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State of Demand

STATE OF DEMAND

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND, Plaintiff,
vs.
LILLIAN F. HOWE, Defendant.

Action at Law
On Contract.
State of Demand.

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND, Plaintiff,
vs.
MURRAY RUSHMORE, Defendant.

Action at Law
On Contract.
State of Demand.

FIRST COUNT

Plaintiff demands of defendant $300 on contract for balance of moneys due from defendant to plaintiff on an agreement to build a garage and driveway.

State of Demand

SECOND COUNT

Plaintiff demands of defendant $300 on contract for balance due for work, labor, services and materials furnished defendant by plaintiff in the building of a garage and driveway.

W. S. ANGLEMAN,

Attorney for Plaintiff.

Notice of Appeal

NOTICE OF APPEAL

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND. Plaintiff, vs. LILLIAN F. HOWE, Defendant.	Action at Law. On Contract. Notice of Appeal.

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND, Plaintiff, vs. MURRAY RUSHMORE, Defendant.	Action at Law. On Contract. Notice of Appeal.

TAKE NOTICE that the plaintiff CHARLES H. HAND hereby appeals to the SUPREME COURT OF NEW JERSEY from the judgment of the DISTRICT COURT OF CITY OF PLAINFIELD rendered in the above-stated action on November 22,

Notice of Appeal

1922, and from each and every determination of such DISTRICT COURT in points of law made adversely to plaintiff's contentions.
Dated, November 23, 1922.

Respectively,

W. S. ANGLEMAN,
Attorney for Plaintiff.

Directed severally to defendants and service severally acknowledged by defendants November 23, 1922.

Order Extending Time

ORDER EXTENDING TIME

DISTRICT COURT OF THE
CITY OF PLAINFIELD

CHARLES H. HAND, Paintiff.	Action at Law.
vs.	On Contract.
LILLIAN F. HOWE, Defendant.	Order Extending Time.

DISTRICT COURT OF THE
CITY OF PLAINFIELD

CHARLES H. HAND, Paintiff.	Action at Law.
vs.	On Contract.
MURRAY RUSHMORE, Defendant.	Order Extending Time.

Application being made for an order to extend the time within which to agree upon or settle the case for appeal in the above-entitled cause, and on good cause shown.

IT IS ORDERED, on this Thirteenth day of

Order Extending Time

December, Nineteen Hundred and Twenty Two, that furter time be granted to agree upon or settle the case for appeal in the above-entitled cause, and that the time within which to agree upon or settle the case for appeal in the above-entitled cause be, and hereby is, extended to and including the Tenth day of January, Nineteen Hundred and Twenty Three.

JOHN R. CONNOLLY,
Judge.

Similar orders made January 10, 1923, January 19, 1923, January 31, 1923, February 5, 1923 and February 10, 1923, extending the time to February 15, 1923.

State of Case as Settled by Court

STATE OF CASE AS SETTLED BY COURT

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND,
Plaintiff,
vs.
LILLIAN F. HOWE,
Defendant.

Action at Law
On Contract.

DISTRICT COURT OF THE CITY OF PLAINFIELD

CHARLES H. HAND,
Plaintiff,
vs.
MURRAY RUSHMORE,
Defendant.

Action at Law
On Contract.

The parties or their despective attorneys being unable to agree upon a State of the Case, and having applied to me, JOHN R. CONNOLLY, Judge of said Court, within the time limited by law and as extended by order made herein, do hereby settle the case as follows:

The above two cases were tried together.

The actions were brought to recover the balances claimed to be due for building a garage and driveway, for which each defendant was claimed to be responsible for one half.

From the evidence, I found the plaintiff, Hand, owned property occupied by defendant Rushmore, as tenant, and there were negotiations between them for sale. Defendant Howe owned adjoining property; Hand sold his property to defendant Rushmore. Hand agreed to build a garage and driveway for defendants, half on each lot, for the sum of Seven Hundred Dollars ($700.00) to be paid one-half by each defendant (See Exhibit H for plaintiff).

It was intended that this agreement should be made part of agreement of sale of plaintiff's property to Rushmore, but it was not. Though dated after the agreement for sale of property, it was signed prior to the execution of that paper.

About a month after title passed from Hand to Rushmore, Hand began building the garage under the agreement.

There were no specifications.

Plaintiff completed the garage, which was satisfactory to and was accepted by defendants, and the latter paid plaintiff Seven Hundred Dollars ($700.00), the contract price, in two checks each for Three Hundred Fifty Dollars ($350.00) (one from each defendant) sent by mail by Rushmore

with a letter, copy of which was offered in evidence (Exhibit 2 for defendant) which plaintiff endorsed "on account" before collecting same.

Plaintiff claimed he built a larger garage than he expected to build for defendants when he made the agreement with them. He testified he had intended to build one twelve by sixteen feet (12' x 16'), but actually built one twelve by twenty (12' x 20'), and that after he had ordered the cement blocks for the garage Mrs Howe, one of the defendants, asked him how large was the garage to be, and on being told sixteen feet long, she asked him to make it larger. This Mrs. Howe denied. Rushmore, the other defendant, testified he told plaintiff when the agreement was made, he wanted the garage twenty feet (20') long, and plaintiff had agreed to build it so; that he was not around after plaintiff started work on the garage, and therefore could not have agreed to any changes.

Plaintiff also testified that when the cement blocks came, Mrs Howe, one of the defendants, asked him what kind of a roof he intended to put on the garage; he replied a slant roof. He said she stated she did not want that kind. He said he then told her if she wanted a hip roof it would cost One Hundred ($100.00) to One Hundred Fifty ($150.00) dollars more. That she then said, "Go ahead. I don't want a slant roof. Mrs Howe, one of the defendants, denied she authorized the plaintiff to change the roof, but admitted about inquiring about the form of the roof he intended to build, and denied she told him to "Go ahead" and change the roof at an increase cost of One Hundred ($100.00)

to One Hundred Fifty ($150.00) Dollars more. She testified she said to plaintiff, "Well, you will have to talk to Mr. Rushmore. I have nothing to say." She denied she authorized any changes in the contract, and denied she agreed to pay more than Seven Hundred Dollars ($700.00), the contract price.

