined the reasons urged for reversal and find them without merit, and the judgment is affirmed. 10

**Judgment of Affirmance.**

NEW JERSEY SUPREME COURT.

Action at Law—On Appeal.

---

BLACK & WHITE OPERATING CO., INC., a New Jersey corporation, 20  
 Plaintiff-Respondent,  
 vs.  
 EMIL GROSBART,  
 Defendant-Appellant.

---

This appeal having been heard by the Court, 30  
 and the Court having considered the matter, it is,  
 on this      day of      , 1929, Ordered  
 that the judgment of the District Court be  
 affirmed and appeal dismissed.

THOMAS W. TRENCHARD,  
 Supreme Court Justice.



NEW JERSEY COURT OF ERRORS & APPEALS.

BLACK & WHITE OPERATING CO., INC.,  
a New Jersey corporation,  
*Plaintiff-Appellee,*

—against—

EMIL GROSBART,  
*Defendant-Appellant.*

**BRIEF FOR DEFENDANT-APPELLANT.**

***Facts.***

The facts are rather brief and rather peculiar, and when sifted down appear to be uncontradicted.

The Black & White Operating Co., Inc., had an alleged claim against Eva Fay. Mrs. Fay was a transient and a non-resident of New Jersey, so that attachment proceedings were both necessary and possible against her.

Frank Kaul, president of the plaintiff corporation, knowing one Satsky, a constable, went to his office in regard to this claim. His testimony is that he desired <sup>it</sup> and knew that an attachment proceeding be instituted; that he signed an affidavit (the first step in an attachment in the District Court, see <sup>ex</sup>p. 3).

I. V. Davis, an attorney-at-law, testified and is uncontradicted, that he works for Harry Levin; that he has his office in the same suite with Levin and with Satsky, the constable; that Kaul saw him together with Satsky and directed him to in-

stitute the attachment proceedings. He <sup>drew and</sup> had Kaul sign the affidavit and directed Grosbart to serve the process. The attachment was issued out of the Second District Court, endorsed in the name of Harry Levin, as attorney for the plaintiff, Black & White Operating Co., Inc., and Grosbart served it. When the moneys were paid to Grosbart under protest, he turned the moneys over to Harry Levin, attorney for whom process was issued, and in whose name the process was endorsed. The case then came up in court, and Frank Kaul, president of the plaintiff corporation, attended at the Second District Court, and heard Levin, acting as the attorney for the corporation, discontinue the matter because the moneys had been paid. Levin then told Kaul that Mrs. Fay would apparently sue for the return of the moneys but Kaul appeared fully satisfied.

Shortly thereafter, Levin sent an accounting for the moneys so received, to the plaintiff corporation, of course deducting the amount of his fee, and it was then that the plaintiff corporation insisted that they had never retained him, and sued the constable for the moneys he had received. The suit of the plaintiff is apparently only an attempt by the plaintiff corporation to eliminate in this way the attorney's charges.

### POINT ONE.

**The Court erred in denying the defendant's motion for a direction of a verdict for the defendant.**

As the motions addressed to the opening and for a non-suit are of course merged in the motion

for a direction, the latter will be the only one argued.

In arguing this point, the facts already recounted above should be closely scrutinized. As I have stated before, none of these facts are in dispute; they are all undenied, and we are therefore merely concerned with the conclusions to be drawn from the admitted facts. Under these circumstances, of course, the motion for a direction, it is insisted, should have been granted because there were no disputed facts, and the conclusions to be drawn from the admitted facts show beyond doubt, that there is no cause of action against the defendant, Grosbart.

The reasons for this can be grouped under three heads:

1. Grosbart as a constable receiving process out of a court of competent jurisdiction, was under duty to turn over the moneys received on this process to the attorney whose name was endorsed upon the process, and having done so, the plaintiff here cannot recover against him.

