

INDEX.

	PAGE
Notice of Appeal to Court of Errors and Appeals Case #58721.....	A
Order Affirming Judgment Case #58721.....	B
Notice of Appeal to Court of Errors and Appeals Case #58720.....	C
Order Affirming Judgment Case #58720.....	D
Notice of Appeal	1
Appeal Bond	2
Consent to Substitution	5
Transcript of Judgment	6
Transcript of Judgment	9
Specification of Determination of the District Court With Which Appellants Are Dissatisfied in Point of Law	12
Summons	13
State of Demand	14
Summons	16
State of Demand	17
Set-off	19
First Assignment of Judgment.....	21
Second Assignment of Judgment.....	24
Plaintiff's Case	26
Defendant's Case	52
Charge by Judge Robbins	65
Notice of Argument	71

TESTIMONY.

Plaintiff's Witnesses:

	PAGE
William F. Faherty—	
Direct	26
Cross	34
Samuel Hilton—	
Direct	39
Cross	42
George L. Aitkens—	
Direct	44
Charles A. Malloy—	
Direct	46
Cross	47
Redirect	51

Defendant's Witness:

Joseph M. Branegan—	
Direct	52
Cross	58
Redirect	63

A

Notice of Appeal.

NEW JERSEY SUPREME COURT.

WILLIAM F. FAHERTY, Plaintiff-Respondent, vs. JOSEPH M. BRANEGAN, Defendant-Appellant.	}	On Contract. On Appeal from Trenton District Court. Case 58721.	10
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To: WILLIAM E. BLACKMAN, Attorney of Plaintiff-Appellee.

TAKE NOTICE, that the Defendant-Appellant appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this case, upon the following ground: 20

That the Supreme Court erred in affirming judgment of Trenton District Court in this cause.

F. W. HASTINGS,
Attorney of Defendant-Appellant.

Service of the within notice of appeal upon attorney of the plaintiff is hereby acknowledged this 5th day of May, 1933. 30

WM. E. BLACKMAN,
Attorney of Plaintiff-Appellee.

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Order Affirming Judgment.

NEW JERSEY SUPREME COURT.

10

WILLIAM F. FAHERTY,
Plaintiff-Appellee,

vs.

JOSEPH M. BRANEGAN,
Defendant-Appellant.

20

This cause coming on to be heard in the presence of Frank W. Hastings, Counsel for Defendant-Appellant and William E. Blackman, Counsel for Plaintiff-Appellee and the argument of Counsel as well as the records and proceedings having been duly considered in the appeal from the Judgment of the District Court of the City of Trenton,

30

It is on this 3rd day of May, 1933, ordered, adjudged and decreed that the judgment of the District Court of the City of Trenton (being referred to in the State of Case as Trenton District Court Case No. 58721), be and the same is hereby affirmed and it is further ordered that the costs be paid by the Appellant.

Done in open court.
Entered May 3, 1933.

On motion of Wm. E. Blackman, Counsel for Plaintiff-Appellee.

A true copy.

40

FRED L. BLOODGOOD,
Clerk.

Notice of Appeal.

NEW JERSEY SUPREME COURT.

WILLIAM F. FAHERTY, Plaintiff-Respondent,	}	On Contract.	
vs.		On Appeal from	
JOSEPH M. BRANEGAN, Defendant-Appellant.		Trenton District Court.	10
		Case 58720.	

To: WILLIAM E. BLACKMAN, Attorney of Plaintiff-Appellee.

TAKE NOTICE, that the Defendant-Appellant appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this case, upon the following ground: 20

That the Supreme Court erred in affirming judgment of Trenton District Court in this cause.

F. W. HASTINGS,
Attorney of Defendant-Appellant.

Service of the within notice of appeal upon attorney of the plaintiff is hereby acknowledged this 5th day of May, 1933. 30

WM. E. BLACKMAN,
Attorney of Plaintiff-Appellee.

Order Affirming Judgment.

NEW JERSEY SUPREME COURT.

WILLIAM F. FAHERTY,
Plaintiff-Appellee,

vs.

JOSEPH M. BRANEGAN,
Defendant-Appellant.

10

20

This cause coming on to be heard in the presence of Frank W. Hastings, Counsel for Defendant-Appellant and William E. Blackman, Counsel for Plaintiff-Appellee and the argument of Counsel as well as the records and proceedings having been duly considered in the appeal from the Judgment of the District Court of the City of Trenton,

30

It is on this 3rd day of May, 1933, ordered, adjudged and decreed that the judgment of the District Court of the City of Trenton (being referred to in the State of Case as Trenton District Court Case No. 58720), be and the same is hereby affirmed and it is further ordered that the costs be paid by the Appellant.

Done in open court.
Entered May 3, 1933.

On motion of Wm. E. Blackman, Counsel for Plaintiff-Appellee.

A true copy.

40

FRED L. BLOODGOOD,
Clerk.

Notice of Appeal.

TRENTON CITY DISTRICT COURT.

WILLIAM F. FAHERTY,
Plaintiff-Appellee,

vs.

JOSEPH M. BRANEGAN,
Defendant-Appellant.

Action
at Law.

10

To WILLIAM E. BLACKMAN, Attorney of Plaintiff-Appellee:

TAKE NOTICE, that the defendant appeals from the whole of the judgment entered in this cause to the New Jersey Supreme Court.

20

Dated October 7th, 1932.

ALEX BUDSON,
Attorney of Defendant-Appellant.

Service of the within notice of appeal upon attorney of the plaintiff is hereby acknowledged this 8th day of October, 1932.

30

WM. E. BLACKMAN,
Attorney of Plaintiff-Appellee.

40

Appeal Bond.

KNOW ALL MEN BY THESE PRESENTS, that we, JOSEPH M. BRANEGAN and WILLET DENNIS are held and firmly bound unto WILLIAM F. FAHERTY, in the penal sum of Seventeen Hundred Dollars, for payment of which sum we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of Oct., nineteen hundred and thirty-two.

WHEREAS, two judgments were rendered in the District Court of the City of Trenton, on the 27th day of September, 1932, in a suit therein depending wherein WILLIAM F. FAHERTY is plaintiff and JOSEPH M. BRANEGAN is defendant, for the sums of \$283.75 and \$17.78 costs and \$500.00 and \$28.60 costs of suit, and the defendant JOSEPH M. BRANEGAN is about to appeal from said judgment of the said District Court of the City of Trenton to the New Jersey Supreme Court;

Now, the condition of this obligation is such, that if the said JOSEPH M. BRANEGAN shall pay the costs of the said appeal, whatever be the result thereof, and shall pay to the said WILLIAM F. FAHERTY the judgment of the District Court of the City of Trenton so as aforesaid rendered against the said JOSEPH M. BRANEGAN if the said appeal be not prosecuted by the said Joseph M. Branegan, or be dis-

Appeal Bond.

missed, then his obligation to be void; otherwise
to remain in full force and virtue.

(Signed) JOS. M. BRANEGAN (L. S.)

(Signed) WILLET M. DENNIS (L. S.)

Signed, sealed and delivered
in the presence of: 10
(Signed) ALEX. BUDSON.

A true copy.

FRANK MUCCIOLI,
Clerk.

STATE OF NEW JERSEY }
COUNTY OF } ss.: 20

WILLET DENNIS, being duly sworn on his oath
says, that he is the surety in the within named
bond; that he is a freeholder in the County of
Mercer and has property subject to execution worth
the sum of Seventeen Hundred Dollars over and
above all his just debts and liabilities.

(Signed) WILLET M. DENNIS. 30

Subscribed and sworn to before me }
this 14th day of October, 1932. }

(Signed) IDE BUDSON MOSS,
Notary Public of N. J.

Appeal Bond.

STATE OF NEW JERSEY }
 COUNTY OF MERCER } ss.:

10 BE IT REMEMBERED that on this 14th day of October nineteen hundred and thirty-two, before me the subscriber, a Notary Public of N. J., personally appeared JOSEPH M. BRANEGAN and WILLET DENNIS to me known to be the parties who executed the foregoing bond, and I having first made known to them the contents thereof, they severally acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

(Signed) IDE BUDSON MOSS,
 Notary Public of N. J.

20

I approve of the within bond. Let it be filed.

(Signed) J. CONNER FRENCH,
 Judge of the District Court
 of Trenton.

A true copy.
 FRANK MUCCIOLI,
 Clerk.

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Transcript of Judgment.

STATE OF NEW JERSEY, }
 MERCER COUNTY, } 58720

IN THE DISTRICT COURT OF THE CITY
 OF TRENTON.

10 WILLIAM F. FAHERTY, Assignor to
 the use of John F. Toman, Sr.,
 Assignee, }
 Plaintiff,
 and }
 JOSEPH M. BRANEGAN,
 Defendant. }

20 WM. E. BLACKMAN,
 Plaintiff's Attorney.

Plaintiff's Costs

	Summons	2.10
	Mileage	
	Listing Fee	1.50
	Witness Fee	
	Attorney's Fee	25.00
		<hr/>
30	Total Cost	\$28.60

Execution
 Statement

A Summons in the above-stated cause was issued on the 4th day of December 1931, returnable on the 10th day of December, 1931, wherein the plaintiff demands of the defendant the sum of \$500.00.

40 State of demand.

Transcript of Judgment.

The summons was served and returned as follows:

I served the within summons Nov. 30, 1931 on Joseph M. Branegan, the defendant, by reading it to him and giving him a copy.

BERNARD CAMPBELL,
Constable. 10

Adjourned to Dec. 10, 1931.

Adjourned to Dec. 17, 1931.

Adjourned to Jan. 11, 1932.

Jan. 18, 1932.—The plaintiff appeared ready for trial by Wm. E. Blackman; the defendant also appeared by Alex. Budson.

Motion by Mr. Budson for non-suit denied. Wm. Faherty sworn. The court is to refer to Court of Common Pleas. This cause along with No. 58721. July 13, 1932 adjourned to Sept. 9, 1932. 20

Sept. 27, 1932.—This cause was referred to the Common Pleas Court with case No. 58721. By consent of Counsel, case was tried in conjunction with Case No. 58721. Jury sworn. Set-off filed. Miss Hulit sworn as Stenographer. Wm. F. Faherty, Samuel Hilton, George L. Atkins, Charles A. Malloy, sworn for plaintiff. Dockets and Assignment offered. The court would not permit the Assignment to be introduced. Joseph M. Branegan sworn. Both sides rested. The court instructed the Jury. Jury retired. After deliberating, the Jury brought in as their verdict a Judgment for William F. Faherty for \$500.00 and costs. 30

Sept. 28, 1932.—Assignment filed.

Sept. 28, 1932.—Statement for Docketing issued —.50.

Oct. 14, 1932—Bond filed. 40

Transcript of Judgment.

I, FRANK MUCCIOLI, Clerk of the District Court of the City of Trenton, do hereby certify the foregoing to be a true statement of the names of the parties in the above suit, the amount and date of judgment given in said Court in the above-stated case, as the same are recorded in the Docket of said Court in the above-stated case.

10

WITNESS my hand and the seal of said Court this second day of November, A. D. 1932.

FRANK MUCCIOLI,
Clerk.

(Seal)

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Transcript of Judgment.