Plaintiff said he told defendant Rushmore about the change in roof asked by defendant Howe. Rushmore denied this and testified the garage as completed was built as he expected it would be, and it was what plaintiff and he agreed on.

Plaintiff also claimed he painted up the garage outside and smoothed it up inside, put in a wash stand and changed the doors at an increased cost of Eight Dollars ($8.00) and put in two (2) work benches; that he also put in a full width cement driveway, instead of two (2) runways eighteen (18) to Twenty (20) inches wide as he had intended. That these changes were put in either at the suggestion of defendant Howe or after he consulted with her, and after she told him to go ahead. He testified the garage cost him to build Nine Hundred Eighty-eight Dollars and Eighty-seven Cents ($988.87), and that he paid Sisteen Dollars and Forty Cents ($16.40) for cleaning up the premises after the garage was finished.

Defendant Howe denied having any talk whatsoever with plaintiff, about changing the driveway; she admitted plaintiff told her he was smoothing up the garage inside and painting up outside, thus to make a better job, and putting in a work bench, but she said she did not tell plaintiff to do it; that she

authorized no changes whatsoever, and did not agree to pay more than Seven Hundred Dollars ($700.00) for the garage; that the original arrangements were all made by defendant, Rushmore.

Defendant Rushmore testified the garage was to be twenty feet (20) long; that he had no talk with plaintiff about the style or form of roof; that plaintiff had agreed before contract was signed to put a wash stand in front; that plantiff agreed to build such garage as defendants' wanted; that he authorized no changes in the buiding of the garage that the garage as finished by plaintiff, was the garage plaintiff had agreed to build for him; and that sketch exhibit (A) for plaintiff was not shown to him before the trial.

Plaintiff presented defendants with a bill for One Thounsand Nine Dollars and Forty Cents ($1009.40) actual cost to him of building garage but defendants refused to pay more than Seven Hundred Dollars ($700.00), the contract price.

I found as a fact that plaintiff agreed with defendants to build a garage for them for Seven Hundred Dollars ($700.00) that no changes or additions were ordered or authorized by either defendant, and that neither of them agreed or were liable to pay plaintiff for making any changes in the garage, and that as the plaintiff had been paid the contract price, Seven Hundred Dollars, ($700.00) judgment should go for them.

Various Exhibits were offered and marked in evidence. Case settled and signed this 15th day of February, 1923.

JOHN R. CONNOLLY, Judge.

DOCKET ENTRIES

In the District Court for the City of Plainfield, County of Union and State of New Jersey

No. 574

Charles H. Hand, Plaintiff, vs. Lillian F. Howe, Defendant. In action upon Contract, Demand, $300.

Att'y of Pl'ff W. S. Angleman.

Att'y of Def't W. A. Coddington.

A Summons was issued in the above stated cause November 3rd., A. D., 1922, returnable November 8th., A. D., 1922, at ten o'clock A. M., and was returned by the Sergeant at Arms as follows:

I served the within summons on the within named defendant Lillian F. Howe, this 3rd. day of November A. D., 1922 by reading the same to her and leaving her a true copy thereof

GEORGE YORK, Sergeant at Arms.

State of demand filed November 8th A. D., 1922.

Adjourned to November 22nd, 1922.

Case tried with No. 575 Charles H. Hand vs. Murray Rushmore objections to State of Demand filed and motion for nonsuit made objections and motion withdrawn. Witness for plaintiff: Charles H. Hand, Edward J. Krine, Edith Hewitt.

Witnesses for defendant Murray Rushmore, Lillian F. Howe.

Plaintiff's exhibits: (A) Agreement for sale of Property dated August 31, 1921, signed Murray Rushmore and Charles H. Hand. (B) Deed for property from Charles H. Hand and Annie Hand his wife dated September 6th, 1921, to Murray Rushmore and Helen Joy Rushmore, as husband and wife. (C) Statement of settlement on closing sale of property by Charles H. Hand and wife to Murray Rushmore and Helen Joy Rushmore, property 118-120 West Eighth Street, Plainfield, N. J., as of September 6th, 1921. (D) Statement dated October 25th, 1921, amount $988.87. (E) Cancelled check No. 1086 on Plainfield Trust Co. for $350. dated October 28th, 1921, signed Murray Rushmore. (F) Cancelled check No. 188 on Plainfield Trust Co. dated October 28th, 1921 signed Lillian F. Howe. (G) Sketch of Garage. (H) Letter dated September 1st, 1921, in nature of agreement signed Murray Rushmore and Charles H. Hand.

Defedants exhibits: (1) Letter dated August 27th, 1921, to Murray Rushmore, signed Charles H. Hand. (2) Carbon copy of letter dated October 26th, 1921, to Charles H. Hand not signed. (3) Letter in form of an agreement dated September 1st, 1921, signed Murray Rushmore, Charles H. Hand. (4) Letter dated November 2nd, 1921, to Murray Rushmore, signed Charles H. Hand. (5) Letter dated November 2nd, 1921 to Lillian F. Howe, signed Charles H. Hand. (6) Letter dated October 25th, 1921, to Murray Rushmore and Mrs. L. F. Howe, signed Charles H. Hand. (7) Pencil sketch

of garage for identification only. (8) Blue print of property on West 8th street, Plainfield, N. J.

Notice of appeal (service acknowledged by defendant November 23, 1922) filed December 6, 1922.

Bond on appeal executed November 23, 1922, approved by Judge and filed December 6, 1922.

Orders extending time to settle case made December 13th, 1922, January 19th, 1923, January 31st, 1923, February 5th, 1923, Febraury 10th, 1923, to February 15th, 1923.

Case settled by Judge February 15th, 1923.

Court gave judgment of no cause for action in favor of said Defendant and against said Plaintiff.

Trial of the above case held November 22nd, 1922.

Judgment entered November 22nd, 1922.

DOCKET ENTRIES

In the District Court for the City of Plainfield, County of Union and State of New Jersey

No. 575

Charles H. Hand, Plaintiff, vs. Murray Rushmore, Defendant. In an action upon Contract. Demand $300..

Att'y of Pl'ff, W. S. Angleman.

Att'y of Def't, W. A. Coddington.

