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Summons.

The State of New Jersey to Peter F. Briscoe:

You are summoned to answer the annexed complaint of Aaron D. Thompson, in an Action at Law in the Supreme Court. And take notice that unless you file your answer to said Complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 21st day of February, One Thousand Nine Hundred and Twenty-nine. 20

FRED L. BLOODGOOD,
Clerk.

BENJAMIN NEWMAN,
Attorney. 30

Complaint.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

10

AARON D. THOMPSON,
Plaintiff,

vs.

PETER F. BRISCOE,
Defendant.

Action at Law.
Complaint.

20

The plaintiff, having his principal place of business in the City of Newark, County of Essex and State of New Jersey, says that:

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1. On August 30, 1927, the defendant, Peter F. Briscoe, duly authorized the plaintiff, by a written agreement, a copy of which is hereunto annexed and made a part hereof, to sell certain lots, not owned by the defendant, but controlled by him and situated on a tract of land known as Fairview Park, Hanover Township, Morris County, New Jersey, and agreed to pay the plaintiff a commission of twenty per cent. (20%) on the purchase price of all lots sold by him, for and on behalf of the defendant.

2. The said defendant further agreed to pay an additional commission of five per cent. (5%) on the purchase price of all lots sold by the plaintiff where the defendant obtained a contract for the erection and construction of a building thereon, for the purchaser of said lot or lots.

40

3. Acting and relying upon said agreement, the plaintiff by himself and his agents sold a lot to

Complaint.

David Clark, to Leslie W. Hopping and or Florence W. Hopping and to Archibald Larkin, which sales were consummated in the months of March, April and May, 1928.

4. With the above named purchasers the defendant obtained contracts from each of them for the erection and construction of a building on each of the lots purchased by said buyers. 10

5. By reason whereof the plaintiff has earned commissions in the sum of Nine Hundred (\$900.00) Dollars, for which plaintiff has demanded payment from the defendant, but the defendant has not paid the same.

Plaintiff demands as damages the sum of Nine Hundred (\$900.00) Dollars with interest. 20

BENJAMIN NEWMAN,
Attorney for Plaintiff.

I, the undersigned, do hereby recognize Aaron D. Thompson as my duly authorized broker for the sale of lots controlled by me and situated in the tract of land known as "Fairview Park", Hanover Township, Morris County, New Jersey, and do hereby agree to pay to the said Aaron D. Thompson, a commission of twenty per cent. (20%) on the purchase price of all lots sold by him for and on my behalf and I also agree to pay an additional commission of five per cent. (5%) on the purchase price of all lots sold by him where I have obtained a contract for the erection and construction of a building thereon for the purchaser of said lot, provided, however, that the said purchaser of said lot shall have entered into a contract with me for the erection of said build- 30 40

Complaint.

ing within three months from the date of said sale.

All commissions are to be paid to the said Aaron D. Thompson as follows:

10 50% of all cash received by me on account of the purchase price of any and all of said lots, until such time as the full commission has been paid.

(signed) PETER F. BRISCOE.

Dated: August 30, 1927.

To the within named defendant:

20 Take notice that if the within summons and complaint be served upon you personally and you intend to make defense, then you must file an affidavit of merits within ten days of such service and must file an answer within twenty days of such service; and that in default thereof, judgment will be entered against you. Lawful service upon a corporation is deemed personal service.

BENJAMIN NEWMAN,
Attorney of Plaintiff.

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Answer.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

10

AARON D. THOMPSON,
Plaintiff,

vs.

PETER F. BRISCOE,
Defendant.

Action at Law.
Answer.

20

The defendant, residing in the City of Plainfield, County of Union, and State of New Jersey, for his answer says:

1. He admits the allegations of paragraphs 1 and 2 of the complaint.
2. He denies the allegations of paragraphs 3, 4 and 5 of the complaint.

First Separate Defense.

30

Before the institution of this suit the parties hereto struck a balance between themselves and completed it accordingly.

ROBERT NEWTON CRANE,
Attorney of Defendant.

40

Reply.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

AARON D. THOMPSON, Plaintiff,	}	Action at Law. Reply.	10
<i>vs.</i>			
PETER F. BRISCOE, Defendant.			

Plaintiff denies the first separate defense.

BENJAMIN NEWMAN, 20
Attorney of Plaintiff.

30

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Substitution.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

10

AARON D. THOMPSON,
Plaintiff,

vs.

PETER F. BRISCOE,
Defendant.

Action at Law.
Substitution.

20

It appearing to the Court that Robert Newton Crane, attorney of the defendant, Peter F. Briscoe, in the above entitled cause has departed this life; and that he has appointed Augustus S. Dreier, in the place and stead of said Robert Newton Crane;

IT IS, on this 15th day of October, A. D. Nineteen Hundred and Thirty, ORDERED that Augustus S. Dreier be and he is hereby substituted as attorney for said defendant, in the place and stead of the said Robert Newton Crane.

30

NEWTON H. PORTER, JR.,
Judge.

I consent to the making and entry of the foregoing order.

PETER F. BRISCOE,
Defendant.

40

Postea.NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

AARON D. THOMPSON,
Plaintiff,

vs.

PETER F. BRISCOE,
Defendant.

10

Action at Law.
Postea.

This case was tried before Judge Newton H. Porter, with a jury at the Essex Circuit, on October 15th, 1930.

20

The jury rendered a general verdict against the defendant and in favor of the plaintiff for Ten Hundred and Eight (\$1008.00) Dollars.

NEWTON H. PORTER,
Judge.

30

40

Notice of Appeal.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

10

AARON D. THOMPSON,
Plaintiff,

vs.

PETER F. BRISCOE,
Defendant.

Action at Law.
Notice of Appeal.

To: BENJAMIN NEWMAN, Esq.,
Attorney of Plaintiff.

20

Dear Sir:

PLEASE TAKE NOTICE THAT the defendant appeals to the New Jersey Court of Errors and Appeals, court of last resort of all causes in New Jersey, from the whole of the judgment entered in this cause in the New Jersey Supreme Court.

Dated: October 24, 1930.

30

AUGUSTUS S. DREIER,
Attorney of Defendant.

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Grounds of Appeal.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

<p style="text-align: center;">AARON D. THOMPSON, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">PETER F. BRISCOE, Defendant.</p>	}	<p style="text-align: center;">Action at Law. Grounds of Appeal.</p>	10
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1. The trial court erroneously admitted the Plaintiff's Exhibit P-1 in evidence over objection.

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2. The trial court erroneously admitted the following question to be answered of the witness Aaron D. Thompson over objection.

“Under the terms of that contract what commission was Mr. Briscoe to get on the sale of those lots?”

3. The trial court erroneously admitted the Plaintiff's Exhibits P-6 and 7.

4. The trial court erroneously refused to permit the following question to be answered of the witness Peter F. Briscoe on direct examination:

30

“Who accepted it for the G. C. T. Corporation?”

5. The trial court erroneously charged the jury as follows:

“The contract was made as a result of the agent's services; the agent brought these people together and the sale was made, and

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Grounds of Appeal.

if I am correct in my recital of the facts with respect to that transaction, the commission has been earned and is due on that sale."

6. The trial court erroneously charged the jury as follows:

10 "If you should find for the plaintiff, there is the matter of interest for two years to be taken into consideration. Counsel has calculated it as \$108 for the full amount of \$900. If your verdict should be for \$600, then it would be two-thirds of that amount; if it should be \$300, then it is one-third of that amount, depending, as I say, on what your verdict shall be, whether for \$300, \$600 or \$900."

20 7. The trial court erroneously refused to charge the jury the following request:

 "The duty which an agent undertakes, the obligation he assumes as a condition of his right to demand commissions is to bring the buyer and seller to an agreement. The agent, to earn commissions on the sale of property, must be the efficient or procuring cause of the sale." (*Queen vs. Jennings*, 93 N. J. L. 353.)

30 8. The trial court erroneously refused to charge the jury the following request:

 "Unless the plaintiff has proven that as a matter of fact he was the one who brought the purchasers to the defendant, or that he was the first one to speak to the purchasers in regards to the buying of the property, then you must find in favor of the defendant."

9. The trial court erroneously refused to charge the jury the following request:

40

Grounds of Appeal.

“A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell.” (*Courter vs. Lydecker*, 71 N. J. L. 511.)

10. The trial court erroneously refused to charge the jury the following request: 10

“If you find that a purchaser was obtained by the plaintiff, but said purchaser was unable financially to carry out the terms of the contract, then you must find the verdict in favor of the defendant.”

11. The verdict was contrary to the weight of the evidence.

12. The verdict was contrary to the charge of the court. 20

13. That portion of the verdict based on the Hopping transaction was contrary to the weight of the evidence.

14. That portion of the verdict based on the Larkin transaction was contrary to the weight of the evidence.

15. That portion of the verdict based on the Clark transaction was contrary to the weight of the evidence. 30

AUGUSTUS S. DREIER,
Attorney of Defendant.

Dated: December 11, 1930.

Testimony.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.
Wednesday, October 15, 1930.

10

AARON D. THOMPSON,

vs.

PETER F. BRISCOE,

} Action at Law.

Before Hon. NEWTON H. PORTER, JR., and a jury.

20

For plaintiff appears BENJAMIN NEWMAN.

For defendant appears AUGUSTUS S. DREIER.

(A jury is called and sworn.)

Mr. Newman opens for plaintiff.

Mr. Dreier opens for defendant.

30

AARON D. THOMPSON, the plaintiff, sworn in his own behalf.

Direct examination by Mr. Newman:

Q. Mr. Thompson, will you state your full name? A. Aaron D. Thompson.

Q. Where do you live? A. Plainfield, New Jersey.

Q. How long have you lived there? A. About thirty-five years.

40

Q. Do you know Mr. Briscoe, the defendant in this case? A. I do.

Aaron D. Thompson, the Plaintiff—Direct.

Q. What is your business, Mr. Thompson? A. Real estate developer.

Q. How long have you been in the real estate business? A. About twenty years.

Q. Are you a member of this G. C. T. Corporation? A. I am secretary.

Q. And this G. C. T. Corporation is the owner of this tract of land out in Hanover? A. They are, sir. 10

Q. Are you a member of that company? A. I am.

Q. Are you a director? A. I am.

Q. Do you hold any office in the company? A. Secretary.

Q. Did Mr. Briscoe have an agreement with this company? A. He did.

Q. And is this the agreement that he had with this Company (document handed to witness)? A. It is. 20

Mr. Newman: That is offered in evidence.

Mr. Dreier: I object to the admission of that. This is a suit on a specific contract between the plaintiff and the defendant and has no bearing on any other contract between the defendant and plaintiff.

The Court: What is the purpose of this offer? 30

Mr. Newman: This is just to show the relationship between Mr. Briscoe and the owners of the property. I think it is evidentiary. We are not suing on it; it is just evidential.

The Court: I will admit it and if I find it has no bearing, I will rule it out. Exception noted as ground of appeal. 40

Aaron D. Thompson, the Plaintiff—Direct.

(Document referred to was thereupon received in evidence and marked Exhibit P-1.)

By Mr. Newman:

10 Q. Under the terms of that contract, what commission was Mr. Briscoe to get on the sale of these lots?

Mr. Dreier: I object to that. This is a specific suit on a specific contract, and what the defendant was to get from another party has no bearing.

20 The Court: It might have, I cannot tell. I will allow it, subject to ruling it out later if it is not connected up or if it is immaterial. Exception noted as ground of appeal.

By Mr. Newman:

Q. You may answer. Under the terms of that agreement, what was Mr. Briscoe to get? A. Thirty per cent. commission.

Q. Mr. Briscoe is in what business, Mr. Thompson? A. Building business.

30 Q. At the time when that contract was drawn, Mr. Briscoe gave you this agreement upon which suit is brought? A. Yes.

Q. This is it, is it not (document handed to witness)? A. That is it, yes, sir.

Mr. Newman: That is offered in evidence.

(Contract referred to was thereupon received in evidence and marked Exhibit P-2.)

40 Q. After you got this contract from Mr. Briscoe, what did you do, Mr. Thompson? A. I did

Aaron D. Thompson, the Plaintiff—Direct.

nothing for a period of about six or eight weeks.

Q. And then what did you do? A. Then Mr. Briscoe not making any sales, I took hold of the property at his request.

Q. What did you do? A. I brought my men up there, took them through the entire development, circularized the town and had my men spend nearly a year up there working, canvassing, bringing the people out there and putting the proposition of Fairview Park before the people of Morristown. 10

By the Court:

Q. Where is Fairview Park? A. It is near the Morris County Club fair grounds, at Morristown.

By Mr. Newman: 20

Q. Did you sell any lots for them? A. We sold three lots—we sold six lots altogether.

Q. On these first three, have you been paid? A. The first three houses were paid for, no question about that.

Q. Is this one of the circulars that you circularized the township or neighborhood with (document handed to witness)? A. That is, yes.

Mr. Newman: That is offered in evidence. 30

The Court: It may be received.

(Circular referred to was thereupon received in evidence and marked Exhibit P-3.)

Q. How much money did you spend in circularizing and advertising and incidental expenses?

Mr. Dreier: That is objected to.

The Court: Objection sustained. 40

Aaron D. Thompson, the Plaintiff—Direct.

By Mr. Newman:

Q. How many people did you have up there?

A. Two men including myself.

Q. On the three first lots that you sold, did Mr. Briscoe build houses? A. He did.

10 Q. You got paid for those? A. I did.

Q. What was the next one that you sold, that you are bringing suit on? A. That was on March 24th, to a man by the name of Hopping.

By the Court:

Q. What was the date? A. March 24, 1928, is the date. The sale is recorded in the G. C. T. books.

20 Q. What did you sell him? A. We sold him a lot, I cannot remember the lot, but the lot number is in the book.

By Mr. Newman:

Q. Is this the first deposit that was received by the G. C. T. Company from Mr. Hopping (document handed to witness)? A. That is the first deposit, yes, sir.

30 Q. That is witnessed by Mr. Callahan? A. That was witnessed by Mr. Callahan and brought in by Mr. Callahan, and when these slips are brought in with the deposit, we make up the contracts.

Q. Mr. Callahan was working for you, was he? A. Mr. Callahan was working for me.

Q. What is this paper (document handed to witness)? A. This is the contract between the G. C. T. Corporation and Leslie W. Hopping.

40 Q. And that is witnessed by Mr. Callahan? A. That is signed by Hopping and his wife and witnessed by Mr. Callahan.

Aaron D. Thompson, the Plaintiff—Direct.

Q. What was the sale price of this lot? A. \$1,200.

Q. What was the lot number? A. Lot 73 in block 3.

Mr. Newman: These are offered in evidence.

The Court: They may be received and marked. 10

(Documents referred to were thereupon received in evidence and marked Exhibits P-4 and P-5.)

Q. Was the \$1,200, the selling price on these lots, paid? A. Paid, yes. Pardon me, no, Mr. Newman, he deducted \$300 on that when he settled with the G. C. T. 20

Q. But the \$1,200 was paid less whatever commissions were deducted? A. \$1,200 was paid to the G. C. T. less the commission.

Q. That he got from the G. C. T.? A. He didn't get it, he deducted it.

Q. Was there a house built on that? A. There was.

Q. Who built that house? A. Peter Briscoe.

Q. What was the next house that was sold by you? 30

The Court: Just a moment, you say he kept \$300 commission, is that what you said?

Mr. Newman: That is what the witness said.

The Witness: It was 30 per cent; it should be \$360 is what he deducted.

Aaron D. Thompson, the Plaintiff—Direct.

By the Court:

Q. And your agreement called for how much?
A. \$300; 25 per cent of \$1,200.

Q. This is if a house were built on the property? A. Yes, and a building was built.

10 By Mr. Newman:

Q. What was your next sale, Mr. Thompson?

A. The next deposit that came in was from Mr. David Clark on lot 70, April 3, 1928, and I received a deposit.

By the Court:

Q. In what block? A. Block 3.

Q. What is the man's name? A. David Clark.

20

By Mr. Newman:

Q. How much was that? A. \$1,200.

Q. Did you get that; did he pay for it? A. There was a payment of \$20 that came to the office; then the lot was paid for by Mr. Briscoe.

Q. In full? A. No, less 30 per cent.

Q. Was there a house built on that lot? A. There was a house built on the lot.

Q. So that your commission there again is \$300?

30 A. Yes, sir.

Q. Is this the memorandum that your salesman brought in? (Document handed to witness.) A. Yes, sir.

Q. And this is the contract? The contract is not signed, but it seems to be a contract with the Fairview Building Company. I offer it in evidence.

40

Mr. Dreier: I object to this. This is not signed by the purchaser but merely by Mr.

Aaron D. Thompson, the Plaintiff—Direct.

Thompson's own agent and there is no proof who signed that.

The Court: It is not signed at all?

Mr. Newman: The contract is not signed, but the assignment is signed by David E. Clark and Bertha S. Clark.

The Court: They may be admitted. 10

Mr. Dreier: Both of them, your Honor?

The Court: Yes.

Mr. Dreier: The small slip which is entirely separate, is not signed at all.

The Court: I understand that.

(Defendant's counsel prays an exception to this ruling of the Court.)

The Court: Exception noted as ground of appeal. 20

(Documents referred to were thereupon received in evidence and marked Exhibits Nos. P-6 and P-7.)

The Court: I think it really amounts to a deposit slip. If a man makes a deposit in a bank, a deposit slip is an evidentiary circumstance of that fact. It is only evidential. Your objection is that it is a self-serving declaration? 30

Mr. Dreier: That is it.

The Court: Yes, so would a deposit slip be.

By Mr. Newman:

Q. There was a house put on the Clark lot? A. Yes, there was a house put on the Clark lot.

Q. By Mr. Briscoe? A. By Mr. Briscoe.

Q. What was your next sale? A. The next sale was made on May 28th, to a man named Archibald Larkin, of lot 75 and the price was \$1,200. 40

Aaron D. Thompson, the Plaintiff—Direct.

By the Court:

Q. Block 3? A. Block 3.

By Mr. Newman:

10 Q. The selling price was \$1,200? A. The selling price was \$1,200.

Q. Was that \$1,200 paid to the G. C. T. Company? A. \$1,200 less 30 per cent. was paid to the G. C. T.

Q. And that 30 per cent. went to Mr. Briscoe? A. Yes.

Q. And this is the deposit slip, as you call it, signed by Mr. Larkin and witnessed by whom? A. Signed by A. Larkin and witnessed by Robert MacCormack.

20 Q. Is that one of your men? A. That is one of my men.

Q. And this is the contract (document handed to witness)? A. This is the contract witnessed by Robert MacCormack.

Mr. Newman: These are offered in evidence.

The Court: They may be received.

30 (Documents referred to were thereupon received in evidence and marked Exhibits Nos. P-8 and P-9.)

By Mr. Newman:

Q. Was there a house built on this lot? A. There was.

Q. By whom? A. Peter Briscoe.

Q. And the \$1,200 was paid in less the commission like the other lots? A. \$1,200 was paid in less 30 per cent. commission.

40

Aaron D. Thompson, the Plaintiff—Cross.

Q. Did you ask Mr. Briscoe for your money?
A. I did.

Q. Did he pay you? A. He did not.

By the Court:

Q. You quit then? A. I quit very quickly, yes. 10
Mr. Newman: You may cross-examine.

Cross-examination by Mr. Dreier:

Q. What was the custom, Mr. Thompson, of Mr. Briscoe in relation to the lots you sold, as to payments to the company, did he make payments on all lots? A. Yes.

Q. On the original three, you got your commission? A. Not all of it. We got the first installment; the first payment made by the customer. 20

Q. And the balance, less Mr. Briscoe's commission, was paid to you? A. The procedure was that the client would assign his right, title and interest in the contract for the purchase of the lot at the time he secured the contract for the erection of the house.

Q. And Mr. Briscoe would pay the balance, is that right? A. Mr. Briscoe would pay the balance. 30

Q. You say you got a receipt of Mr. Hopping for \$10; you gave him a receipt rather for \$10? A. If that is in evidence, we did.

Q. Well, could you have given it to him and not have it in evidence? Is it not shown on that first deposit slip that was offered? A. I think it is there.

Q. Now, Mr. Thompson, this slip says that a formal contract will be entered into; was that entered into? A. Which case are you talking about? 40

Aaron D. Thompson, the Plaintiff—Cross.

Q. The Hopping. A. It was.

Q. Have you that contract? A. I believe it is here.

Q. May I see it?

(Document handed to counsel.)

10

Q. Is this the formal contract you speak of?

A. That is the formal contract I make on all lots.

Q. I see. I did not understand that. Now, who made the sale to Mr. Hopping? A. You would have to look on the slip.

Q. It says Callahan there. A. Then Callahan did.

20

Q. He made the sale. Do you know, as a matter of fact whether Mr. Hopping owns that house now or Mrs. Hopping? A. I have not searched the records, I don't know.

Q. You don't know whether they ever bought it, do you? A. They bought it, as far as paying for the lot is concerned on signing the contract; I presume they bought it.

Q. How much did Mr. Hopping pay, that you know of? A. I would have to look on the slips—the G. C. T.'s statement there.

30

By Mr. Newman:

Q. Do you mean these sheets? Will these help you? (Documents handed to witness.) A. Yes, sir.

By Mr. Dreier:

Q. Did Mr. Hopping himself pay you? A. He paid us; he paid us the sum of \$260.

Q. How did he pay that? A. In cash.

40

Q. He paid that? A. It came to my office through one of my men who brought it in. I pre-

Aaron D. Thompson, the Plaintiff—Cross.

sume Mr. Hopping must have paid it. I don't think the boys would pay it themselves.