STATE OF NEW JERSEY, }
 MERCER COUNTY, } 58721

IN THE DISTRICT COURT OF THE CITY
 OF TRENTON.

WILLIAM F. FAHERTY, Assignor to the use of John F. Toman, Sr., Assignee, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0 5px 40px;">and</div> <div style="text-align: left; padding-left: 40px;">JOSEPH M. BRANEGAN, Defendant.</div>	}	10
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WM. E. BLACKMAN, 20
 Plaintiff's Attorney.

Plaintiff's Costs

Summons	2.10	
Mileage		
Listing Fee	1.50	
Witness Fee		
Attorney's Fee	14.78	
	\$17.78	30
Total Cost		

Execution
 Statement

A Summons in the above-stated cause was issued on the 4th day of December 1931, returnable on the 10th day of December, 1931, wherein the plaintiff demands of the defendant the sum of \$250.00.

State of demand. 40

Transcript of Judgment.

The summons was served and returned as follows:

I served the within summons Nov. 30, 1931 on Joseph M. Branegan, the defendant, by reading it to him and giving him a copy.

BERNARD CAMPBELL,
Constable.

10

Adjourned to Dec. 17, 1931.

Adjourned to Jan. 11, 1932.

July 13, 1932.—Adjourned to Sept. 9, 1932.

Jan. 18, 1932.—The plaintiff appeared ready for trial by Wm. E. Blackman; the defendant also appeared by Alex. Budson.

20

Sept. 27, 1932.—This cause was tried by consent of Counsel with Case No. 58720—and the evidence and testimony given in that case was to apply in this action.

Jury came in with a verdict in favor of Wm. F. Faherty for \$250.00, interest \$33.75, and costs.—\$283.75.

Sept. 28, 1932.—Assignment filed.

Sept. 28, 1932.—Statement for Docketing Issued —.50.

30

Oct. 14, 1932.—Bond filed.

Transcript of Judgment.

I, FRANK MUCCIOLI, Clerk of the District Court of the City of Trenton, do hereby certify the foregoing to be a true statement of the names of the parties in the above suit, the amount and date of judgment given in said Court in the above-stated case, as the same are recorded in the Docket of said Court in the above-stated case.

10

WITNESS my hand and the seal of said Court this second day of November, A. D. 1932.

FRANK MUCCIOLI,
Clerk.

(Seal)

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Summons.

MERCER COUNTY, SS.:

The State of New Jersey to any Constable of said County or the Sergeant-at-Arms of the District Court of the City of Trenton Summon Joseph M. Branegan to appear before the District Court of the City of Trenton, to be held at the City Hall in said city, on Thursday the 3rd day of Dec., nineteen hundred and 31, at nine o'clock in the forenoon, to answer Wm. F. Faherty in an action at law, for the sum of Five Hundred Dollars. Hereof fail not. 10

Witness, J. CONNER FRENCH, Esquire, Judge of said Court, at Trenton aforesaid, the 23rd day of Nov. in the year nineteen hundred and thirty-one.

FRANK MUCCIOLI, 20
Clerk.

A true copy.

FRANK MUCCIOLI,
Clerk.

(Seal)

30

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State of Demand.DISTRICT COURT OF THE CITY
OF TRENTON.

10

WILLIAM F. FAHERTY,
Plaintiff,

VS.

JOSEPH M. BRANEGAN,
Defendant.

FIRST COURT.

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William F. Faherty, of the City of Trenton, County of Mercer and State of New Jersey, the plaintiff, says that:

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1. That the defendant, Joseph M. Branegan, immediately prior to March 24, 1930, employed the plaintiff William F. Faherty, as an expert in real estate, to appraise his property, and the damages to said property by reason of the taking by condemnation or otherwise by the State of New Jersey, and also appearing as an expert witness at the hearing before the Condemnation Commissioners.

2. The said defendant Joseph M. Branegan agreed to pay to the said William F. Faherty for his services in making said appraisal and as expert witness the sum of \$500.00.

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3. The plaintiff William F. Faherty performed the services and made the appraisal but the defendant has not paid said sum as agreed, although often requested so to do.

State of Demand.

4. Plaintiff demands as damages the sum of \$500.00 and costs of suit.

SECOND COUNT.

1. The plaintiff, William F. Faherty was employed by the defendant Joseph M. Branegan, immediately prior to Mar. 24, 1930, to act as an expert appraiser for his property being or about to be condemned by the State of New Jersey, and as an expert witness, and agreed to pay to the said plaintiff the sum of money that said services were reasonably worth. 10

2. That the plaintiff William F. Faherty performed the services requested on March 24, 25, 1930. 20

3. That said services were reasonably worth \$500.00.

4. That the defendant has refused to pay said amount.

5. Plaintiff claims as damages the sum of \$500.00 and costs of suit. 30

WM. E. BLACKMAN,
Attorney for Plaintiff.

A true copy.

FRANK MUCCIOLI,
Clerk.

(Seal)

Summons.

MERCER COUNTY, SS. :

10 The State of New Jersey to any Constable of said County or the Sergeant-at-Arms of the District Court of the City of Trenton Summon Joseph M. Branegan to appear before the District Court of the City of Trenton, to be held at the City Hall in said city, on Thursday, the 10th day of Dec., nineteen hundred and 31, at nine o'clock in the forenoon, to answer Wm. F. Faherty in an action at law, for the Sum of Two Hundred Seventy and 63/100 Dollars. Hereof fail not.

Witness, J. CONNER FRENCH, Esquire, Judge of said Court, at Trenton aforesaid, the 4th day of Dec. in the year nineteen hundred and thirty-one.

20

FRANK MUCCIOLI,
Clerk.

A true copy.

FRANK MUCCIOLI,
Clerk.

(Seal)

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State of Demand.DISTRICT COURT OF THE CITY
OF TRENTON.

<p>WILLIAM F. FAHERTY, Plaintiff,</p>	}
<p>VS.</p>	
<p>JOSEPH M. BRANEGAN, Defendant.</p>	

10

FIRST COUNT.

William F. Faherty, of the City of Trenton, County of Mercer and State of New Jersey, the plaintiff, says that:

1. That the defendant, Joseph M. Branegan, immediately prior to June 9, 1930, employed the plaintiff William F. Faherty, as an expert in real estate, to appraise his property, and the damages to said property by reason of the taking by condemnation or otherwise by the State of New Jersey, and also to appear as an expert witness before the hearing before the Judge and Jury in the Circuit Court of Mercer County.

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2. The said defendant Joseph M. Branegan agreed to pay to the said William F. Faherty for his services in making said appraisal the sum of \$250.00.

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3. The plaintiff William F. Faherty performed the services and made the appraisal but the defendant has not paid said sum as agreed, although often requested so to do.

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State of Demand.

4. Plaintiff demands as damages the sum of \$250.00 and interest of \$20.63, making a total of \$270.63, and costs of suit.

SECOND COUNT.

10 1. The plaintiff William F. Faherty was employed by the defendant Joseph M. Branegan, to act as an expert appraiser for his property being or about to be condemned by the State of New Jersey, and as an expert witness, and agreed to pay to the said plaintiff the sum of money that said services were reasonably worth.

20 2. That the plaintiff William F. Faherty performed the service requested on June 9, 10, 11, 1930.

3. That said services were reasonably worth \$250.00.

4. That the defendant has refused to pay said amount.

30 5. Plaintiff claims as damages the sum of \$250.00 and interest of \$20.63, making a total of \$270.63, and costs of suit.

WM. E. BLACKMAN,
Attorney for Plaintiff.

A true copy.

FRANK MUCCIOLI,
Clerk.

(Seal)

Set-Off.DISTRICT COURT OF THE CITY OF
TRENTON.

WILLIAM F. FAHERTY,
Plaintiff,

vs.

JOSEPH M. BRANEGAN,
Defendant.

} On Contract.

10

Defendant by way of Set-off, claims of plaintiff, the sum of Five Hundred (\$500.00) Dollars, upon two certain judgments recovered in District Court of the City of Trenton on June 3, 1931; in favor of Hanover-Capital Trust Company, one against John F. Toman Jr. and William F. Faherty for \$326.48 and \$21.04 costs, which judgment was docketed June 5, 1931 in Mercer County Court of Common Pleas, Book 6 of Docket of Judgment, Page 112; and the other of said judgments recovered against James E. Pierson, William F. Faherty and Samuel Mountford, for the sum of \$56.20 and costs of \$7.50, all which more fully appears in the records of said judgment remaining in this Court; which said judgments were duly assigned to the defendant, Joseph M. Branegan by said Hanover-Capital Trust Company by Assignments dated January 15, 1932 and May , 1932.

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WHEREFORE, defendant claims judgment against plaintiff in the sum of \$411.22, besides interest and costs.

JOS. M. BRANEGAN.

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Set-Off.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.:

JOSEPH M. BRANEGAN, being duly sworn, on his oath, deposes and says:

10 The above Set-off is not filed by him for the purpose of delay and that plaintiff is indebted to deponent in the sum of Four Hundred Eleven Dollars and Twenty-Two Cents (\$411.22).

JOSEPH M. BRANEGAN.

Sworn to and subscribed before me }
this 18th day of May, 1932. }

20 LOUIS RUDNER,
Master in Chancery of the State of
New Jersey.
(Seal)

A true Copy.
FRANK MUCCIOLI,
Clerk.

30

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First Assignment of Judgment.

KNOW ALL MEN BY THESE PRESENTS, that whereas the HANOVER-CAPITAL TRUST COMPANY (formerly the Hanover Trust Company), a banking corporation of the State of New Jersey, doing business in the City of Trent, County of Mercer and State of New Jersey, party of the first part herein, did, on the third day of June, 1931 recover a judgment in the District Court of the City of Trenton against John F. Toman, Jr. and Wm. F. Faherty for the sum of Three Hundred Twenty-six Dollars and Forty-eight Cents (\$326.48) and Twenty-one Dollars and Four Cents (\$21.04) costs, which judgment was on the fifth day of June, 1931 docketed in the Mercer County Court of Common Pleas in Book 6 of Docketed Judgments, page 112, amount sworn to be due Three Hundred Forty-eight Dollars and Seventy-seven Cents (\$348.77): Now this deed of assignment witnesseth that the said party of the first part in consideration of the sum of One Dollar and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, hath sold, and by these presents doth assign, transfer and set over unto JOSEPH M. BRANEGAN, of the City of Harrison, County of Hudson and State of New Jersey, the party of the second part herein, his executors, administrators and assigns, the said judgment, and all sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon.

And the said party of the first part doth hereby constitute and appoint the said party of the second part, his executors, administrators or assigns, its true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand and receive, and to sue

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First Assignment of Judgment.

10 out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment, and on payment to acknowledge satisfaction or discharge the same; and attorneys, one or more under him, for the purpose aforesaid, to make and substitute and at pleasure to revoke; hereby ratifying and confirming all that its said attorney or substitute shall lawfully do in the premises.

20 And the said party of the first part doth covenant that there is now due on the said judgment the sum of Three Hundred Forty-eight Dollars and Seventy-seven Cents (\$348.77) and interest and costs, and that it will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of the first part harmless of and from any costs in the premises.

30 In Witness Whereof, the party of the first part has caused its corporate seal to be hereto affixed, and attested by its Secretary, and these presents to be signed by its Assistant Vice-President, this fifteenth day of January, nineteen hundred and thirty-two.