A Summons was issued in the above stated cause November 3rd, A. D., 1922, returnable November 8th, A. D., 1922, at ten o'clock A. M., and was returned by the Sergeant at Arms as follows:

The within named defendant not being found, I served the within summons on him this 3rd day of November A. D., 1922 by leaving a true copy thereof at his place of abode with his wife a emmber of his family over the age of fourteen years, who was informed by me of the contents thereof

GEORGE YORK, Seregant at Arms.

State of demand filed November 8th A. D., 1922.

Adjourned to November 22nd, 1922.

Case tried with No. 574 Charles H. Hand vs. Lillian F. Howe. Same objections, same witnesses, and

Docket Entries

same Exhibits as in No. 574 Charles H. Hand vs. Lillian F. Howe. Defendant paid into court $14.00 after trial. Notice of appeal (service acknowledged by defendant November 23rd, 1922) and filed December 6th, 1922.

Bond an appeal executed Noveber 23rd, 1922, approved by Judge and filed December 6th, 1922.

Orders extending time to settle case made Dec. 13, 1922, Jan. 10, 1923, Jan. 19, 1923, Feb. 5, 1923, Feb. 10, 1923 to Feb. 15, 1923, case settled by Judge February 15, 1923.

Court gave judgment of no cause for action in favor of said Defendant and against said Plaintiff.

Trial of the above case held November 22, 1922.

Judgment entered November 22, 1922.

Plaintiff's Exhibits

PLAINTIFF'S EXHIBITS

EXHIBIT A (Plaintiff)

Agreement for sale of property 118-120 West Eighth Street, Plainfield, N. J., made by Charles H. Hand and wife to Murray Rushmore and Helen Joy Rushmore, as husband and wife, dated August 31, 1921.

No mention therein that a garage was to be built by Charles H. Hand or that the sale included a garage to be built.

EXHIBIT B (Plaintiff)

Warranty Deed for property 118-120 West Eighth Street, Plainfield, N. J., by Charles H. Hand and wife to Murray Rushmore and Helen Joy Rushmore, as husband and wife, dated Sept. 6, 1921, and recorded in Union County Register's Office in Book 836, on pages 393, etc.

No mention therein that a garage was to be built by Charles H. Hand or that the conveyance included a garage to be built.

Plaintiff's Exhibits

EXHIBIT C (Plaintiff)

Statement of settlement on closing sale of property by Charles H. Hand and wife to Murray Rushmore and Helen Joy Rushmore, property 118-120 West Eighth Street, Plainfield, N. J., as of September 6, 1921.

Sale price	$15,300.00
rent at $125.00 per month paid to Sept 1, 1921, or 1/5 September	25.00
Pro rata unearned value of insurance premium No. 1820—National Union $14,000.00, expiring August 15, 1923, premium $46.25 and $18.43, $64.68	41.42
	$15,366.42

Cr.

Paid on acount	$ 300.00
Bond and mortgage to Plainfield Savings Bank at 6%, balance	5,000.00
Accrued interest 6-1-1921 to 9-6-1921	80.00
1921 Tax $234.07, on which $117.04 has been paid, charge tax 2 1/5 month	42.90
Balance	9,943.52
	$15,366.42

Plaintiff's Exhibits

EXHIBIT D (Plaintiff)

Plainfield, N. J., Oct. 25, 1921.

Mr. Murray Rushmore and Mrs E. F. Howe, Dr.

to Chas. H. Hand

To cash spent on drive and garage

J. W. Cox, digging drive	$ 27.00
Adam Seader, stone and trap	3.00
H. C. Hand, carpenter's helper	18.00
Tips to masons, drivers, etc	4.25
Crist. Lubeck, sand and gravel	41.80
Frank Mobus, " " "	9.00
Boice Runyon & Co.	27.58
" " "	3.56
Dunellen Building Co., cement blocks	123.72
Hardware & nails	12.25
Trap iron	.49
F. Gise, mason	233.50
J. D. Loizeaux, lumber	269.56
I. Bloom & Son, painters	22.50
R. G. Bush, driveway	110.66
H. Overland, carpenter	72.00
Cleaning up yard	10.00
	$988.87

Plaintiff's Exhibits

EXHIBIT E (Plaintiff)

No. 1086 Plainfield, N. J. October 28, 1921
THE PLAINFIELD TRUST COMPANY
Pay to the Order of CHARLES H. HAND
Three Hundred and 00/100 Dollars
$350.00 MURRAY RUSHMORE

Certified:

Accepted; Payable through Exchanges; F. I. Walsh, Ass't Sec'y; The Plainfield Trust Company, Plainfield, N. J. Nov. 10, 1921.

Endorsed:

On account of bill rendered
Charles H. Hand
The Plainfield Trust Co.
P A I D
Dec. 16, 1921
General Bookkeeper
Plainfield, N. J.

EXHIBIT F (Plaintiff)

No. 188 Plainfield, N. J. Oct. 28, 1921
Pay to the Order of CHARLES H. HAND
Three Hundred and Fifty and 00/00 Dollars
$350.00 LILLIAN F. HOWE

Certified:

Accepted; Payable through Exchanges; F. I. Walsh, Ass't Sec'y; The Plainfield Trust Co.; Nov. 10, 1921.

Plaintiff's Exhibits

Endorsed:

On account of bill rendered
Charles H. Hand
The Plainfield Trust Co.
P A I D
Dec. 16, 1921
General Bookkeeper
Plainfield, N. J.

EXHIBIT G (Plaintiff)

Pencil sketch of garage, showing 12 feet for width of each side and 16 feet depth with double doors for each side, cement floors, cement entrance and cement runners to street, and with the following wording:

"Aug. 28 Garage 12x16 rough cement blocks, flat roof asbestos shingles, Battin Doors with glass in them, small window in each garage."

EXHIBIT H (Plaintiff)

TWENTY-NINE BROADWAY
New York City
September 1st, 1921

My dear Mr. Hand:

This will confirm my telephone conversation and agreement for purchase of the 120 West Eighth Street property. Part of the argeement is to include the construction by you of a suitable double garage and roadway between my property and that of Mr. Howe adjoining me on the east. This garage to be a double garage half on his land and half on mine and the roadway to also be half on each prop-

erty. This is to cost $700.00, half to be paid by Mr. Howe and half by me. Mr. Howe has agreed to join me in this and I would like your signature to this paper which will constitute the agreement between us.