Q. You don't know, as a matter of fact, do you?

A. I wasn't there, no.

Q. How about the balance of it? A. The balance was paid by Mr. Briscoe; we deeded the property to Mr. Briscoe.

10

Q. If that property was sold to Mr. Briscoe, you would not have gotten any commission, would you? A. If he purchased a lot himself, he would be entitled to his 30 per cent discount, you are right.

Q. As a matter of fact, he did purchase one up there and no one got any commissions but himself? A. That is right.

Q. And if he purchased another one and still owned that other one, he would have been entitled to full commissions, would he not? A. Absolutely.

20

Q. Now, as to Mr. Clark, did you sell the lot or was it your salesman? A. My salesman sold the lot.

Q. Who? A. My salesman.

Q. What is his name? A. Mr. MacCormack, that is the one who signed the slip; Mr. MacCormack brought the deposit in.

Q. You do not know what transaction he had?

30

A. No, I do not.

Q. And you do not know where he saw Clark first? A. Only what he told me.

The Court: Don't tell that.

Q. All you know about the transaction is that this slip was brought to you with \$20 and subsequently the balance was paid by Mr. Briscoe?

A. That is all I know.

40

Aaron D. Thompson, the Plaintiff—Cross.

Q. That is about all you know about the Larkin transaction, isn't it? A. The money came in, that is all I know. No, there is more about the Larkin transaction that I know about, because I was——

Q. Did you have anything to do with the Larkin transaction?

10

Mr. Newman: Let the witness finish his answer.

The Court: He asked him if that is all he knew. He said he knew more but maybe he does not wish to hear any more.

20

Q. What did you have to do personally with the Larkin transaction? A. I was asked before the contract for the sale of the house was completed, as I understand it, to go down with Mr. MacCormack to the Larkin homestead, which I did. There seemed to be some difficulty in getting a satisfactory arrangement for that house. There was something about a room to be finished on the second floor—this being a one-story bungalow, and I talked with Mrs. Larkin, that is the mother, one afternoon—in fact, I went there twice. The second time they said they would go up again that night.

30

Q. That was after the original deposit had been paid? A. That was after the original deposit was paid.

Q. You are a member of the corporation who owns the property? A. I am.

Q. Are you a stockholder in it? A. I am.

Q. And you are vitally interested in the sale of the lots? A. Absolutely.

Q. And you get some of the profit that is made from the sale of those lots besides a commission?

A. If it goes through, we do.

40

Aaron D. Thompson, the Plaintiff—Re-direct.

Q. As an officer and stockholder, you would do everything you can to sell such property, would you not? A. Positively.

Q. Even though you would not get much commission on the side, wouldn't you? A. Why, yes.

Q. As to the original transaction with Larkin and Clark, you say that you did not have those transactions but it was one of your agents, as far as you know? A. My agents made all the sales. 10

Mr. Dreier: That is all.

Re-direct examination by Mr. Newman:

Q. Mr. Thompson, the first three houses that you sold—or the first three lots that you sold on which you collected a commission, when these customers got these contracts, they would take these contracts that are in evidence, would they not? A. Absolutely. 20

Q. What would happen to the contracts after they were signed up?

Mr. Dreier: I object to that. That is immaterial, your Honor.

The Court: That has already been testified to; they were assigned to Mr. Briscoe and title taken by Mr. Briscoe.

Mr. Newman: I just wanted to be sure your Honor knew that. 30

The Court: I certainly did. I wondered about it. He said they were assigned to Mr. Briscoe, who built houses, and my thought was that Br. Briscoe was then enabled to negotiate mortgages. I suppose they would pay their installments and finally get title, isn't that the way it was?

Aaron D. Thomspon, the Plaintiff—Re-cross.

By Mr. Newman:

Q. Now, on this Clark contract, how much was brought in to the G. C. T. Company by your agents from Mr. Clark?

The Court: \$360, wasn't it?

10

A. \$500.

Q. How much on the last contract, direct from the buyer—was Clark the last one?

The Court: No, Larkin was the last one, as I understand it.

The Witness: Larkin paid \$250.

Q. Clark \$500 and Hopping how much? A. \$250.

20

By the Court:

Q. And Larkin \$250, you say?

By Mr. Newman:

Q. How much did Larkin pay? A. Larkin paid \$250.

Mr. Newman: That is all, Mr. Thompson.

30

Re-cross-examination by Mr. Dreier:

Q. Just one more question: It was the custom of anyone purchasing property out there, no matter who sold it, to enter into this contract with your company? A. Absolutely.

Q. If Mr. Briscoe sold it himself or you sold it or one of your agents or anyone? A. That is the contract for the purchase of the lot—that must be made with our company.

40

Aaron D. Thompspon, the Plaintiff—Re-cross.

Q. No matter who sold it? A. Absolutely, that is the company's contract.

Q. Mr. Thompson, as a matter of fact, you know that Mr. Hopping failed to go through with the purchase of the property and Mr. Briscoe had to take it on himself, don't you? A. He said at that time that he was having trouble getting the balance of his purchase price from Mr. Hopping. I think that is right. 10

Q. Mr. Briscoe told you that? A. He told me that.

Q. Do you know, as a matter of fact, whether Hopping took the property or not? A. He moved into the property. I don't know. He took possession of the property. Whether he paid in full or not, I would have no way of finding out and I had no interest. 20

Q. You don't want to collect commissions on property that you did not sell or that your men did not sell, do you? A. I want to collect commissions under the agreement I had with Mr. Briscoe, that in the event that a house is erected on the lot which they purchase, and the contract is made according to my agreement there that if the purchaser builds a house or enters into a contract for the erection of a house, I want my commission. 30

Q. If you or your men sold the lot? A. Absolutely.

Q. But if your men or yourself did not sell the lot, you do not expect a commission then, do you? A. No, I don't expect anything that I am not entitled to.

The Court: That is all, call your next witness.

James A. Callahan, for Plaintiff—Direct.

JAMES A. CALLAHAN, called as a witness on behalf of the plaintiff having been duly sworn, testified as follows:

Direct examination by Mr. Newman:

10 The Court: What is that memorandum you have there?

 The Witness: Just the dates of sales.

 The Court: Put it away.

By Mr. Newman:

Q. What is your business, Mr. Callahan? A. Salesman.

Q. Real estate salesman? A. Yes.

20 Q. Where do you live, Mr. Callahan? A. Caldwell, New Jersey.

Q. How long have you been a real estate salesman? A. Why, about ten years.

Q. In 1928, you were working for whom? A. For Mr. Thompson.

Q. You were selling lots at Fairview Park? A. I was selling lots at Fairview Park, yes.

Q. Do you know Mr. Briscoe? A. Yes.

30 Q. How many lots did you sell for Mr. Thompson at Fairview Park? A. I think we sold about six between us,—between Mr. MacCormack and myself. You see we were partners, MacCormack and myself.

Q. Mr. MacCormack is a real estate salesman also? A. Yes.

Q. On the first three lots sold, were there any houses built on those? A. Yes.

Q. Did you bring about those sales? A. Yes.

40 Q. What work did you do for Mr. Thompson?
A. Well, we circularized the town; called from door to door, rang their bells; told them about it; told about the property and when the Fair was

James A. Callahan, for Plaintiff—Direct.

going on at Morris County,—that is the Morris County Fair, we had a booth there. Mr. Thompson put up a booth there and I think we got out around 4,000 or 5,000 circulars during the Fair and we kept busy going from door to door for about, I guess, six months or so.

Q. Is this the circular that you refer to, marked Plaintiff's Exhibit 3? (Document handed to witness.) A. That is one of them. Then we got out a bigger one than that, and then we also had ads in the newspaper. 10

Q. Did you and Mr. MacCormack sell those first three lots? A. Yes.

Q. And there were three houses built on those? A. Yes, by Mr. Briscoe.

Q. When those lots were sold, you got a deposit from these people? A. Certainly. 20

Q. And you brought them in on those small slips? A. That is right, and then we got a contract.

Q. The first three of these contracts were made out in the names of the buyers? A. That is right.

Q. What happened to the contracts after that? A. It was assigned to the builder. When they made a contract for a building, they assigned it over to the builder, as their payment to the builder. 30

Q. To Mr. Briscoe? A. Yes.

Q. And Mr. Briscoe paid for those three? A. That is right, as much as I know.

Q. The fourth one was sold to whom? A. To Hopping.

Q. And this slip marked Plaintiff's Exhibit 4 that is witnessed by you as a salesman, is it not, Mr. Callahan? A. Yes. I got Mr. Hopping through an ad. I had a newspaper ad and I went to his house and collected the deposit off of him 40

James A. Callahan, for Plaintiff—Direct.

of \$10, then I brought him up the contract and brought him to Mr. Briscoe after I got the \$10; turned him over to Mr. Briscoe and got the other \$250 at Mr. Briscoe's house.

10 Q. Then you had Mr. and Mrs. Hopping sign the agreement marked Plaintiff's Exhibit 5? A. Yes.

Q. And you witnessed it there over on the left? A. Yes, I did.

Q. How many times did you see Mr. Hopping before he signed the slip marked Plaintiff's Exhibit 4? A. I got the deposit the first time I seen him; the first time I brought him to the property.

Q. You got a deposit from him? A. Yes.

20 Q. When you got the deposit, you gave that to Mr. Thompson? A. I gave him the deposit and a receipt the same as that.

Q. You gave Mr. Hopping a duplicate of this slip, marked Plaintiff's Exhibit 4? A. That is right.

Q. And you brought the deposit down to Mr. Thompson? A. Yes.

Q. And then this contract was drawn up? A. That is right.

30 Q. And you were present when Mr. and Mrs. Hopping signed this contract? A. Yes, I witnessed their signatures.

Q. You say you brought the customer over to Mr. Briscoe after they signed the contract? A. Yes.

Q. What happened after that? A. We always bring them over or send them over to Mr. Briscoe. Mr. Briscoe had arrangements to take care of any customers, to take them on the property.

Mr. Dreier: I object to what his arrangement with Mr. Briscoe was.

James A. Callahan, for Plaintiff—Direct.

The Court: This man is the agent of the plaintiff and it was as the agent for the plaintiff that he had this arrangement and I think that is proper.

By Mr. Newman:

Q. After you got a customer, you brought him over to Mr. Briscoe? A. We did not bring all of our customers over to Mr. Briscoe, because we were out canvassing all day long; Mr. Briscoe was on the property and if we talked to a party and could not get him there at that time, we would ask him to go over to see Mr. Briscoe, because we would continue looking up other customers. 10

Q. On this Hopping lot, is there a house erected? A. Yes.

Q. Who is living in that house? A. Mr. Hopping, as far as I know. I have not been there for a year. 20

Q. When it was finished, who moved into the house? A. Mr. Hopping.

Q. Who built that house? A. Mr. Briscoe.

Q. Who was your next customer? A. After that?

Q. Yes. A. The next sale was made to Mr. Clark.

Q. How did you meet Mr. Clark? A. Mr. Clark came through Mr. Hopping. Mr. Clark and Mr. Hopping worked in the same place of business, in a plumbing establishment in Morristown. When I sold Mr. Hopping, after my sale was finished, I went with Mr. Briscoe to the plumbing establishment where Mr. Hopping works, to show the plan of the house; Mr. Briscoe and I went to show the plan to the draftsman of the house that Mr. Briscoe was to build, and through him, Mr. Clark buys a lot. 30 40

James A. Callahan, for Plaintiff—Direct.

By the Court:

Q. Through Mr. Hopping? A. Yes, through Mr. Hopping, but it comes through my sale to Mr. Hopping, you understand. I sold Mr. Hopping first. Mr. Hopping works in the same place as Mr. Clark.

10

The Court: Yes, I heard that.

By Mr. Newman:

Q. On this Hopping contract, did Mr. Hopping give you any more money than the original \$10? A. Yes, he give me \$250, which I brought back to Mr. Thompson and—just one minute—he gave the \$250 to Mr. Briscoe and Mr. Briscoe handed me that and I gave it to Mr. Thompson.

20

Q. That is on the Hopping transactions? A. Yes.

Q. Clark did not sign this slip, did he? A. I don't know, Mr. Newman; I brought the \$20 and give it to Mr. Thompson.

Q. How much cash did you get from Mr. Clark when the contract was signed? A. I don't know what the next payment was. That was turned over to Mr. Briscoe when he assigned that over. Didn't he assign that to Mr. Briscoe?

30

Q. Yes, that was assigned to Mr. Briscoe's company. A. Then Mr. Briscoe turned over to Mr. Thompson the balance of that.

Q. How many times did you see Mr. Clark? A. How many times did I see him?

Q. Yes. First you saw him when you got the \$20 from him.

Mr. Dreier: I object to that. The witness did not so testify.

The Court: No, as I understand, he testified that Mr. Briscoe turned the money over

40

James A. Callahan, for Plaintiff—Direct.

to this witness from Clark and he in turn handed it to Mr. Thompson, that was the \$250, that he spoke of.

The Witness: Mr. Clark was up on the property; he come up there through Hopping, understand; looked around; we were not there when Mr. Clark come up on the property the first time, understand. 10

By Mr. Newman:

Q. Then you called to see Mr. Clark? A. Then we sent him on the property the next day. I think Mr. MacCormack did, I didn't.

Q. Then you testify that you went up to Mr. Hopping's plumbing establishment? A. That is right.

Q. And Mr. Clark was there? A. Mr. Briscoe met Mr. Clark up there too, I imagine, he was there; everybody in the establishment was looking at the plan. 20

Q. Did you talk to Mr. Clark? A. I talked to all of them but I did not know Mr. Clark then.

Q. Did you get any cash from Mr. Clark at that time yourself? A. No, I got the cash from Mr. MacCormack and brought it to Mr. Thompson. I brought the \$20 in to get the contract from Mr. Thompson on that lot, and I took the contract back and give the contract to Mr. Briscoe, thinking he was to close the deal on the house—the house and lot—it was a funny case. The house and lot was sold at the same time. It had to be sold that way. Mr. Briscoe collected the rest of the money and sent it in. I don't know whether he sent it in with any of his or not; he sent the money in for the rest of the deposit. 30

Q. Then you got the contract from Mr. Thompson and you gave it to Mr. Briscoe to close it up? A. That is right. 40

James A. Callahan, for Plaintiff—Cross.

Q. What was the next contract? A. The next contract was Larkin's.

Q. Just one minute on this Clark matter. Was there a house built on the Clark lot? A. Yes.

Q. Is Clark occupying it? A. No, I don't think he is—I don't know whether he is or not.

10 Q. Do you know whether he occupied it when the house was finished? A. No, I think he rented it, if I am not mistaken.

Q. You mean that Clark is collecting rent on the house? A. I think so, but I am not sure.

Q. What was the next contract? A. The next contract was Larkin's.

Q. Did you have anything to do with the making of that contract? A. No, Mr. MacCormack made that sale.

20 Mr. Newman: Cross-examine.

Cross-examination by Mr. Dreier:

Q. Mr. Callahan, do you consider that you made a sale of a lot if someone buys it through the recommendations of a party to whom you sold another lot?

Mr. Newman: I object to that. That is rather argumentative.

30 The Court: I will allow it. He has already testified on that.

A. That is right. In the real estate business—

Q. No, I just asked you if you considered it a sale by yourself? A. Yes, I consider it a sale if it comes through my customer.

Q. That is how this lot was sold to Mr. Clark? A. That is right. That is the way most of them were sold.

40 Q. You never spoke to Mr. Clark about purchasing a lot, did you? A. No, I never spoke to Mr. Clark about purchasing a lot, but I spoke to Mr. Hopping about getting me customers, though.

James A. Callahan, for Plaintiff—Cross.

Q. Are you going to pay Mr. Hopping a commission on this sale? A. No, he is not a licensed broker and I cannot pay him a commission.

Q. Mr. Callahan, when did you first see Mr. Clark; when did you first speak to him? A. I think it was a couple of days before the contract; the Sunday before he drove up to the tract. 10

Q. You are sure of that? A. Positive.

Q. You are sure it was not after the house was started? A. No, it was not after the house was started; it was before.

Q. When did you see Mrs. Clark for the first time? A. I think they were both together, the same day.

Q. You are sure of that? A. I am sure of that, yes. Mr. MacCormack seen them before I did.

Q. Did you see them? A. Yes, I seen them the day he was there: 20

Q. Mr. Callahan, that \$20 deposit, what was that, cash or check? A. That was cash.

Q. Are you sure it was cash? A. Yes.

Q. Did you ever see this check (document handed to witness)? A. No.

Q. What was the date of the sale of that property? A. Clark's?

Q. Yes. A. I don't know. April 4th, I think, or April 3rd. 30

Q. April 3rd? A. Yes.

Q. Let me show you this check again; what is the date on that check? A. April 3rd, that is right.

Q. Do you know whether you got this check as a deposit? A. How much is this check? Let me see the check again.

(Check handed to witness.)

A. (Continuing) The check was for \$20. 40

James A. Callahan, for Plaintiff—Cross.

Q. It was made out to whom? A. Made out to the G. C. T. Corporation.

Q. That is the company that owns the property? A. That is right. I understand now. This check was given me by Mr. MacCormack and I brought it in and gave it to Mr. Thompson, as a first payment.

10 Q. Then you were mistaken in your previous answer, it was not cash, but it was a check? A. Yes.

Q. Whose check is it? A. Mr. Briscoe's.

Q. That was a deposit on the lot? A. Yes.

Mr. Dreier: I ask that it be marked for identification.

20 (Document referred to was thereupon marked Exhibit D-1 for identification.)

Q. You never received any money from Mr. Clark? A. I received \$20 from Mr. MacCormack, this check. You must remember, this is about three years ago now.

Q. You are not so sure about this transaction, are you? A. Well, really, it was not my sale. I got the check from Mr. MacCormack and I gave it to Mr. Thompson. When Mr. Briscoe give the \$20 to Mr. Thompson, he said, "One of your customers come up and looked at a lot and I am going to get \$20 from him tomorrow," and he says, "Do you want a contract?" And he said yes. Then Mr. Briscoe, I remember distinctly, Mr. Briscoe gives Mr. MacCormack a check to get the contract.

Q. As a matter of fact, you know that Mr. Briscoe was the one who spoke to Mr. Clark first? A. I don't remember whether—yes, that is right.

40

Mr. Dreier: That is all.

Robert MacCormack, for Plaintiff—Direct.

ROBERT MACCORMACK, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by Mr. Newman:

Q. Mr. MacCormack, you are a real estate salesman? A. Yes, sir. 10

Q. How long have you been in the real estate business? A. About eight or ten years.

Q. Where do you live, Mr. MacCormack? A. Irvington, New Jersey.

Q. You were in the employ of Thompson? A. Yes.

Q. Did you sell any lots up at Fairview Park? A. Yes.

Q. You were in partnership with Mr. Callahan? A. Yes. 20

Q. What did you do in connection with your sale of lots up there? A. Why, we canvassed the town; gave out circulars at the County Fair; inserted advertisements in the newspapers and devoted our entire time to facilitate sales, canvassing throughout the City of Morristown, and so forth.

Q. How long a time did you work up there? A. About eight months.

Q. How many lots did you sell? A. About six or seven, something like that. 30

Q. On the first three, were houses built on those lots? A. Yes, sir.

Q. Who built those houses? A. Mr. Briscoe.

Q. The next sale after that was the Hopping sale; do you know anything about that? A. Only that he came; he answered an advertisement in the papers and came down; Mr. Callahan got the letter and made the call on him.

Robert MacCormack, for Plaintiff—Direct.

Q. You did not speak to Hopping yourself? A. I may have spoken to him when he was on the property.

Q. You really did not handle the Hopping sale, did you? A. No.

10 Q. Did you handle the Clark sale? A. I got the deposit on the Clark sale from Mr. Briscoe.

Q. What did he tell you when he gave it to you? A. If I remember correctly, Mr. Briscoe got the cash from Mr. Clarke and he gave me the check.

Q. How do you know that; or do you know that? A. From just what he said. I cannot positively swear to that, because I had a lot of transactions go through me between that time and this, and I did not pay particular attention of all them and make a note of that.

20 Q. You got this \$20 from Mr. Briscoe? A. I got the \$20 from Mr. Briscoe.

Q. And you turned it in to the company? A. No, I gave it to Callahan to take in.

Q. Who got the contract; did you get it? A. I don't remember.

30 Q. Did you speak to Clark yourself? A. I spoke to Clark on the property several times but I don't believe I spoke to Clark the first time he came on the property. It was always understood—

Mr. Dreier: Just a moment, I object to what was understood.

The Court: Objection sustained.

By Mr. Newman:

Q. Did you speak to Mr. Briscoe with respect to the Clark contract? A. Yes, sir.

40 Q. What did you say to him? A. I discussed it from all the different angles. I was not much interested in the sale of the houses, just the lots.

Robert MacCormack, for Plaintiff—Direct.

Q. I understand, but what I want to know is what Mr. Briscoe said about who sold this lot; did Mr. Briscoe ever claim that he sold the Clark lot? A. No, I don't think he ever did.