2. That the plaintiff corporation could not institute any attachment proceeding or carry on any attachment proceeding, except through an attorney-at-law, and by the admitted testimony hired Levin to do so, or ratified his act in doing so; that he was therefore its authorized agent, and that Grosbart having turned over the moneys to the plaintiff's authorized agent cannot be held doubly by this action.

3. If we assume that Levin was not authorized and was not acting as agent for the plaintiff corporation when he employed Grosbart, then Grosbart was not the agent of the plaintiff corporation,

and cannot be sued by it as such. Plaintiff, however, ratifies its action so as to make him its agent; it ratifies the entire proceeding and therefore, his delivery of the moneys to the one who appointed him absolves him from further liability. and sues him  
as such;

Taking up No. 1, the proposition itself almost explains itself. An officer of the Court, serving its process, is of course only under duty to serve this process properly and to comply with its mandate, and acts of course only through the attorney who issues the process. In the case of *Mangold v. Thorpe*, 33 Law, 134, Chief Justice Beasley said:

“A warrant, regular on its face, and issued by a Magistrate having jurisdiction over the subject matter, affords a full justification for all acts done by a constable in its lawful execution.”

Apparent analogy is that of a sheriff who receives a writ of execution endorsed with the name of the plaintiff's attorney. When he collects on this execution, he delivers this money to the attorney who is acting in the case as the plaintiff's attorney, a person equally with him “an officer of the Court”. If in the meantime, there was some personal dissension between the plaintiff and his attorney, so that the plaintiff withdrew the authority of the attorney, without notice to the sheriff, by way of substitution, etc., could it be said that the sheriff can be directly sued for the moneys so delivered to the plaintiff's attorney? And it should be further remembered and considered in this point that there is no intimation that the attorney is withholding, but on the contrary there is testimony that the attorney has offered the money less his fee. The plaintiff is only taking this method of procedure in an attempt to avoid payment of

any legal fee, even though he admits that legal services were rendered (see p. 3).

In starting <sup>head</sup> No. 2, it must be first remembered that in this State, a corporation cannot prosecute or defend any action except by a licensed attorney-at-law.

Chancellor Walker goes into the history of this, in the case of *New Jersey Photo Engraving Co. v. Karl Schonert & Son*, 95 Eq. 112, 122 Atl. Rep. 307.

There therefore can be no question that a legal proceeding such as an attachment proceeding cannot be instituted, nor can the plaintiff corporation appear in the Court as it did in this case upon the return of the writ, except by a duly licensed attorney.

It therefore follows without argument, that the corporation did not appear by constable, as the plaintiff insisted, and as the Court intimated it might, and that as it both desired and authorized the institution of the attachment proceeding, that it authorized the person who instituted the proceedings for it.

The admitted facts as before recounted, show that the plaintiff went to the office of Levin, and whether it was with the intention of engaging Satsky, a constable, or Levin, the attorney, the facts are that it was with the intention and direction that an attachment proceeding be instituted; that a court step be taken, and papers in this court proceeding were signed by the plaintiff. Going further, we have Davis's undisputed testimony that he was ordered to do so by Kaul, and then we have the testimony that Kaul was at the District Court, and heard and saw Levin representing him in the case before the Court, and talked to him about it as they left.

When an individual goes to the office of several people, with different businesses or vocations, he need not announce which one he desires for the character of the work he desires plainly designates the person. The work required here being legal services, the attorney was of course fully within his rights in assuming his services were desired and is surely within his rights requiring payment for the services.

At this point, a rather peculiar situation should be noticed. If the plaintiff insists he hired only Satsky, the constable (see <sup>ex</sup>p. 3), then the hiring by Satsky of the attorney Levin, who in turn hired the defendant here, would establish the same fact, and Grosbart would be entitled to pay his principal, Levin, who was authorized this way, by the plaintiff corporation, and as Levin turned the moneys over to Satsky, less a fee, Satsky would be entitled to turn this over to the plaintiff corporation less his fee, and we would then be in the same position. If the plaintiff corporation only authorized Satsky and did not authorize him to engage others, then how could their suit here be based upon an agency of Grosbart?