HANOVER-CAPITAL TRUST COMPANY,
C. E. SOMMERS,
Asst. Vice-President.

(Seal)

Attest:
WILLET M. DENNIS,
Secretary.

40

First Assignment of Judgment.

STATE OF NEW JERSEY, }
 COUNTY OF MERCER, } ss.:

BE IT REMEMBERED, that on this fifteenth day of January, A. D., nineteen hundred and thirty-two, before me, a Notary Public of the State of New Jersey, personally appeared WILLET M. DENNIS, who, being duly sworn according to law, says that he is the Secretary of the Hanover-Capital Trust Company (formerly the Hanover Trust Company) the grantor named in the foregoing Assignment of Judgment; that he well knows the corporate seal of said company, and that the seal thereto affixed is its proper corporate seal; that the same was so affixed thereto, and the said deed signed and delivered by Charles E. Sommers, who was at the date of execution thereof the Assistant Vice-President of said company, in the presence of the said deponent, as the voluntary act and deed of said company, and that the said deponent thereupon signed the same as subscribing witness.

WILLET M. DENNIS.

Sworn and subscribed to before me }
 this 15th day of January, 1932. }

CHARLES J. TURNER,
 Notary Public of New Jersey.

(Seal)

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Second Assignment of Judgment.

Similar form to first assignment, except that this judgment was recovered in Trenton District Court against James E. Pierson, William F. Faherty and Samuel Mountford, for the sum of \$56.20 and costs of \$7.50, and said judgment was assigned to the defendant, James M. Branegan by the said Hanover-Capital Trust Company by assignment dated May, 1932.

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William F. Faherty. Called by Plaintiff. Direct.

Judge: What is the Rule of Pleading in the District Court?

Clerk of District Court: Judge deals with that as the case goes along.

Mr. Budson: My conception of the District Court Act is that an answer must be filed at or during the trial, and unless filed the counter claim is admitted.

10

Judge: I confess I am not familiar with the rules of the District Court. This case is not in the Common Pleas Court where I am used to trying cases. I am more or less familiar with the pleading in the Common Pleas. I know the rules of the District Court are somewhat different. The Clerk advises me verbally that an answer is all that is necessary in the District Court.

Mr. Budson: We don't even have that.

20

Mr. Blackman: You will get that when you undertake to offer it.

Mr. Budson: I filed a counter claim, and I am here with no answer filed by this man to the counter claim, and I still contend it is admitted.

Judge: I think Mr. Blackman said he contested the admission of the counter claim.

Mr. Blackman: Yes.

Judge: Proceed.

30

WILLIAM F. FAHERTY, being sworn, testified as follows:

DIRECT EXAMINATION BY MR. BLACKMAN:

Q. What is your profession? A. Real estate.

Q. How long have you been engaged in the real estate business? A. Fourteen years.

40

William F. Faherty. Called by Plaintiff. Direct.

Q. Where? A. In Trenton and vicinity.

Q. Have you as a real estate man acted as an expert in condemnation proceedings? A. I have.

Q. Were you engaged in such a capacity by Joseph Branegan? A. I was.

Q. For what purpose? A. To value a property which he owned at Clarksville on the Brunswick Pike, known as The Clarksville Inn, and to estimate the value of the land taken, and damages to the land and buildings, by reason of the projection of the State Highway from Trenton to Jersey City, and to appear before a Commission to testify for him as to these findings, and later to testify before a Jury. 10

Q. Did you do this alone? A. I did not. I did it with Samuel Hilton. I was ordered by Judge Branegan to get another expert to assist me in this, to do the same work or similar work as I was doing. I hired Mr. Hilton, because there is no one more experienced in real estate plotting and development, and he is also a real estate builder. 20

Q. Did you do the things you were employed to do? A. I did.

Q. State just what you did. A. I hired Mr. Hilton and we examined the property some time in October or November, 1929. We were all one day at the property, measuring it because the property is a large hotel. It was remodeled some years ago, and has 7 or 8 baths, and a large heating plant, and fire apparatus—a building about 100 feet long—and it was necessary to value the building, and in order to do that Mr. Hilton and myself measured it and got the value on that from a builder's point of view, with Mr. Hilton. We were one day doing that and we worked that night until eleven o'clock in Mr. Hilton's office. Appeared in New 30 40

William F. Faherty. Called by Plaintiff. Direct.

Brunswick for a conference with Mr. Samuel Hoffman, Judge Branegan's attorney, before the meeting before the Commission—a half day.

Mr. Budson: What date was that?

10 A. I don't know, October or November. Also went another day to Harrison, New Jersey, and that vicinity, in conferences as to the values of property with other experts Mr. Branegan had hired in that vicinity, and also Mr. Hilton, and other conferences between Mr. Hilton and myself, and Mr. Hilton and I appeared before the Commission on November 19, 1929 and on March 24 and 25, 1930, at which time I gave testimony as to the value of the land taken and the damages; also testified on 20 June 9th and 10th, and a half day on June 11th before a Jury in Mercer Court.

Q. Were there any other conferences with Mr. Hoffman except this one you mentioned? A. None except during the trial and before the appearance before the Commission.

Q. Can you state how many conferences you had with Mr. Hilton? A. No, I can't. There were quite a number in the course of arranging the work and values, that was necessary up to the time of 30 appearing before the Commission.

Q. Who were the Commissioners?

Mr. Budson: Objected to as immaterial.

Judge: I cannot see the names of the Commissioners are necessary.

Mr. Blackman: He appeared as an expert, and we want to show he is that.

Judge: I can't see that it will do any harm —I think it is somewhat material. 40

William F. Faherty. Called by Plaintiff. Direct.

A. Vincent P. Bradley, Gardner H. Cain and Willet M. Dennis.

Q. You have frequently acted as an appraiser and witness in condemnation proceedings? A. I have.

Q. Have you any idea how many? A. I can't tell, except I have testified for the Highway Department from about 1920 to about 1926, and since then for property owners. From 1926 up to date very few cases have been heard that I have not testified on one side or the other, in Mercer County. 10

Q. What has been your charge on these cases? A. \$100 a day.

Mr. Budson: Objected to and I ask it be stricken out. If we hadn't thought him competent for the job, we wouldn't have hired him. This is an improper way of producing evidence. 20

Judge: I do not think it is competent to prove what he did in other cases, other condemnation proceedings—what his services are reasonably worth or what Judge Branegan agreed to pay him.

Mr. Blackman: Is there any better way of finding out what services are reasonably worth than what was paid in previous proceedings? 30

Judge: Yes, I think there is.

Mr. Budson: Certainly. It's a self-serving declaration and improper.

Objection sustained.

Q. Had you ever been employed by Judge Branegan? A. No, I have not.

Q. Do you know what the customary fee is for experts of this class in this vicinity? A. I do. 40

William F. Faherty. Called by Plaintiff. Direct.

Mr. Budson: Objected to, each case must be considered by itself, and there is no customary fee.

Judge: He knows about what the fees are.

10 Mr. Budson: How can there be? If I engage your Honor, and Mr. Blackman, and maybe a third person for somewhat less—each had a different price—there is no standard price. It is not like a quality of merchandise with the price based on a certain article, the value of a certain article, to go out in the market and buy it. There are different circumstances, different men. I might be willing to work for \$100 and somebody else would want \$500.

Objection overruled.

Exception granted.

20 Q. What fees do they get, people in your profession? A. \$100 a day for testifying in court, plus a fee for testifying before Commissioners.

Q. Do you know anybody who has received that amount? A. Yes.

30 Q. Who? A. George Atkins and Vincent Bradley. I know a great many men who have received that—Kuser for the Pennsylvania Railroad Company, and Sam Hilton. I know cases where Mr. Hilton has refused to go into court unless he got \$100 per day.

Mr. Budson: I ask that be stricken out. It is most unusual testimony. I know of lawyers that go into court and get \$5000 a day—would you admit that is a basis for legal fees?

Objection overruled.

Exception granted.

40

William F. Faherty. Called by Plaintiff. Direct.

Q. What did Mr. Hilton receive on this particular appraisal? A. \$700.

Mr. Budson: Objected to and ask that it be stricken out.

Judge: Why do you object to that?

Mr. Budson: I don't think it is material what we paid anybody else in this case. It's Mr. Faherty's services we are considering. 10

Judge: I refuse to strike that out.

Q. You say you testified before a Commission?

A. I did.

Q. How many days? A. Three days.

Q. And did you after you had finished testifying, between that time and the time of the jury trial, send Judge Branegan a bill? A. I did not.

Q. Did you tell him how much he owed you? A. I did not. 20

Q. Just previous to the hearing, or the trial before the jury, did you tell Judge Branegan what your charge was for previous work? A. I did.

Q. How much did you tell him it would be? A. I told him my charge would be \$600.

Q. And did you estimate how you arrived at that amount? A. Yes.

Q. How? A. I charged \$300 for estimating the value of the land, before and after the taking, and also the building, and the conferences which were necessary—going to New Brunswick for a half day, and spending a day and all evening in Harrison and vicinity—that was \$300, and \$100 a day for each day in Court, November 19, 1929 and March 24 and 25, 1930. 30

William F. Faherty. Called by Plaintiff. Direct.

Q. What did Judge Branegan say when you told him your charge was \$600.00?

Mr. Budson: Object to it.

10 A. This conference was held in one of these rooms (indicating) in the opposite court room, and it was between Mr. Hilton, Judge Branegan and myself.

Q. Was Judge Branegan's lawyer there? Mr. Hoffman? A. It finally wound up in the corridor of the court house—Mr. Hoffman was there at that part of the conference—in which Judge Branegan agreed on his own proposal he would pay \$500 for the work done up to that date, and \$100 for each day we served in Court before the jury.

20 Q. And how many days did you serve in Court before the jury? A. Two and a half. The case lasted three days before the jury, but I was there the first two days and the afternoon of the third.

Q. And then you were dismissed? A. I was dismissed at the end of the second day, and told to come back by Judge Branegan.

Q. Besides testifying in court, did you perform or give any assistance to Mr. Hoffman, or Mr. Branegan, when you were asked to testify?

30 Mr. Budson: Objected to on the ground that it is leading.

Objection overruled.

A. I did.

40 Q. What did you do? A. I helped Mr. Hoffman during the trial because he was a lawyer from New Brunswick and didn't know local people—there was a matter come up, which Mr. Hoffman knew would come up before the jury as it had come up

William F. Faherty. Called by Plaintiff. Direct.

before the Commission—as to whether or not the Clarksville Inn building should be paid for in its entirety by the State, or whether having moved it, the moving and damages were to be paid for by the State. I was in on that discussion with Mr. Hoffman and Judge Branegan, and I told them I was pretty certain I knew a lawyer in the city who could straighten them out on the law, as Mr. Hoffman did not know, and I suggested they call Mr. Charles Malloy, an attorney in the Broad Street Bank Building, and they asked that I call him, and he came and straightened them out on that. 10

Q. You suggested another witness on that point?

A. I did, on the value of the building, as I said before. I made arrangements with Mr. W. C. Ehret to accept a subpoena, on my proposal, but he was not called to the witness stand because his figures were high. 20

Q. What were the damages before the Commission? A. \$20,750.

Q. And what were the damages before the jury? A. \$28,000.

Q. Before you appeared before the jury, you say Judge Branegan offered to pay you a certain amount? A. He did.

Q. And that amount was that? A. \$500 for the work done before the jury trial and \$100 a day thereafter. 30

Q. Do you know what the offer to Judge Branegan was before the condemnation? A. \$11,000 by the State.

Mr. Budson: Objected to.