Q. Not what you think; do you know or don't you know? A. He never done it to my knowledge.

Q. Did you get any money on the Clark contract that you brought in to the company? A. The \$20 check that I sent in with Callahan. 10

By the Court:

Q. Suppose Mr. Briscoe sold the lot himself to someone who was not your customer or a friend of your customer, he would not then come to you with a deposit, would he? A. Certainly not.

Q. Did he sell any other lots? A. Not that I know of. 20

Q. You do not know of any? A. All the people that came in were through our efforts and advertisements in Morristown.

Q. So you don't know whether Mr. Briscoe sold any on his own hook or not? A. I understood he bought the first one on his own hook.

Q. That is before you were on the job? A. Yes, sir.

By Mr. Newman: 30

Q. On the Larkin tract, did you get the cash or the \$10 deposit from Larkin? A. No, I got the \$250.

Q. Is that your signature on Plaintiff's Exhibit 8? A. Yes, sir, that is my signature.

Q. Did you get that \$10? A. Peter Briscoe said he got \$10; he told me that he was to put in the \$10 for him. They come up through some people that worked alongside of Mr. Larkin. I tried to sell him, but he did not have sufficient funds 40

Robert MacCormack, for Plaintiff—Cross.

to go through with it. They had spoken to Mr. Larkin, as Mr. Larkin told me, and they come down to the property by reason of the talk with the other people we had down there.

Q. You got this \$10 from Mr. Briscoe? A. I got the receipt from Mr. Briscoe.

10 Q. Then you had Mr. Larkin sign the contract?

A. I had Mr. Larkin sign the contract.

Q. Did Mr. Larkin give you any money on that contract? A. He gave me \$250.

Q. And that you turned in to the company? A. To the G. C. T.

Q. And had the contract signed? A. And had the contract signed.

Q. Was there a house built on this Larkin property? A. Yes.

20 Q. Who lives in this house? A. Mr. Larkin, I understand.

Q. How about the Clark house? A. There was a house built on that lot but who lives in it, I don't know.

Q. Was the house built by Mr. Briscoe? A. By Mr. Briscoe, yes, sir.

Mr. Newman: Take the witness.

Cross-examination by Mr. Dreier:

30 Q. As a matter of fact, Mr. MacCormack, you did not sell Clark the property? A. No?

Q. Did you? A. I helped to sell it.

Q. You yourself did not approach Mr. Clark the first time, did you? A. No, sir, I did not.

Q. The deposit was paid to Mr. Briscoe, wasn't it? A. The cash? Yes.

40 Q. If Mr. Briscoe made the sale, he turned the deposit over to you for you to turn over to the G. C. T. Company, that would be the ordinary way

Robert MacCormack, for Plaintiff—Cross.

of transacting it? A. Not necessarily. He could take it himself.

Q. It would be turned into the company, would it not? A. I suppose so.

Q. That would be done so that the lot would not be sold a second time, isn't that so? A. The deposit would be turned in on the lot, so that it could not be sold until it was released from the deposit.

10

Q. And that would be a binding sale. Now, the Larkin transaction, you did not have anything to do with that, did you? A. Oh, yes, I got \$250 from Mr. Larkin.

Q. Did you see Mr. Larkin the first time he came on the property? A. No, I saw him the second time. To make that clear, Mr. Larkin had gone up to look at Mr. Hopping's house; he wanted a house like Mr. Hopping's.

20

Q. When was that? A. What date?

Q. When, with reference to the time you got the \$250? A. Before I got the \$250. Mr. Briscoe said he would not build a house like Hopping's.

Q. Were you there? A. Certainly I was there. How could I say this, if I was not there?

Q. That is what I wanted to know. A. The Hopping's house, I believe, had hardwood floors, and Mr. Briscoe said that he lost money on that and said he would not build a house like that for the price. So I had Mr. Briscoe take out the hardwood floors and put in pine, and make other changes which were agreeable to Larkin. In the meantime I had taken Mr. Hopping to Larkin's house, and smoothed things over, and told him what they were doing.

30

Q. Now, Mr. MacCormack, Mr. Larkin first spoke to Mr. Briscoe, did he not? A. Through our contract with the men we had down there, yes.

40

Leslie W. Hopping, for Defendant—Direct.

Q. He got the \$10 deposit from Mr. Larkin, did he not? A. No. He told Mr. Larkin he would put \$10 in for him; he told me that.

Q. He told you that he would put the \$10 in for Mr. Larkin? A. Mr. Briscoe said, "I told Mr. Larkin I would put up the \$10 for him."

10 Q. Was there any reason why Mr. Briscoe did not see Mr. Larkin when he came again? A. He was not there on the property.

Q. Where was he? A. That I could not say.

Q. Did he tell you to meet Mr. Larkin? A. I don't remember that.

Q. Do you remember Mr. Briscoe leaving the property because he was called away on account of his mother's sickness? A. I remember him leaving the property once when his mother died.

20 Q. Do you remember that that was the same day or not? A. I could not say.

Q. You would not say no? A. I say I could not say; I don't remember.

Q. And as far as you know, Mr. Briscoe spoke to Mr. Larkin before you did about the property? A. Oh, yes.

Mr. Dreier: That is all.

Mr. Newman: That is plaintiff's case.

30

LESLIE W. HOPPING, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Dreier:

Q. Mr. Hopping, you are the party to whom a house was sold in Fairview Park? A. I am.

40 Q. And it was sold to you by one of Mr. Thompson's agents? A. Mr. Callahan.

Leslie W. Hopping, for Defendant—Direct.

Q. How much did you pay on account of that house? A. \$250.

Q. Do you own the house now? A. No. I never passed title.

Q. You never took title to the house? A. No.

Q. Why didn't you? A. I did not have sufficient money. 10

Q. Mr. Briscoe never refused to sell you the house, did he? A. No.

Q. Do you know who owns the house now? A. I presume Mr. Briscoe does.

Q. Do you live in the house? A. I do.

Q. Do you have a lease on the house? A. No lease, no.

Q. Do you have any agreement with Mr. Briscoe about how much you are to pay a month? A. Yes, \$55.50. 20

By the Court:

Q. What is that for, rent or on account of the purchase price? A. That is for rent until such time as I can raise enough money to take title.

Q. You are under contract still? A. Yes.

Q. To pay \$55.50? A. To pay \$55.50.

Q. Why the odd amount? A. That is on account of the building loan. 30

By. Mr. Dreier:

Q. Some day you hope to buy the property?

The Court: He has bought it. He is under contract but simply has not got title as yet, is that right?

The Witness: I believe that is right.

By the Court:

Q. That is what you said. You have not paid for it yet, I suppose, because your money ran out? 40
A. I paid \$250.

Leslie W. Hopping, for Defendant—Direct.

Q. Sure. Now, you are paying carrying charges and you have a contract to pay for the house when your ship comes in, isn't that about it? A. That is it.

10 The Court: That is what I understand. He could not sell it to anybody else, because you are under contract to purchase, unless you released him, that is correct, is it not?

The Witness: I guess he could sell it.

The Court: Go ahead.

By Mr. Dreier:

20 Q. I show you your original contract with the G. C. T. Corporation. Is that it? (Document handed to witness.) A. Yes, that is it.

Q. Was that assigned to anyone, that is, your interest in the contract?

The Court: It is assigned to Briscoe, isn't it? That is the testimony. Don't waste any time on that.

By the Court:

30 Q. You assigned it to Mr. Briscoe, then you went ahead and built the house? A. Yes.

By Mr. Dreier:

Q. You never took title to the house? A. No.

Q. The reason you didn't is because you did not have money enough to do so? A. That is right.

The Court: That is the best reason in the world.

40 Mr. Dreier: That is all.

L. W. Hopping, for Defendant—Cross—Re-direct.

Cross-examination by Mr. Newman:

Q. How long have you been paying \$55.50 a month on this property? A. It is close to three years now.

Q. How much is the building loan on this house? A. That is what it is, \$55.50 a month.

Q. You pay it directly to the building loan? A. I send the money to Mr. Briscoe. 10

Q. Do you know how much the building loan is? A. \$5,500.

Q. And you pay \$55.50 a month? A. I do.

Q. And you get credit on your contract for every month's payment, do you not? A. I presume I do.

Q. You have a contract that provides for that, have you not? A. I have. 20

Mr. Newman: That is all.

Re-direct examination by Mr. Dreier:

Q. What contract have you with Mr. Briscoe? A. I just don't recall what it is now; it is some kind of a contract.

Q. Is this what you signed with Mr. Briscoe? Look at the second page where the signature is. (Document handed to witness.) A. This is it.

Q. That is what you had reference to? A. Yes. 30

Mr. Dreier: I offer it in evidence.

The Court: What is it, a lease?

Mr. Dreier: A lease.

(Document referred to was thereupon received in evidence and marked Exhibit D-2.)

Leslie W. Hopping, for Defendant—Re-direct.

By Mr. Dreier:

Q. Do you understand you are only in there as a tenant? A. I do.

10 Q. What is to happen to your money? A. I lose it, that is all. If Mr. Briscoe takes a notion that he don't want to let me stay there, I lose the \$250.

Q. How much do you pay him a month? A. \$55.50.

Q. This lease provides for \$55; why pay \$55.50? A. Something came up about you couldn't get any half shares in the building loan and I had to pay that extra 50 cents, or whatever it is.

20 Q. In other words, the building loan does not issue half shares? A. That is what it says; that is what Mr. Briscoe showed me.

By Mr. Newman:

Q. Do you paint the house yourself? A. Anything that is to be done, I do.

Q. You treat it as if it were your own house, don't you? A. Yes.

Q. Have you any other contract beside this? A. That is all.

30 Q. When you signed that contract with the G. C. T. Company, then you transferred your contract to Mr. Briscoe, did you not? A. Yes.

Q. And he agreed to build a house on it for you, did he not? A. He did.

Q. Where is that agreement? A. I have that agreement home.

Q. Is that still in effect? A. No. That is no good now.

Q. You could not pay him the money that you were supposed to pay? A. No.

40 Mr. Dreier: I offer this in evidence.

Florence W. Hopping, for Defendant—Direct.

The Court: Let it be received and mark in evidence the other paper that you had identified. The check, let that be marked in evidence.

(Exhibit D-1 for identification was thereupon received in evidence.)

10

FLORENCE HOPPING, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Dreier:

Q. Mrs. Hopping, you are the wife of the last witness? A. I am.

20

Q. This house that has been testified about, that is up on Fairview Park property? A. Yes.

Q. And you are living there now? A. Yes.

Q. Who owns that property, Mrs. Hopping? A. I believe Mr. Briscoe does.

Q. Did you or your husband ever own it? A. No, not as I know of; not until we pass title.

Q. Why have you not passed title yet? A. Because we haven't been able to gather the money together.

30

Q. How do you live there, under any agreement or anything like that?

The Court: Don't let us waste time; there is no dispute about that.

Q. You are a tenant there, are you not? A. Yes.

Mr. Newman: I would like to have counsel put in the original contract with the Hoppings.

40

Florence W. Hopping, for Defendant—Cross.

The Court; I cannot ask him to do it.

Mr. Dreier: I do not see the necessity of it.

Cross-examination by Mr. Newman:

10 Q. Originally you and your husband agreed to buy this property from the G. C. T. Company?
A. Yes, sir.

Q. And then you transferred your contract, Mrs. Hopping, to Mr. Briscoe; you assigned your contract to Mr. Briscoe? A. Yes.

Q. And Mr. Briscoe agreed to put up a house for you and your husband? A. Yes.

Q. And he put up that house, didn't he? A. Yes.

20 Q. How much did you pay Mr. Briscoe on his contract? A. \$250.

Q. Was it \$250 or \$260? A. \$10 in the beginning for the lot.

Q. So it was a total of \$260? A. Yes.

Q. And he built that house, did he not? A. Yes.

Q. And you are occupying that house now? A. Yes.

Q. And Mr. Callahan was the agent who sold you that lot? A. Yes.

30 By Mr. Dreier:

Q. Did you ever sign any mortgage at any time?
A. No, not for another year.

By the Court:

Q. Who repairs the house? A. We have not repaired it yet.

Q. That is because it does not need repairs yet?
A. No.

40 Q. Who pays the taxes? A. Mr. Briscoe.

Q. You don't? A. No.

Bertha S. Clark, for Defendant—Direct.

By Mr. Dreier:

Q. What did you mean when you said not for another year? A. Until we get the money together.

Q. Is this \$55.50 in payment for the house? A. It is payment to Mr. Briscoe to hold the house for us. 10

Q. Are you getting any credit for it? A. Just as rent.

Q. As credit for the purchase of the house? A. No, as rent.

By the Court:

Q. Part of this \$55 is reducing the mortgage, is it not? Suppose you were to take the title from Mr. Briscoe, the mortgage has been reduced by \$28 every month, he would not expect you to pay that, would he? Do you know about that? A. I know we give that money to Mr. Briscoe. 20

Q. But you don't know how much of it, if any, is being credited on to the purchase price? A. I know he is helping us out, that is all I know.

The Court: That is all. Call your next witness.

30

BERTHA S. CLARK, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Dreier:

Q. Mrs. Clark, you and your husband are the owners of this property at Fairview Park? A. Yes. 40

Bertha S. Clark, for Defendant—Direct.

Q. Will you tell us when you first went to the property or first heard about it? A. Well, I think it was in March.

Q. What year? A. Well, we have had the house going on three years.

10 Q. March, 1928, was it not? A. It must have been.

Q. Did you go to the property or did a salesman come to see you about it, or how was it? A. No, my husband came home one night and said, "Let us go and look at some lots this evening". I said, "Where"?

He said, "There are some lots by the Whippany River Club that they are going to sell. You have been talking about buying some lots, so let's go down and see them".

20 So I said, "All right".

So after we got through, we started down and we turned into some street and of course we didn't know where to go, and we happened to be on the side that Mr. Briscoe lives on,—there are two houses there and one on the other side, so we got down almost to Mr. Briscoe's house, and this gentleman came out of his yard; it was Mr. Cole, and my husband said to him, "Can you tell me where the gentleman lives that sells and builds these houses"?

30 He said, "Come right in here, Mr. Clark, and I will introduce you to Mr. Briscoe".

So we went in, and Mr. Cole took us to the living room and introduced us to Mrs. Briscoe.

By the Court:

Q. Mr. Clark knew Mr. Cole, did he? A. Oh, yes, he knew him quite a while.

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Bertha S. Clark, for Defendant—Direct.

By Mr. Dreier :

Q. You spoke to Mr. Briscoe about one of the lots? A. Yes, I said I would like to look through his house and he asked me what we came for. I told him how my husband said that we were going to look for some lots but I did not know whether we would want to buy one or not, but I thought we would like to look them over. Of course, I always knew that property, because I was born around there, and I always liked it very much.

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By the Court :

Q. It sold itself almost, did it not? A. Yes, it did.

By Mr. Dreier :

20

Q. Mrs. Clark, you did not purchase the property that night? A. No, I didn't.

Q. Were you there when the deposit was put on the property? A. Oh, yes, I was the one that handed Mr. Briscoe—I am not positive about that—whether it was myself or my husband; it was my \$20 and it was my idea of taking it.

Q. Did you meet Mr. Callahan? A. I met Mr. Callahan; I met both of the gentlemen at the same time. I went over to see how my house was getting on, and I met Mr. Callahan and this other employee with him, and Mr. Briscoe, after I had gone to see the house and I went to see about a certain door being put there and Mr. Briscoe said I could not have it, because the place was too low and I was kind of fussed about it and as I came across the street with Mr. Briscoe, Mr. Callahan and the other gentleman, I can't remember his name,—I was introduced to them for the first time.

30

Q. That was after your house was started? A. After my foundation was laid.

40

Bertha S. Clark, for Defendant—Cross.

Q. When did you first meet Mr. Thompson? A. I first met Mr. Thompson one Sunday afternoon, I remember.

Q. You knew neither of these gentlemen, did you? A. Neither of them.

10 By the Court:

Q. How soon after you parted with the \$20, did you meet these people? A. I think Mr. Briscoe started my house in April.

Q. When was it that you met Mr. Callahan and Mr. MacCormack? A. It must have been around the last of April or the first of May.

Q. Pretty soon then, wasn't it? A. Yes, it was.

By Mr. Dreier:

20

Q. You paid the deposit in March, did you not? A. Yes, but not the first night we were there; it was the second night.

Q. That day or night of March, you did not meet Mr. Callahan, Mr. MacCormack or Mr. Thompson, did you? It was not until the end of April or May, you say? A. Yes, around about there. I cannot tell exactly the time.

Mr. Dreier: That is all.

30

Cross-examination by Mr. Newman:

Q. How did you find out about this property, Mrs. Clark?

Mr. Dreier: I object to that.

The Court: Oh, I will allow it.

A. My husband just came home and said, "We will go and look at the property. He had been told——"

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Bertha S. Clark, for Defendant—Cross.

The Court: No, don't tell us what he was told.

Q. Did you know Mr. Cole who lived there? A. I did not know him.

Q. Your husband knew him? A. He came in contact with him on account of the business he is in, the plumbing and gas business, and he met him that way. 10

By the Court:

Q. Where does Mr. Hopping work? A. Mr. Hopping works where my husband works.

By Mr. Newman:

Q. And Mr. Clark heard of this contract through Mr. Hopping, didn't he? A. That I could not say. 20

Q. Were the Hoppings building a house when you went there? A. No.

Q. Had not started yet? A. I did not even know about that.

Q. You found that out afterwards? A. Yes, when I went to see Mr. Briscoe the second time.

Q. That is when you found that out? A. Yes.

Q. Then you paid your \$20? A. No.

By the Court: 30

Q. You did not pay the \$20 the first night or the first evening you went there, did you? A. The first night we went there, I asked Mr. Briscoe about the lots and he said, "Which one do you want?"

I said, "I like the lot across the way by Mrs. Prophet's house."

So he said, "I don't know, Mrs. Clark, whether I can let you have that or not. Someone has spoken for that lot, but if he does not come to- 40

David E. Clark, for Defendant—Direct.

morrow and you come, why I will let you have the lot." So the second night we paid the \$20 on the lot.

Q. After that, you heard about Mr. Hopping having bought a lot, is that right? A. Yes, I believe so.

10

By Mr. Newman:

Q. Did you give the \$20 after you knew Mr. Hopping bought the lot, I mean you or your husband? A. I don't remember whether it was my husband or I that handed the \$20 to Mr. Briscoe. I could not say that.

Q. Do you own that house now? A. Yes.

20

Q. How much did you pay for the lot? A. I didn't pay for the lot; I paid for the whole house when it was built. I paid \$500 three different times on it.

Q. Mr. Briscoe has a mortgage on your house? A. No, I have a building loan on it.

Q. Mr. Briscoe built the house for you? A. Mr. Briscoe built my house, yes.

Q. And he has been paid for the house,—the building of it? A. Yes, he has been paid for the whole thing. He is settled up.

Mr. Newman: That is all.

30

DAVID E. CLARK, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Dreier:

Q. Mr. Clark, you are the husband of Mrs. Clark, who was just on the stand? A. Yes.

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Q. You own the property out on Fairview Park? A. We do.

David E. Clark, for Defendant—Direct.

Q. Will you tell us how you came to go out there and purchase that property? A. Well, there was something said in the shop where I am working and where Mr. Hopping is working too,—something concerning some property, the same as I would say to you, “Did you hear something about these lots that are being sold in this Fairview Park section over here?” I says, “No, I had not heard anything particular about it.” 10

So he said, “They are having a sale over there.” He said, “If you ever think of anything like that, maybe something would suit you over there.”

So I said, “All right.” I never said any more about it until I went home that night and spoke to my wife.

She said, “Suppose we go and look at them and see what they are. We were thinking about getting a lot for quite a while, and maybe one of these would suit us.” 20

Q. Did you say, “Let’s go over?” A. Yes.

Q. Then you say she said, “All right, let us go over?” A. I cannot say which one between the two of us decided to go.

Q. You went over there, Mr. Clark? A. Yes.

Q. Whom did you see there? A. Mr. Briscoe, when I went to the house. As my wife said, we went down the street; when we got to this house Mr. Cole came out. I knew Mr. Cole; had seen him and spoken to him and I asked him where the people were who had to do with these lots. 30

He said, “They are right here next door to me and I will go in with you and introduce them to you, as I know them, as they built a house for me, and I will introduce you to them.”

So I went in and was introduced to Mr. Briscoe.

Q. And you spoke to Mr. Briscoe about a lot? A. Yes, we spent part of the evening there and also were talking about one thing and another. 40

David E. Clark, for Defendant—Direct.

Q. Previous to that, had you spoken to any salesman, Mr. Thompson, Mr. Callahan or Mr. MacCormack about the purchase of any of these lots? A. No, sir, I did not know them at all.

Q. You did not know them at that time? A. No, sir.

10 Q. When did you pay the deposit on the lot?
A. The second night we were there.

Q. When did you first meet Mr. Callahan or Mr. MacCormack or Mr. Thompson? A. That was some Sunday afternoon, long after our place was started, I happened to be there, and we were introduced to them.

Q. And the building had already been started?
A. Oh, yes, sure. The first time I remember seeing them people at all, was after it was started.

20 Q. Did you have any dealings whatsoever with any of those three gentlemen? A. No.

Q. Who was the only one you dealt with? A. Mr. Briscoe.

By the Court:

Q. Did you not tell your wife that you talked about the house that Mr. Hopping told you about it? A. I might have; I won't say positively.