Very truly,

MURRAY RUSHMORE

CHARLES H. HAND

DEFENDANT'S EXHIBITS

EXHIBIT 1 (Defendant)

Office of
CHARLES H. HAND
120 Watchung Avenue
Plainfield, N. J.

Aug. 27, 1921

Mr. Murray Rushmore,
Dear Sir:

Your letter and offer for 120 West 8th Street, received. As you know my price was $16,500. One of the agents wrote me at Atlantic City two weeks ago and offered me $16,000, if I would pay him $500 for the sale, which I refused. He wanted the house next May. Now if you will give me $15,500, $10,000 cash, and assume a $5500 mortgage, now on the place, held by Plainfield Savings Bank (it was $8,000; I paid $2500 last year) you may have it. If closed up by Sept. 15th Asa Randolph, the lawyer for the Bank, has all searches, etc., which will save some money. You can let me know by Wednesday

next. I would not do this only I save trouble. No change in moving etc. If you do this we will let all papers bear date Sept. 15. You save half month's rent. Taxes paid to June 1st, 1921.

Yours resp.,

CHARLES H. HAND

EXHIBIT 2 (Defendant)

From

MOORE & MUNGER,
29 Broadway,
New York, N. Y.

October 28, 1921

Mr. Charles H. Hand,
120 Watchung Avenue,
Plainfield, N. J.

My dear Mr. Hand:

Mr. Howe has handed me the bill which you sent him covering expenses in building our garage. I was rather surprised to see the figures which you menton. This garage was distinctly to be part of the contract for the sale of my house. You will recall that I pointed out in objecting to the price you asked, that the house was not complete without a garage and you said that to remedy this you would build me a suitable double garage with cement roadway for Seven hundred ($700.00) dollars,—half to be paid by me and half by Mr. Howe. At the time we discussed the method of construction and agreed upon cement blocks with an asbestos shingled roof. Also, in closing with you for the purchase of the house I asked you to sign an agreement I had made out stating that a "suitabl egarage and driveway"

should be built for $700.00 as part of the agreement covering the sale.

It was of course necessary for me to consult Mr. Howe before I originally entered into this agreement with you and he stated that the price of $700 was satisfactory to him.

Mr. Howe and I are therefore enclosing herewith our checks for Three hundred and fifty ($350.-00) dollars apiece, totalling Seven hundred ($700.-00) dollars which covers payment in full for the work done. We feel that you have done a very good job for us, we like our garage and believe it will prove very satisfactory.

Very truly yours

MR/F

EXHIBIT 3 (Defendant)

(Same as Plaintiff's Exhibit H.)

EXHIBIT 4 (Defendant)

HOTEL RALEIGH
Atlantic City, N. J.

November 2, 1921

Mr. Murray Rushmore,

Dear Sir:

I received your letter this morning and was more than surprised at it. Your checks wlll not settle my bill, only placed to the account of the amount. When I told you a garage could be built for $700 I told you a rough block garage, flat shingle roof, asbestos shingles, 16x24 driveway 8' wide like others cement 2' wide under the wheels. No cess-

pools for washing cars. Doors were to be glass and Battin doors. That would have only cost $700. I did tell you I would build it free of charge as to my time. NOW if you think the bill is too much for what you got, which was ordered by Mrs. Howe, and the day you was home I told you of the extra cost,— I will do this, I will take the property back at what you paid and you pay rent until your lease expires. I will also return your check I got today. I sold it too cheap and would like it for a home. Now there is one of three thnigs to do: pay the bill; deed back the property and I will save you harmless; or, I will put it in my lawyer's hands. I want no trouble with you or anyone that was a friend of J. W. Murray or I. W. Rushmore as they was friends of mine.

Yours resp.

CHARLES H. HAND

I give you $200 worth of my time free as the water flows down hill.

EXHIBIT 5 (Defendant)

HOTEL RALEIGH
Atlantic City, N. J.

Nov. 2, 1921

Mrs E. F. Howe,
116 West 8th Street.

Mr. Rushmore sent me a check of yours for $350.00 which I will give you and he credit for on the bill. I did not get the $25 check for work done on your place as per your orders which I would like soon as I have paid it all out of my account. I could have built the garage and driveway for

$700 or less if I had done as I told Mr. Rushmore but as I told you the hip roof would cose $125 or more and the walls cemented inside and jointed up outside and work benches, cesspools for drains and panel doors would all cost more then I told Mr. Rushmore. You wanted it and I done it thinking you knew it was to be paid for by you and Mr. Rushmore. When I give my time and car and son's time do you not think I was very good. I told Mr. Rushmore a garage what kind of a garage you would build as you know I am no contractor; only done this to please you both. I have this day told Mr. R. would take place back if he wanted me to. My bills as sent must be paid as my lawyer will attend to it. I do not want trouble for nothing and will not have it.

Yours

CHARLES H. HAND

Will be home Nov. 7th.

EXHIBIT 6 (Defendant)

Residence 'phone 1836

Office of
CHARLES H. HAND
Real Estate & Insurance
120 Watchung Avenue
Plainfield, N. J.

Oct. 25, 1921.

Mr. Murray Rushmore and
Mr. E. F. Howe.

Gentlemen:

My bill enclosed for cost of garage and drive-

way. I told Mr. Rushmore it would cost about $700 flat roof and rough walls and no trap in yard. That makes the extra costs. I have given you all discounts on bills and charged nothing for my time. I hope you think I have done my best for you both.

Yours

CHARLES H. HAND

P. S. I have paid all bills but painter and man who cleans up yard. Wednesday I go to Atlantic City. Will be home in ten days.

EXHIBIT 7 (Defendant)

(Marked for identification only.)

EXHIBIT 8 (Defendant)

Blue print of property on West Eighth Street, Plainfield, N. J.

SPECIFICATION OF OBJECTIONS

NEW JERSEY SUPREME COURT

CHARLES H. HAND, Plaintiff-Appellant.	Action at Law.
vs.	On Contract.
LILLIAN F. HOWE, Defendant-Respondent.	On Appeal. Specification of Objections.