Taking up <sup>head</sup>No. 3, *Boden v. Berg*, 82 Law, 662, 82 Atl. 901, "by accepting beneficial results of an unauthorized act of his agent, the principal having knowledge of the facts, ratifies the said act, and cannot repudiate the consequences of the particular act in the incidental transaction." So also 2 C. P. Agency, page 483, and 21 Ruling Case Law 100.

If the plaintiff insists that Grosbart is its agent by its ratification of his agency, it could hardly ratify his acts as agent for the action, and refuse to ratify his act in paying moneys over to the one who appointed <sup>him</sup>its agent.

In *Gulick v. Grover*, 33 Law 463, the Court said that the ratification of an act is equivalent to the original grant of authority. Having ratified the original act of ~~the~~ appointment by Levin, Grosbart was authorized to turn the moneys over to Levin and cannot be held for having done so.

Further argument on this point seems superfluous.

### POINT TWO.

The Court charged the jury and the appellant excepted to the said charge, and said exception was granted, "that Eva Fay had a right to bring the action for the moneys which she paid under protest, and which she claimed owing by her".

As there was nothing in the case as to the merits or demerits of the Eva Fay suit; as there was nothing in the case that was at all relevant to this, or anything to prove whether she had or had not any rights, it is of course apparent that the charge made was erroneous and prejudicial.

### POINT THREE.

The Court charged the jury and the appellant <sup>separately</sup> excepted to the said <sup>portions of one</sup> charge, and said exceptions were granted, as follows:

- (a) "That they could find what the fact was as to the employment of the defendant, Grosbart, by the plaintiff.
- (b) Also ascertain as well from the evidence whether there had been an employment by the plaintiff of Mr. Levin as attorney.

- (c) That if there was an employment of the constable Grosbart by the plaintiff, the constable was under legal obligation to pay to the plaintiff such moneys as he might collect, and it was not his business to pay such moneys to an attorney unless that attorney had, as a matter of fact, been employed in the matter by the plaintiff.
- (d) That there is a claim of an attorney in this case and a direct denial, and the jury must ascertain the fact from the evidence."

The above have already been discussed in the discussion of Point One for a direction of a verdict. All of the ~~evidence was~~ <sup>facts were</sup> admitted and the conclusions of law to be drawn therefrom were for the Court under the admitted facts, and each of said portions of the charges had no basis in the evidence, and was prejudicial to the defendant.

#### POINT FOUR.

**The Court charged the jury and the appellant excepted to said charge, and said exceptions were granted as follows:**

*"That the constable had a right to institute the attachment proceedings if he were employed to do so.*

*That the plaintiff did not necessarily have to employ a lawyer in the attachment proceedings, such an employment being a voluntary act on its part."*

This point has <sup>already</sup> been argued in the argument in Point One ("error in refusing to direct a verdict") ~~which came under the cases and especially under~~ <sup>it is squarely decided in</sup> the case cited *supra*, *N. J. Photo Engraving Co. v. Schonert*, 95 Eq. 12. There can be no doubt that these portions of the charge of the Court were erroneous.

It was of course prejudicial to the defendant in determining the question as to whether the plaintiff had hired the attorney as set forth more particularly in the first point.

#### POINT FIVE.

The Court charged the jury and the appellant excepted to the said charge, and said exception was granted "That if a person walked into a suite of offices occupied by various persons pursuing independent occupations or businesses separately, to see a certain individual, and discussed matters in a general way to one who spoke to him, that there was no implied contract of employment or agreement of hiring, except where a conference is held or action required by request, all of which are matters of dispute in this case and must be decided by the jury as to the facts."

This point has also been argued in the argument in Point One.

#### CONCLUSION.

*It is therefore respectfully submitted that the judgment must be reversed and set aside, and the matter sent back for a new trial.*

HARRY LEVIN,  
and of counsel, with  
Attorney for Defendant-Appellant.