30 Q. Didn't you say Mr. Hopping bought a lot up there? A. He has now.

Q. Didn't you tell her then that he had bought a lot? A. No, because I didn't know that he had.

Q. Weren't you in the shop when Mr. Callahan came with Mr. Briscoe, with the blueprint? A. No, sir, I never saw those things at all.

Q. Don't you remember that? A. No, sir.

Q. All the fellows standing around in the shop, looking at the blueprint? A. I don't remember ever seeing that; I never seen the plans.

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David E. Clark, for Defendant—Cross.
Archibald Larkin, for Defendant—Direct.

By Mr. Dreier:

Q. What is your job in the shop, Mr. Clark?
 A. Truck driver.

Q. And you are out quite often? A. I am out most of the time.

Q. And you might have been out when this happened? A. As far as I know. I don't remember seeing the thing at all.

10

Cross-examination by Mr. Newman:

Q. You heard the men about the shop talking about Hopping buying a house? A. Some time afterwards, yes.

Q. I mean at the time you bought yours? A. No, the only time I heard Hopping say anything about it was when I heard about the lots—

20

Q. When you heard that the lots were for sale?
 A. Yes.

Mr. Newman: That is all.

ARCHIBALD LARKIN, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

30

Direct examination by Mr. Dreier:

Q. Mr. Larkin, you had bought one of the properties in dispute here? A. Yes.

Q. When did you first go to that property or what directed your attention to that property for the first time? A. The first time, myself and my mother were taking a ride in the car and we see a sign board up on this property, and mother

40

Archibald Larkin, for Defendant—Direct.

was interested in looking at houses, so we thought we would walk around.

Q. You say that was with your mother? A. That was mother, yes.

Q. Did you go on to the property? A. Yes.

10 Q. When you went on to the property, whom did you see? A. I saw Mr. Briscoe.

Q. What did you do? A. Mr. Briscoe was very much interested in showing us around the lots, and his carpenter was also there, and while we were there, they decided it would be a good location to have a house. We had no ready cash with us, so Mr. Briscoe kindly consented to pay \$10 down and hold the lot for us. While I was there, he called the office up in Newark and told them that he sold this lot and had a deposit on it and to hold the
20 lot.

Q. Whom did he call up? A. Someone in Newark. I don't remember the name. I think Mrs. Briscoe was there.

Q. When were you to pay the balance of this deposit? A. I think Mr. Briscoe said that he had a death in his family or someone was very ill, so there would be someone on the lot to take the \$250 we had to pay down.

30 Q. You say someone else was to take that? A. One of the agents.

Q. Was there someone else to take it? A. When I came there, Mr. MacCormack was there and he met me on the street.

Q. Previous to paying the \$10 deposit, did you have any dealings with Mr. Thompson, Mr. Callahan or Mr. MacCormack? A. Nothing whatsoever.

Q. Mr. Briscoe was the first one? A. Mr. Briscoe absolutely was the first one.

40 Q. When you first went on the property and you spoke to Mr. Briscoe, who else was present? A.

Archibald Larkin, for Defendant—Cross.

Mrs. Briscoe, myself, my mother and Mr. Briscoe's carpenter.

Q. And the carpenter, you say? A. Yes.

Q. Did the carpenter do anything? A. Yes, he took quite a little interest in it; he showed me around and it was more him that convinced me about buying a lot than Mr. Briscoe.

10

Q. He showed you around the houses? A. He showed me around the houses that were being built.

Mr. Dreier: Cross-examine.

Cross-examination by Mr. Newman:

Q. Where did you live, Mr. Larkin, before your present residence? A. I lived in Morristown.

Q. How did you come to go around Fairview Park? A. We usually go out driving, practically every night in the summer.

20

Q. Did you answer any advertisements? A. No, we happened to be driving around and saw the big sign on the property.

Q. And you came in there? A. Yes.

Q. Whose sign was it, do you know? A. Well, it was just one of those advertising signs, advertising the property with Mr. Briscoe's name on there about a block big on the bottom.

30

Q. Was Mr. Thompson's name on it? A. I didn't notice Mr. Thompson's name.

Q. Did you ever meet Mr. Thompson? A. Oh, yes.

Q. Did Mr. Thompson ever come to your house? A. Since I was living there, yes.

Q. I mean before you bought it. A. In the old house where I was living previous?

Q. Yes. A. Mother told me that while I was at work, Mr. Thompson and Mr. MacCormack had called, but I was not there at the time.

40

Archibald Larkin, for Defendant—Re-direct.

Q. You had some discussion with Mr. Briscoe about some room on the second floor? A. Yes, after the \$250 was paid down.

Q. And Mr. Thompson came to see your mother about that matter? A. When I was at work.

10 Q. In order to straighten out the little difference between the plans in the construction of the house? A. And Mr. MacCormack was there.

Q. But you were not there? A. I was not there.

Q. Prior to that, had you seen Mr. MacCormack? A. I could not say. I met Mr. MacCormack several times during the period.

Q. Do you remember signing Plaintiff's Exhibit 8; is that your signature (document handed to witness)? A. Yes, that was the first time I ever met Mr. MacCormack, after I paid the \$250.

20 Q. No, that is only for \$10. A. Oh, this is the \$10 one?

Q. Yes. A. The first time I met Mr. MacCormack was when I paid down the \$250.

Q. Do you remember when you signed this memorandum? A. I don't know whether I signed it on the street, when I paid down the \$250, I believe it was there.

30 Q. Do you remember Mr. MacCormack witnessing your signature on the contract? A. Yes, I do. That was signed in Mr. Briscoe's house.

Q. He was there at the time? A. Absolutely.

Q. To whom did you give the money, to him, or Mr. Briscoe? A. The \$250?

Q. Yes. A. I gave that to Mr. MacCormack on the street.

Mr. Newman: That is all.

Re-direct examination by Mr. Dreier:

40 Q. Just one more question. At this meeting of Mr. Thompson, was that before or after you paid the \$10? A. That was after.

Archibald Larkin, for Defendant—Re-cross.

Walter Gunton, for Defendant—Direct.

Q. Mr. Briscoe was the first one you met? A.
Mr. Briscoe was the first I met.

Re-cross-examination by Mr. Newman:

Q. You are living in the house up there? A. 10
Yes.

Q. Mr. Briscoe built the house for you? A. Yes.

Q. You paid him for it? A. As far as I know,
Mr. Briscoe has nothing to do with my house now.
I got a mortgage on it from the Fourth Ward
Building & Loan.

Q. As far as he is concerned, you paid him? A.
Yes.

Mr. Newman: That is all.

20

WALTER GUNTON, called as a witness on behalf
of the defendant, having been duly sworn, testi-
fied as follows:

Direct examination by Mr. Dreier:

Q. Mr. Gunton, do you remember meeting Mr.
Larkin in 1928? A. Yes, I met Mr. Larkin that
morning; it was between nine and ten. 30

Q. Where did you meet him? A. In the house
where I was working.

By the Court:

Q. You are the carpenter that made the sale?
A. Yes, sir.

Q. You showed him around? A. I did.

By Mr. Dreier:

Q. Will you explain what took place there be- 40
tween Mr. Larkin and Mr. Briscoe and yourself?

Walter Gunton, for Defendant—Direct.

10 A. Well, there was a few little changes in one of the houses that Mr. Larkin wanted, and I showed him through and told him what we could do without any additional expense to him, and he said that would be satisfactory if we could do it that way. So he went across the street with Mr. Briscoe.

Q. Did you go also? A. Yes. Of course, I remember—I think he did not have any money with him and I believe Mr. Briscoe loaned him \$10 to bind the lot he wanted until the next morning.

Q. Was he to come back the next morning to pay the balance of the deposit? A. Yes.

Q. Was Mr. Briscoe there the next morning? A. No, Mr. Briscoe went to Plainfield.

20 By the Court:

Q. Was that nine o'clock in the morning? A. It was somewhere between nine and ten o'clock in the morning.

Q. Are you sure about that? A. Yes, sir.

Q. What day of the week was it? A. That I just would not say, what day of the week.

Q. But you are sure it was in the morning? A. It was in the morning.

30 The Court: All right.

By Mr. Dreier:

Q. And Mr. Briscoe and Mr. Larkin came to an agreement? A. Yes.

Mr. Dreier: Cross-examine.

Mr. Newman: No cross-examination.

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Ella Briscoe, for Defendant—Direct.

ELLA BRISCOE, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination By Mr. Dreier:

Q. Mrs. Briscoe, you are the wife of the defendant? A. Yes, sir. 10

Q. The house that the Hoppings live in, do you know who owns that? A. The Fairview Building Company.

Q. Who is the president of the Fairview Building Company? A. Mr. Briscoe, my husband.

Q. Were you present when Mrs. Clark and Mr. Clark came up the property? A. Yes.

Q. Where were you? A. I think I was in the kitchen when they came. 20

Q. In your home? A. In my home.

Q. On this property? A. Yes.

Q. Did they come to your house? A. They did. Mr. Cole brought them in and introduced them and immediately left, and Mrs. Clark said she would like to see through the house, so I showed her through the house.

Q. Then what happened? A. Then they talked about buying a lot and building a house, so they said that there was one lot across the street that they favored very much, but Mr. Briscoe was holding it for a party who was to come in that night, but he had telephoned saying that he was going on a fishing trip and would not be there until the next day or on the next night, I cannot tell you which, but I think around seven o'clock Mr. Clark came and said, "Am I too late?" 30

Mr. Briscoe said, "No, the other man did not come."

So Mr. Clark said, "My money is as good as his, isn't it?" 40

Ella Briscoe, for Defendant—Cross.

So Mr. Briscoe said, "It certainly is", and he paid the \$20.

Q. Do you remember when Mr. Larkin came up to the property? A. Yes, I do. It was in the morning, and I think the morning of the 28th of May.

10 Q. How did it happen that you remember the date so well? A. Because Mr. Briscoe's mother died on that date.

Q. And did you hear Mr. Larkin and Mr. Briscoe talking? A. Yes, I did.

Q. Did they come to an agreement about the purchase of a lot? A. Yes.

Q. What was the agreement? A. Mr. Briscoe told Mr. Larkin, after Mr. Larkin said he had no ready money with him, "I can let you have \$10. That will be a binder." He then went to the tele-
20 phone and called Mr. Thompson's office—I think it was lot 75, and asked if it had been sold. He said not to his knowledge. So Mr. Briscoe said, "Don't sell it, because I have a deposit of \$10."

Q. Did Mr. Larkin agree to come back the next day? A. We met Mr. MacCormack and Mr. Callahan when we were called to Plainfield from the hospital, saying that Mrs. Briscoe was dead. Mr. Briscoe said to them, "I may not be able to come
30 back and Mr. Larkin is to bring the deposit up in the morning. If I cannot be there, will you please take it and bring it in to the office." That is what happened.

Q. You were not back in the morning, were you? A. No, we were not.

Mr. Dreier: Cross-examine.

Cross-examination by Mr. Newman:

40 Q. Are you an officer of this Fairview Building Company? A. Yes.

Ella Briscoe, for Defendant—Cross.

Q. What office do you hold? A. Secretary.

Q. Are you a director there too? A. Pardon?

Q. Are you a director? A. Yes.

Q. Who is treasurer? A. Mr. Briscoe.

Q. Who is president? A. Mr. Briscoe is president and treasurer both.

Q. You help your husband conduct his business, don't you? A. Yes. 10

Q. You know what this suit is about, don't you?
A. Yes. I talked it over with Mr. Thompson in Mr. Thompson's office. Mr. Thompson told me I should collect the money on the Clark houses—

Q. Just a minute, Mrs. Briscoe. I just want you to answer my questions. Larkin came up to the tract, did he not? A. Yes, in the morning, he and his mother.

Q. He had been out riding? A. I don't know. I could not tell you. He came there in a car. 20

Q. Did he say that he had seen the ads at the tract? A. I did not hear that part of the conversation.

Q. All you know is that he came to your house? A. Yes.

Q. And he said he wanted to buy the lot? A. And talked over the plan of the house.

Q. Was Mr. MacCormack there or Mr. Callahan? A. No. 30

Q. That was the time when you husband took \$10 out of his pocket, and said he would put it down as a deposit? A. Yes, he would loan Mr. Larkin \$10 as a deposit.

Q. And your husband gave that \$10 to Mr. MacCormack? A. That I could not tell you.

Q. You don't know? A. No.

Q. And the \$250 that Mr. Larkin the next day was to bring, was to be paid to Mr. MacCormack? A. Yes, because my husband asked Mr. MacCor- 40

Peter Briscoe, for Defendant—Direct.

mack that night, if he did not get back, to take the deposit.

Q. Did you hear him speak to Mr. MacCormack?

A. I did. They were standing at the car together. I can certainly tell you a remark that Mr. MacCormack passed; that he was sorry he detained us so long—

10 Q. Please don't volunteer. We know you are a business woman, but remember that this is a trial and please do not try to inject more than you can help, but just answer my questions. A. All right.

Q. Mr. MacCormack was there that night on the tract? A. Which night?

Q. The night when your husband got the \$10 from Mr. Larkin. A. The night of the morning when he got the \$10?

20 Q. Yes. A. Yes.

Q. Then your husband arranged with Mr. MacCormack to see Mr. Larkin the next day, is that right? A. Yes.

Mr. Newman: That is all.

30 PETER F. BRISCOE, called as a witness in his own behalf, having been duly sworn, testified as follows:

Direct examination by Mr. Dreier:

Q. Mr. Briscoe, you are the defendant in this case? A. Yes, sir.

Q. And you have charge of the development in Fairview Park? A. Yes, sir.

40 Q. You entered into this contract with Thompson to pay him a commission on all lots that he or his agents sold? A. Yes, sir.

Peter Briscoe, for Defendant—Direct.

Q. Did he or his agents sell any? A. Did they sell any?

Q. Yes. A. Yes, they sold two or three lots.

Q. And you paid commissions on them? A. Yes.

Q. How did you pay those commissions? A. Why, I sent the check in to the company that Mr. Thompson is secretary of, the G. C. T. Corporation. 10

Q. Was his commission included in the check sent to the company? A. Yes.

Q. And you straightened out with the company for the price of the lot and his commission, all in one? A. And his commission, yes.

Q. You usually struck a balance with him at that time? 20

Mr. Newman: Don't lead the witness, please.

The Court: Yes, objection sustained.

Q. As to the Hopping transaction, Mr. Briscoe, who owns that property that the Hoppings live in? A. The Fairview Building Company.

Q. Who lives in it? A. Mr. Hopping.

Q. As what? A. As a tenant.

Q. How did the Fairview Building Company come to own that property? A. I believe the agents brought Mr. Hopping up there and sold him the lot and they came to me and wanted me to build them a house, and they asked me how much they would have to pay down. 30

The Court: That is not the question. How did the Fairview Company own the property?

The Witness: By Mr. Hopping not being able to go through with the deal. 40

Peter Briscoe, for Defendant—Direct.

The Court: He assigned to you before you started to build, didn't he?

The Witness: Yes.

The Court: He assigned his contract to you?

The Witness: Yes.

10

By Mr. Dreier:

Q. He never took title to it? A. He never took title to it.

By the Court:

Q. But you did take title? A. Yes.

Q. The Fairview took title? A. Yes.

20

By Mr. Dreier:

Q. You also took title to the property you live in up there, did you not? A. Yes.

Q. Now, Mr. Clark and Mrs. Clark, how did the deal with them come about? A. They came to my house one night about eight o'clock and spoke about the development and the lots and I showed them through my house and they liked it, and we looked at a lot across the street from my house, which they liked, and I told them that there was a man looking at it and I was to let him know the next night—or rather he was to let me know the next night whether he would buy or not. The man did not show up and Mr. Clark came the next night and asked me if the lot was sold. I said, "No, the party had not showed up."

30

So he said, "My money is as good as his." So I said, "Sure," so he gave me \$20 deposit on it.

Q. Did you ever introduce Mr. Clark and Mrs. Clark to Mr. Thompson and Mr. MacCormack and Mr. Callahan? A. Some time after that.

40

Peter Briscoe, for Defendant—Direct.

Q. You introduced them? A. Yes, I introduced Mr. MacCormack and Mr. Callahan after I had started the house for Mr. Clark.

Q. Do you know whether they ever met Mr. Thompson before,—I mean Mr. and Mrs. Clark? A. I don't know. I don't think they had.

Q. And you were the one that sold that property then to them? A. To Mr. and Mrs. Clark. 10

Q. Mr. Larkin, how did he come to buy the property? A. Well, he came there one morning around ten o'clock and walked into the house where my carpenter and I were doing some work. Him and his mother, and inquired about the property. I tried to sell them a lot that was next door to this house that we were working on, but his mother thought they would sooner have one across the street, so we went and looked at the one across the street, and they decided to buy the one across the street, which is lot 75. 20

After paying a deposit on the lot, there was some little difference in regard to the building, so my carpenter took Mr. Larkin over to a house that we were building and there was some little changes he wanted made, and if we could make these changes for him, he would go through with the contract, so the carpenter pointed out how the changes could be made. 30

By Mr. Newman:

Q. Were you there? A. Yes, I was there.

Mr. Newman: All right.

The Witness: (Continuing) How the changes could be made without any additional expense, and he paid a deposit on the lot.

Peter Briscoe, for Defendant—Direct.

By Mr. Dreier :

Q. That is, the first time he was there, he paid the deposit? A. Yes.

10 Q. Then did you make arrangements with him to pay the balance? A. That afternoon I got word that my mother was dead in Plainfield, and I met the agents and asked them if they would not take care of Mr. Larkin the next morning when he came up to pay the balance of the money—\$250.

Q. And as far as you know, they met him? A. Yes.

Q. Mr. Briscoe, you say the custom was to settle up the commissions with the company direct? A. Yes.

20 Q. And Mr. Thompson, was he present when these settlements were made? A. As a rule I settled with Mr. Thompson.

Q. Your dealings were with Mr. Thompson? A. He was the secretary, and I dealt with him.

Q. I show you a check dated July 11, 1928, payable to the G. C. T. Corporation and ask you what that represents? A. That is paying the G. C. T. Corporation in full for the balance I owed them.

Q. What lots is that on? A. Why on Nos. 70, 73 and 75.

Q. And that was payment in full? A. Yes.

30 Q. And that was after these three transactions took place? A. Yes.

Q. That was the last settlement you made with them? A. That was the last settlement I made with them.

Mr. Dreier: I offer that in evidence.

Mr. Newman: I object to that.

The Court: What has it to do with this transaction?

40 Mr. Dreier: The testimony is, on the previous deals, they settled up everything, as

Peter Briscoe, for Defendant—Direct.

far as the commissions for the purchase of the lots was concerned by payments to Mr. Thompson or the G. C. T. Corporation, making the checks payable to the G. C. T. Corporation, and this check is a similar one relating to these three deals, and the testimony is it settled up everything.

10

The Court: That is his testimony and the check does not help us on that.

Mr. Dreier: It is endorsed "Paid in full" on those lots and endorsed by the G. C. T. Corporation.

The Court: Yes, but that is not on these lots. That is the reason it is objected to, because it has nothing to do with this transaction.

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By Mr. Dreier:

Q. Who was it given to, Mr. Briscoe? A. Mr. Thompson.

Q. Who accepted it for the G. C. T. Corporation?

Mr. Newman: I object to that.

The Court: I will sustain the objection. I do not think it is relevant.

Defendant's counsel prays an exception to this ruling of the Court.

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The Court: Exception noted as ground of appeal.

Q. Mr. Briscoe, was there ever any understanding between you and Mr. Thompson at the time of the sale of these lots that he was to get a commission on them?

Mr. Newman: I object to that. There was an agreement on these particular lots.

The Court: I will allow that.

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Peter Briscoe, for Defendant—Direct.

Q. Was there anything said about a commission on the Larkin, Clark and Hopping sales? A. No. When I went down to make the settlement with Mr. Thompson, he brought up these sales. He spoke about them and wanted a commission on them.

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By the Court:

Q. Was that the first time that was mentioned?

A. Yes.

Q. There was never any question about the Hopping deal, was there? A. No, I admit that they brought Hopping up there. I admit that, and when Mr. Hopping goes through with the deal, I will pay them the commission.

20

Q. What was the discussion then; what was the difference between you? A. Mr. Thompson claims that they sold Clark the lot and house.

Q. Clark and Larkin too, doesn't he? A. Yes.

Q. He told you so? A. Yes, but I am the one that sold them.

By Mr. Dreier:

Q. You told them at that time, did you? A. When I took the \$10.00—if fact loaned Mr. Larkin the \$10.00—

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Mr. Newman: I object. That is not responsive to the question.

The Court: That is for Mr. Drier to object to, not you.

Mr. Newman: I object to it, your Honor.

The Court: I will overrule the objection. You may answer, go on.

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The Witness: When I loaned Mr. Larkin the \$10 to pay on the lot,—in fact, before I loaned him the \$10, I called up Mr. Thompson and asked if the lot was sold. He told

Peter Briscoe, for Defendant—Cross.

me no; that as far as he knew, the lot was not sold. So I said, if you see any of the agents, be sure and tell them not to sell it, because I have a deposit. I am selling it this morning to Mr. Larkin.