Judge: Why do you think that is incompetent?

William F. Faherty. Called by Plaintiff. Cross.

Mr. Blackman: Mr. Faherty is an expert in making appraisals, and if he could convince the Commissioners from his estimates of real estate values to raise the amount from a certain amount to another, it seems to me it is material.

10 Judge: Let it stand, but I do not think it is very material.

Q. Did you send a bill to Judge Branegan after that? A. I did not. As is customary, I waited until Judge Branegan received his money from the State. I have sent in my time very few bills in these cases, because the lawyers or the property owners always call a conference when they receive their check and pay the money out. I did not expect Judge Branegan to pay me before he got his money.

Q. And you did not send him a bill in the meantime? A. No.

Q. You told him what it was? A. Oh, yes, he knew from his lawyer.

Q. And after he received the money from the State he refused to pay you the amount? A. That's true.

30 Q. Then you brought the suit in the City District Court? A. That's right.

CROSS EXAMINATION BY MR. BUDSON:

Q. You never knew Judge Branegan before he engaged you, did you? A. I did not.

Q. Do you know how he happened to engage you? A. No, I do not.

Q. When was the first time you talked to Judge Branegan? A. One Sunday, I think, in October, 40 1929.

William F. Faherty. Called by Plaintiff. Cross.

Q. Where? A. At the Clarksville Inn.

Q. How did you meet him there? A. I met him by appointment made through John Heher.

Q. It was John Heher who got you in contact with Judge Branegan? A. That must be necessarily so. You asked who recommended me. I don't know that, but John Heher made the appointment.

Q. You met there on a Sunday afternoon? A. 10
Sunday morning. I don't know the date.

Q. And the Judge asked you to act as one of the appraisers for his property? A. Yes.

Q. And you said you would? A. Yes.

Q. Did you state what price you would charge at that time for your services? A. I did not.

Q. Did you intend to send a bill in bulk or by the day? A. The same as I would send in—

Q. You stated you never sent a bill? A. Accord- 20
ing to—on the basis of the time spent on the appraisal and conferences and \$100. a day for the time spent in court.

Q. You never had sent out a bill you say merely based on \$100. per day? A. Always on the time spent.

Q. And you say you must have spent 7½ days, is that right? A. I wouldn't say that—on that basis, but the time in court was on a basis of \$100. 30
per day.

Q. \$100. per day? A. Yes and I spend 5½ days in court.

Q. And how about the other two days? A. I think that was well worth it.

Q. Where did you spend those? A. I spent more than two days—a half day in New Brunswick, and a day and an evening in Harrison and vicinity, and I spent part of that Sunday which I would of course expect Judge Branegan to pay me for, meet- 40
ing him on Sunday.

William F. Faherty. Called by Plaintiff. Cross.

Q. Where was that? A. Clarksville Inn.

Q. You charged him for that? A. I wouldn't have ignored that, spending time on Sunday without being paid for it.

Q. You charge people double time for Sunday?
A. No, I don't.

10 Q. You don't? A. No. I charge for the work on the appraisal, the time spent in conferences with Mr. Hoffman and myself and other appraisers, and Mr. Hilton.

Q. Do you have any other business outside of being an appraiser? A. Yes.

Q. What is it? A. Same thing, real estate business, developing.

Q. Now you spoke of being 5 days in court? A. 5½.

20 Q. 5½ days in court—you were not there all the time? A. Yes, I was.

Q. You sat around all of that time? A. No, I worked. When I was not testifying I helped the lawyer with his cross examination and direct examination of other witnesses, which I have done in all other cases.

Q. Didn't you in all other cases in condemnation proceedings act as a witness before Commissioners in the City of Trenton? A. Yes.

30 Q. How much did you get a day? A. \$100.

Q. And you are charging him \$100. for part of a day? A. No, I am charging him \$50. for part of a day—that was the last day, the day Judge Brane-gan came to the City Hall, and we arranged to serve subpoena on Mr. Ehret, after I had made ar-rangements for him to accept it, as Judge Brane-gan knew Ehret didn't have to accept subpoena. I was there before a Commission for the Pennsyl-vania Railroad Company on electrification in the

40

William F. Faherty. Called by Plaintiff. Cross.

City of Trenton, and that was a half day, and a half day here.

Q. And you charged them each a half day? A. Yes, I charged each \$50.00, and I was paid by the Pennsylvania Railroad for it.

Q. You have appraised property for the State of New Jersey? A. Yes, sir.

Q. How much did they pay you for that work? 10
A. That was done before 1926, 4 or 5 years before this appraisal, and they paid me \$50.00 a day then.

Q. Haven't you made any appraisements for the State since 1926? A. No, I think I did appear one day in 1926 or 1927 on a hangover of a case of a couple of years' standing. But I have not done any work for the State since the work was started on the Brunswick Pike at the Circle. 20

Q. Have you done any work for the City of Trenton? A. No, sir, not on cases of the City of Trenton—on tax cases.

Q. Haven't you done appraising work for people in the vicinity of Trenton for \$25.00 per day? A. Never in my life. I worked for Mercer County and got \$100. per day, and for numerous individuals and I can give you their names.

Q. I didn't ask you about them. Now the first day you went out to look at the property with Mr. Hilton, you stated you had to make some measurements? A. Yes, sir. 30

Q. How many feet does this property extend along the road from the point of intersection of the Clarksville Road with the main highway? A. Measurement of the land?

Q. Yes. A. Well, it has been quite some time since I referred to my papers, but I believe about 1300 feet. 40

William F. Faherty. Called by Plaintiff. Cross.

Q. And you stated you went through the building inside and measured it? A. We measured it, yes, and took notes, every bit of it.

Q. You stated how many bath rooms? A. I stated bath rooms.

10 Q. This was used as a road house, and some may have been toilets? A. There was two on the second, and one or two on the third floor.

Q. How many bath rooms were there? A. 6 or 7 or 8, and plumbing fixtures and basis in the rooms.

Q. That was part of the work you had to do, to find out or ascertain, and you say there were 7 or 8 bath rooms out there? A. I said 6 or 7 or 8. I didn't come today to testify as to the value on that.

20 Q. Would you be surprised if I tell you there are only two bath rooms in the place? A. Then you don't know anything about the property.

Q. Would it surprise you? A. It would not surprise me that you say that because you don't know the property.

Q. You say there are 7 or 8 bath rooms there? A. Yes.

30 Q. You don't mean to tell us that Judge Brane-gan promised you \$500 in this court room? A. No the opposite court room in the corridor.

Q. Why didn't you ask him to fix the price before you started the work? A. My price was well known among the lawyers in Trenton. I didn't have to fix the price.

Q. You were not called in by a Trenton lawyer? A. Yes, by John Heher.

Q. You were dealing with Mr. Hoffman? A. I told Hoffman.

40

Samuel Hilton. Called by Plaintiff. Direct.

Q. Why didn't you tell Branegan? A. When I told him I did it at Mr. Hoffman's suggestion—it was he that said we had better settle our prices, Mr. Hilton's and myself with Judge Branegan, otherwise I would probably never have thought of it, and it would have gone on.

10

SAMUEL HILTON, witness called on behalf of Plaintiff, is duly sworn, and examined DIRECTLY BY MR. BLACKMAN:

Q. What is your business? A. Real Estate and developing.

Q. How long have you been in that business? A. About 23 years.

Q. Have you been used as an expert in making appraisals on Condemnation proceedings? A. Yes. 20

Q. Frequently? A. In the last two years frequently, yes.

Q. And what charge would you make for your services? A. \$100. per day.

Q. Is that a customary charge with experts in your class?

Mr. Hudson: Objected to.

Objection overruled.

30

A. I know about 9 appraisers in Trenton who get \$100. per day.

Q. Is Mr. Faherty among them? A. Yes, he is one of the best we have in Trenton.

Q. Is Mr. Atkin one? A. Yes, a very good one.

Mr. Hudson: Object to this. Will you grant an exception.

Judge: Granted.

40

Samuel Hilton. Called by Plaintiff. Direct.

Q. Did you assist Mr. Faherty in the appraisal of this property? A. I did.

10 Q. Tell what you did with Mr. Faherty leading towards the appraisal and damages to the property? A. Mr. Faherty called one Saturday and asked me to go with him to the Clarksville Inn on Sunday morning for the purpose of appraising. I kept the appointment, and we found the State line went through the property about 17 feet, and it was necessary to arrive at the damage, so we had to measure up the building and find out if the building would have any use after it was taken, and that necessitated drawing a plan and relaying out the hotel, and that necessitated a whole day, and we found the building could not be relayed under a new scheme, and it was a total damage. Then
20 Mr. Faherty called me again and asked if I would go to New Brunswick with him, that Mr. Hoffman stated it was necessary to have a conference with us.

Q. Who was Mr. Hoffman? A. Mr. Branegan's lawyer. I went to New Brunswick with Mr. Faherty, and we got there about 12 o'clock and we stayed until about 11 in the evening. Then Mr. Faherty called me again to go to Harrison, and there we had first a conference with Mr. Branegan
30 who was sick in bed at the time, and we called in two other experts, I forget their names, but we had a conference all day.

Q. Experts in what line? A. I think electric and heating, and we left there about eleven o'clock.

Q. Did you have any conferences with Mr. Faherty independent of these trips you speak of? A. I think we had more than a dozen conferences off and on.

Samuel Hilton. Called by Plaintiff. Direct.

Q. When you stated you left Harrison, you meant eleven o'clock at night? A. Eleven o'clock at night, yes.

Q. As a result of this report did you appear before the Condemnation Commissioners? A. Yes, sir.

Mr. Budson: Objected to. I don't see the materiality of this man's appearance at that time. 10

(No ruling.)

Q. As a result of your efforts, you and Mr. Faherty appeared before the Condemnation Commissioners how many times? A. I was there 3 days.

Q. After the report made by the Condemnation Commissioners, Judge Branegan took an appeal, did he not? A. Yes. 20

Q. And the hearing was then before a jury? A. Yes.

Q. Were you and Mr. Faherty called in to give testimony before the jury? A. Yes, we were.

Q. Do you remember whether just previous to that hearing you had a conference with Judge Branegan as to your and Mr. Faherty's charge for the services you had performed? A. Yes. I saw Mr. Branegan first. I was told by his lawyer that we should have an understanding as to what we were going to charge, so I called Mr. Branegan and told him what our charges were—told him what our bill was to be, and at that time he objected to it. Then I called Mr. Faherty and told him what we were talking about, and he said well, that's my charge too. 30

Q. What was that? A. \$600.00—\$300.00 for the appraisal and conferences, and \$300, or \$100.00 40

Samuel Hilton. Called by Plaintiff. Cross.

per day for attending the Commission hearings. And we talked for awhile in the corridor in the anteroom, and Mr. Branegan said, "I'll tell you what I'll do, give you \$500.00 for the work done, and \$100.00 per day for each day you are in court." From this point Mr. Faherty and I talked from a separate proposition.