NEW JERSEY SUPREME COURT

CHARLES H. HAND, Plaintiff-Appellant.	Action at Law.
vs.	On Contract.
MURRAY RUSHMORE, Defendant-Respondent.	On Appeal. Specification of Objections.

The following is a specification of the rulings, determinations or directions of the District Court of the City of Plainfield with respect to whch the plaintiff-appellant is dissatisfied n point of law:

1. That plaintiff was only entitled for building garage aomunt specified in letter of Rushmore to Hand dated September 1, 1921, namely $700.

2. That sole agreement for building garage

was letter of September 1, 1921, from Rushmore to Hand unmodified by anything subsequent thereto.

3. That defendant was not liable for cost of changes in building garage.

4. Exclusion of testimony to which exceptions were taken.

5. Refusal to give judgment to plaintiff for work done other than for building garage.

6. That judgment was given against plaintiff.

7. That judgment was given for defendant.

W. S. ANGLEMAN,

Attorney for Plaintiff-Appellant.

SUPREME COURT OPINION

(Filed, Nov. 7, 1923)

Nos. 440 and 441, June Term, 1923

New Jersey Supreme Court

CHARLES H. HAND,
Plaintiff-Appellant,
vs.
LILLIAN F. HOWE,
Defendant-Respondent

CHARLES H. HAND,
Plaintiff-Appellant,
vs.
MURRAY RUSHMORE,
Defendant-Respondent

Submitted June Term, 1923, Decided November 7, 1923.

On appeal from Plainfield District Court.

Before Justices Kalisch and Katzenbach.

W. S. Angleman, Esq., for the plaintiff-appellant.

Wm. A. Coddington, Esq., for the defendants-respondents.

George W. Anderson, Esq., of Counsel.

PER CURIAM.

These cases, tried together below in the Plainfield District Court, are appeals from judgments for the defendant of no cause of action. The appellant was the owner of the dwelling rented by him to Murray Rushmore. The adjoining property was owned by Lillian F. Howe. The

plaintiff entered into negotiations with Rushmore for the sale to Rushmore of the property he was occupying. During the negotiations there was a conversation between the plaintiff and Rushmore to the effect that the plaintiff, who was a Builder, and Real Estate operator, would erect a garage and construct a roadway for Rushmore and Mrs. Howe for $700. One half of the garage was to be built upon Mrs. Howe's property, the other half on Rushmore's, if he became the purchaser of the property. On September 1st, 1921, Rushmore wrote to the plaintiff the following letter:

"September 1st, 1921.

My dear Mr. Hand:

This will confirm my telephone conversation and agreement for purchase of the 120 West Eighth Street property. Part of the agreement is to include the construction by you of a suitable double garage and roadway between my property and that of Mr. Howe adjoining me on the east. This garage to be a double garage half on his land and half on mine and the roadway to also one half on each property. This is to cost $700.00, half to be paid by Mr. Howe and half by me. Mr. Howe has agreed to join me in this and I would like your signature to this paper which will constitute the agreement between us.

Very truly,

(Signed) Murray Rushmore"

The plaintiff signed his name below that of Mr. Rushmore. The contract for the sale of the property between the plaintiff and Rushmore is dated August 31, 1921, but the above letter

of September 1st, 1921 was admittedly sent before the contract of sale was executed. The plaintiff built the garage and roadway. Each of the defendants paid $350. making the $700 mentioned in the agreement in the form of the letter of September 1st, 1921. The plaintiff sent the defendants upon completion of the work, bills for materials and labor for $988.87 and presented a bill of $16.40 for cleaning up the premises. For the difference between these bills and the $700 paid, the present actions were instituted. The Plaintiff claimed he had built a larger garage, with a different kind of roof and also a better roadway than had been agreed upon and that these changes were made by him, the request of Mrs. Howe and the plaintiff. This was denied. The only questions presented to us are questions of fact. The District Court found as a fact "that the plaintiff agreed with defendants to build a garage for them for Seven Hundred Dollars ($700.00) that no charges or additions were ordered or authorized by either defendant, and that neither of them agreed or were liable to pay plaintiff for making any changes in the garage".

This Court cannot reverse a judgment upon a finding of fact where there is evidence to support the judgment. Lurich vs. Breithart, 120 At. Rep. 20. There is evidence to support the judgments rendered by the District Court in both cases. Accordingly the judgments are affirmed in both cases.

RULES OF AFFIRMANCE

(Entered, Nov. 13, 1923)

New Jersey Supreme Court

CHARLES H. HAND, Appellant, vs. LILLIAN F. HOWE, Appellee.	On Appeal, Rule of Affirmance and Remittitur.

This cause having been heard the June Term 1923 of this Court, and the Court having inspected the record and proceedings of the Court below, and considered the reasons assigned for error, and being of the opinion that the judgment removed by appeal in this cause should be affirmed, with costs.

It is Ordered that the judgment of the District Court of Plainfield removed by appeal in this cause be affirmed, with costs, and the record remitted to the said District Court to be proceeded with according to law and the practice of said Court. Entered November 13, 1923.

On motion of

William A. Coddington,

Attorney of Appellee.

RULES OF AFFIRMANCE

(Entered, Nov. 13, 1923)

New Jersey Supreme Court

CHARLES H. HAND, Appellant, vs. MURRAY RUSHMORE, Appellee.	On Appeal, Rule of Affirmance and Remittitur.

This cause having been heard at the June Term 1923 of this Court, and the Court having inspected the record and proceedings of the Court below, and considered the reasons assigned for error, and being of the opinion that the judgment removed by appeal in this cause should be affirmed, with costs.

It is Ordered that the judgment of the District Court of Plainfield removed by appeal in this cause be affirmed, with costs, and the record remitted to the said District Court to be proceeded with according to law and the practice of said Court. Entered November 13, 1923.

On motion of

William A. Coddington,

Attorney of Appellee.