By Mr. Dreier:

Q. He told you that there had been no sale? A. He told me there had been no sale on it.

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By the Court:

Q. As far as he knew. A. As far as he knew.

Cross-examination by Mr. Newman:

Q. When did your mother die, Mr. Briscoe? A. I think May 29, 1929.

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Q. That would be the time you made the Clark contract? A. In around that time.

Q. Larkin was a friend of Hopping, wasn't he? A. I don't know.

Q. Or Clark was a friend of Hopping? A. They worked together, I believe, with the same firm.

Q. Mr. Thompson was circularizing your tract, was he not? A. Yes.

Q. He had a tent at the Morris County Fair? A. Yes, he had a tent there.

Q. And they distributed a lot of circulars? A. Yes.

30

Q. And they had done newspaper advertising? A. Yes.

Q. Mr. Thompson had salesmen going around canvassing? A. Yes, sir.

Q. Mr. Thompson was not all the time on the tract, was he? A. No.

Q. You were there, were you not? A. All the time.

40

Peter Briscoe, for Defendant—Cross.

Q. Mr. Thompson's salesmen were out canvassing, trying to sell? A. Yes.

Q. And for every lot that was sold, you would get a discount from the company, that is right, is it not? A. Yes.

10 Q. And on every lot that was sold, you would get a discount on? A. A discount on.

Q. Neither Mr. Thompson nor his salesmen were on the tract all the time, were they? A. No.

Q. But you were? A. Yes.

Q. You lived on the tract? A. Yes.

Q. And these people that came here when Mr. Thompson was not on the tract, or when the salesmen were not on the tract, saw you? A. Yes.

20 Q. And because they saw you, that is, persons like Mr. Clark and Mr. Larkin, you claim that you ought to get the commission, is that it? A. Yes, sir.

Q. You say you called up Mr. Thompson on this last tract and asked him to keep this lot for—who was it, Mr. Clark? A. I asked Mr. Thompson if the lot was sold.

Q. Did you sell any lots yourself before Mr. Thompson got busy on this tract?

Mr. Dreier: I object to that. That is immaterial.

30 The Court: Objection sustained.

Q. Did you build any houses for any people besides your own house that you were living in, except these last six houses that we have been discussing?

Mr. Dreier: I object to that.

The Court: I will allow it.

A. Yes.

40 Q. You sold some other lots? A. Yes.

Peter Briscoe, for Defendant—Cross.

Q. Yourself, that you built? A. Besides these three last three ones?

Q. Yes. A. No.

Q. And the other three that Mr. Thompson sold for you. A. I admit they sold them.

By the Court:

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Q. No, the question is were there any others built except these six houses? A. Oh, yes, there were nine built altogether.

By Mr. Newman:

Q. Nine? A. Yes.

Q. Who were the other three? A. My own,—I will take them in rotation,—my own, Cole, Flanagan and an Italian person, I don't know who they are,—Mr. Thompson or someone sold them; Mr. Clark, Prophet; a third little bungalow built since I came there and Mr. Larkin.

20

Q. You are no more interested in this tract, are you? A. No.

Q. Before you left, how many houses were built on this tract? A. Before I left? Seven, I think.

Q. One is your own house? A. Yes.

Q. Then the first three were the three for which you paid commissions to Mr. Thompson? A. Yes.

30

Q. And the last three are the three on which this suit is based? A. Yes.

Q. You built those last three houses? A. Yes.

Q. Did not Mr. MacCormack or Mr. Callahan go up to see Mr. Clark at Mr. Hopping's place of business? A. I don't know.

Q. You don't know whether they saw him or not? A. No, I don't.

Mr. Dreier: If your Honor please, I object. Mr. Callahan said he just went up

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Peter Briscoe, for Defendant—Cross.

with Mr. Hopping, but not to see anybody in particular.

The Court: No, he said he went up with Mr. Briscoe with a plan and saw Mr. Clark and Mr. Hopping there, that is what he said. That is what Mr. Callahan said.

10

Mr. Dreier: He said he saw several men there.

By Mr. Newman:

Q. Do you remember that occasion? A. I remember going there with Mr. Callahan and showing Mr. Hopping the plan.

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Q. Do you remember whether Mr. Clark was there at the time? A. No, Mr. Clark was not there.

Q. You did not know him at that time, did you? A. There was nobody there but Mr. Hopping, Mr. Callahan and myself.

By the Court:

Q. Didn't a lot of workmen stand around, looking at the plans? A. Nobody. One of the bosses came in while we were there and Mr. Hopping talked to him about the plan.

30

By Mr. Newman:

Q. The Clarks were introduced to you by Mr. Cole? A. Yes, they showed them where I lived.

Q. They knew Mr. Hopping; didn't they tell you that? A. I don't know whether they told me that or not. I don't know whether they knew Mr. Hopping before they came in.

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Q. Didn't you know that Mr. Clark worked where Mr. Hopping worked? A. I knew that.

Peter Briscoe, for Defendant—Cross.

Q. Still you didn't think he knew Mr. Hopping?

A. I misunderstood your question. I thought you said didn't Mr. Cole know Mr. Hopping.

Q. I asked if Mr. Clark knew Hopping. A. Yes.

Q. And he told you that? A. Yes.

Q. And Mr. Clark knew Mr. Cole? A. Yes. 10

Q. Mr. Cole introduced you to Mr. Clark, did he? A. Yes.

Q. Mr. Cole was Mr. Thompson's customer wasn't he? A. I don't now—yes.

Q. Sure you know; you paid Mr. Thompson a commission for selling the house to Mr. Cole. A. Yes, that is right.

Q. Mr. Larkin did not tell you how he came on the tract, did he? A. No, sir.

Q. Just said that he was riding around? A. Riding around. 20

Q. Seeking ads; you did not do any advertising yourself, did you? A. Yes, sir.

Mr. Dreier: I object to that as immaterial.

Mr. Newman: I will withdraw the question. I don't care for the answer anyhow.

Q. Did Mr. Thompson meet Mr. Larkin or his mother? A. I don't know. 30

Q. Did Mr. Thompson go down to see Mr. Larkin's mother to straighten out your plans? A. I could not tell you that, I don't know.

Q. Did he talk to you about going down to see Mrs. Larkin?

Mr. Dreier: If your Honor please, I would like to have him specify the time.

Mr. Newman: Any time. What is the answer? 40

Peter Briscoe, for Defendant—Re-direct.

The Witness: I don't remember ever saying anything about it.

10 Q. Don't you remember Mr. Thompson speaking to you about going down to see Mr. Larkin to straighten out the plans for this proposed house? A. I remember Mr. Thompson coming up there with Mr. Larkin, but I am not sure whether his mother was with him or not. He wanted me to put an extra room in the attic or he would not go through with the deal.

Q. And Mr. Thompson spoke to you and spoke to the Larkins, did he not, about this plan? A. Yes.

Q. And tried to get you together? A. Yes.

20 Q. Did he not? A. Yes.

Mr. Newman: That is all.

Re-direct examination by Mr. Dreier:

Q. Now, Mr. Briscoe, when Mr. Thompson spoke to you about getting you and Larkin together, was that after the deposit had been paid? A. Yes.

Q. And it was to Mr. Thompson's benefit to have this sale go through? A. Certainly.

30 Q. He was interested in the G. C. T. Corporation? A. Certainly.

By the Court:

Q. This booth that was testified to at this County Fair, whose booth was that? A. I built the frame for it; there was a canvass thrown over it.

Q. Who built it? A. My carpenter.

40 Q. At whose expense? A. My own expense.

Peter Briscoe, for Defendant—Re-cross.

Aaron D. Thompson, Recalled—Direct.

By Mr. Dreier :

Q. Did you do any advertising in relation to those premises? A. Yes, I put some small ads in the local paper up there.

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Re-cross-examination by Mr. Newman :

Q. Who built that tent? A. My carpenter.

Q. Are you sure about that? A. Yes.

Q. Are you sure Mr. Thompson did not pay for it? A. I am sure of it.

Mr. Newman: That is all.

Mr. Dreier: Defendant rests.

20

AARON D. THOMPSON, recalled as a witness in his own behalf, in rebuttal, testified further as follows:

Direct examination by Mr. Newman :

Q. Mr. Thompson, who paid for that tent up there? A. I paid for it.

By the Court :

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Q. How much? A. \$15.

Q. To whom? A. The man who furnished all the tents for the Fair.

By Mr. Newman :

Q. Did Mr. Briscoe's man build it? A. He built a little table that we used for putting the circulars on; three boards, I think it was put on a stand. I also had to pay for the space there; you have to buy those things.

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Aaron D. Thompson, Recalled—Cross.

Robert MacCormack, Recalled—Direct.

Cross-examination by Mr. Dreier:

Q. Who built the framework? A. The framework came with the tent.

Q. Are you sure of that? A. I am.

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Mr. Dreier: That is all.

ROBERT MACCORMACK, recalled as a witness on behalf of the plaintiff, in rebuttal, testified further as follows:

Direct examination by Mr. Newman:

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Q. On this occasion of getting the \$250, in May, Mr. Briscoe has testified that he told you that his mother was dying and that you should get this money for him; do you recall that? A. I would not say that. His mother was sick at the time, I do not know whether she died at that particular time—I heard that she was seriously ill.

Q. What did he tell you? A. He told me that the Larkins might buy it.

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Q. When did you first meet the Larkins? A. Why, the day he come up to pick out a house. I don't know whether it was the first time he had been up or the second, but there was some dispute about the house, and I helped smooth it over.

Q. You talked to Mr. Briscoe about it? A. I talked to Mr. Briscoe and Mr. Larkin.

Q. Who gave you the \$10 on this memorandum, Mr. Briscoe or Mr. Larkin? A. I think it was Mr. Briscoe.

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*Robert MacCormack, Recalled—Cross.**Cross-examination by Mr. Dreier:*

Q. Mr. Briscoe spoke to you about Mr. Larkin coming up before you saw Mr. Larkin, did he not?

A. I could not say that.

Q. He gave you the first \$10 payment? A. He gave me the \$10 payment, yes.

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Mr. Dreier: That is all.

Mr. Newman: That is our case.

(Whereupon Mr. Newman and Mr. Drier summed up to the jury.)

Charge to the Jury.

The Court: Gentlemen of the Jury: This suit that you are called upon to decide is one between Aaron D. Thompson and Peter F. Briscoe and arises out of a real estate transaction, or rather a series of real estate transactions, and is for commissions which Mr. Thompson claims to be due from Mr. Briscoe. There arise here questions in dispute, questions of fact, and it is your duty to decide all questions of fact. That is the sole function of the jury, to find the truth; to find what the facts are and it is the function of the Court to explain the law to you.

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There are not a great many questions of law involved in this case. It is almost entirely one of fact. There isn't any dispute that there was a written agreement between Mr. Thompson and Mr. Briscoe with respect to the sale of the property that was owned by the G. C. T. Corporation; that Mr. Thompson was the selling agent for Mr. Briscoe, operating the Fairview Building Company, which was building houses on a tract of

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Charge to the Jury.

land out near Morristown. There isn't any dispute that there were some houses built and that there were some lots sold; there isn't any dispute that there were three lots sold for \$1,200 apiece, one to Mr. Clark, one to Mr. Hopping and one to Mr. Larkin. Thus far there is no trouble
10 at all. But there is a dispute as to whether or not the lots were sold to Mr. Larkin and to Mr. Clark by Mr. Thompson or Mr. Thompson's agents and employees. There isn't any question but what the lot of Mr. Hopping was sold by Mr. Thompson, but there is a dispute, I say, with respect to the Clark and Larkin properties and that is what you are here to decide.

Now, with respect to the Hopping property, the lot was sold for \$1,200 and has been paid for, and
20 under the terms of the contract, if a house is built upon the lot, the agent gets 25 per cent. There is no dispute about that. Therefore the plaintiff is entitled to \$300 with interest on that property. It seems that Mr. Hopping has not as yet taken title, but that is not the fault of any agent. The contract was made as a result of the agent's services; the agent brought those people together and the sale was made, and if I am correct in my recital of the facts with respect to that transac-
30 tion, the commission has been earned and is due on that sale.

With respect to the other two, however, the situation is quite different. Although Mr. Thompson and Mr. Briscoe are not very much apart on the testimony as to just how these sales were made, neither Mr. Thompson nor Mr. Callahan nor Mr. MacCormack say that they solicited the sales to those people directly in the first instance, as I remember it, but on the contrary they say that
40 they were out hustling up business. They claim

Charge to the Jury.

that they were at the Fair, giving our circulars; that they were making house-to-house canvasses and that they were putting advertisements in the papers, and that as a result of such efforts these people came to the property, and that they, therefore, were the procuring cause, the efficient cause of the sale of those two properties and that if they were, they are entitled to a commission; if they were not, they are not. That raises a question of fact for you to decide from all this testimony, much of it, indeed most of it perhaps being of a negative character. As counsel said in the opening, you may draw inferences from the testimony. Inferences that properly may be drawn from the testimony are, whether or not on this main question of the case, this plaintiff or his agents were the efficient and procuring cause of these sales? Were they? If they were, Mr. Thompson is entitled to a commission. If they were not, he is not entitled to a commission. That is a question of fact for you to determine.

One of these men, it seems, is a friend of another man who bought some property, so that is the way we trace that sale. These two men are employed together and one told the other. If you find that Mr. Larkin knew nothing about this at all and Mr. Briscoe sold it to him without the intermediate work of an agent, then, of course, on the Larkin sale there can be no commission. Mr. Larkin says he does not even know whether the Thompson name was on the sign. He says Mr. Briscoe's name was there a block long. He did not mean that literally, for of course the sign was not that big, but he said that the sign was a large sign with Briscoe's name thereon. If that sign was put up by Mr. Thompson, and if that was part of his selling campaign, and it was because

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Charge to the Jury.

of that sign that Mr. Larkin's attention was called to the property, then Mr. Thompson is entitled to a commission, because that would make him the efficient, procuring cause. Here was a man taking a drive,—I probably misunderstood him,—I thought he said he was taking a drive in the evening,—at least that is the impression I got, that he was driving in the evening, but the others say that it was around ten o'clock in the morning. But whatever time it was, Mr. Larkin said he saw the sign and that is what drew him to the property; that is what directed his attention to it. He probably did not know about the property before; he had not seen it. Neither Mr. MacCormick nor Mr. Callahan approached him or rang his doorbell for the purpose of interesting him in it,—at least I do not remember any testimony to that effect. So that boils itself down to the question of whether or not Mr. Larkin did see the sign and whether the Thompson name was on the sign. If Mr. Briscoe saw him and he never heard of that property before; didn't know anything about it, or if Mr. Briscoe had a sign there and he saw Mr. Briscoe's sign, and because of the sign he purchased the property, then of course Mr. Briscoe made the sale, and in that event, you cannot find any facts that would lead you to say that the Thompson outfit was the efficient and procuring cause of the sale.

So you must decide these questions of fact from the testimony.

Who was the efficient, procuring agency for these sales? Was it Mr. Briscoe himself, unrelated with any acts on the part of Mr. Thompson, or was it Mr. Thompson or his agents either directly or indirectly through their advertisements or circularizing, or through one man telling another or what not? That is for you to determine.

Charge to the Jury.

If you should find for the plaintiff, there is the matter of interest for two years to be taken into consideration. Counsel has calculated it as \$108 for the full amount of \$900. If your verdict should be for \$600, then it would be two-thirds of that amount; if it should be \$300, then it is one-third of that amount, depending, as I say on what your verdict shall be, whether for \$300, \$600 or \$900. 10

If the Court has misstated the testimony in any particular in the charge, with respect to the facts that have been testified to, of course you will disregard any such misstatements and you may rely entirely on your own recollection of the testimony. It is for you to decide what the facts are, and you arrive at that decision from the testimony that was given, together with such inferences that may properly be drawn from the facts as they have been testified to. 20

When you have found the facts then you find your verdict, as the Court has outlined to you.

You may retire.

Mr. Dreier: I take an exception to that part of the Court's charge in which he says that the sale was made when the agents brought the parties together; also to that part of the charge in which his Honor said, "your verdict should be \$300, \$600 or \$900," and the Court's failure to charge the following requests: 30

"1. The duty which an agent undertakes, the obligation he assumes as a condition of his right to demand commissions is to bring the buyer and seller to an agreement. The agent, to earn commissions on the sale of property, must be the efficient or procuring cause of the sale (*Queen vs. Jennings*, 93 N. J. L. 353). 40

Requests and Exceptions.

“2. Unless the plaintiff has proven that as a matter of fact he was the one who brought the purchasers to the defendant, or that he was the first one to speak to the purchasers in regards to the buying of the property, then you must find in favor of the defendant.

10

“3. A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell (*Courter vs. Lydecker*, 71 N. J. L. 511).

“4. If you find that a purchaser was obtained by the plaintiff, but said purchaser was unable financially to carry out the terms of the contract, then you must find the verdict in favor of the defendant.”

20

Exceptions noted as ground of appeal.

30

40

Exhibit P-1.

THIS AGREEMENT MADE THIS 31st day of August,
Nineteen Hundred and Twenty-seven, between

PETER F. BRISCOE,

of the City of Plainfield, County of Union and
State of New Jersey, party of the first part, and 10

G. C. T. CORPORATION, a Corp.

of the State of New Jersey, having its principal
office in the City of Newark, County of Essex and
State of New Jersey, party of the second part,

WITNESSETH:—

WHEREAS, the said party of the second part is
in possession of a tract of land situated in the
Township of Hanover, in the County of Morris 20
and State of New Jersey, and known as "FAIR-
VIEW PARK," and

WHEREAS, the party of the first part is desirous
of obtaining an exclusive agency for the sale of
all the remaining unsold lots in said tract under
the terms herein specified.

NOW THEREFORE, the said party of the first part,
for and in consideration of the sum of One (\$1.00)
Dollar, lawful money of the United States, to him
in hand paid by the party of the second part, re- 30
ceipt whereof is hereby acknowledged, and in
further consideration of the covenants hereinafter
specified, does hereby covenant, promise and
agree to and with the said party of the second
part, its successors and assigns, that he will sell
for and on behalf of the party of the second part,
all the unsold lots situated in "FAIRVIEW PARK"
as shown on a map of said property known as
"FAIRVIEW PARK, HANOVER, N. J." which said lots 40

Exhibit P-1.

are not marked on the map of said property attached hereto and made a part of this contract, and identified with the signatures of the said parties hereto at the following prices.

10 It is expressly understood that all contracts made by the party of the first part for the sale of said property or any part thereof, shall not be valid unless properly approved in writing by the said party of the second part, or its duly authorized agent, and any sale made by the party of the first part shall not be considered as such unless the terms or contract have been approved in writing by the party of the second part.

20 It is further expressly understood that the said party of the second part shall not be responsible for any of the acts of the said party of the first part, or his agents, unless approved by the said Corporation, or its duly authorized agent, and a sale shall not be considered a "bona fide sale" within the meaning of this agreement, unless the purchaser shall have paid ten per cent of the purchase price of such lot or lots, purchased, as a deposit for the purchase of said property.

30 The party of the first part does for himself, his heirs, executors and assigns, further covenant and agree to and with the said party of the second part, its successors and assigns, that from and after the execution of this agreement, and for the period for which the same is made, he will not, either alone, or jointly with, or as agent for, or employer of any person or persons, firms or corporations, except only as agent for the party of the second part, and either directly or indirectly, enter into, conduct, or be engaged, employed or interested in, or carry on, within a radius of
40 twenty square miles from the premises hereinabove mentioned and known as "FAIRVIEW PARK"

Exhibit P-1.

any occupation or business in opposition to the said business hereinabove mentioned, or sell any land, real estate or property of every description for any other person, firm or corporation in opposition to the said business of the party of the second part, or the property referred to in this agreement, nor do anything to the prejudice thereof. 10

And the said party of the second part, in consideration of the covenants and agreements on the part of the party of the first part for services for affecting a sale of the land and premises hereinabove mentioned, a commission to be paid in the following manner:

A commission of thirty per cent shall be paid on the purchase price of all lots sold for cash (where no installment agreement is made); fifty per cent of the amount received as deposit to be paid to the party of the first part upon the signing of an agreement under the terms hereinabove mentioned, and the balance of said commission (not exceeding thirty per cent of the purchase price) shall be paid when the balance of the purchase price is paid and a deed delivered to the purchaser. 20

Where an installment agreement is made with the purchaser, the party of the first part shall receive fifty per cent of the cash received when the agreement is signed by the purchaser, and thereafter fifty per cent of each monthly payment made by the purchaser on account of the balance of the purchase price shall be paid to the party of the first part, until he shall have received 30% of the entire purchase price of said lot or lots. 30

All commissions due to the party of the first part shall be paid by the party of the second part on or before the tenth day of each and every month. 40

Exhibit P-1.

It is expressly understood and agreed between the parties hereto, and this agreement is made upon the express condition that the said party of the first part shall sell and dispose of lots in the tract hereinabove described, the gross purchase price of which sales shall amount to at least
10 Thirty-five Thousand (\$35,000) Dollars during the period for which this agreement is made, and in the event that the said party of the first part shall fail to sell and dispose of lots, the gross purchase price of which shall amount to at least the sum hereinabove mentioned in any one month of the period of this contract, then the party of the second part shall have the option of rescinding the within contract and declare the same null and
20 void, it being the intention that the said party of the first part will guarantee that they will sell and dispose of the land in the above tract, the gross price of which shall amount to at least Thirty-five Thousand (\$35,000) Dollars during the period of this contract.