10 Q. Did you then give testimony before the court?

A. Yes, we did, and I gave 2 days' testimony and Mr. Faherty 2 and a half.

Q. Were you paid for your services? A. Yes.

Q. At what rate? A. He paid me \$700.

Q. Who paid you? A. I got it from my counsel, but Mr. Branegan paid it. I received the check through my counsel.

Q. Did you have to sue to collect it?

20

Mr. Budson: Objected to.

Judge: I don't think it is material; that may be stricken out.

CROSS EXAMINATION BY MR. BUDSON:

Q. This conversation that took place in this court corridor was during the trial of the case? A. Just before, in the morning.

30 Q. In the morning before the case was put on? A. Yes.

Q. And you took the Judge aside and told him he would pay you \$100. a day or you wouldn't testify, is that right? A. No, I was told by Mr. Hoffman I had better have an understanding with Judge Branegan as to the amount he was going to pay, because he hadn't settled the price, and because he was trying to Jew him down—for me to take it up with Branegan and tell him whatever
40 it was, exactly what it was to be.

Samuel Hilton. Called by Plaintiff. Cross.

Q. And you had been working until that time with Faherty about 6 days? A. Yes.

Q. Did Judge Branegan engage you at all? A. Mr. Faherty engaged me.

Q. Branegan never engaged you? A. No.

Q. Why didn't you go and tell him how much it was going to cost him? A. That's my regular fee and he should find out. 10

Q. He never engaged you and you never told him what the bill would be until the court trial, and then you took him in the hallway and said you pay me my price— A. I did, yes—

Q. And Faherty said the same? A. Yes.

Q. And you said pay or I won't testify? A. We told him our services were worth \$100. and he couldn't have them for less.

Q. You knew he had to have you? A. No, there were other witnesses in Trenton. 20

Q. You had already appeared before the Commissioners? A. Yes.

Q. And you knew you had to testify? A. The jury wasn't summoned then.

Q. You said pay me my price and if he didn't say yes he would be in a terrible hole. Pay me my price or I won't testify, he would be in a terrible plight, wouldn't he? A. No, he could have the case adjourned and get other prices. 30

Q. Why did you hold him up in the corridor?

Mr. Blackman: Objected to, I don't think it is a fair question.

Judge: Objection sustained.

George L. Aitkens. Called by Plaintiff. Direct.

GEORGE L. AITKENS, witness produced on behalf of plaintiff, is duly sworn, and testifies as follows:

DIRECT EXAMINATION BY MR. BLACKMAN:

- Q. What is your profession? A. Real estate.
 Q. How long have you been in that business? A.
 10 22 years.
 Q. Licensed by the State of New Jersey? A.
 Yes, sir.
 Q. In addition to the real estate business have
 you acted as a witness in condemnation proceed-
 ings? A. I have.

Mr. Budson: Objected to as immaterial.
 Objection overruled.

- 20 Q. Have you done this often? A. I have.
 Q. For whom? A. Well I have appeared for
 the Federal Government; I have appeared for the
 State of New Jersey; appeared for Mercer County;
 appeared for Lawrence Township, City of Trenton,
 Pennsylvania Railroad Company, and numerous
 other individuals.
 Q. Were you on the opposite side of this case?
 A. I was.
 30 Q. You were then appearing for the Highway
 Department? A. I did.
 Q. What did you receive as an expert in these
 condemnation proceedings?

Mr. Budson: Objected to.
 Objection sustained.

- Q. What's the customary fee for an expert in Mr.
 Faherty's class?
 40

George L. Aitkens. Called by Plaintiff. Direct.

Mr. Hudson: Objected to. Mr. Aitkens cannot testify as to what class Mr. Faherty belongs to, unless it was shown to this court that there were grades of experts in Mercer County, starting with Mr. Faherty all the way down.

Judge: Unless the question is reframed, the objection is sustained.

Q. What are the services of an expert worth in condemnation proceedings? A. Varies. Some experts are not worth anything, so-called experts, I mean.

Q. What in your opinion is about the value of the services of Mr. Faherty? A. I think Mr. Faherty is one of the best witnesses in this section, and I think his services are worth at least \$100. per day.

Q. Is that the price you get for your services?

Mr. Hudson: Objected to.

Judge: I do not think that is material. You are proving what Mr. Faherty's services were reasonably worth.

Q. Upon what do you base your opinion of the value of Mr. Faherty's services? A. Upon my knowledge of his testimony. I have been in numerous cases in which we have appeared either on opposite sides or the same side of the case—appeared with him. My knowledge of the amount of preparation he puts into each case, and the fact that he goes into his cases well prepared, and his testimony is given in a straightforward manner.

Q. And have the prices and value of services of other experts anything to do with that opinion?
A. No.

(No cross examination.)

Charles A. Malloy. Called by Plaintiff. Direct.

CHARLES A. MALLOY, witness called on behalf of plaintiff, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BLACKMAN:

Q. What profession are you engaged in? A. I am a lawyer.

10 Q. And in the practice of your profession have you been frequently called to represent owners in condemnation proceedings? A. Yes, several times.

Q. And did you employ experts as witnesses in valuing the property taken? A. Always.

Q. And have you ever employed Mr. Faherty?

20 Mr. Budson: Objected to, and I ask that be stricken out. I ask that all the questions and answers thus far be stricken out as they do not relate to this cause. I can't see how this is material.

Judge: I think that question is material.

30 Mr. Budson: I cannot see the relationship between Mr. Faherty and Mr. Malloy had anything to do with the contract upon which suit is brought—first, upon reasonable value for the time spent on the job—that is the first theory, and secondly that he made a contract in this corridor of \$500. for the work done and \$100. per day for the balance of the work.

I don't care what Mr. Malloy paid him or anybody else, or how many times he engaged him and used him as an expert—that wouldn't affect my case.

Objection overruled.

Question read.

Charles A. Malloy. Called by Plaintiff. Cross.

A. Yes, in practically every case I have had in condemnation I have employed Mr. Faherty as an expert witness.

Q. What standing do you consider Mr. Faherty has as an expert witness in condemnation proceedings? A. I consider him one of the best—in the best class of experts we have in this community.

Q. What is your opinion as to a reasonable amount that his services are worth? 10

Mr. Budson: Objected to unless he knows the kind of work he did, and in that case he can testify.

Judge: I think he has established his qualification to testify as to the reasonable amount an expert should receive.

Objection is overruled. Exception granted. 20
Question read.

A. At least \$100. a day.

Q. You were engaged in this case somewhat were you not? A. I was consulted.

Q. You were present while it was going on? A. A part of the time.

Q. You were consulted by whom? A. Consulted by Mr. Hoffman, an attorney from New Brunswick, in conference with other persons and Mr. Faherty. 30

CROSS EXAMINATION BY MR. BUDSON:

Q. How do you arrive at \$100. as being reasonable, on what basis do you arrive at that amount?

A. In the first place experience in condemnation cases of lands in this community; then again upon the amount of work such an expert as Mr. Faherty does. His work consists not only in testifying on 40

Charles A. Malloy. Called by Plaintiff. Cross.

the stand, but consists in sitting at counsel table, at least in all the cases where I have employed him, and assisting counsel both in direct and cross examination. The services in cross examination are very, very valuable. It is impossible for you to understand them—a lawyer, to know all about the properties and all the sales that take place.

10 Q. Then you say as an expert he is always as good as the lawyer? A. I think if I had my choice between selecting some lawyers in condemnation proceedings and taking Mr. Faherty to go down and handle the case, I would select Mr. Faherty.

Q. He is always as good as a lawyer at the table? A. It would depend upon the type of lawyer I would have—as good as some lawyers and almost as good as some others.

20 Q. You are an attorney? A. I am supposed to be, I have an attorney's license.

Q. What is your average price as an attorney, per day? A. I suppose that depends on the character of the case—in condemnation proceedings the fees would very likely be contingent.

Q. Would be in the neighborhood of what? A. According to the time—certain properties—nature of the work—

30 Q. Do you charge on \$100. a day basis? A. Sometimes much more than that.

Q. I mean on the average? A. Depends upon the result. In other words, a man is offered \$11,000. and gets an award of \$28,000, then he has certain expenses \$2000 or \$3000, and he will probably have a net increase of \$14000. Now the attorney making the charge will base it on the net increase.

40 Q. As an attorney he is also an expert, and he is entitled to pay on a similar basis? A. An attorney is an expert in his line; they are not experts in condemnation.

Charles A. Malloy. Called by Plaintiff. Cross.

Q. You charge \$100. a day for your services? A. When I have made a flat charge of that kind, understand it is on the basis of the award of the Commissioners or the verdict of the jury.

Q. Do the Commissioners who sit in judgment receive \$100 per day? A. I have had them get more than that.

Q. I am talking about the average. I am not talking about the Pennsylvania Railroad cases. Do they receive \$100. a day? A. Some do and some don't. I would make no comparison between a commissioner and an expert. I can go in the City of Trenton and get 50 competent commissioners and only one competent expert. 10

Q. Did the trial judge who tried this case get \$100. a day, Judge Oliphant? A. I don't know what it figures. 20

Q. That does not average \$100. A. I know what these experts get—\$100. a day when I get them in condemnation cases. They don't get \$100 a day six days in the week, of course.

Q. In other words, you believe Peter Barnum was right—when you get a sucker, bleed him. A. I didn't imply that and didn't say that.

Q. You said Mr. Faherty is the best in the city? A. One of the best, in the best class. 30

Q. And entitled to \$100. a day? A. At least \$100. In some cases I paid more. In the Tucillo case I paid more.

Q. How much? A. \$150. He was entitled to get \$500. instead of \$350.

Q. Have you ever paid less than \$100. per day? A. Yes.

Q. How much? A. I think in one case I paid \$75.00, but that was a case in which the award was

Charles A. Malloy. Called by Plaintiff. Cross.

not high, and we were both willing to take our losses in the case.

Q. Did you ever pay him \$25.00 a day? A. I do not recall ever paying him as low as that.

10 Q. Did you ever pay him \$50. a day? A. One case on a verdict, I know it was less than \$100. a day—that was the Guarniere case of Lambertville, and after we got through paying off the mortgage and taxes, etc., on the property, we decided we would charge less than \$100. a day, and I think considerably less.

Q. Was it a case in which you charged \$25.00 a day? A. Never a flat charge of \$25.00 a day.

Q. How much did you get? A. I just forget, but I think it was less than \$100. a day.

20 Q. Considerably less than \$100.? A. Well, that's just my best guess.

30 Q. As a matter of fact are you not controlled, not by what you would like to get, but, by the circumstances of the people—you would charge if it was a poor man \$25.00 and the Pennsylvania Railroad Company \$100; or if it was the State of New Jersey, or the City of Trenton, you would charge them enough? Isn't that the basis on which these so-called experts in the City of Trenton work? A. No, when I make arrangements with them for my clients they never get more than \$100. a day no matter who it is, and some times, under the circumstances, in a particular case, they may agree to take less.

40 Q. And isn't it a fact that these so-called experts in real estate, as appraisers, will stick on as much as the property will bear? A. That has not been my experience with them, and I have employed many of them. I have employed Mr. Aitkens, Mr. Malloy, Mr. Hilton, Mr. Faherty, Mr. Holcombe.