NOTICE OF APPEAL

(Filed, Nov. 11, 1924)

Supreme Court of New Jersey

CHARLES H. HAND, Plaintiff-Appellant, vs. MURRAY RUSHMORE, Defendant-Respondent	Action at Law. On Contract. On Appeal from Plainfield District Court. Notice of Appeal

TAKE NOTICE that the plaintiff-appellant appeals to the Court of Appeals fom the whole of the judgment entered in this cause on the ground that the Supreme Court erred in affirming the judgment under review.

Errors and

W. S. ANGLEMAN,

Attorney for Plaintiff-Appellant.

To

Murray Rushmore, Defendant-Respondent,
William A. Coddington, Attorney.

NOTICE OF APPEAL

(Filed, Nov. 11, 1924)

Supreme Court of New Jersey

CHARLES H. HAND, Plaintiff-Appellant, vs. LILLIAN F. HOWE, Defendant-Respondent	Action at Law. On Contract. On Appeal from Plainfield District Court. Notice of Appeal

TAKE NOTICE that the plaintiff-appellant appeals to the Court of Appeals fom the whole of the judgment entered in this cause on the ground that the Supreme Court erred in affirming the judgment under review.

Errors and

W. S. ANGLEMAN,

Attorney for Plaintiff-Appellant.

To

Lillian F. Howe, Defendant-Respondent,
William A. Coddington, Attorney.

New Jersey Court
of
Errors and Appeals

On Appeal from Plainfield District Court
and
On Appeal from New Jersey Supreme Court

CHARLES H. HAND, Plaintiff-Appellant vs. LILLIAN F. HOWE, Defendant-Respondent	Action at law. On Contract.

CHARLES H. HAND, Plaintiff-Appellant vs. MURRAY RUSHMORE, Defendant-Respondent	Action at law. On Contract.

Brief for Defendants-Respondents

The issue is solely of fact. The state of demand contains 2 counts, (1) $300., for balance due on a contract for the erection of a Garage and driveway. (2) $300., balance for labor and materials in construction of a Garage and driveway.

The plaintiff is, or was, a builder and real estate manipulator. The defendants two private property owners.

The Garage and driveway in question is a double, or joint affair, built on the adjoining properties of the two defendants, at the instance of the defendant Rushmore, in accordance with an agreement between Rushmore and the plaintiff. Rushmore purchased his property of the plaintiff, and at the time of the negotiations objected because there was no Garage, but which the plaintiff proposed to, and did, overcome by constructing the Garage and driveway in question in order to effect the sale of the property to Rushmore. Under these circumstances it is safe to say that the plaintiff agreed to build a Garage and driveway as Rushmore wanted it.

The work was done under a contract in writing which was independent of the agreement of sale, and purchase of the property by Rushmore, and does not enter into it, only incidentally as mentioned.

The contract in question is in the form of a letter signed by Rushmore and the plaintiff, calling for the construction by the plaintiff of "A suitable Garage and driveway" to be constructed on the adjoining properties of both defendants for their joint use, for the sum of $700. (Ex. H. Plaintiff, page 30-1). The plaintiff-appellant claims in his brief that this paper is not a contract, but only an agreement to enter into a contract. But plaintiff admitted at the trial that he agreed to build a Garage for $700. Therefore if Ex. H., is not complete enough, as alleged by the plaintiff, to constitute a contract, it is conclusive evidence of such a contract, or agreement, under which the plaintiff constructed a Garage for which he claims extra compensation on account of what he alleges were changes in construction.

When the work was done the plaintiff instead of asking for the contract price, $700., sent the defendants itemized bills for materials and labor for $988.87 (Ex. D. Plaintiff, page 21). The defendant Rushmore, replied, by sending the plaintiff the defendant's check

for $700., (which the plaintiff accepted and used) and refused to pay the balance. (Ex. 2. Deft page 25).

There were no specifications. The character of the construction depended entirely upon the oral part of the agreement between Rushmore and the plaintiff, at the time Rushmore purchased the property of the plaintiff. The plaintiff in reply to Rushmore, after receiving the $700., defines what he was to build as a rough block Garage; *flat shingle roof;* (which would be an absurdity) 16 x 24. Driveway 20 inches wide under the wheels; no place for washing cars; doors glass and battin. (Ex. 4. Deft, page 26).

This is denied by Rushmore. He says the Garage was to be 20 feet long, which would make it 20 x 24; that there was to be wash stand in front, and the Garage as finished was the Garage plantiff agreed to build. (Pages 11 and 13).

On page 12 Rushmore denies that the Plaintiff said anything to him about the hip roof for which he claims extra compensation, and which he says Mrs. Howe ordered him to put on in place of a flat roof.

Both defendants deny that they directed him to do any of the things for which he claims extra compensation.

Mrs. Howe says he did talk to her about the roof and she referred him to Mr. Rushmore. (Page 11-12). It was a joint affair and of course Mrs. Howe could not bind Rushmore. Neither could the construction be such that she could have what Rushmore did not have, and vice versa.

It is quite evident that the plaintiff did not talk with Rushmore about these things, because it appears by the evidence that Rushmore was only home one day between the time the agreement was made until after the work was finished.

The plaintiff's letter to Mrs. Howe (Ex. 5 Deft, p. 27), the contents of which are in the main denied by her testimony, yet it has a decided bearing in the words, *"You wanted it and I done it thinking you knew it was to be paid for by you and Mr. Rushmore."* This shows conclusively that *she did not* direct any-

thing extra to be done, and that *she did not* enter into any agreement to pay anything outside of the contract price.

Plaintiff's brief calls attention to an item of $16.40, claimed by the plaintiff for cleaning up the premises after his work was done.

It is *not claimed that the defendants requested him to do so.* It appears to have been a *voluntary act* on his part, and the defendants are not chargeable with it.

In fact it is customary, and usually required, that contractors clear up the debris they have created in their construction work.

In conclusion, the trial Judge (see page 13) "found as a fact that plaintiff agreed with defendants to build a Garage for them for $700; that no changes or additions were ordered or authorized by either defendant, and that neither of them agreed, nor were liable to pay plaintiff for making any changes in the Garage, and that as plaintiff has been paid the contract price, $700., judgment should go for them." And as there is testimony and other evidence in support of his conclusion, the weight and sufficiency of which was for him to determine, the judgment should be sustained.