It is further understood and agreed between the parties hereto that the party of the first part shall be entitled to commissions on all sales made by the party of the second part, and shall also be entitled to full commissions on all cash sales where
30 discounts have been allowed to the purchaser by the said party of the second part.

It is understood between the parties hereto that this contract is made for a period of one year, commencing August 10th, 1927 and ending August 10th, 1928, and shall bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof the said party of the first part has hereunto set his hand and seal and the
40 party of the 2nd part has caused these presents

Exhibit P-1.

to be signed by its president, attested by the secretary, and the common seal of the Company attached hereto, the day and year first written.

Signed, Sealed and	} PETER F. BRISCOE	10
Delivered in the		
Presence of		

G. C. T. CORPORATION

BY A GENNET
President.

(Corporate Seal)

ATTEST:

A D THOMPSON
Secretary.

20

Map of property and price list annexed hereto
but not printed with exhibit.

(Endorsement:)

ARTICLES OF AGREEMENT

Between 30

PETER F. BRISCOE,
and
G. C. T. CORPORATION, a corp.

LEVY, FENSTER & McCLOSKEY
Forty-five Branford Place Bldg.
45 Branford Place
Newark, New Jersey

40

Exhibit P-2.

I, the undersigned, do hereby recognize Aaron D. Thompson as my duly authorized broker for the sale of lots controlled by me and situated in the tract of land known as "Fairview Park", Hanover Township, Morris County, New Jersey, and do hereby agree to pay to the said Aaron D. Thompson, a commission of twenty percent (20%) on the purchase price of all lots sold by him for and on my behalf and I also agree to pay an additional commission of five percent (5%) on the purchase price of all lots sold by him where I have obtained a contract for the erection and construction of a building thereon for the purchaser of said lot, provided, however, that the said purchaser of said lot shall have entered into a contract with me for the erection of said building within three months from the date of said sale.


All commissions are to be paid to the said Aaron D. Thompson as follows:

50% of all cash received by me on account of the purchase price of any and all of said lots, until such time as the full commission has been paid.

PETER F. BRISCOE.

Dated: August 30, 1927.

Exhibit P-3.

(Opposite) 

YOUR IDEAL HOME
WHERE HAPPINESS AND CONTENTMENT ARE FOUND



WHICH STAIRWAY ARE YOU CLIMBING?

THE RENTED HOME
WHERE THE LANDLORD KILLS THE SPARK OF AMBITION



Fairview Park

Offers Unusual Opportunities to Acquire
A Home of Your Own

A most unique and new plan of payment terms
have been arranged for the convenience of
rent payers.

This occasion will open up the gateway
to prosperity and independence to all
who have the ambition to divert their
rent money into their own pockets.

*Billy
Sunday
Says*

"The rent payer who sings 'Home Sweet Home' is kidding himself and serenading the landlord."

Arthur Brisbane Says-

"Buy land- Stocks go up and stocks go down and sometimes go out entirely.

Oil wells go dry- sometimes they only run on paper, but mother earth is always there."

BUY LAND



*Change Your
Direction!
Walk the Road to
Prosperity*

It is so easy to make the change
Merely invest your rent money
Dont spend it.

To be wise too late is the great-
est cause for regret.

Mail Coupon Today
Tomorrow never comes

CALLAHAN & MAC CORMACK
45 Brandford Place, Newark, N. J.
Gentlemen;

Without obligation please send booklet with pictures of newest
home designs and more information about Fairview Park home sites.

Name.....
Street..... City.....

Some of you can remember when certain lots could be bought for a song but it would require a song from Scotti or John McCormack to buy them to-day.

G. C. T. Corporation

Owners and Developers

39 Branford Place

Newark, N. J.

Phone Mulberry 1349

Fairview Building Co.

BUILDERS - P. F. BRISCOE

Office on Property

Selling Agents

Callahan & MacCormack

45 Branford Place

Newark, N. J.

BROKERS PROTECTED

FAIRVIEW PARK

GUARANTEES

Nice Homes

Paved Streets

Water

Gas

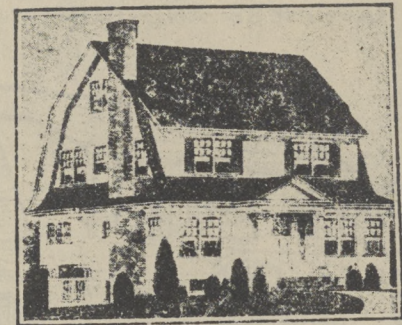
Electric

\$200 Down and small monthly payments starts you off to own your own home.

Inside sketch tells more than we can write

What happened to Brooklyn, Long Island and the Bronx and other populace centers when fast electric train service was brought to them, when antiquated ferry boats gave way to great bridges and smooth highways to meet the demand of motor traffic? Realty values jumped practically over night as people sought to cash in on this progress. Lots that sold for a few hundred dollars jumped to thousands.

The same will happen here.



FAIRVIEW PARK

HANOVER ROAD
AND
EVERGREEN AVE.

FIVE MINUTES FROM

D. L. & W.

RAILROAD STATION

MORRISTOWN

NEW JERSEY

—PHOTOSTAT—

Exhibit P-4.

G. C. T. CORPORATION
Developers

190 Market Street, Newark, N. J.
Telephone Mulberry 1349
39 Branford Place

10

Date May 24 1928

THE G. C. T. CORPORATION, does hereby acknowledge receipt of the sum of 10.00 dollars, being deposit from Leslie W. Hopping of 77 Abbott St, for the purchase of 1 lots, Nos. 73 Block No. 3 facing on Highview Ave, as shown on map entitled map of Highview Park.

20 House

Price Lot \$1200

TERMS—Deposit \$.....

Additional payment to be made by purchaser at time of signing the formal Contract of Dollars \$500.00. Balance to be paid..... or monthly installments of not less than \$..... Purchaser agrees to sign a regular form of contract with corporation, on

30 otherwise deposit shall be forfeited.

This receipt shall not be binding upon the Corporation until a formal contract is signed by the parties hereto.

G. C. T. CORPORATION,
G. CALLAHAN
Salesman.

L. HOPPING
Purchaser.

40

Exhibit P-5.

Fairview Park
G. C. T. CORPORATION
39 Branford Place 10

At Halsey—Newark, New Jersey
“Street Floor”

and 20

LESLIE W. HOPPING
77 Abbott St.
Morristown, N. J.

Lot No. 73
Block No. 3 30

Always Bring This Book With You
When Making Payments

40

Exhibit P-5.

ARTICLES OF AGREEMENT, made the 24 day of March A. D., 1928, between the G. C. T. CORPORATION, a Corporation of New Jersey, located in the City of Newark, Essex County, New Jersey, party of the first part, and LESLIE W. HOPPING of the City of Morristown in the County of Morris, and State of New Jersey party of the second part;

10
 20
 30
 WITNESSETH, That the said party of the first part for and in consideration of Twelve hundred dollars, to be paid and satisfied in the manner and according to the conditions hereinafter contained, hereby agrees to sell and convey unto the said party of the second part, his heirs and assigns, free of all encumbrance, except certain restrictions against nuisances, house restrictions hereinafter mentioned, and such taxes and assessments as shall become an encumbrance upon said property after the date of this agreement, all that lots, tract, or parcel of land and premises, situate, lying and being in the Township of Hanover, County of Morris, and State of New Jersey, known and designated as Lot No. 73 Seventy three in Block No. three 3, as shown on revised map of Fairview Park, property of the G. C. T. CORPORATION, 39 Branford Place, Newark, N. J., situated in Hanover Township, N. J. Surveyed April, 1927, Ernest Baechlin, C. E., Bloomfield, N. J.

40
 And the said party of the second part agrees for his self, his heirs, executors and administrators, to pay to said party of the first part the said sum of Twelve hundred dollars (\$1200) in the manner following, that is to say:—The sum of Two hundred & fifty dollars (\$250.00) when this agreement is signed, and Fifteen dollars (\$15.00) additional on the Third Tuesday of each and

Exhibit P-5.

every month until said sum of Twelve hundred dollars (\$1200) together with interest at six per cent. from Mar 26 1928 is fully paid and satisfied. Such payment to be made at the office of the party of the first part, 39 Branford Place, Newark, N. J., between the hours of 10 a. m. and 4 p. m.

It being also understood and agreed that in case the party of the second part so elects he may at any time within six months from the date hereof pay the entire balance of said purchase price above mentioned, in which event he shall be entitled to a discount of 5 per cent. upon all such part of balance as would otherwise become due under the terms of this agreement after the date when such balance is paid. 10

And it is further agreed that as soon as the moneys herein agreed to be paid by the party of the second part shall have been fully paid and satisfied as herein agreed, the party of the first part will at its own costs and expense, transfer and convey to the said party of the second part his heirs or assigns, the lot hereinbefore mentioned, by good and absolute deed of conveyance, free from all encumbrance, except such taxes and assessments hereinbefore mentioned; said deed of conveyance to contain a covenant that no building shall be erected on said lot which shall approach nearer the street on which said lots front than twenty feet nor which shall reasonably cost to build less than thirty-five hundred dollars (\$3,500), and that no less than one lot, as laid down on said map, except corner lots, shall be used as a building site, and that no more than one dwelling house shall be erected upon any lot; also that these shall not be erected upon any portion of said premises any slaughter house, brass foundry, nail or iron foundry, or any fertilizing 20 30 40

Exhibit P-5.

manufactory, or any manufactory of gun powder, dynamite, varnish, vitriol, ink or turpentine; nor any bone boiling establishment; nor shall said premises be used for the sale or manufacture of any vinous, spirituous or malt liquors; nor shall anything be conducted upon said premises that shall be a nuisance to the neighboring inhabitants. The above restriction shall not apply or effect lots Nos. 1, 2, 3, 4, Block 1; 23, 24, 25, 26, 27, 28, Block 2; 63, 64, 65, 66, 67, 68, Block 3; 103, 104, 105, Block 4; 211, 212, 213, 214, 215, Block 8; 287, Block 11; on map herebefore mentioned; and these covenants shall be taken to be real covenants running with the land and binding upon the heirs, executors, administrators and assigns of the party of the second part until January 1st in the year nineteen hundred and forty-five (1945) when they shall cease and terminate.

And it is further agreed by the parties hereto that the said deed shall be delivered at the office of the said party of the first part at No. 39 Branford Place, Newark, N. J. when said moneys have been fully paid and satisfied as herein provided.

And it is further hereby expressly agreed and understood by the parties to these presents that time shall be taken to be of the essence of this contract, and that if the said party of the second part shall make default in payment of any of the installments hereby agreed to be paid, and said installment shall remain unpaid, and said default shall continue for the space of thirty days, then this contract and all rights and interests which the said party of the second part has hereunder shall be forfeited and shall cease and determine, and all moneys paid hereunder shall be forfeited to the party of the first part and the party of the

Exhibit P-5.

first part shall be released and discharged from all obligations at law or in equity to convey said lands, and all other matters whatsoever and shall be at liberty to resell and convey said property as if this contract had not been made, without any liability to the party of the second part or other person whatsoever for or in respect of any of the matters contained in this agreement. 10

And the said party of the second part hereby agrees, if default shall be made in the payment of any of the moneys, as hereinbefore mentioned, to waive and relinquish every and all right, legal or equitable, under and by virtue of this contract, and to make, execute, and deliver to the party of the first part, all such releases, deeds or other instruments, if any, as may be necessary to relinquish and discharge every and all rights which the party of the second part may have hereunder, or to which the party of the second part may in any wise appear to be entitled, so that the said party of the first part will hold said lands and premises herein mentioned the same as if this agreement had not been made. 20

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Exhibit P-5.

This contract shall not be assigned by the party of the second part, without the written consent of the party of the first part.

10 IN WITNESS WHEREOF the said party of the first part hath, caused its corporate seal to be hereto affixed, and these presents to be signed by the (Corporate Seal) Treas. and attested by the Secretary and the party of the second part hath hereunto set hand and seal the day and year first above written.

(Corporate Seal)

20 Signed, sealed and delivered in the presence of

G. C. T.
CORPORATION
By
DAVID K. DUNKLIN
Treas

Attested by

30 A. D. THOMPSON
Secretary.

Witness

G. CALLAHAN

LESLIE W. HOPPING (L. S.)
FLORENCE W. HOPPING (L. S.)

Exhibit P-6.

G. C. T. CORPORATION

Developers

190 Market Street, Newark, N. J.

Telephone Mulberry 1349

10

Date April 3, 1928

THE G. C. T. CORPORATION, does hereby acknowledge receipt of the sum of 20 dollars, being deposit from David Clark of Morris Plains Glenbrook Rd., for the purchase of 1 lots, Nos. 70 Block No. 3 facing on High View Ave, as shown on map entitled map of Fair View Pk.

Price Twelve Hundred \$1200.

20

TERMS—Deposit Twenty \$20.

Additional payment to be made by purchaser at time of signing the formal Contract of Four Hundred & Eighty Dollars \$480.00. Balance to be paid or monthly installments of not less than \$20. Purchaser agrees to sign a regular form of contract with corporation, on April 5th otherwise deposit shall be forfeited.

This receipt shall not be binding upon the Corporation until a formal contract is signed by the parties hereto.

30

G. C. T. CORPORATION,

CALLAHAN & MACCORMACK
Salesman.

Purchaser.

40

Exhibit P-7.

10 Fairview Park
G. C. T. CORPORATION
39 Branford Place
At Halsey—Newark, New Jersey
“Street Floor”

and

20 DAVID CLARK
Glenbrook Road
Morris Plains N. J.

Lot No. 70

Block No. 3

30 Always Bring This Book With You
When Making Payments

40

Exhibit P-7.

ARTICLES OF AGREEMENT, made the 3rd day of April A. D., 1928, between the G. C. T. CORPORATION, a Corporation of New Jersey, located in the City of Newark, Essex County, New Jersey, party of the first part, and DAVID CLARK of the Town of Morris Plains in the County of Morris, and State of New Jersey party of the second part;

10

WITNESSETH, That the said party of the first part for and in consideration of Twelve hundred dollars, to be paid and satisfied in the manner and according to the conditions hereinafter contained, hereby agrees to sell and convey unto the said party of the second part, his heirs and assigns, free of all encumbrance, except certain restrictions against nuisances, house restrictions hereinafter mentioned, and such taxes and assessments as shall become an encumbrance upon said property after the date of this agreement, all that lot, tract, or parcel of land and premises, situate, lying and being in the Township of Hanover, County of Morris, and State of New Jersey, known and designated as Lot No. Seventy 70 in Block No. Three 3, as shown on revised map of Fairview Park, property of the G. C. T. CORPORATION, 39 Branford Place, Newark, N. J., situated in Hanover Township, N. J. Surveyed April, 1927, Ernest Baechlin, C. E., Bloomfield, N. J.

20

30

And the said party of the second part agrees for his self, his heirs, executors and administrators, to pay to the said party of the first part the said sum of Twelve hundred dollars (\$1200/00) in the manner following, that is to say—The sum of Five hundred dollars (\$500/00) when this agreement is signed, and Twenty dollars (\$20/00) additional on the Third Tuesday of each and every

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Exhibit P-7.

month until said sum of Twelve hundred dollars (\$1200/00) together with interest at Six per cent. from April 3 1928 is fully paid and satisfied. Such payment to be made at the office of the party of the first part, 39 Branford Place, Newark, N. J., between the hours of 10 a. m. and 4 p. m.

10 It being also understood and agreed that in case the party of the second part so elects he may at any time within six months from the date hereof pay the entire balance of said purchase price above mentioned, in which event he shall be entitled to a discount of 5 per cent. upon all such part of balance as would otherwise become due under the terms of this agreement after the date when such balance is paid.

20 And it is further agreed that as soon as the moneys herein agreed to be paid by the party of the second part shall have been fully paid and satisfied as herein agreed, the party of the first part will at its own costs and expense, transfer and convey to the said party of the second part his heirs or assigns, the lot hereinbefore mentioned, by good and absolute deed of conveyance, free from all encumbrance, except such taxes and assessments hereinbefore mentioned; said deed of conveyance to contain a covenant that no building shall be erected on said lot which shall approach nearer the street on which said lots front than 30 twenty feet nor which shall reasonably cost to build less than thirty-five hundred dollars (\$3,500), and that no less than one lot, as laid down on said map, except corner lots, shall be used as a building site, and that no more than one dwelling house shall be erected upon any lot; also that these shall not be erected upon any portion of said premises any slaughter house, brass foundry, nail

40

Exhibit P-7.

or iron foundry, or any fertilizing manufactory, or any manufactory of gun powder, dynamite, varnish, vitriol, ink or turpentine; nor any bone boiling establishment; nor shall said premises be used for the sale or manufacture of any vinous, spiritous or malt liquors; nor shall anything be conducted upon said premises that shall be a nuisance to the neighboring inhabitants. The above restriction shall not apply or effect lots Nos. 1, 2, 3, 4, Block 1; 23, 24, 25, 26, 27, 28, Block 2; 63, 64, 65, 66, 67, 68, Block 3; 103, 104, 105, Block 4; 211, 212, 213, 214, 215, Block 8; 287, Block 11; on map herebefore mentioned; and these covenants shall be taken to be real covenants running with the land and binding upon the heirs, executors, administrators and assigns of the party of the second part, until January 1st in the year nineteen hundred and forty-five (1945) when they shall cease and terminate.

10

20

And it is further agreed by the parties hereto that the said deed shall be delivered at the office of the said party of the first part as No. 39 Branford Place, Newark, N. J. when said moneys have been fully paid and satisfied as herein provided.

And it is further hereby expressly agreed and understood by the parties to these presents that time shall be taken to be of the essence of this contract, and that if the said party of the second part shall make default in payment of any of the installments hereby agreed to be paid, and said installments shall remain unpaid, and said default shall continue for the space of thirty days, then this contract and all rights and interests which the said party of the second part has hereunder shall be forfeited and shall cease and determine, and all moneys paid hereunder shall be forfeited to the party of the first part and the party of the

30

40

Exhibit P-7.

10 first part shall be released and discharged from all obligations at law or in equity to convey said lands, and all other matters whatsoever and shall be at liberty to resell and convey said property as if this contract had not been made, without any liability to the party of the second part or other person whatsoever for or in respect of any of the matters contained in this agreement.

20 And the said party of the second part hereby agrees, if default shall be made in the payment of any of the moneys, as hereinbefore mentioned, to waive and relinquish every and all right, legal or equitable, under and by virtue of this contract, and to make, execute, and deliver to the party of the first part, all such releases, deeds or other instruments, if any, as may be necessary to relinquish and discharge every and all rights which the party of the second part may have hereunder, or to which the party of the second part may in any wise appear to be entitled, so that the said party of the first part will hold said lands and premises herein mentioned the same as if this agreement had not been made.

30

40

Exhibit P-7.

This contract shall not be assigned by the party of the second part, without the written consent of the party of the first part.

IN WITNESS WHEREOF the said party of the first part hath, caused its corporate seal to be hereto affixed, and (Corporate Seal) these presents to be signed by the Treas. and attested by the Secretary and the party of the second part hath hereunto set hand and seal the day and year first above written. 10

(Corporate Seal)

Signed, sealed and delivered in the presence of

G. C. T. CORPORATION By DAVID K. DUNKLIN Treas 20

Attested by A D THOMPSON Secretary.

Witness(L. S.) 30
.....(L. S.)

I Transfer all my rights in this Contract to the Fairview Building Cor.

DAVID E. CLARK BERTHA S CLARK

Exhibit P-8.

G. C. T. CORPORATION

Developers

190 Market Street, Newark, N. J.

Telephone Mulberry 1349

10

39 Branford Place

Date May 29 1928

THE G. C. T. CORPORATION, does hereby acknowledge receipt of the sum of 10.00 dollars, being deposit from Mrs. F. Larkins of 40 King Place, for the purchase of one lots, Nos. 75 Block No. 3 facing on Highview Ave, as shown on map entitled map of Fairview Park.

20

Price 1200.00 \$.....

TERMS—Deposit Ten \$10

Additional payment to be made by purchaser at time of signing the formal Contract of Two Hundred and fifty Dollars \$250. Balance to be paid or monthly installments of not less than \$..... Purchaser agrees to sign a regular form of contract with corporation, on otherwise deposit shall be forfeited.

30

This receipt shall not be binding upon the Corporation until a formal contract is signed by the parties hereto.

G. C. T. CORPORATION,

ROBERT MACCORMACK

Salesman.

A. LARKIN

Purchaser.

40

Exhibit P-9.

Fairview Park
G. C. T. CORPORATION
39 Branford Place
At Halsey—Newark, New Jersey
“Street Floor”

10

and

ARCHIBOLD LARKIN
40 King Place
Morristown

20

Lot No. 75

Block No. 3

30

Always Bring This Book With You
When Making Payments

Exhibit P-9.