Charles A. Malloy. Called by Plaintiff. Redirect.

That has not been my experience. In other words, any lawyer protects his client; he provides that there shall not be over a certain charge. I don't know that I ever made an arrangement with anybody for over \$100. per day.

REDIRECT EXAMINATION BY MR. BLACKMAN:

10

Q. You have made arrangements with many to pay \$100. per day? A. Oh, yes.

Q. Has Mr. Faherty been among them? A. Yes.

Q. And the time he took less in this Hunterdon County case was because of the conditions, and was in the nature of a compromise? A. No there was a mortgage and accumulated taxes and other expenses, and these were all paid off out of the condemnation money first, and there wasn't much left.

20

Q. That was the reason he took less? A. That was the reason.

Q. And that same thing applied where you charged somebody \$75.00? A. Yes.

Q. Do you know that is regarded as a customary charge, \$100? A. Yes, sir.

Mr. Budson: Objected to. Its leading. Mr. Blackman knows better.

30

Judge: It has been answered and I will let it stand.

Q. Did you hear Mr. Faherty's testimony in the Branegan case? A. I forget whether I did or not.

(PLAINTIFF RESTS.)

40

Joseph M. Branegan. Called by Defendant. Direct.

JOSEPH M. BRANEGAN, defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. BUDSON:

Q. Where do you reside, Judge? A. In Harrison, Hudson County.

10 Q. Harrison, New Jersey? A. Yes, sir.

Q. And you are the owner of an Inn, known as the Clarksville Inn around here, located on Route No. 1? A. No. 26 Federal—No. 1, I guess.

Q. And do you know Mr. Faherty? A. Yes, sir.

Q. When did you first meet him? A. In November, 1929.

Q. On Sunday? A. Yes, sir.

20 Q. Will you tell the ladies and gentlemen of the jury what transpired, and what you did and what you said? A. In November, 1929, the State issued a summons in a condemnation suit on this particular property referred to. I did not know any particular attorney in Trenton except John Heher and his brother Harry. I went to see John Heher, and told him it was necessary to have some one, a real estate man from Trenton to testify, as I expected the State would have two or three, and I asked if he might know any one and he said several, and in-

30 cidentally mentioned William Faherty, and I said get him—

Mr. Blackman: I object to the conversation with Mr. Heher at this point.

Mr. Budson: Mr. Faherty admitted he was called by Mr. Heher.

40 Judge: The conversation between Branegan and Heher is not material. As a result of that conversation he may tell what he did.

Joseph M. Branegan. Called by Defendant. Direct.

A. As a result of the conversation with him I met Faherty one Sunday. I had been told—

Judge: What you did.

A. What I did was to say that I would pay \$25.00 a day.

Q. To whom? A. To an expert before Mr. Heher— 10

Judge: Did you tell Mr. Faherty that or did you tell Mr. Heher that?

A. I told Mr. Heher that. He had been sent by him.

Mr. Blackman: I object to that.

Objection sustained. 20

Q. As a result you met him there on Sunday?

A. Yes, and we stayed 10 or 15 minutes. My daughters were along and we took a ride into Trenton, and he said he would be there the following Tuesday, I think it was—that day I was to be before the Condemnation Commission, and I passed there and he was there, and found him there, and came on down to the City Hall to the court room. Was there a half day and the case went off. In the meantime I was taken ill and operated in the hospital, and they waited some time, postponed the trial of this matter. Mr. Hoffman kept me informed, and when it looked as if it might be some months before I was able to attend, I advised them to go on without my presence. The information I had was that they had spent three days, roughly, before the Condemnation Commission, and when 30
40

Joseph M. Branegan. Called by Defendant. Direct.

the matter was explained to me about the amount the Condemnation Commission had awarded I said it was not half sufficient and suggested it be appealed—an appeal be taken. I had then gone back to the hospital a few weeks, and in June of the following year the case came on in Judge Oliphant's court. Monday there was no testimony, except I
 10 went out with the Jurors to investigate and inspect the property. The next day, Tuesday, about quarter after 10, the Judge called the first witness, or the clerk called, and it was Mr. Hilton. Mr. Hoffmann, who was my attorney, said Hilton and Faherty want to see you down in the court room, and I went down and he said you know that we expect \$100. per day for our services. Now remember in the meantime the clerk had called Hilton to
 20 the stand, and I said that's not my understanding. I said my understanding with Mr. Heher is you receive \$25.00 a day—and he said I don't care anything about that, we put in five days on this condemnation and we expect \$500, and my answer to them was "Take the stand". They argued with me and the clerk again called Hilton, and I said, "take the stand". I never consented or agreed to pay them more than \$25.00, which was the conversation with Mr. Heher, and that's the whole case as far
 30 as this defense is concerned. I did inquire as to what the State of New Jersey paid and it was \$50.00 a day, and on that \$25.00 was enough for me, an individual.

Q. You are the holder by assignment of two certain judgments? A. Yes, sir.

Q. Have you those assignments with you? A. Yes, sir.

Q. I show you an assignment executed by the
 40 Hanover-Capital Trust Company, C. Sommer, Vice

Joseph M. Branegan. Called by Defendant. Direct.

President, and Willet M. Dennis, Secretary, in the sum of \$348.77, together with interest to be computed, and I ask whether that is—

Mr. Blackman: I object to testimony on this assignment of judgment, and of course might as well object to all that has been said up to the present time based upon these judgments, on the ground that I think they are not proper subject matter for a set off. The judgments have already been executed in the District Court against Mr. Faherty, the plaintiff in this case, upon which execution has been issued and levies have been made. It seems to me that is *res judicata*. The judgments have already been entered and cannot be made a part of this suit, to subtract from the judgment we are attempting to get today; because surely if that were true—if the jury should say we are entitled, and we are claiming Judge Branegan is entitled to this set off, then their verdict will be the difference between the two, but those judgments still exist, and may be sold or assigned within the next 20 minutes—anything might happen to them. These judgments are judgments and you cannot go any further, and why bring them to life again in another suit. I think it is certainly improper for a set-off.

Mr. Budson: A judgment existing in a tort action, I think the act provides can be set off in the District Court. A judgment is a personal right, personal property, assignable or transferable. We are holders of these judgments, and our only means of obtaining any redress is to set it off, because failure to set it off bars us from forever claiming it. That's why we appealed, to get in the set-off.

Joseph M. Branegan. Called by Defendant. Direct.

Judge: Have you anything further to say?

Mr. Blackman: I think that is *res judicata*.

Judge: You have had your legal remedy.

Mr. Budson: I have had it? I acquired it by assignment, but I haven't had any remedy at all. Our remedy is to come here and set it off.

10

Judge: That is not a matter existing between this plaintiff and defendant, that has been adjudicated. It is about time for adjournment, and I will take an adjournment until quarter of 2, and then rule upon the status of these judgments. I confess the situation is perplexing.

Mr. Blackman: Execution has been issued, and levy has been made on independent property of Mr. Faherty.

20

AFTERNOON SESSION—1:45.

JUDGE BRANEGAN is recalled, and Direct Examination continued by Mr. Budson.

30

Mr. Budson: I offer first two assignments of judgments, for the purpose of proving my counterclaim—a judgment obtained by the Hanover-Capital Trust Company against William Faherty, et als., which judgment is Docketed in Book 6 of Judgments, page 112, in the Court of Common Pleas for Mercer County, and is in the sum of \$348.77.

40

I also offer a judgment, or assignment of judgment by the Hanover-Capital Trust Company, to Joseph M. Branegan, executed the 9th day of May, 1932, docketed in the District

Joseph M. Branegan. Called by Defendant. Direct.

Court of the City of Trenton the 31st day of June, 1931, Book 137, page 476, in the total sum of \$63.70.

I also desire to offer in evidence the original docket books, being Volume 6 of the Common Pleas Judgments of Mercer County, and Volume 137 of the District Court of the City of Trenton, page 476.

10

Mr. Blackman: I object to the offer of these assignments and these books, also to the set-off for the reasons stated previously, and rest.

Judge: For the purposes of the record suppose you re-state your reasons.

Mr. Blackman: That an assigned judgment is not proper subject matter for a set-off in a suit against the assignee, and for the further reason, although that is not proven at the present, because the judgment was not awarded until after the commencement of the original action, which I think was in October, 1931, and the court record as read by Mr. Budson of these assignments is that they were made in May, 1932. I think they are two important reasons.

20

Judge: The objection to the offer will be sustained.

Exception granted.

30

Q. How many bath rooms are there in this Clarksville Inn, Judge? A. Two.

Q. How many were there in the same inn on or about the month of November, 1929? A. Two.

Q. And how many bath rooms throughout the time Mr. Faherty claimed he inspected the premises for the purpose of testifying in your case? A. Two.

40

Joseph M. Branegan. Called by Defendant. Cross.

Q. There are not more than two? A. No.

Q. Were there 6 or 7 or 8 at any time? A. Never.

Q. And there are not that many now? A. No.

Q. Did you have any conversation with Mr. Faherty immediately after the judgment was rendered by the jury in this court? A. I did.

10 Q. What was that conversation? A. Well, he said, Judge, you certainly took a licking on this verdict, and he also mentioned that to somebody down at the station when I drove down.

Q. Did Mr. Faherty ever render you a bill for his services? A. Never.

Q. Did you ever receive from him a statement telling you how much you were indebted to him? A. Never.

20 Q. He stated he came down to your house in Harrison and asked for money? A. No, he didn't even get into my room, I was too sick at the time.

CROSS EXAMINATION BY MR. BLACKMAN:

Q. Who was present when Mr. Faherty told you that? A. Told me what?

30 Q. About your taking a licking? A. He looked over to me as the jury came in that afternoon—the jury was there, and who else I don't know, some friend of his, I don't know what his name is—he introduced me to him, but I don't know his name.

Q. Was it Mr. Scoville? A. No—he might have been there, I think he was, too.

Q. Mr. Scoville represented the State? A. Right.

Q. How many toilets are there in your property at Clarksville? A. Three.

Q. In addition to bath rooms? A. No, only one.

40 Q. Are there any lavatories or basins in the bed rooms? A. Yes.

Joseph M. Branegan. Called by Defendant. Cross.

Q. How many? A. I couldn't tell you exactly, but the rooms upstairs have water basins.

Q. Where are the bath rooms? A. Second floor.

Q. Both of them? A. Yes, and lavatory on the first floor.

Q. No bath room? A. No.

Q. Is there any lavatory on the second floor?

A. The bath rooms—that depends on what you mean, little wash basins in some of the bed rooms. 10

Q. Running water? A. Yes.

Q. Is there a third floor? A. If you consider it so, very dark in places, never used only as an attic.

Q. Any toilets up there? A. No.

Q. Is it finished? A. No.

Q. Is the property still located where it was? A. No, it is not. 20

Q. Did you move it to the spot where it is now located from somewhere else? A. Yes.

Q. Do you still own it? A. Yes, I do.

Q. You testified, did you not, that you met Mr. Faherty and Mr. Hilton in the Circuit Court just before the jury trial? A. Yes, that's true.