These cases were tried together in the District Court and were appealed to the Supreme Court and both submitted together there, and are also both submitted together in this court. The Supreme Court decided both cases together on November 7, 1923, and affirmed the judgments in both cases. Rules for affirmance of each judgment were entered in the Supreme Court, November 13th, 1923. Plaintiff-Appellant has appealed from the judgments rendered in the Supreme Court to this court.

Respectfully submitted,

WM. A. CODDINGTON,
Attorney for Defendants

GEORGE W. ANDERSON,
Of Counsel with Defendants.

May Term, 1927.

New Jersey
Court of Errors and Appeals

CHARLES H. HAND, Plaintiff-Appellant, vs. LILLIAN F. HOWE, Defendant-Respondent	Action at Law. On Contract. On Appeal from Supreme Court.

CHARLES H. HAND, Plaintiff-Appellant, vs. MURRAY RUSHMORE, Defendant-Respondent	Action at Law. On Contract. On Appeal from Supreme Court.

Brief For Appellant

These two cases were tried together in the Plainfield District Court, resulting in a judgment for the defendants, and the plaintiff appealed. The Supreme Court affirmed, and the plaintiff has appealed to this Court. By consent the two cases are submitted and argued together.

FACTS.

The subject matter of the cases is the building by the plaintiff of a joint garage and roadway for the two defendants under the following circumstances:

Defendant Rushmore was a tenant of the plaintiff. Defendant Howe owned and occupied adjoining property. Rushmore and the plaintiff entered into negotiations for the sale to Rushmore of the property of which he was tenant. As a part of these negotiations there was talk with Rushmore of the plaintiff building a garage and roadway for Rushmore and Howe at a cost of $700, half to be paid by Rushmore and half by Howe; and a letter was sent by Rushmore to plaintiff to confirm the telephone conversation relative to the sale and containing a reference to the proposed garage. That letter is dated Sept. 1, 1921, and the contract for sale is dated August 31, 1921, but the letter was admittedly signed before the contract for sale. The letter stated that

> "Part of the agreement is to include the construction by you of a suitable double garage and roadway between my property and that of Mr. Howe."

There were no specifications of any kind, those presumably to be left to the more definite contract for sale to be drawn up later. When that contract was made, however, no mention was made therein that plaintiff was to build a garage or that sale included a garage to be built. Nor was there anything about a garage in the deed given to carry out the contract for sale, nor

in the statement of settlement on closing sale. About a month after the sale Hand began building a garage for the defendants. The District Court held that the letter mentioned constituted an agreement by Hand to build a garage for $700, and that the garage Hand built was built by him under the terms of, and governed by, said agreement as to price. Plaintiff's contention was that he was entitled to be paid the exact amount of money spent by him in building the garage and roadway without any compensation to him for his services. That amount was $988.87 and $16.40 for cleaning up the premises after the garage was finished. There was no dispute but that plaintiff actually paid the amount stated. Neither was there any dispute but that the work was perfectly satisfactory, in fact Rushmore wrote plaintiff, on Oct. 28, 1921, that

> "We feel that you have done a very good job for us, we like our garage and believe it will prove satisfactory."

Case, State of Case, as Settled by Court, pp. 9—13.

Case, Letter of Sept. 1, Ex. H and 3, p. 23, lines 27, etc.; p. 26, lines 21, etc.

Case, Agreement of Sale, Ex. A., p. 19, lines 8, etc.

Case, Deed, Ex. B., p. 19, lines 19, etc.
Case, Statement on Closing Sale, Ex. C., p. 20.

Case, Letter of Oct. 25, p. 29, lines 7—10.

Case, Letter of Nov. 2, p. 27, lines 6—8.

Case, Letter of Oct. 28, Ex. 2, p. 26, lines 15-17.

Defendants paid $700, being $350 each, and these suits were brought to recover the balance of the amount actually expended by the plaintiff for the defendants.

SPECIFICATIONS OF OBJECTIONS

There are seven objections filed, but one of them (Objection 4) being to exclusion of evidence to which exceptions were taken not being mentioned in any way in the State of the Case as settled by the Court must of necessity be dropped. Three (Objections 1, 2, 3) of the remaining six are referrable to the holding of the Court that the letter of Sept. 1 (Exhibits, H and 3) was the agreement, unmodified by anything subsequent thereto, under which the garage was built. One objection (Objection 5) is to the refusal to give judgment to plaintiff for work done other than for building garage, i. e., cleaning up yard after garage was built. The remaining two objections (Objections 6, 7) are the usual general objections covering all errors which may have been made in giving erroneous judgment.

Case, Specifications of Objections, pp. 30, 31.

The objections may be conveniently argued in groups as above specified.

I. LETTER OF SEPT. 21.

The District Court tried the case on the theory that the letter of Stpt. 21 (Exhibits H and 3) was the agreement under which the garage was built and that was all there was to it, ignoring entirely the theory of the plaintiff that that letter as a legal agreement, if it could be said to have ever been such, ceased when it was not included in the contract of sale, deed, or statement of settlement, and that the building of the garage by plaintiff was carrying out at the most of simply a moral obligation or agreement to build such a garage at cost price as defendants might desire at some future time.

Case, Letter of Sept. 1, (Exhibits H and 3) p. 22, lines 30, etc.; p. 26, lines 21, etc.

Case, Agreement for Sale (Exhibit A), p. 19, lines 6—15.

Case, Deed (Exhibit B), p. 19, lines 17—29.

Case, Statement of Settlement (Exhibit C), p. 20.

That the Court's attitude was as stated is shown by various portions of the State of the Case as settled by the Court, namely:

> "Hand agreed to build a garage and driveway for defendants, half on each lot, for the sum of Seven Hundred Dollars ($700.00) to be paid one-half by each defendant (See Exhibit H for plaintiff).

"It was intended that this agreement should be made part of agreement for sale of plaintiff's property to Rushmore, but it was not. Though dated after the agreement for sale of property, it was signed prior to the execution of that paper.

"About a month after title passed from Hand to Rushmore, Hand began building the garage under the agreement."

Case, State of Case as Settled by Court, p. 10, lines 17—31.