ARTICLES OF AGREEMENT, made the 29 day of
 May A. D., 1928, between the G. C. T. CORPORATION,
 a Corporation of New Jersey, located in the City
 of Newark, Essex County, New Jersey, party of
 the first part, and ARCHIBOLD LARKIN of the City
 of Morristown in the County of Morris, and State
 10 of New Jersey party of the second part;

WITNESSETH, That the said party of the first
 part for and in consideration of Twelve hundred
 dollars, to be paid and satisfied in the manner and
 according to the conditions hereinafter contained,
 hereby agrees to sell and convey unto the said
 party of the second part, his heirs and assigns,
 free of all encumbrance, except certain restric-
 tions against nuisances, house restrictions herein-
 20 after mentioned, and such taxes and assessments
 as shall become an encumbrance upon said prop-
 erty after the date of this agreement, all that lot
 -----, tract -----, or parcel of land and
 premises, situate, lying and being in the Town-
 ship of Hanover, County of Morris, and State of
 New Jersey, known and designated as Lot No.
 Seventy-five 75 in Block No. Three 3, as shown on
 revised map of Fairview Park, property of the
 G. C. T. CORPORATION, 39 Branford Place, Newark,
 N. J., situated in Hanover Township, N. J. Sur-
 30 veyed April, 1927, Ernest Baechlin, C. E., Bloom-
 field, N. J.

And the said party of the second part agrees for
 his self, his heirs, executors and administrators,
 to pay to the said party of the first part the said
 sum of Twelve hundred dollars (\$1200/00) in
 the manner following, that is to say:—The sum of
 Two hundred fifty dollars (\$250/00) when this
 agreement is signed, and Ten dollars (\$10/00)
 40 additional on the Third Tuesday of each and
 every month until said sum of Twelve hundred

Exhibit P-9.

fifty dollars (\$1250/00) together with interest at six per cent. from May 29 1928 is fully paid and satisfied. Such payment to be made at the office of the party of the first part, 39 Branford Place, Newark, N. J., between the hours of 10 a. m. and 4 p. m.

It being also understood and agreed that in case the party of the second part so elects he may at any time within six months from the date hereof pay the entire balance of said purchase price above mentioned, in which event he shall be entitled to a discount of 5 per cent. upon all such part of balance as would otherwise become due under the terms of this agreement after the date when such balance is paid. 10

And it is further agreed that as soon as the moneys herein agreed to be paid by the party of the second part shall have been fully paid and satisfied as herein agreed, the party of the first part will at its own costs and expense, transfer and convey to the said party of the second part his heirs or assigns, the lot hereinbefore mentioned, by good and absolute deed of conveyance, free from all encumbrance, except such taxes and assessments hereinbefore mentioned; said deed of conveyance to contain a covenant that no building shall be erected on said lot which shall approach nearer the street on which said lots front than twenty feet nor which shall reasonably cost to build less than thirty-five hundred dollars (\$3,500), and that no less than one lot, as laid down on said map, except corner lots, shall be used as a building site, and that no more than one dwelling house shall be erected upon any lot; also that these shall not be erected upon any portion of said premises any slaughter house, brass foundry, nail or iron foundry, or any fertilizing manufac- 20
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Exhibit P-9.

tory, or any manufactory of gun powder, dynamite, varnish, vitriol, ink or turpentine; nor any bone boiling establishment; nor shall said premises be used for the sale or manufacture of any vinous, spirituous or malt liquors; nor shall anything be conducted upon said premises that shall
10 be a nuisance to the neighboring inhabitants. The above restriction shall not apply or effect lots Nos. 1, 2, 3, 4, Block 1; 23, 24, 25, 26, 27, 28, Block 2; 63, 64, 65, 66, 67, 68, Block 3; 103, 104, 105, Block 4; 211, 212, 213, 214, 215, Block 8; 287, Block 11; on map herebefore mentioned; and these covenants shall be taken to be real covenants running with the land and binding upon the heirs, executors, administrators and assigns of the party of the second part until January 1st in the year nineteen
20 hundred and forty-five (1945) when they shall cease and terminate.

And it is further agreed by the parties hereto that the said deed shall be delivered at the office of the said party of the first part as No. 39 Branford Place, Newark, N. J. when said moneys have been fully paid and satisfied as herein provided.

And it is further hereby expressly agreed and understood by the parties to these presents that time shall be taken to be of the essence of this
30 contract, and that if the said party of the second part shall make default in payment of any of the installments hereby agreed to be paid, and said installment shall remain unpaid, and said default shall continue for the space of thirty days, then this contract and all rights and interests which the said party of the second part has hereunder shall be forfeited and shall cease and determine, and all moneys paid hereunder shall be forfeited to the party of the first part and the party of the
40 first part shall be released and discharged from

Exhibit P-9.

all obligations at law or in equity to convey said lands, and all other matters whatsoever and shall be at liberty to resell and convey said property as if this contract had not been made, without any liability to the party of the second part or other person whatsoever for or in respect of any of the matters contained in this agreement.

10

And the said party of the second part hereby agrees, if default shall be made in the payment of any of the moneys, as hereinbefore mentioned, to waive and relinquish every and all right, legal or equitable, under and by virtue of this contract, and to make, execute, and deliver to the party of the first part, all such releases, deeds or other instruments, if any, as may be necessary to relinquish and discharge every and all rights which the party of the second part may have hereunder, or to which the party of the second part may in any wise appear to be entitled, so that the said party of the first part will hold said lands and premises herein mentioned the same as if this agreement had not been made.

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Exhibit P-9.

This contract shall not be assigned by the party of the second part, without the written consent of the party of the first part.

10 (Corporate Seal) IN WITNESS WHEREOF the said party of the first part hath, caused its corporate seal to be hereto affixed, and these presents to be signed by the Treas and attested by the Secretary and the party of the second part hath hereunto set hand and seal the day and year first above written.

(Corporate Seal)

20 Signed, sealed and delivered in the presence of

G. C. T.
CORPORATION
By
DAVID K. DUNKLIN
Treas

Attested by
A D THOMPSON
Secretary.

30 Witness
R. MACCORMACK

ARCHIBOLD LARKIN (L. S.)

.....(L. S.)

Exhibit D-1.

MORRISTOWN TRUST COMPANY

MORRISTOWN, N. J. April 3, 1928.

No. 126 10
Pay to the Order of G. C. T. Corp. \$20.00
Twenty 00/100..... Dollars

FAIRVIEW BUILDING Co. INC.
PETER F. BRISCOE.
President.

Deposit on Lot #70
FAIRVIEW BUILDING Co., INC.
Sold to Mr. Clark. 20

(Endorsed)

Pay to the Order of
UNITED STATES TRUST Co.
Newark, N. J. 30

G. C. T. CORPORATION

40

Exhibit D-2.

10 THIS AGREEMENT, made the Fourteenth day of July in the year of our Lord, One Thousand Nine Hundred and twenty-eight between the FAIRVIEW BUILDING COMPANY, a corporation of the State of New Jersey, and LESLIE W. HOPPING, and FLORENCE W. HOPPING, his wife, of the Town of Morristown, in the County of Morris and State of New Jersey party of the Second Part.

WITNESSETH, that the said party of the First Part, has hereby let, and rented to the said party of the Second Part, and the said party of the Second Part, has hereby hired and taken from the said party of the First Part

20 ALL that house and lot, known as lot #73, Block 3, on revised map of Fairview Park, Hanover Township, Morris County, New Jersey, Property of G. C. T. Corporation, 39 Branford Place, Newark, New Jersey, surveyed 1927, by Ernest Baechlin, C. E., Bloomfield, N. J.

30 for the term of one year, to commence on the Sixteenth day of July A. D., 1928, at the yearly rent of Six Hundred and Sixty Dollars, (\$660.00) payable Fifty-Five Dollars monthly in advance on the first business day of each and every month.

AND it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the First Part to re-enter the said premises, and to remove all persons therefrom.

40 And the said party of the Second Part covenants to pay to the said party of the First Part, the said rent as herein specified, to wit: Fifty-Five Dollars monthly, in advance, on the first business day of each and every month.

Exhibit D-2.

AND at the expiration of the said term, or the termination of this lease, the said party of the Second Part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use thereof will permit, damage by the elements excepted.

AND the said party of the First Part covenant, that the said party of the Second Part, on paying the said rent, and performing the covenants, aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid. 10

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered }
in the presence of }

FAIRVIEW BUILDING COMPANY.

By PETER F. BRISCOE.

LESLIE W. HOPPING (LS)

MRS. FLORENCE W. HOPPING (LS)

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Exhibit D-2.

(Endorsed)

LEASE.

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from

FAIRVIEW BUILDING COMPANY

to

LESLIE W. HOPPING, and

FLORENCE W. HOPPING, his wf.

20

Dated July 14th., 1928

Rent, \$660.00 per year

Payable 55.00 per month, in advance

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

AARON D. THOMPSON,
Plaintiff-Respondent,

vs.

PETER F. BRISCOE,
Defendant-Appellant.

*Action
at Law.
On Appeal
from
Supreme
Court, Essex
County.*

BRIEF FOR RESPONDENT.

Facts.

This is a suit for commission on a brokerage agreement. The defendant was not the owner of the real estate in question, but was the exclusive agent to sell the real estate for the G. C. T. Corporation, a corporation, which was the owner of the property. The plaintiff was the secretary of this company. Under the defendant's agreement with the owner of the real estate, the defendant received a commission of 30% on all lots sold. The defendant, at about the same time of the execution of the agreement with the owner by the defendant, entered into the brokerage agreement with the plaintiff marked Exhibit P. 2, upon which agreement this suit is based. By the terms thereof the plaintiff was to receive 20% on the sale price of all lots sold by him, and an additional 5% on said sale price of such lots so sold as the defendant would obtain a contract to erect a building.

The defendant not being able to make progress himself at the end of about six weeks, the plaintiff commenced to work under his brokerage agreement. He brought his salesman up to the property, circularized Morristown, can-

vassed houses from door to door, conducted an exhibit at the Morris County Fair Grounds, and as a result of his efforts sold a number of plots. The last three were sold to people by the name of Hopping, Clark and Larkin. The sale price for each plot was \$1200.00, and on each of such sales a building was erected by the defendant.

The plaintiff, not being paid his commission for these three sales, instituted suit for his commission of \$900.00, and the jury rendered a verdict in his favor for the full amount, plus two years' interest, making a total of \$1008.00.

POINTS OF APPEAL 1 AND 2.

These two grounds of appeal refer to Exhibit P. 1 printed on page 89 of the State of the Case, and to a question asked under that exhibit.

This exhibit was an agreement between the defendant and the owner of the property, i. e.; G. C. T. Corporation, and shows the interest that the defendant had in the property in question, and his relationship with the owner. The second ground of appeal arose from a question under this exhibit, and a perusal of the exhibit itself would disclose the answer to such question.

The Court (see p. 15, State of the Case) on the defendant's objection to the admission of the exhibit, says:

"I will admit it, and if I find it has no bearing, I will rule it out. Exception noted as ground of appeal."

The testimony on the next ground of appeal is to the same effect, as follows: (See State of Case, p. 16, ll. 10 to 20.)

"Q Under the terms of that contract, what commission was Mr. Briscoe to get on the sale of these lots?"

Mr. Dreier: I object to that, this is a specific suit on a specific contract and what the defendant was to get from another party has no bearing.

The Court: It might have, I cannot tell. I will allow it, subject to ruling it out later if it is not connected up or if it is immaterial. Exception noted as ground of appeal."

No further motion was made by appellant's attorney to suppress either the exhibit or and the above question and answer. Instead the appellant's attorney asked the plaintiff (p. 25, l. 10):

"Q If that property was sold to Mr. Briscoe you would not have gotten any commission, would you? A If he purchased a lot himself he would be entitled to his 30% discount, you are right."

(On p. 22, by plaintiff's attorney):

"Q The selling price was \$1200? A The selling price was \$1200.

Q Was that \$1200 paid to the G. C. T. Company? A \$1200 less 30% was paid to the G. C. T.

Q And that 30% went to Mr. Briscoe?
A Yes."

(See also p. 19 on the bottom of which):

"The Court: Just a moment, you say he (defendant) kept \$300 commission, is that what you said?

Mr. Newman: That is what the witness said.

The Witness: It was 30%; it should be \$360 is what he deducted."

It is submitted that permitting this exhibit and the above question to come before the jury was a matter in the full discretion of the Court. The subsequent questions and answers, only part of which are here referred to, cover the same

ground. There was nothing in this contract that was prejudicial to the defendant, and, on the contrary, it clarified the picture of the position of the parties to this suit, and was an aid to the jury.

On the law directly bearing on this question Cyc says (38 Cyc 1344-1345):

“e. Provisional or Conditional Admission of Evidence. While the practice is not favored, the courts sometimes admit evidence which on its face appears to be inadmissible subject to the right to strike it out. Thus evidence not competent and relevant at the time it is offered may be admitted on the condition that the party introducing it will subsequently introduce other evidence which will make it admissible. Where testimony is introduced on condition that counsel shall subsequently introduce other evidence making it relevant and competent, and this is not done, the court may strike out the evidence of its own motion, and it should strike out such evidence when a proper request is made therefor. *However, in the absence of such request, error cannot be assigned to the failure of the court to strike out such evidence. Where documents are received in evidence subject to objection, and are not afterward excluded, they must be treated as properly before the court.*”

See also *Camden & Atlantic R. R. Co. v. Williams*, 61 N. J. L. 646 on page 649, second paragraph, where the court says:

“Like any other evidence available only when supplemented, it stands unless motion be made to suppress it.”

See also *Auer v. Sinclair Refining Co.*, 103 N. J. L. 372, where on page 374 this court says:

“The next point is that the trial judge erroneously overruled a question put to the defendant MacLachlan. But that action, if

erroneous, was not prejudicial, because later, during his examination, he was permitted to testify in effect to the facts sought to be proved, and therefore will not lead to a reversal. *Dayton v. Boettner*, 82 N. J. L. 421; *Finkelstein v. Geismar*, 91 *Id.* 46; affirmed, 92 *Id.* 251; *Klie v. Hollstein*, 98 *Id.* 473."

POINT OF APPEAL 3.

This ground of appeal goes, as appellant contends, to the erroneous admission by the court of plaintiff's Exhibits P. 6 and 7. These exhibits are uniform with Exhibits P. 4, P. 5, P. 8 and P. 9, except that here Exhibit P. 6 is not signed by the purchaser and P. 7 is not signed by the buyer. P. 6 is explained by the plaintiff and his salesman, that when a deposit was made this kind of receipt was given, and that thereafter contract P. 7 was written up and signed by the G. C. T. Corporation. It is to be noted that attached to P. 7 is an executed *assignment* signed by the buyers, to the defendants building company.

The court's ruling on Exhibit P. 6 it is submitted, covers the situation. (State of the Case p. 21, ll. 23-31).

"The Court: I think it really amounts to a deposit slip. If a man makes a deposit in a bank, a deposit slip is an evidentiary circumstance of that fact. It is only evidential. Your objection is that it is a self-serving declaration?"

Mr. Dreier: That is it.

The Court: Yes, so would a deposit slip be."

But later defendant's attorney asks the following questions (See p. 25, State of Case, ll. 34-40):

"The Court: Don't tell that.

Q All you know about the transaction is that this slip was brought to you with \$20 and subsequently the balance was paid by Mr. Briscoe? A That is all I know."

(And on p. 34, ll. 23 to 25):

"Q Clark did not sign this slip, did he?
A I don't know, Mr. Newman; I brought the \$20 and give it to Mr. Thompson."

The plaintiff's and defendant's witnesses and the parties to the suit refer again and again to both Exhibit P. 7 and P. 6. All parties are agreed that the contract was assigned to the defendant and that he built a house thereon. Hence, even if the court was erroneous the plaintiff and his witnesses were permitted to testify in effect to the facts sought to be proved. See *Auer v. Sinclair Refining Co.* (*Supra*).

POINT OF APPEAL 4.

This ground of appeal arises from an objection sustained by the court to a question asked by the defendant's attorney as to who had accepted the particular check for the G. C. T. Corporation. The defendant had testified that he had paid for the balance of the purchase price of the three plots upon which the plaintiff was suing for his commission, and then offered the check in evidence. The check was objected to, and the court refused to permit the check in evidence. The defendant was then asked to whom the check was given and the answer was that it was received by the plaintiff. Then came the question as to who accepted the check for the G. C. T. Corporation.

It is submitted that it was not relevant and that the court's ruling was proper. If the question had been permitted, then the trial might

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have gone into the issue as to whether the plaintiff had a right to accept this check and bind the G. C. T. Corporation. As the payment of the sale price of the lots was admitted by the defendant, it is submitted that the inquiry as to who accepted the check for the owner of the entire tract, was not material to the issue and irrelevant. It is to be noted that no proof was offered by the defendant on the first separate defense set up in his answer.

POINT OF APPEAL 5.

As to this ground of appeal, it is necessary to read the entire middle paragraph on page 84 of the court's charge to the jury. The court had in mind the testimony of the defendant himself. (See p. 74, ll. 15 to 19).

“By the Court.

Q There was never any question about the Hopping deal, was there? A No, I admit that they brought Hopping up there. I admit that, and when Mr. Hopping goes through with the deal, I will pay them the commission.”

That portion of the charge, it is submitted, refers only to the commission on the Hopping sale, and the law on the subject seems to be well settled that a broker earns his brokerage on bringing the parties together to a binding agreement. (See law set up under grounds of appeal Nos. 7 to 10).

POINT OF APPEAL 6.

It is submitted that the court's statement in this part of his charge is very fair. The court does not, by making this statement, take the case from the jury, and we disagree with ap-

pellant's statement that the only deduction which the jury could make was to bring in a verdict for the plaintiff in either these several amounts. It is to be noted that the Court begins that portion of its charge with the words "*If you should find for the plaintiff.*"

POINTS 7 TO 10.

These grounds for appeal go to the refusal of the Court to charge the jury various requests to charge. In detail they are as follows:

7. "The duty which an agent undertakes, the obligation he assumes as a condition of his right to demand commissions is to bring the buyer and seller to an agreement. The agent, to earn commissions on the sale of property, must be the efficient or procuring cause of the sale." (*Queen v. Jennings*, 93 N. J. L. 353.)

8. "Unless the plaintiff has proven that as a matter of fact he was the one who brought the purchaser to the defendant, or that he was the first one to speak to the purchasers in regards to the buying of the property, then you must find in favor of the defendant."

9. "A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell." (*Courter v. Lydecker*, 71 N. J. L. 511.)

10. "If you find that a purchaser was obtained by the plaintiff, but said purchaser was unable financially to carry out the terms of the contract, then you must find the verdict in favor of the defendant."

POINT 7.

The Court in its charge to the jury said "Inferences that probably may be drawn from the testimony are, whether or not on this main question of the case, this plaintiff or his agents were the efficient and procuring cause of these sales? Were they? If they were Mr. Thompson is entitled to a commission. If they were not, he is not entitled to a commission. That is a question of fact for you to determine." (See State of Case, p. 85, ll. 17 to 24), again on page 86, lines 36 to 41, "Who was the efficient, procuring agency for these sales? Was it Mr. Briscoe himself, unrelated with any acts on the part of Mr. Thompson, or was it Mr. Thompson or his agents either directly or indirectly through their advertisements or circularizing, or through one man telling another or what not? That is for you to determine."

It is submitted that this ground was amply covered by the Court in its charge.

"Whether the plaintiff was the procuring or efficient cause of the sale? There being doubt upon that point, the doubt must be solved by the jury, under proper instructions from the trial court." *Clark v. Griffin*, 95 N. J. L. 508 (Court of Errors and Appeals), cites *Vreeland v. Vetterlein*, 33 N. J. L. 247; *Queen v. Jennings*, 93 *Id.* 353; *Weeks v. Smith & Sons Co.*, 79 *Id.* 388; *Hudson Real Estate Co. v. Bauer*, 74 *Id.* 90. The question then, as to who was the procuring or efficient cause of the sale was a jury question and the request to charge, it is submitted, was amply covered by the Court in its charge.

POINT 8.

It is to be noted that in this request to charge, defendant's attorney tried to have the Court direct the jury that an agent must bring the purchaser to the defendant or that the agent was the first person to speak to the purchaser in regard to buying the property. It is not the first person who speaks to the buyer, or that person who brings the buyer to the owner who is entitled to a commission. The rule of law is always the same. It is that, the agent, to earn his commissions, must be the efficient or procuring cause of the sale. This makes the question, where it is disputed, one of fact, and that was resolved in favor of the plaintiff by the jury. The Court's charge on the whole covered this situation very fully and very carefully for the protection of the defendant.

POINT 9.

In this case every buyer purchased a lot and the defendant undertook to build a house thereon for each buyer. Having accepted them as a purchaser on terms suitable to the defendant, he cannot now say that they were unable to conclude the bargain.

The leading case on that subject is *Freeman v. Van Wagenen*, 90 N. J. L. 358, where the Court says on page 360:

“The Judge charged that all the plaintiff was bound to do was to bring the parties together and get them to make a binding agreement. This was a correct statement of the law.”

And on page 361, the Court says again:

“That the words ‘sale’ and ‘sell’ in agreements between the owners of land and real

estate brokers, mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms."

In our case, there were three agreements made. The Clark agreement was not signed by the buyers, but their transfer or assignment is made to the defendant's company. (See p. 109 of the State of Case.) On all three lots, three houses were built by the defendant and these buyers are now in the premises. It is too late for the defendant to say that because one buyer, Hopping, has been unable to take title, the defendant owes no commission on that sale.

POINT 10.

The law we submit as stated in the above requested charge is to the contrary and the Court was justified in refusing to charge the same.