Q. Then is when you had the conversation about the compensation? A. Well, if you call it a conversation. I was told by Mr. Hoffman, my attorney—I happened to be in the retiring room, I believe, and he told me they wanted to see me. 30

Q. And they did see you? A. They did.

Q. And the compensation was fixed? A. His name had been called to take the stand.

Q. Mr. Hilton's? A. Yes.

Q. And this was when the jury was in the box? A. Oh, yes, and everything all ready.

Q. And the first thing that happened? A. Yes, his name was called, and I was told he wanted to see me. 40

Joseph M. Branegan. Called by Defendant. Cross.

Q. His name was called to take the seat in the witness box? A. Yes.

Q. And after the interview with you he went to the witness box? A. If you call it an interview, I call it simply a hold-up.

Q. You testified to this same effect before Judge French? A. Yes.

10 Q. As to what happened at the trial and Mr. Hilton being already called? A. Eh, eh.

Q. And don't you remember Mr. Hoffman, your lawyer, during the recess came down and looked at the record, and found out just the true situation? A. The record is there and Mr. Hoffman's testimony will show.

Q. The transcript of Mr. Hoffman's testimony? A. Yes.

20 Q. In the District Court in Mr. Hilton's case? A. Yes.

Q. Do you remember whether Mr. Hoffman came down during recess? A. I wasn't with him and I don't know anything about it.

Q. You know he was excused for that purpose? A. I don't remember that.

Q. Did he testify later in the day? A. He did.

30 Q. What was his testimony then? A. I don't remember. It is in the transcript, and I would like to have this jury listen to it.

Q. Did the jury go to view the property on the first day? A. The first day, the jury, yes.

Q. And no testimony was taken? A. I don't think so, I think the records will show there wasn't.

Q. Didn't you testify this morning there was not? A. As I remember now there was not.

40 Q. Then you are mistaken about Mr. Hilton being ready to take the stand? A. It was in the morning the first thing that Mr. Hilton refused to take

Joseph M. Branegan. Called by Defendant. Cross.

the stand. Now what happened—I don't think we went on the first day, that Monday.

Q. You testified that you did not go on that first day? A. As I remember that is true.

Q. Then you are mistaken that he was called? A. He was called.

Q. That day? A. No, the day after.

Q. Before recess you testified rather positively there was no testimony taken that first day? A. 10
As I remember there was not. It was when his name was called he refused to take the stand.

Q. It does make a lot of difference whether there was testimony that day or not, because you stated originally nothing happened that first day—there was no testimony offered. Now that is correct? A. 20
The jury was taken out in a bus that morning, and I went with them, probably at 11:30, and if I remember correctly nothing was done, and we came back the next day. It is possible that he may have been called that afternoon, if we went on that afternoon, but my recollection is that we did not go on until the next morning.

Q. When did you have the conversation then? A. Whenever Hilton's or Faherty's name was called.

Q. Now it seems very important as to whether there was any testimony that first morning. A. 30
There was not by either of these gentlemen up to that time.

Q. I show you the record of the proceedings on that day of Mercer County Circuit Court, made Monday, June 9th, 1930, at 10 A. M. A. Yes.

Q. Now here is the list of jurors, and it says here, opening for plaintiff by Mr. Hoffman; opening for the defendant by Mr. Scoville? A. That's right.

Q. Mr. Hoffman for the plaintiff called the following witnesses: Mr. Faherty— A. He was the 40
first witness to be called.

Joseph M. Branegan. Called by Defendant. Cross.

Q. Now, it's Mr. Faherty instead of Mr. Hilton.
A. Either one, both had me down trying to inveigle me to pay \$100 per day instead of \$25.00 stated in the agreement with Mr. Heher.

10 Q. Then it was Mr. Faherty and not Mr. Hilton? A. Either one of them. I know it was before the case started. It's something that happened two years ago, so it must have been Mr. Faherty.

Q. Your idea when you testified this morning was that it was one or the other, and it didn't make any difference which one? A. It was postponed at that time. It may have went on in the afternoon. As I recall it was in the morning I was asked to go down and see them by Mr. Hoffman.

20 Q. After that Mr. Faherty was sworn and evidently testified, he did testify then? A. Yes, he did.

Q. And Mr. Hilton went on and testified? A. Yes.

Q. Then Mr. Scoville called somebody out of turn? A. I suppose that must be true if the records show so.

Q. And then you were sworn? A. Yes.

Q. And Mr. Hilton was recalled? A. Yes.

30 Q. And that is what the record shows? A. That's true, yes.

Q. That is really what happened that first day? A. I say it must be, that was a Monday.

Q. Yes, Monday. A. And this would be Tuesday's work.

Q. Then here's the next day and half day? A. Was there any testimony by these two gentlemen running in between—can you show the jury that record, where there is any?

40 Q. I am doing the questioning—don't ask me anything. Did Mr. Faherty testify on the second day?

A. The record will speak for that, I don't know.

J. M. Branegan. Called by Defendant. Redirect.

Q. This is the second day, June 10th? A. Yes.

Q. Mr. Samuel Hilton was continued from the day before, and then Mr. Hoffman, your lawyer, called these witnesses— A. Yes.

Q. Mr. Dolphin? A. Yes.

Q. Mr. Fissell? A. Yes.

Q. Mr. Ehret? A. Yes.

Q. Mr. Sheradi? A. He's an engineer for Mr. Ehret. 10

Q. Then Mr. Faherty was recalled? A. Yes.

Q. Well, the fact is, and of course you are willing to state that shows the correct situation, and you were mistaken when you said this morning that Hilton was called first? A. It may have been that they both spoke to me, both of them were there.

Q. You are also mistaken, are you not, when you say no testimony was taken the first day? A. On this record we carried on in the afternoon after we came back from the investigation. I remember we had lunch at the hotel. I notified these gentlemen to be there. If the record shows the examination was continued, I am absolutely satisfied to rely on this record. 20

Q. Then you were mistaken that there was no testimony the first day? A. Yes, if that record shows it.

Q. Both Mr. Faherty and Mr. Hilton testified on both days? A. If the record shows so they must have done so. 30

Q. Didn't you read the record? A. Yes, I would say they did, but they have three days in for that time.

REDIRECT EXAMINATION BY MR. BUDSON :

Q. Are there any facts that this record discloses you would like to state to the jury? A. Yes, it 40

J. M. Branegan. Called by Defendant. Redirect.

discloses that Richard T. Dolphin, who testified, is a graduate of Stevens, and he charged me \$25.00 a day.

Mr. Blackman: Object to what he charges.

10 A. And W. C. Ehret, who testified, charged me \$50.00 a day.

Mr. Blackman: Objected to as having nothing to do with this transaction at all.

Judge: I don't suppose the record shows that?

A. No, other than they testified for me.

20 Q. Who else testified for you outside of Faherty and Hilton? A. Mr. Fissell.

Q. Who is he? A. A man from Newark, and he has built a great many buildings, etc.

Q. He testified? A. Yes.

Q. What was his price?

Mr. Blackman: I object. I don't think it is fair for Mr. Budson to ask.

30 Judge: I do not think what he paid other experts is admissible here. This man was not an expert real estate man, he was a building expert. I don't think that is admissible.

Question withdrawn.

(Defendant rests.)

Charge by Judge Robbins.

Mr. Blackman: The only rebuttal I would want to use, is to repeat where the conversation took place just previous to the trial being called, but I don't want to clutter up the record.

Judge: That would not be rebuttal.

Mr. Blackman: That's true. I don't think it is. 10

Judge: That would not be admissible as rebuttal—what they testified to on direct.

(Argument.)

Judge: Mr. Blackman, the Clerk informs me that the jurisdiction of the District Court cannot exceed \$500. Therefore, interest could not be allowed on the \$500. claim.

Mr. Blackman: That is correct.

Judge: I am not familiar enough with the law of the District Court, so I am calling your attention to that fact. 20

Mr. Blackman: Only interest on the suit for \$250, and that amounts to \$33.75.

Judge: I am sorry I am not more familiar with the District Court rules.

Charge by Judge Robbins. 30

Ladies and gentlemen you have been impaneled from the regular panel of jurors called to hear cases in the Circuit and Common Pleas Courts. This case, or those cases, however, have been sent up to this court for trial from the District Court of the City of Trenton. For some reason I presume Judge French did not desire to preside at the trial of these cases, and the law then provides they may be sent 40

Charge by Judge Robbins.

to the Common Pleas Court, and a judge of the Common Pleas Court presides over the District Court and hears the matters in controversy.

10 Therefore, I am sitting as a judge of the District Court so far as these cases are concerned, and you are trying these two cases as jurors impaneled in the District Court, and your verdict, whatever it may be, will be a verdict in the District Court of the City of Trenton.

I am not very familiar with the pleadings and practice of the District Courts, but from the papers before me and the statements of counsel it seems conclusive that two actions have been started in the District Court of the City of Trenton by William F. Faherty, the plaintiff, against Joseph M. Branegan, the defendant.

20 The state of demand in the larger case discloses that the plaintiff claims of the defendant the sum of \$500, which in that case is the limit of the jurisdiction of the District Court of the City of Trenton, and therefore so far as case No. 1, if we may term that, is concerned, the extreme verdict which you can return is that of \$500 plus costs.

30 There is before me a summons and complaint, entitled in the same court, between the same parties, in which the plaintiff, Mr. Faherty, demands the sum of \$250.00. That, of course, is only half the amount of the jurisdiction of the District Court. Now, by consent of counsel, these two cases are being tried together, and you as members of this jury, are to pass upon both cases, but they must be dealt with separately. You are to determine the amount due the plaintiff, if anything, on the state of demand for \$500; and you are to determine the amount due, if anything, on the state of demand for
40 \$250. So you see you have two distinct causes of

Charge by Judge Robbins.

action to deal with. You could not render one verdict, assuming that you might desire to do so, of \$750.00, because that would be more than the jurisdiction of the District Court. Therefore, you will have to deal with the cases separately and return your verdicts accordingly, as I have instructed you.

The state of demand is similar in the cases. There are two counts in the state of demand. The first count set up in the state of demand, the plaintiff complains that the defendant, Joseph M. Branegan, agreed to pay the said William F. Faherty for said services in making the said appraisal and as an expert witness the sum of \$500. The same language is used in the state of demand in the other case which you have to consider, and that the plaintiff did perform these services and therefore is entitled to be paid in the one case the sum of \$500, and in the other case the sum of \$250. 10 20

The other count in the state of demand is that the plaintiff, William F. Faherty, was employed by the defendant, Joseph M. Branegan, immediately prior to March 24th, 1930, to act as an expert appraiser for his property, having been or about to be condemned by the State of New Jersey, and he agreed to pay the plaintiff for said services the sum of money that said services were reasonably worth. Practically the same thing is set up in the state of demand for the \$250. 30

Now, in your consideration of these cases, ladies and gentlemen, you have heard the testimony, and it is your duty to consider the testimony that has been produced here. If Judge Branegan, the defendant, agreed to pay the sum of \$500 and the sum of \$250, as alleged in the first counts of the state of demands, and the plaintiff performed the services for which he agreed to pay the said respective 40

Charge by Judge Robbins.

amounts, if those things are proven to your satisfaction by a fair preponderance of the believable evidence, then of course the plaintiff is entitled to verdicts at your hands. When you come to the consideration of the other count in the state of demands, then of course you are to analyze the testimony and determine whether the plaintiff was employed as such expert, and if he was employed as such expert, under that count in the demand which he relies upon, what were such services reasonably worth—services of that nature and like amount. Then it is for you to determine under the proofs offered what those services were reasonably worth in the respective cases, bearing in mind all the time, ladies and gentlemen, that you are dealing with two distinct cases; the first case for services performed on or about March 24th and 25th, 1930 and prior thereto, and in the other case for services performed June 9th, 10th and 11th, 1930.