"Plaintiff claims he built a larger garage than he expected to build for defendants when he made the agreement with them."

Case, State of Case as Settled by Court, p. 11, lines 9—11.

"Rushmore, the other defendant, testified he told plaintiff when agreement was made * * *"

Case, State of Case as Settled by Court, p. 11, lines 18—20.

"She denied she authorized any changes in the contract, and denied she agreed to pay more than Seven Hundred Dollars ($700.00), the contract price."

Case, State of Case as Settled by Court, p. 12, lines 8—10.

"* * * that plaintiff had agreed before contract was signed * * *."

Case, State of Case as Settled by Court, p. 13, lines 12, 13.

The finding by the District Court as a fact that the plaintiff agreed to build a garage for the defendants for $700 when the only testimony to that effect and the testimony on which the District Court relies for that conclusion (see extracts quoted) is the said letter (Exhibits H and 3) is not, and can not be, binding on appeal as a finding of fact merely because so labeled by the District Court. If the mere labeling as a fact what is in reality a conclusion of law makes the thing so labeled a fact, then the District Courts have more uncontrolled autocratic powers than this Court would ever dream of asserting, and the futility of appeal when the District Court is so minded as so to label its conclusions is at once manifest, no matter how meritorious the case may be or how much injustice may have been done, and the statutory rights of litigants to appeal on matters of law is rendered nugatory.

This letter (Exhibit H) was not an agreement to build a garage. At the most it could only be considered an agreement to make an agreement, the full terms of which are not disclosed. Such an agreement is not a legal agreement. Specific performance could not be decreed of it. It says, "Part of the agreement is to include the construction by you of a suitable double garage and roadway," plainly refering to an agreement to be yet entered into, one of the terms of which is to include the construction of a "suitable" garage, whatever that may mean. Merely concluding, "I would like your signature to this paper which will constitute the agreement between us," can

not make the paper itself an agreement to build a garage any more than it can make the paper an agreement to purchase the property, and no one contends that, although it starts off with "This will confirm my telephone conversation and agreement for purchase." The subsequent entering into an agreement to purchase the property did away with all previous negotiations, and what-not not included in the actual written agreement finally consummated. This is so plain that neither ~~agreement~~ argument nor citation is necessary. This agreement for sale contained nothing relative to building a garage and roadway. All previous negotiations and agreements looking to include such matter in said agreement for sale went, therefore into the discard and lost any and all legal efficacy, if any they ever had. The deed following contained nothing about the garage, and the statement of settlement on closing sale omitted any mention of it. The statement of settlement finally settled the pros and cons of the matter, and the transaction then became fully completed in every respect. When, therefore, Rushmore says in his letter of Oct. 28, (Exhibit 2) to the plaintiff, "This garage was distinctly to be part of the contract for the sale of my house," he can not by so stating make it so when it is not to be found in that contract.

Case, Letter of Oct. 28 (Exhibit 2), p. 25, line 28, 29.

When the plaintiff received that letter he immediately replied, although out of town, that if Rushmore thought the bill was too much he would take back the property and save him harmless. Needless to say, Rushmore declined.

Case, Letter of Nov. 2 (Exhibit 4), p. 26, lines 30, etc.

This letter (Exhibit H) can not be considered as a contract to build the garage for another reason, and that is that to constitute a contract all the essential terms must be settled and assented to by both the parties and no one could seriously contend that this letter settles "all the essential terms" and that they have been "assented to by both the parties."

Shaw vs. Woodbury Glass Works, 52 N. J. L. 7, 9.

(Supreme Court, 1889, Beasley, Ch. J.)

The only terms in this letter as to the garage is that it is to be "a suitable double garage and roadway," half on property of each defendant and to cost $700, half to be paid by each defendant. Could such a paper be legally considered as settling and assenting to all the essential terms? Moreover, Rushmore testified that "he had no talk with plaintiff about the style or form of roof," a very essential part, as the roof that was put on admittedly cost $100-$150 more than the one first talked about. Nothing at all is said as to the kind of roadway to be built, a rather essential matter.

Case, State of Case as Settled by Court, p. 13, line 11, 12; p. 11, lines 27, etc.

If anything is left open or undetermined, so that the minds of the parties have not met, no contract exists. There must be a meeting of

minds, and there can be no meeting of minds if one party has no mind which can meet the mind of the other. A contract imports mutuality, and there must be the concurrence of the minds of all parties in reference to the thing to be done. An agreement to be finally settled must comprise all the terms. These are fundamental principles. How then can the legal conclusion by the District Court that this letter (Exhibit H) is a contract and was the contract or agreement under which plaintiff built the garage and driveway be justified?

The District Court having made this basic legal error, the judgment resting on it should be reversed.

II. PAYMENT FOR OTHER WORK DONE

But, even if the District Court could so legally find, what about the expense of $16.40 for cleaning up the premises after the garage was finished? There is nothing in that letter which by the wildest stretch of imagination could call for that work to be included in the $700. The defendants having had the benefit of such expenditure, the plaintiff is legally entitled to be reimbursed therefor; and the District Court erred in not so ruling.

III. ERRONEOUS JUDGMENT.

The arguments under I and II apply here. As a matter of law on the whole case judgment was erroneously given against the plaintiff and for the defendants.

CONCLUSION.

This is not a case where any question has been raised that the full amount of money claimed has not been expended by the plaintiff to good purpose for the benefit of defendants. It is not a case where a penny of profit will be reaped by the plaintiff should he ultimately recover all that he sues for. The work done is admittedly of the best character. It was not a work undertaken for profit. If it had been, the plaintiff would need but have taken the position defendants now take and built a "suitable" garage for $700, and if he could not have recovered under the letter he could have recovered under a quantum meruit, including the value of his own services. Is this plaintiff to be penalized merely because he has played fair and fulfilled what he considered to be a moral obligation to put up such a garage and roadway as the defendants desired at the lowest cost price without charging anything for his own services? Would it not be a blot on the fair name of justice if money spent by one for another under the circumstances here shown is not recoverable?

It is most respectfully and urgently submitted that the judgments of the Supreme Court in these two cases should be reversed.

W. S. ANGLEMAN,

Attorney and Counsel for Appellant.

May Term, 1927.