We submit that we have covered the above question on Point 9. In addition to that law we have the case of *Steinberg v. Mindlin*, 96 N. J. L. 206, where the Court says on page 207:

"In the absence of a special agreement, a real estate broker, acting by virtue of a written agreement, earns his commission when he secures a buyer on the seller's terms either as originally propounded or as settled by agreement between the seller and buyer. *Freeman v. Van Wagenen*, 90 N. J. L. 358; *Homan v. Griffin*, 94 *Id.* 345; *Clark v. Griffin*, 95 *Id.* 508."

We therefore submit that this request to charge was properly denied.

POINTS 11-15.

These points allege that "the verdict was contrary to the weight of evidence," and that the verdict, based on three separate sales, each part thereof was contrary to the weight of evidence.

It is, we submit, sufficient answer to these points to state that, this court will not consider the weight of evidence. This rule of law has been laid down by this court repeatedly.

In *Savino v. Goldberg*, 92 N. J. L. 617, this court said:

"Defendant-Appellant argues in the brief, as one of the grounds of appeal, that this court should reverse the judgment, because the *verdict on which the judgment was entered is against the weight of the evidence; manifestly, this court has no jurisdiction or power to review the evidence or determine the weight of evidence, on which a verdict is found by a jury and on which the judgment is based.*" Citing *Flanigan v. Guggenheim Smelting Co.*, 63 N. J. L. 647; *Central Railroad Co. v. Tunison*, 55 *Id.* 561.

In *Smith v. Brunswick Laundry Co.*, 93 N. J. L. 436, this court says:

"There are four grounds of appeals, of which the first three are; the verdict is contrary to the evidence; it is contrary to the charge of the court; and the damages are excessive. *These are not proper grounds of appeal.* They are matters pertinent for a rule to show cause on an application for a new trial. *This court has no power to review or determine the weight of evidence (Savino v. Goldberg, 92 N. J. L. 617) or consider whether the amount of the verdict is excessive. (Flanigan v. Guggenheim Smelting Co., 63 Id. 647).*"

In *Chirgotis v. Counes*, 96 N. J. L. 542, bottom of page 543, this court affirms an opinion of the Supreme Court, that says:

“The cases not being before us on rules to show cause, we cannot consider the weight of the evidence.”

In *Joseph M. Byrne Co. v. Snead & Co.*, 98 N. J. L. 256, this Court says:

“There are six grounds of appeal filed (6) the verdict was against the preponderance of evidence.” Setting aside verdicts for that reason in civil causes is exclusively the province of the trial court. *The Court of Errors and Appeals has no jurisdiction or power to review or determine the weight of evidence on which the verdict of a jury is founded.*”

The reason for the above rule is set forth in *Flanigan v. Guggenheim Smelting Co.* (*Supra*) and is not set up here as we conceive doing so, will serve no purpose.

It is respectfully submitted that the judgment should be affirmed with costs.

BENJAMIN NEWMAN,
Attorney of Plaintiff-Respondent
and of Counsel.

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New Jersey Court of Errors and Appeals

AARON D. THOMPSON,
Plaintiff-Respondent,

vs.

PETER F. BRISCOE,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court,
Essex County.

BRIEF FOR APPELLANT.

This is an appeal from a judgment entered in the New Jersey Supreme Court on the verdict rendered by a jury on October 15, 1930, in favor of the plaintiff and against the defendant in the sum of Ten Hundred and Eight (\$1,008.00) Dollars.

Facts.

The defendant was employed by the G. C. T. Corporation, of which the plaintiff was an officer, to develop and manage a certain tract of land known as "Fairview Park" which this corporation owned in Hanover, New Jersey. The defendant in turn entered into the contract (Plaintiff's Exhibit 2, p. 94, ll. 1 to 31) with the plaintiff, thereby recognizing the said plaintiff as the broker of the defendant. By the terms of said contract, the defendant was to pay the plaintiff "A commission of 20% of the purchasing price of all lots sold by him and on my (the defendant) behalf and I also agree to pay an additional commission

of 5% on the purchase price of all lots sold by him where I have obtained the contract for the erection and construction of a building thereon for the purchaser of said lot”.

After entering into this agreement, the defendant sold two certain lots and erected houses thereon. On a third lot the plaintiff, or his agents, obtained a contract for its sale, but the party to whom the said lot was to be sold never fulfilled his part of the contract by taking title to said lot, and, as a result, the defendant was compelled to take over this property.

The plaintiff claims commissions on the sale of the two lots made by the defendant on the theory that the purchasers came to know about the property through people to whom the plaintiff had previously sold lots.

Errors Alleged.

1. The trial court erroneously admitted the Plaintiff's Exhibit P-1 in evidence over objection (C., p. 15, ll. 23-40; p. 16, ll. 1-3).

2. The trial court erroneously admitted the following question to be answered by the witness Aaron D. Thompson over objection.

“Under the terms of that contract what commission was Mr. Briscoe to get on the sale of those lots?” (C., p. 16, ll. 10-20).

3. The trial court erroneously admitted the Plaintiff's Exhibits P-6 and 7 (C., p. 20, ll. 34-40; p. 21, ll. 1-21).

4. The trial court erroneously refused to permit the following question to be answered of the witness Peter F. Briscoe on direct examination:

“Who accepted it for the G. C. T. Corporation?” (C., p. 73, ll. 23-32).

5. The trial court erroneously charged the jury as follows:

“The contract was made as a result of the agent’s services; the agent brought these people together and the sale was made, and if I am correct in my recital of the facts with respect to that transaction, the commission has been earned and is due on that sale” (C., p. 84, ll. 25-31).

6. The trial court erroneously charged the jury as follows:

“If you should find for the plaintiff, there is the matter of interest for two years to be taken into consideration. Counsel has calculated it as \$108 for the full amount of \$900. If your verdict should be for \$600, then it would be two-thirds of that amount; if it should be \$300, then it is one-third of that amount, depending, as I say, on what your verdict shall be, whether for \$300, \$600 or \$900” (C., p. 87, ll. 1-12).

7. The trial court erroneously refused to charge the jury the following request:

“The duty which an agent undertakes, the obligation he assumes as a condition of his right to demand commissions is to bring the buyer and seller to an agreement. The agent, to earn commissions on the sale of property, must be the efficient or procuring cause of the sale” (Queen vs. Jennings, 93 N. J. L. 353) (C., p. 87, ll. 33-40).

8. The trial court erroneously refused to charge the jury the following request:

“Unless the plaintiff has proven that as a matter of fact he was the one who brought the purchasers to the defendant, or that he was the first one to speak to the purchasers in regards to the buying of the property, then you must find in favor of the defendant” (C., p. 88, ll. 1-9).

9. The trial court erroneously refused to charge the jury the following request:

“A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell” (*Courter vs. Lydecker*, 71 N. J. L. 511) (C., p. 88, ll. 11-16).

10. The trial court erroneously refused to charge the jury the following request:

“If you find that a purchaser was obtained by the plaintiff, but said purchaser was unable financially to carry out the terms of the contract, then you must find the verdict in favor of the defendant” (C., p. 88, ll. 17-21).

11. The verdict was contrary to the weight of the evidence.

12. The verdict was contrary to the charge of the court.

13. That portion of the verdict based on the Hopping transaction was contrary to the weight of the evidence.

14. That portion of the verdict based on the Larkin transaction was contrary to the weight of the evidence.

15. That portion of the verdict based on the Clark transaction was contrary to the weight of the evidence.

POINT 1.

The trial court erroneously admitted the Plaintiff's Exhibit P-1 (p. 89, l. 1, to p. 93, l. 40) in evidence over objection (C., p. 15, ll. 23-40; p. 16, ll. 1-3).

This exhibit was a contract between the defendant and the G. C. T. Corporation (C., p. 15, ll. 20-22) which company was in no way involved in the present suit.

The plaintiff's case was based on a contract entered into between the plaintiff and the defendant, and an outside contract between the defendant and a third party was not evidential or relevant in this issue. The court said on allowing the agreement in evidence that he would rule it out if it was found to have no bearing (C., p. 15, ll. 37-39). This contract was in no way connected up with the plaintiff's case at any time during the trial and the only effect the same could have in this case would be to prejudice the minds of the jury. It, therefore, became incumbent upon the court to rule out of evidence this agreement. Inasmuch as this was not done, harmful error resulted to the defendant.

POINT 2.

The trial court erroneously admitted the following question to be answered by the witness, Aaron D. Thompson, over objection: "Under the terms of that contract what commission was Mr. Briscoe to get on the sale of those lots?" (C., p. 16, ll. 10-20).

The arguments advanced under Point 1 cover this point as well, inasmuch as the question above arose out of the admitting into evidence the contract referred to under Point 1.

The court also said after objection was made to the above question that if this was not connected up, or if it was immaterial, he would rule it out later (C., p. 16, ll. 17-20).

This question was not connected up and it was immaterial, and therefore, the failure of the court to rule the same out was harmful error to the defendant.

POINT 3.

The trial court erroneously admitted the Plaintiff's Exhibits P-6 and 7 (C., p. 20, ll. 34-40; p. 21, ll. 1-21).

The Exhibits P-6 (p. 103, ll. 1 to 40) and P-7 (p. 104, l. 1, to p. 109, l. 36) are not evidential for the following reasons: First:—they are merely memorandums signed by the plaintiff's agent (C., p. 20, ll. 39-40; p. 21, ll. 1-2) and therefore could not be binding upon the defendant. They are purely a self-serving declaration. Secondly:—the documents are offered into evidence by the plaintiff himself, although he testifies that the memorandum was brought in by his salesman (C., p. 20, ll. 31-33).

It, therefore, remains that not even the single signature of the plaintiff's agent was proven, and that the instrument was accepted into evidence over objection without any proof at all as to its genuineness, or relevancy. Neither of these instruments should have been admitted into evidence and because they were admitted, harmful error resulted to the defendant.

P O I N T 4 .

The trial court erroneously refused to permit the following question to be answered by the witness, Peter F. Briscoe, on direct examination: "Who accepted it for the G. C. T. Corporation?" (C., p. 73, ll. 23-32).

This question was asked of the defendant in line with the previous testimony showing that the plaintiff, who was the secretary of the G. C. T. Corporation (C., p. 15, ll. 8-9) received his commissions on all lots sold at the time settlement was made with the said G. C. T. Corporation, and that his said commissions were included in the check referred to in this question. The testimony is that the check paid in full everything that was due from the defendant. If the plaintiff accepted this check under these conditions as had been done previously on the sale of other lots, then this fact is relevant and the question should have been permitted. This question was asked so as to prove the first separate defense (C., p. 6, ll. 28-30) in the answer.

As is shown under Points 1 and 2, the court permitted into evidence a contract between the defendant and the G. C. T. Corporation, and as is shown in Point 2, permitted further questioning under said contract. If this is evidential, surely the fact that the plaintiff, acting for said corporation, received a check from the defendant as the last settlement on the lots in question (C., p. 72, ll. 30-35) is evidential. By not permitting this question to be asked, the defendant was deprived of showing one of his defenses to this action, and so harmful error resulted by it not being allowed.

POINT 5.

The trial court erroneously charged the jury as follows:

"The contract was made as a result of the agent's services; the agent brought these people together and the sale was made, and if I am correct in my recital of the facts with respect to that transaction, the commission has been earned and is due on that sale" (C., p. 84, ll. 25-31).

The above statement by the court is a conclusion drawn from the facts, and by this statement, the jury is led to believe that the sale of the lots in question was completed, or negotiated by the agent of the plaintiff. This question is, of course, the essence of the suit, and should be left for the jury to decide.

The testimony of Mrs. Clark who purchased one of the lots for which commission is sued, was that she did not meet the plaintiff, or his agents, until after she paid a deposit on the lot, and the house was being built (C., p. 54, ll. 11-16).

The testimony of Mr. Clark was that the defendant was the one with whom he had his dealings, and never met or heard of the plaintiff, or his agents, until after he purchased his lot from the defendant (C., p. 57, ll. 38-40; p. 58, ll. 1-23).

Mr. Larkin, the purchaser of another one of the lots, for which commission is sued, testified that his first dealings were with Mr. Briscoe and that he did not meet Mr. Thompson, or his agents, until after he had paid a \$10.00 deposit to Mr. Briscoe, the defendant (C., p. 60, ll. 34-38).

Inasmuch as there is a vast difference in the testimony of the plaintiff's and defendant's witnesses, it remains the province of the jury to determine which story it shall believe, and the

above statement included in the court's charge is erroneous, and, therefore, harmful to the defendant.

POINT 6.

The trial court erroneously charged the jury as follows:

"If you should find for the plaintiff, there is the matter of interest for two years to be taken into consideration. Counsel has calculated it as \$108 for the full amount of \$900. If your verdict should be for \$600, then it would be two-thirds of that amount; if it should be \$300, then it is one-third of that amount, depending, as I say, on what your verdict shall be, whether for \$300, \$600 or \$900" (C., p. 87, ll. 1-12).

The only deduction which the jury could make from this statement in the court's charge is that they must bring in a verdict for either \$300, \$600 or \$900. Of course, as mentioned under Point 5 these are questions of fact, and it is for the jury to determine whether they will bring in any verdict at all, and if so, for how much. By the court charging as above, the result was practically the same as a directed verdict, and therefore was erroneous.

POINTS 7-8-9-10.

The trial court erroneously refused to charge the jury the following request:

"The duty which an agent undertakes, the obligation he assumes as a condition of his right to demand commissions is to bring the buyer and seller to an agreement. The agent, to earn commissions on the sale of property, must be the efficient or procuring cause of the sale" (*Queen vs. Jennings*, 93 N. J. L. 353) (C., p. 87, ll. 33-40).

The trial court erroneously refused to charge the jury the following request:

"Unless the plaintiff has proven that as a matter of fact he was the one who brought the purchasers to the defendant, or that he was the first one to speak to the purchasers in regards to the buying of the property, then you must find in favor of the defendant" (C., p. 88, ll. 1-9).

The trial court erroneously refused to charge the jury the following request:

"A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell" (*Courter vs. Lydecker*, 71 N. J. L. 511) (C., p. 88, ll. 11-16).

The trial court erroneously refused to charge the jury the following request:

"If you find that a purchaser was obtained by the plaintiff, but said purchaser was unable financially to carry out the terms of the contract, then you must find the verdict in favor of the defendant" (C., p. 88, ll. 17-21).

For the convenience of the court Points 7-8-9-10 are here argued together.

The above requests are proper law in New Jersey today, and cover points at issue in this case. The court in his charge may have touched on a portion of the above requests, but did not cover them fully. By the refusal of the trial court to charge the above requests, the defendant was deprived of having the law as it exists in New Jersey today fully brought before the jury, and therefore, harmful error resulted to the defendant.

POINTS 11 - 13 - 14 - 15.

The verdict was contrary to the weight of the evidence.

That portion of the verdict based on the Hopping transaction was contrary to the weight of the evidence.

That portion of the verdict based on the Larkin transaction was contrary to the weight of the evidence.

That portion of the verdict based on the Clark transaction was contrary to the weight of the evidence.

For the convenience of the court Points 11-13-14-15 are here argued together.

The evidence offered in this case greatly varies on the parts of the plaintiff and his witnesses from that of the defendant and his witnesses. Although the greater number of witnesses produced on one side does not conclusively prove a case, it should, nevertheless, have great bearing on the determination of the facts. In this case the plaintiff does not testify that he had any direct dealings with any of the purchasers of the lots for the sale of which commission is sought. His testimony is that his

agents made all sales (C., p. 27, ll. 9-12) therefore, the plaintiff cannot testify and did not testify as to the relations between his agents and the purchasers of these lots before the actual sales took place.

Although it is true that Callahan, one of the agents of the plaintiff, was the one who originally negotiated with Mr. and Mrs. Hopping for the purchase of one of the lots in question, this sale never was consummated due to the fact that the prospective purchasers never had sufficient money to take title. This was testified to by Mr. Hopping (C., p. 45, ll. 8-10) and by Mrs. Hopping (C., p. 49, ll. 27-29). Because of the Hoppings' inability to carry out their contract for the purchase of the property, it was necessary for the defendant, Mr. Briscoe, to take title himself so as to protect his interest necessitated by the fact that he had already started to build on this property (C., p. 69, ll. 24-40). Surely, the defendant should not be compelled to pay commissions on property which he himself purchased, where he controls that property.

In the case of *Courter vs. Lydecker*, 71 N. J. L. 511, this court established the rule of law as follows:

“A broker employed to obtain a sale of real estate earns his commissions when he procures a purchaser able and willing to conclude the bargain on the terms on which the broker was authorized to sell.”

This is the prevailing law today, and therefore, in this case the requirements that the purchaser secured must be able and willing to go through with his contract has not been complied with, inasmuch as Mr. Hopping has never been able.

The next transaction we have to deal with is the Larkin one. The testimony of Callahan, agent of the plaintiff, was that he had no dealings in this matter (C., p. 36, ll. 17-19).

MacCormack, the other agent of the plaintiff, testified that the defendant, Briscoe, was the one who received the deposit from Mr. Larkin (C., p. 41, ll. 36-40; p. 42, ll. 1-9) and also that Briscoe was the one who first spoke to Mr. Larkin and not he, the agent (C., p. 44, ll. 24-26). MacCormack further testified that Larkin went to the property as a result of talking to someone to whom he (MacCormack) had previously spoken (C., p. 41, ll. 38-40; p. 42, ll. 1-4). Mr. Larkin testified that he first went on the property as a result of seeing a signboard while out driving (C., p. 59, ll. 36-40). On cross-examination, Mr. Larkin said that he did not answer any advertisements (C., p. 61, ll. 23-25) that he saw Mr. Briscoe's name on the sign, but did not notice Mr. Thompson's (C., p. 61, ll. 27-32). He also said that the first time he met Mr. Thompson was after he had paid a deposit (C., p. 45, ll. 38-40).

It is testified that Mr. Thompson did come to see him after he had paid a deposit in order to straighten out a difference in the plans of the house, but as Mr. Thompson said, he would, because of the fact that he was an officer and stockholder of the G. C. T. Corporation, which company owned the property, do everything he could to help sell the property even though he were to get no commission (C., p. 27, ll. 4-9).

Mr. Callahan, the agent of the plaintiff, says that Mr. Clark purchased his property as a result of talking to Mr. Hopping to whom he, Callahan, had previously spoken (C., p. 33, ll. 30-40). He further says that he was not on the property at the time Mr. Clark first came up (C., p. 35, ll. 7-11). On cross-examination, Callahan admits that he never spoke to Clark about purchasing a lot (C., p. 36, ll. 37-40). Mrs. Clark testified that the deposit on the property was paid to Mr. Briscoe (C., p. 53, ll. 23-27) and that she did not meet

Mr. Callahan, or the other agent, until after the foundation of her house was laid (C., p. 53, ll. 28-40). She further testified that work was started on her house in April and she did not meet Callahan, or MacCormack, until the last of April, or the first of May (C., p. 54, ll. 11-17). Mr. Clark's testimony was that he first met Mr. Briscoe when he went to the property (C., p. 57, ll. 28-40) and spoke to him about purchasing a lot. He also says that previous to this, he had not spoken to Mr. Thompson, Mr. Callahan, or Mr. MacCormack (C., p. 58, ll. 1-7), nor in fact did he meet any of these three men until long after work had been started on his home (C., p. 58, ll. 12-19).

In response to the question by the court, Mr. Clark said that at the time he purchased his property, he did not know Mr. Hopping was buying a lot on this property, nor did he ever remember seeing blue prints of the Hopping House while in his shop at work (C., p. 58, ll. 31-40) thereby contradicting the testimony of the agent, Callahan, wherein he said Clark purchased as a result of Mr. Hopping buying a lot.

To recite Mr. Briscoe's testimony would be a mere repetition of what has been said heretofore. He testified that the Hopping transaction never went through because Mr. Hopping did not have sufficient cash and that he was forced to take over the property. He testified that he introduced Mr. and Mrs. Clark to Mr. Thompson, Mr. MacCormack and Mr. Callahan some time after he received a deposit on the lot sold to Mr. Clark (C., p. 70, ll. 36-40). He also said that he was the one to whom Mr. Larkin paid his first deposit and that he made arrangements with Mr. Larkin to pay the balance to one of Mr. Thompson's agents, inasmuch as he had to leave the property the following morning on account of the death of his mother (C., p. 72, ll. 4-12).

In summing up the testimony of all witnesses, the preponderance of evidence is surely on the side of the defendant. Although it is admitted that the plaintiff, or his agents, secured Mr. Hopping, the uncontradicted facts are that he was never able to complete his contract, and therefore, commissions were never earned. On these transactions, surely, the best testimony as to what induced the parties to purchase lots is the testimony of the purchasers. The plaintiff's claim is that Mr. Clark purchased his property as a result of speaking to Mr. Hopping, their customer. Even if this was so, the plaintiff would not be entitled to commission as he himself did not secure the buyer. But in this case, the purchaser says that he bought the property as a result of no conversation with Mr. Hopping, or anyone else, and that Mr. Briscoe, the defendant, was the one who sold him the property. Mr. Larkin also says that he went to the property as a result of seeing a sign on which Mr. Briscoe's name was, and that he had no dealings with any of the agents, or Mr. Thompson, until after he had completed negotiations for the purchase of the property. Therefore, the entire verdict and that portion of the verdict based on each transaction is contrary to the weight of the evidence.

It is, therefore, respectfully contended that the judgment in this case in favor of the plaintiff should be reversed.

Respectfully submitted,

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