You are to consider the testimony that has been offered, and you are to bear in mind that it is always incumbent upon the plaintiff to prove by a fair preponderance of evidence his contention. You are the sole judges of all matters of fact. You are the sole judges of the credibility of the witnesses, and you are to determine the amount of credit to be given the various witnesses sworn in the cases. You are to decide the cases upon the evidence produced before you here in this court room, and you are to render your verdict based upon the evidence as you have heard it during the progress of this trial.

The law you are to take from the court and apply the principle of the law, as the court has instructed you, to the facts that have been proven before you by the witnesses produced in the prog-

Charge by Judge Robbins.

ress of the cases. You are to be guided by the weight of the testimony, bearing in mind, as I have said, that it is incumbent upon the plaintiff to prove by a fair preponderance of believable evidence his contention. You are not necessarily bound by a greater quantity of witnesses on one side than on the other, as it is the quality rather than the quantity of the testimony which should be carefully weighed in your deliberations. You will now be placed in charge of an officer and retire to consider your verdicts. 10

I, EMMA R. HULIT, a stenographer duly sworn to report stenographically the evidence given in the cases of William F. Faherty, plaintiff, vs. Joseph M. Branegan, defendant, do hereby certify that the foregoing is a true and correct transcript of the evidence given on the 27th day of September, A. D. 1932, before the Honorable A. O. Robbins, Judge of the Common Pleas Court of Hunterdon County, New Jersey, presiding at the trial of these cases as a Judge of the District Court of the City of Trenton. 20

Dated, Trenton, N. J., Jan. 17th, 1933. 30

EMMA R. HULIT.

I, ADAM O. ROBBINS, Judge of the Common Pleas Court of the County of Hunterdon, New Jersey, hereby certify that I presided at the trial of the cases of William F. Faherty, plaintiff, and Joseph M. Branegan, defendant, in the District Court of the City of Trenton, on the 27th day of September, A. D. 1932, and that the foregoing is a transcript of the evidence given at said trial as certified by Emma R. Hulit, a stenographer duly sworn to report the evidence given in the said cases.

Dated, Trenton, New Jersey, Jan. 17, 1933.

A. O. ROBBINS,
Acting Judge.

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Notice of Argument.

NEW JERSEY SUPREME COURT,

(No. 58720 and No. 58721.)

TRENTON DISTRICT COURT.

WILLIAM F. FAHERTY, Plaintiff-Appellee,	}	On Contract. On Appeal.
vs.		
JOSEPH M. BRANEGAN, Defendant-Appellant.		

10

To: WILLIAM E. BLACKMAN, Attorney for Plaintiff-Appellee:

20

SIR:

TAKE NOTICE of the argument of the issue joined in this cause, before the Supreme Court of New Jersey, to be held at the State House, in the City of Trenton, State of New Jersey, on Tuesday, the second day of May, 1933, at ten o'clock in the forenoon (Daylight Saving Time), or as soon thereafter as the said Court can attend to the same.

30

Dated, April 22, 1933.

Respectfully yours,

FRANK W. HASTINGS,
 Attorney for Defendant-Appellant.

40

New Jersey Court of Errors and Appeals

William F. Faherty, Plaintiff-Respondent,	{	On Contract
vs.		On Appeal
		from Trenton
		District Court.
		Cases 58720
		and 58721.
Joseph M. Branegan, Defendant-Appellant.	{	On Appeal from
		Supreme Court.

MEMORANDUM
FOR DEFENDANT-APPELLANT

Two suits were started in Trenton District Court by William F. Faherty, against Joseph M. Branegan, for his services as an expert in real estate to appraise property and testify in condemnation proceedings by the State of New Jersey before commissioners and before a jury on appeal. Faherty claimed a total of \$750.00 for services but split his claim into two actions, claiming first for services before the commission, and second before a jury, claiming \$500.00 in the first suit, and \$250.00 in the second suit, as will appear by the States of Demand, pages 14-18. The set-off (p.19) was filed by Branegan, and the transcript of judgment (p.7) shows the filing thereof and certifies the two cases were tried together before a jury and that the dockets and assignments of judgments mentioned in the set-off were offered, and that the Court would not permit the assignments to be introduced. This further appears in the testimony (pp.55-57).

Appellant specifies just two grounds of appeal (p.12), viz.: that plaintiff had but a single cause of action in a sum in excess of the jurisdiction of the District Court, and second, the refusal to entertain the set-off or evidence to prove the same.

The subject matter of the two suits constitute a single cause of action beyond the jurisdiction of the District Court.

It would appear from plaintiff's own testimony, that the only agreement with Branegan was a single one made in the midst of proceedings as stated by plaintiff himself (p.32, ll. 11,18), agreeing to pay \$500 for services to date and \$100 per day in Court before the jury, at the time he was about to take the stand. Witness Hilton (top p.42) in almost identical language states the same arrangement. Nowhere else do the proofs show any definite understanding, and we submit this evidence shows the single agreement to pay for past and future services, all of which plaintiff was required to perform as an entire contract. The parties had but the one interview and understanding as to payment for services. And even where there are several demands by the same plaintiff against the same defendant arising out of one transaction, all matured before suit begun, it has been held that bringing two suits where one would suffice is "oppressive".

Lee v. Township of Kearney, 42 N. J. L.
543.

And separate suits arising out of one action cannot be split one for personal injury and one for property damage by the same plaintiff.

Ochs v. The Railway Co., 80 N. J. L. 148;
Paton v. Doyne, 74 N. J. L. 319;
C. J. 1114, R. C. L. 357 Sec. 22.
Title Actions.

The whole trend of modern decisions shows that the Courts will not permit unnecessary splitting up of a cause or causes of action accrued in favor of one party against another, prior to commencement of suit, and it is submitted that the proofs here clearly show an attempt to split up one agreement between the parties for all services by an arbitrary separation marked only by the point of time when such services ended before the

commissioners and began before jury. As well might it be said that when plaintiff first viewed the premises and made up his appraisal, that was one cause of action; that when he testified before commissioners the first day, that was another cause of action; and so on, it would be susceptible of a splitting into half-a-dozen causes of action. Yet when the suit was commenced, the total compensation had accrued to the plaintiff.

II.

The set-off should have been received and appellant permitted to prove the judgments and assignments therein mentioned.

The trial Court (p.57) seems to have refused to entertain this set-off upon an objection that it was not proper subject matter for a set-off. Not only does the District Court Act, Section 60, but also our general statute law recognizes the right of set-off. And Section 61 precludes a defendant in the District Court, who fails to present his set-off or counter claim, from having or maintaining any action thereon in any future suit unless the amount exceeds the jurisdiction of the Court.

And judgments are universally recognized as proper subject matter for a set-off. See Title Judgments, 15 R.C.L., page 820, Art. XII, Sec. 287. This also applies to judgments held by assignment. See same title page 823, Sec. 291.

Wherefore, it is submitted that judgments herein should be reversed for the foregoing reasons with costs.

Respectfully,

Frank W. Hastings,
Counsel for Defendant-Appellant

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NEW JERSEY
Court of Errors and Appeals

WILLIAM F. FAHERTY,

Plaintiff-Respondent,

vs.

JOSEPH M. BRANEGAN,

Defendant-Appellant.

On contract.
On appeal
from New
Jersey Su-
preme Court.

BRIEF OF THE PLAINTIFF-RESPONDENT

There are two points only in the specifications of determinations of the Trenton District Court, with which the appellant is dissatisfied in point of law. First that the court did not have jurisdiction and the second the District Court did not permit a set-off.

Point I

The District Court did have jurisdiction because the amount sued for in one case was \$500.00, and in the other \$250.00, two independent causes of action not arising out of the same transaction as the State of Demand clearly shows. One was for expert serv-

ices in a condemnation proceeding before commissioners, which was completed, and the other for similar services in an appeal tried before court and jury. The first transaction for which a charge of \$500.00 was made, was ended, the services performed and his fee earned, and that would have been all of it, if the defendant had not much later decided to appeal the award, and he then again employed his services. When there was intimation that the defendant might dispute the \$500.00 fee, a conference was held in which he agreed to pay it. He also agreed to pay for his further service.

The case of *Paton vs. Dayne*, 74 N. J. L. 320; 65 Atl. 843, held:

“In case where there were several notes between the same parties that they were distinct causes of action and suit would lie upon each.”

There is no doubt that the court could consolidate similar suits between the same parties for the purpose of saving costs, but the right to bring separate suits has always been admitted.

The same question was raised in the case of *Hilton vs. Branegan*, 160 Atl. 577. This case grew out of the same transaction as the case now being appealed. The State of Demand was identical except as to the amount involved in the case tried in the District Court against the same defendant with the same counsel, and the same question raised, and after the verdict an attempt was made to secure a writ of certiorari in New Jersey Supreme Court, which that court refused. The head note of that case is as follows:

“Evidence held to show that employment to testify before commissioners and subsequent request to testify before appellate court re-

specting same property were separate employments, bringing claims for each within District Court's jurisdictions."

In the trial of the case at bar in the District Court, there was no objection made to the jurisdiction of the District Court as will appear by the State of the Case, and in fact the defendant agreed that the one jury should hear both cases, and there being no objection at the trial, it can not be raised now.

Point II

The judge of the District Court properly refused defendant's setoff and excluded evidence to prove same. It appears that the judgment sought to be set off was assigned to the defendant, the first one, January 15, 1932, and the second, May, 1932 (State of Case, pp. 21 and 24), whereas the summons starting the suits were served on November 30, 1931, quite a long time before the judgments were assigned to the defendant.

All of the decisions in New Jersey hold that the set-off must have been a subsisting right in the defendants at the time the action was commenced. *Johnson vs. Kaiser*, 40 N. J. L. 286.

A very early case, that of *Reeves vs. Hatkinson*, 3 N. J. L. 319, held that:

"A judgment or other debt to be set off must be due the defendant in his own right. An assigned judgment may not be set off in a suit."

In the case of *Whitaker vs. Turnbull*, 18 N. J. L. 172, the court held:

"A note made or endorsed by the plaintiff and obtained by the defendant after an action has been commenced can not be set off in that action against the plaintiff's demand."

Citing *Eland vs. Kerr*, 1 East R. 275, *Carpenter vs. Butterfield*, 3 Johns Cases 145.

Even if the judgment were owned by the defendant previous to the starting of the suit (which was not the fact in this case) it would be entirely within the discretion of the court whether to allow the judgment as a set-off. It is not a set right, and so held in *Brown vs. Hendrickson*, 39 N. J. L. 239; *Strautz vs. Kearney*, 47 N. J. L. 56; *McAdams vs. Randolph*, 42 N. J. L. 332, and *Lautsch vs. West N. Y.*, 57 N. J. L. 234.

Respectfully submitted,

WM. R. BLACKMAN,

Attorney for Plaintiff-Respondent.

